

Bill No. 111 of 2013

THE SECURITIES LAWS (AMENDMENT)

BILL, 2013

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BILL

further to amend the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Securities Laws (Amendment) Act, 2013.

5 (2) Save as otherwise provided in this Act, it shall be deemed to have come into force on the 18th day of July, 2013.

Short title
and
commencement.

CHAPTER II

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

Amendment of section 11.	2. In section 11 of the Securities and Exchange Board of India Act, 1992 (hereafter in this Chapter referred to as the principal Act),—	15 of 1992.
	<i>(i)</i> in sub-section (2),—	5
	<i>(a)</i> for clause <i>(ia)</i> , the following clause shall be substituted, namely:—	
	“ <i>(ia)</i> calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;”;	10
	<i>(b)</i> after clause <i>(ia)</i> , the following clause shall be inserted and shall be deemed to have been inserted with effect from the 6th day of March, 1998, namely:—	
	“ <i>(ib)</i> calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:	15
	Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;”;	20
	<i>(ii)</i> after sub-section (4), the following sub-section shall be inserted, namely:—	
	“ <i>(5)</i> The amount disgorged, pursuant to a direction issued, under section 11B or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.”.	25 42 of 1956. 22 of 1996.
Amendment of section 11AA.	3. In section 11AA of the principal Act,—	
	<i>(i)</i> in sub-section (1) —	
	<i>(a)</i> after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;	
	<i>(b)</i> the following proviso shall be inserted, namely:—	35
	“Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.”;	
	<i>(ii)</i> in sub-section (2), in the opening portion, for the word “company”, the word “person” shall be substituted;	40
	<i>(iii)</i> after sub-section (2), the following sub-section shall be inserted, namely:—	
	“ <i>(2A)</i> Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.”;	45
	<i>(iv)</i> in sub-section (3),—	

(a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;

(b) after clause (viii), the following clause shall be inserted, namely:—

5 “(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify.”.

4. In section 11B of the principal Act, the following *Explanation* shall be inserted, namely:—

Amendment
of section
11B.

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

5. In section 11C of the principal Act,—

Amendment
of section
11C.

15 (i) for sub-section (8), the following sub-section shall be substituted, namely:—

“(8) Where in the course of an investigation, the Investigating Authority has reason to believe that any person or enterprise, as the case may be, to whom a notice under sub-section (3) has been issued or might be issued,—

20 (a) has omitted or failed to provide the information or produce documents as required in the notice; or

(b) would not provide the information or produce documents which shall be useful for, or relevant to, the investigation; or

(c) would destroy, mutilate, alter, falsify or secrete the information or documents useful for, or relevant to, the investigation,

25 then, the Chairman may, after being satisfied that it is necessary to do so, authorise the Investigating Authority or any other officer of the Board (the officer so authorised in all cases being hereinafter referred to as the authorised officer), to—

30 (i) enter and search, with such assistance, as may be required, the building, place, vessel, vehicle or aircraft where such information or documents are expected or believed to be kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by sub-clause (i), where the keys thereof are not available;

35 (iii) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account or other documents;

40 (iv) require any person who is found to be in possession or control of any books of account or other documents, maintained in the form of electronic record, to provide the authorised officer the necessary facility to inspect such books of account or other documents.

Explanation.—For the purposes of this sub-clause, the expression “electronic record” shall have the meaning assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000.

21 of 2000.

45 (v) seize any such books of account or other documents found as a result of such search;

(vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(vii) record on oath the statement of any person who is found to be in possession or in control of the information or documents referred to in sub-clauses (i), (iii) and (iv).’;

(ii) for sub-section (9), the following sub-section shall be substituted, namely:—

“(9) The Board may make regulations in relation to any search or seizure under this section; and in particular, without prejudice to the generality of the foregoing power, such regulations may provide for the procedure to be followed by the authorised officer—

(a) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

(b) for ensuring safe custody of any books of account or other documents or assets seized.”;

(iii) in sub-section (10), the words “and inform the Magistrate of such return” shall be omitted.

Insertion of new section 15JB.

6. After section 15JA of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

Settlement of administrative and civil proceedings.

“15JB. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

(3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.

(4) No appeal shall lie under section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section.”.

Amendment of section 15T.

7. In section 15T of the principal Act, sub-section (2) shall be omitted.

Amendment of section 26.

8. In section 26 of the principal Act, sub-section (2) shall be omitted.

Insertion of new sections 26A, 26B, 26C, 26D and 26E.

9. After section 26 of the principal Act, the following sections shall be inserted, namely:—

Establishment of Special Courts.

“26A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

2 of 1974.	5	26B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.	Offences triable by Special Courts.
2 of 1974.	10	26C. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.	Appeal and revision.
2 of 1974.	15	26D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.	Application of Code to proceedings before Special Court.
	20	(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.	
2 of 1974.	25	26E. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:	Transitional provisions.
2 of 1974.	30	Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this section.”.	
	35	10. After section 28 of the principal Act, the following section shall be inserted, namely:—	Insertion of new section 28A.
	40	‘28A. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—	Recovery of amounts.
	45	(a) attachment and sale of the person’s movable property;	
	43 of 1961.	(b) attachment of the person’s bank accounts;	
		(c) attachment and sale of the person’s immovable property;	
		(d) arrest of the person and his detention in prison;	
		(e) appointing a receiver for the management of the person’s movable and immovable properties,	
		and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were	

the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

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

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

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

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.

(4) For the purpose of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.’

Amendment of section 30.

11. In section 30 of the principal Act, in sub-section (2),—

(i) after clause (c), the following clauses shall be inserted, namely:—

“(ca) the utilisation of the amount credited under sub-section (5) of section 11;

(cb) the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA;

(cc) the procedure to be followed by the authorised officer for search or seizure under sub-section (9) of section 11C;”;

(ii) after clause (d), the following clauses shall be inserted, namely:—

“(da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;

(db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.”.

Insertion of new section 34A.

12. After section 34 of the principal Act, the following section shall be inserted, namely:—

Validation of certain Acts.

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

CHAPTER III

AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

42 of 1956.	<p>13. In section 12A of the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as the principal Act), the following <i>Explanation</i> shall be inserted, namely:—</p> <p>5 “<i>Explanation.</i>—For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such</p> <p>10 contravention.”.</p>	Amendment of section 12A.
15 of 1992.	<p>14. After section 23J of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—</p> <p> “23JA. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.</p> <p> (2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.</p> <p> (3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.</p> <p> (4) No appeal shall lie under section 23L against any order passed by the Board or the adjudicating officer, as the case may be, under this section.”.</p>	<p>Insertion of new section 23JA.</p> <p>Settlement of administrative and civil proceedings.</p>
15 of 1992.	<p>15. After section 23JA of the principal Act as so inserted, the following section shall be inserted, namely:—</p> <p> “23JB. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 12A or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—</p> <p> (a) attachment and sale of the person’s movable property;</p> <p> (b) attachment of the person’s bank accounts;</p> <p> (c) attachment and sale of the person’s immovable property;</p> <p> (d) arrest of the person and his detention in prison;</p> <p> (e) appointing a receiver for the management of the person’s movable and immovable properties,</p> <p>and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.</p>	<p>Insertion of new section 23JB.</p> <p>Recovery of amounts.</p>
43 of 1961.	<p>45</p>	

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

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

Explanation 3.—Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23L of this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 12A, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing to exercise the powers of a Recovery Officer.’

16. In section 26 of the principal Act, sub-section (2) shall be omitted.

17. After section 26 of the principal Act, the following sections shall be inserted, namely:—

“26A. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

26B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Amendment to section 26.

Insertion of new sections 26A, 26B, 26C, 26D and 26E.

Establishment of Special Courts.

Offences triable by Special Courts.

2 of 1974.	5	26C. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.	Appeal and revision.
2 of 1974.	10	26D. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.	Application of Code to proceedings before Special Court.
	15	(2) The person conducting prosecution referred to in sub—section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.	
2 of 1974.	20	26E. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:	Transitional provisions.
	25	Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.”	
		18. After section 31 of the principal Act, the following section shall be inserted, namely:—	Insertion of new section 32.
	25	“32. Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.”	Validation of certain Acts.
CHAPTER IV			
AMENDMENTS TO THE DEPOSITORIES ACT, 1996			
22 of 1996.	30	19. In section 19 of the Depositories Act, 1996 (hereafter in this Chapter referred to as the principal Act), the following <i>Explanation</i> shall be inserted, namely:—	Amendment of section 19.
	35	“ <i>Explanation.</i> —For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.”	
	40	20. After section 19-I of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—	Insertion of new section 19-1A.
	45	“19-1A. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 19 or section 19H, as the case may be, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.	Settlement of administrative and civil proceedings.
15 of 1992.		(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.	

(3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply. 15 of 1992.

(4) No appeal shall lie under section 23A against any order passed by the Board or the adjudicating officer under this section.”.

Insertion of new section 19-IB.

21. After section 19-IA of the principal Act as so inserted, the following shall be inserted, namely:— 5

Recovery of amounts.

‘19-IB. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 19 or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely: — 10

(a) attachment and sale of the person’s movable property;

(b) attachment of the person’s bank accounts; 15

(c) attachment and sale of the person’s immovable property;

(d) arrest of the person and his detention in prison;

(e) appointing a receiver for the management of the person’s movable and immovable properties,

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961. 20 43 of 1961. 25

Explanation 1.— For the purposes of this sub-section, the person’s movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son’s wife or son’s minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son’s minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son’s minor child, as the case may be, continue to be included in the person’s movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act. 30 35

Explanation 2.—Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate. 43 of 1961. 40

Explanation 3.—Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23A of this Act. 43 of 1961.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1). 45

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant

to non-compliance with any direction issued by the Board under section 19, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.’

22. In section 22 of the principal Act, sub-section (2) shall be omitted.

Amendment of section 22.

23. After section 22B of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 22C, 22D, 22E, 22F and 22G.

“22C. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

Establishment of Special Courts.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

22D. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Offences triable by Special Courts.

22E. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Appeal and revision.

22F.(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

Application of Code to proceedings before Special Court.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

22G. Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Transitional provisions.

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

Amendment of section 23A.	24. In section 23A of the principal Act, sub-section (2) shall be omitted.	
Insertion of new section 30A.	25. After section 30 of the principal Act, the following section shall be inserted, namely:—	
Validation of certain acts	“30A. Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.”.	5
Repeal and saving.	26. (1) The Securities Laws (Amendment) Ordinance, 2013 is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the principal Acts, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Acts, as amended by this Act.	Ord. 8 of 2013. 10

STATEMENT OF OBJECTS AND REASONS

The Securities and Exchange Board of India Act, 1992 (the SEBI Act) was enacted for the establishment of the Securities and Exchange Board of India (the Board) with the object of protecting the interests of investors in the securities market, to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

2. The nature of the securities market and the environment in which it operates is dynamic and the laws governing it have to be responsive to market needs. The governance of the securities market through the Board has withstood the test of time, including judicial scrutiny. However, based on the experience gained over the years, it has become necessary to further strengthen the regulatory provisions to ensure effective enforcement of the securities market related laws while ensuring its orderly development.

3. To protect the interests of investors and to ensure orderly development of securities markets, it has become necessary to enhance the powers of the Board—(a) to call for information not only from the people or entities associated with the securities market but also from persons who are not directly associated with the securities market; (b) to provide for effective protection of investors in cases where there is fraudulent diversion of monies raised from investors; and (c) to monitor collective investment schemes and to ensure that such schemes, which are thriving, at the expense of gullible investors are curbed. Further, in view of large pendency of cases, it is necessary to constitute Special Courts for prosecution of offences under the securities laws to provide speedy trial.

4. As Parliament was not in session and the President was satisfied that immediate action was required to be taken to make necessary amendments to the Securities and Exchange Board of India Act, 1992, the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996, so as to enable the Board to initiate action against illegal deposit taking schemes, the Securities Laws (Amendment) Ordinance, 2013 (Ord. 8 of 2013) was promulgated on 18th July, 2013.

5. The Securities Laws (Amendment) Bill, 2013, which seeks to replace the Securities Laws (Amendment) Ordinance, 2013, *inter alia*, provides for the following, namely:—

(a) to amend section 11 of the SEBI Act empowering the Board for calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

(b) to insert a new sub-section (5) in section 11 of the SEBI Act to provide that the amount disgorged, pursuant to a direction issued under section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board;

(c) to amend section 11AA of the SEBI Act so as to provide that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under this section, involving a corpus of hundred crore rupees or more shall be deemed to be a collective investment scheme;

(d) to amend section 11C of the Act so as to empower the Chairman of the Board to authorise the investigating authorities or any officer of the Board to enter and search building, place and to seize any books of account or other documents found as a result of such search;

(e) to insert a new section 15JB so as to provide that any person against whom any proceedings have been initiated under sections 11, 11B, 11D, 12 or 15—I, may file an application before the Board for settlement of the proceedings which shall be

conducted in accordance with the procedure specified in the regulations to be made under the SEBI Act;

(f) to establish “Special Courts” for the purpose of providing speedy trial of offences under the SEBI Act;

(g) to insert a new section 28A so as to empower the Recovery Officer to recover the amount, against the persons who fail to comply with any direction of the Board for refund of monies or fail to comply with a direction of disgorgement issued under section 11B or fail to pay any fees due to the Board.

6. It has also become necessary to make certain amendments to the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996 on lines similar to the amendments made to the Securities and Exchange Board of India Act, 1992.

7. The Bill seeks to replace the aforesaid Ordinance.

NEW DELHI;
The 5th August, 2013

P. CHIDAMBARAM

NOTES ON CLAUSES

Clause 2.— This clause seeks to amend section 11 of the Securities and Exchange Board of India Act, 1992 (SEBI Act 1992) relating to the functions of the Securities and Exchange Board of India. It is proposed to amend clause (ia) in sub-section (2) of the said section to enable the Securities and Exchange Board of India to call for information and record from any person in respect of any transaction in securities which needs investigation or enquiry by the said Board. It is further proposed to insert clause (ib) in sub-section (2) of the said section with effect from the 6th day of March, 1998 so as to expressly empower the Board to obtain or furnish information to other regulators abroad who have similar functions to those of the Board, in matters relating to prevention, detection, enforcement and investigation of violations in respect of securities. However, for the purpose of furnishing any information to any authority outside India, a memorandum of understanding shall be signed between the Board and the overseas regulators with the prior approval of the Central Government. It is also proposed to insert a new sub-section (5) in the said section which provides that amount disgorged pursuant to a direction of the Board under section 11B of the Securities and Exchange Board of India Act, 1992, section 12 A of the Securities Contracts (Regulation) Act, 1956 and section 19 of the Depositories Act, 1996 shall be credited to the Investor Protection and Education Fund established by the Board.

Clause 3.— This clause seeks to amend section 11AA of the SEBI Act, 1992 relating to regulation of collective investment schemes. It is proposed to insert a proviso in sub-section (1) of the said clause, which provides that any pooling of funds under any scheme or arrangement, which is not excluded by sub-section (3) of the said section and which is not registered with the Board, involving a corpus amount of Rs.100 crore or more shall be deemed to be a collective investment scheme. It is further proposed to amend sub-section (2) of the said clause to clarify that any scheme or arrangement made by any person, would fall under the collective investment scheme. It is proposed to insert sub-section (2A) in the said clause, to empower the Board to specify by regulations, additional independent parameters as to what constitutes a collective investment scheme. It is also proposed to insert a new clause (ix) in sub-section (3) of the said clause, to empower the Central Government to exclude, by notification, in consultation with the Board, any scheme or arrangement from falling under the ambit of collective investment schemes. This is proposed in light of deeming provision inserted in sub-section (1), to ensure that money pooling activities which are otherwise regulated by some other authorities or regulators do not come under the ambit of collective investment schemes to ensure that there are no regulatory overlaps.

Clause 4.— This clause seeks to amend section 11B of the SEBI Act, 1992 relating to power to issue directions. It is proposed to insert an *Explanation* in the said clause so as to clarify that the Board had and shall always be deemed to have had the power to issue disgorgement orders under that section.

Clause 5.— This clause seeks to amend section 11C of the SEBI Act, 1992 relating to investigation. It is proposed to substitute sub-sections (8) and (9) and amend sub-section (10) of the said section 11C to conduct search and seizure. It is also proposed to provide the Board with powers of search and seizure with authorisation from the Chairman of the Board.

Clause 6.— This clause seeks to insert a new section 15JA in the SEBI Act, 1992 relating to settlement of administrative and civil proceedings with effect from the 20th day of April, 2007. The said clause explicitly empowers the Board to settle administrative and civil proceedings on payment of such sums or on such other terms as may be determined in accordance with the procedures specified in the regulations framed by the Board.

Clause 7.— This clause seeks to omit sub-section (2) of section 15T of the SEBI Act, 1992 as a new provision for settlement of administrative and civil proceedings has been inserted in clause 6.

Clause 8.— This clause seeks to omit sub-section (2) of section 26 of the SEBI Act, 1992, as a new provision for establishment of Special Courts for trial of offences has been inserted in clause 9.

Clause 9. — This clause seeks to insert new sections 26A to 26E in the SEBI Act, 1992 which deal with the establishment of Special Courts for trial of offences. It is proposed to insert a new section 26A which provides for the establishment of Special Courts by the Central Government in consultation with the Chief Justice of the High Court within whose jurisdiction the Judge is to be appointed. It further provides that the person so appointed as Judge of Special Court shall be one who immediately before such appointment was a Sessions Judge or an Additional Sessions Judge. It is also proposed to insert a new section 26B, which seeks to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973 all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2013 or on or after the date of such commencement, shall be taken cognizance and triable only by the Special Courts. It is also proposed to insert a new section 26C which deals with appeal and revision. It also provides that High Courts shall have the power of appeal or revision as if Special Courts were Court of Session trying cases within the local limits of the jurisdiction of the High Court. It is also proposed to insert a new section 26D which provides that Special Court shall be deemed to be a Court of Session and the provisions of the Code of Criminal Procedure, 1973 shall apply to the Special Court and the person conducting prosecution before the Special Court shall be deemed to be a public prosecutor. It is also proposed to insert a new section 26E which provides that till such time Special Courts are established the existing Court of Session will continue to exercise jurisdiction. However, it shall not affect the powers of the High Court to transfer any case.

Clause 10.— This clause seeks to insert a new section 28A in the SEBI Act, 1992 relating to recovery of amounts. This clause empowers the Board, *inter alia*, to attach and sell movable and immovable property of the defaulters without recourse to any court of law and attach bank accounts of defaulters, in case a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board.

Clause 11.— This clause seeks to amend section 30 of the SEBI Act, 1992 relating to power to make regulations. It is proposed to amend sub-section (2) of said section so as to empower the Board to make the regulations in matters relating to the utilisation of the amount credited under sub-section (5) of section 11; the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA; the procedure to be followed by the authorised officer for search or seizure under sub-section (9) of section 11C; the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB; and any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Clause 12.— This clause proposes to insert a new section in the SEBI Act, 1992 for validating certain acts.

Clause 13.— This clause seeks to amend section 12A of the Securities Contracts (Regulation) Act, 1956 (SCR Act, 1956) relating to power to issue directions. It is proposed to insert an *Explanation* in the said section so as to clarify that the Board had and shall always deemed to have had the power to issue disgorgement orders under that section to empower the Board to settle administrative and civil proceedings under the SCR Act, 1956 on payment of such sums or on such other terms as may be determined in accordance with procedures specified in the regulations framed by the Board.

Clause 14.— This clause seeks to insert a new section 23JA in the SCR Act, 1956 relating to settlement of administrative and civil proceedings with effect from the 20th day of April, 2007. The said clause empowers the Board to settle administrative and civil proceedings on payment of such sums or on such other terms as may be determined in accordance with procedures specified in the regulations framed by the Board.

Clause 15.— This clause seeks to insert a new section 23JB in the SCR Act, 1956 relating to recovery of amounts. This clause empowers the Board, *inter alia*, to attach and sell movable and immovable property of the defaulters without recourse to any court of law and attach bank accounts of defaulters, in case a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 12A or fails to pay any fees due to the Board.

Clause 16.— This clause seeks to omit sub-section (2) of section 26 of the SCR Act, 1956, as a new provision for establishment of Special Courts for trial of offences has been inserted in clause 17.

Clause 17.— This clause seeks to insert new sections 26A to 26E in the SCR Act, 1956, which deal with the establishment of Special Courts for trial of offences under the said Act. It is proposed to insert a new section 26A which provides for the establishment of Special Courts by the Central Government in consultation with the Chief Justice of the High Court within whose jurisdiction the Judge is to be appointed. It further provides that the person so appointed as Judge of Special Court shall be one who immediately before such appointment was a Sessions Judge or an Additional Sessions Judge. It is also proposed to insert a new section 26B, which seeks to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973 all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2013 or on or after the date of such commencement, shall be taken cognizance and triable only by the Special Courts. It is also proposed to insert a new section 26C which deals with appeal and revision. It also provides that the High Courts shall have the power of appeal or revision as if Special Courts were Court of Session trying cases within the local limits of the jurisdiction of the High Court. It is also proposed to insert a new section 26D which provides that Special Court shall be deemed to be a Court of Session and the provisions of the Code of Criminal Procedure, 1973 shall apply to the Special Court and the person conducting prosecution before the Special Court shall be deemed to be a public prosecutor. It is also proposed to insert a new section 26E which provides that till such time Special Courts are established the existing Court of Session will continue to exercise jurisdiction. However, it shall not affect the powers of the High Court to transfer any case.

Clause 18.— This clause proposes to insert a new section in the SCR Act, 1956 for validating certain acts.

Clause 19.— This clause seeks to amend section 19 of the Depositories Act, 1996 relating to power to issue directions. It is proposed to insert an *Explanation* in the said section so as to clarify that the Board had and shall always be deemed to have had the power to issue disgorgement orders under the said section explicitly to empower the Board to settle administrative and civil proceedings under the Depositories Act, 1996 on payment of such sums or on such other terms as may be determined in accordance with procedures specified in the regulations framed by the Board.

Clause 20.— This clause seeks to insert a new section 19—IA in the Depositories Act, 1996 relating to settlement of administrative and civil proceedings with effect from the 20th day of April, 2007. The said clause empowers the Board to settle administrative and civil proceedings on payment of such sums or on such other terms as may be determined in accordance with procedures specified in the regulations framed by the Board.

Clause 21.— This clause seeks to insert a new section 19—IB in the Depositories Act, 1996 relating to recovery of amounts. This clause empowers the Board, *inter alia*, to attach and sell movable and immovable property of the defaulters without recourse to any court of law and attach bank accounts of defaulters, in case a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 19 or fails to pay any fees due to the Board.

Clause 22.— This clause seeks to omit sub-section (2) of section 22 of the Depositories Act, 1996, as a new provision for establishment of Special Courts for trial of offences has been inserted in clause 23.

Clause 23.— This clause seeks to insert new sections 22C to 22G in the Depositories Act, 1996 which deal with the establishment of Special Courts for trial of offences under the said Act. It is proposed to insert a new section 22C which provides for the establishment of Special Courts by the Central Government in consultation with the Chief Justice of the High Court within whose jurisdiction the Judge is to be appointed. It further provides that the person so appointed as Judge of Special Court shall be one who immediately before such appointment was a Sessions Judge or an Additional Sessions Judge. It is also proposed to insert a new section 22D, which seeks to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973 all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2013 or on or after the date of such commencement, shall be taken cognizance and triable only by the Special Courts. It is also proposed to insert a new section 22E which deals with appeal and revision. It also provides that the High Courts shall have the power of appeal or revision as if Special Courts were Court of Session trying cases within the local limits of the jurisdiction of the High Court. It is also proposed to insert a new section 22F which provides that Special Court shall be deemed to be a Court of Session and the provisions of the Code of Criminal Procedure, 1973 shall apply to the Special Court and the person conducting prosecution before the Special Court shall be deemed to be a public prosecutor. It is also proposed to insert a new section 22G which provides that till such time Special Courts are established the existing Court of Session will continue to exercise jurisdiction. However, it shall not affect the powers of the High Court to transfer any case.

Clause 24.— This clause seeks to omit sub-section (2) of section 23A of the Depositories Act, 1996, as a new provision for settlement of administrative and civil proceedings has been inserted in clause 20.

Clause 25.— This clause proposes to insert a new section in the Depositories Act, 1996 for validating certain acts.

Clause 26.— This clause proposes to insert a new clause relating to repeal of the Securities Laws (Amendment) Ordinance, 2013 and saving.

FINANCIAL MEMORANDUM

1. Clause 9 of the Bill seeks to insert a new section 26A in the Securities and Exchange Board of India Act, 1992 to empower the Central Government to establish or designate as many Special Courts as may be necessary for the purpose of providing speedy trial of offences under that Act.

2. Clause 17 of the Bill seeks to insert a new section 26A in the Securities Contracts (Regulation) Act, 1956 to empower the Central Government to establish or designate as many Special Courts as may be necessary for the purpose of providing speedy trial of offences under that Act.

3. Clause 23 of the Bill seeks to insert a new section 22C in the Depositories Act, 1996 to empower the Central Government to establish or designate as many Special Courts as may be necessary for the purpose of providing speedy trial of offences under that Act.

4. There is no financial implications at present to the Consolidated Fund of India arising from this proposal. In case any expenditure is proposed to be incurred due to the constitution of Special Courts, the Department of Expenditure would be approached in accordance with the rules on the matter.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Clause 2 of the Bill seeks to empower the Securities and Exchange Board of India (Board) to specify by regulations, the utilisation of the amount credited under sub-section (5) of section 11.

2. Clause 3 of the Bill seeks to empower the Board to specify by regulations, the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA.

3. Clause 5 of the Bill seeks to empower the Board to specify by regulations, the procedure to be followed by the authorised officer for search or seizure under sub-section (9) of section 11C.

4. Clause 6 of the Bill seeks to empower the Board to specify by regulations, the terms determined by the Board for settlement of proceedings and the procedure for conducting of settlement proceedings.

5. The matters in respect of which regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

Memorandum Explaining the Modifications Contained in the Bill to Replace the Securities Laws (Amendment) Ordinance, 2013

The Securities Laws (Amendment) Bill, 2013, which seeks to repeal and replace the Securities Laws (Amendment) Ordinance, 2013, proposes to make the following modifications, apart from the modifications of a consequential or drafting nature in the provisions contained in the said Ordinance, namely:—

(1) The word “Ordinance” referred to in the Ordinance has been replaced with the word “Act” in the Bill.

(2) The reference of section ‘231,’ of the Income-tax Act in the Ordinance has been deleted in clauses 10, 15 and 21 of the Bill since section 231 of the Income-tax Act, 1961 has been repealed.

(3) The words “taken cognizance of and” have been inserted in clauses 9, 17 and 23 of the Bill.

(4) New clauses 12, 18 and 25 relating to validation of certain acts have been inserted in the Bill.

(5) Clause 26 of the Bill is a new provision relating to repeal and saving of the Ordinance.

ANNEXURE

EXTRACTS FROM THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

* * * * *

CHAPTER IV

POWERS AND FUNCTIONS OF THE BOARD

Functions of Board. **11.(1)*** * * * * *

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

* * * * *

(ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;

* * * * *

Collective investment scheme. **11AA. (1)** Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which,—

* * * * *

(3) Notwithstanding anything contained in sub-section (2), any scheme or arrangement—

* * * * *

Power to issue directions. **11B.** Save as otherwise provided in section 11, if after making or causing to be made any enquiry, the Board is satisfied that it is necessary—

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

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions,—

(a) to any person or class of persons referred to section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A,

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

Investigation. **11C. (1)*** * * * * *

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to,

any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority—

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

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

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

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

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

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

* * * * *

15T. (1)* * * * *

Appeal to the Securities Appellate Tribunal.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made—

(a) by the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999;

(b) by an adjudicating officer,

with the consent of the parties.

* * * * *

26. (1)* * * * *

Cognizance of offences by courts.

(2) No court inferior to that of a court of session shall try any offence punishable under this Act.

* * * * *

30. (1)* * * * *

Power to make regulations.

(2) In particular, and without prejudice to the generality of the forgoing power, such regulations may provide for all or any of the following matters, namely:—

EXTRACTS FROM THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 OF 1956)

* * * * *

Power to issue directions.

12A. 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.

* * * * *

Cognizance of offences by courts.

26. (1)* * * *

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act.

* * * * *

EXTRACTS FROM THE DEPOSITORIES ACT, 1996

(22 OF 1996)

Power of Board to give directions in certain cases.

19. Save as provided in this Act, if after making or causing to be made an enquiry or inspection, the Board is satisfied that it is necessary—

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

(ii) to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market;

it may issue such directions,—

(a) to any depository or participant or any person associated with the securities market; or

(b) to any issuer,

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

* * * * *

CHAPTER VI

MISCELLANEOUS

22. (1)* * * * *

(2) No court inferior to that of a court of session shall try any offence punishable under this Act.

Cognizance of offences by courts.

* * * *

23A. (1)* * * *

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made by the Board with the consent of the parties.

Appeal to Securities Appellate Tribunal.

LOK SABHA

A

BILL

further to amend the Securities and Exchange Board of India Act, 1992, the Securities
Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

(Shri P. Chidambaram, Minister of Finance)

GMGIPMRND—1748LS(S3)—07.08.2013.