

The Securities and Exchange Board of India Act 1992

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PREAMBLE

[ACT NO. 15 OF 1992]

An Act to provide for the establishment of a Board to protect the interests of investors in securities and to **promote the development of, and to regulate, the securities market** and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows :-

1. SHORT TITLE, EXTENT AND COMMENCEMENT.

- (1) This Act may be called the Securities and Exchange Board of India Act, 1992.
- (2) It extends to the whole of India.
- (3) It shall be deemed to have come into force on the 30th day of January, 1992.

2. DEFINITIONS.

- (1) In this Act, unless the context otherwise requires, -
 - (a) "Board" means the Securities and Exchange Board of India established under section 3;
 - (b) "Chairman" means the Chairman of the Board;
 - (c) "existing Securities and Exchange Board" means the Securities and Exchange Board of India constituted under the Resolution of the Government of India in the Department of Economic Affairs No. 1(44) SE/86, dated the 12th day of April, 1988;
 - (d) "Fund" means the Fund constituted under section 14;

- (e) "member" means a member of the Board and includes the Chairman;
- (f) "notification" means a notification published in the Official Gazette;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "regulations" means the regulations made by the Board under this Act;
- (i) "securities" has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

[(2) Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) [or the Depositories Act, 1996], shall have the meanings respectively assigned to them in that Act.]

3. ESTABLISHMENT AND INCORPORATION OF BOARD.

(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board by the name of the Securities and Exchange Board of India.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Board shall be at Bombay.

(4) The Board may establish offices at other places in India.

4. MANAGEMENT OF THE BOARD.

(1) The Board shall consist of the following members, namely :-

(a) a Chairman;

(b) two members from amongst the officials of the Ministries of the Central Government dealing with Finance and Law;

(c) one member from amongst the officials of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(d) two other members,

to be appointed by the Central Government.

(2) The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.

(3) Save as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank of India respectively.

(5) The Chairman and the other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

5. TERM OF OFFICE AND CONDITIONS OF SERVICE OF CHAIRMAN AND MEMBERS OF THE BOARD.

(1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 4 shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 4, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

6. REMOVAL OF MEMBER FROM OFFICE.

The Central Government shall remove a member from office if he -

(a) is, or at any time has been, adjudicated as insolvent;

(b) is of unsound mind and stands so declared by a competent court;

(c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

(d) * * *

(e) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest :

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

7. MEETINGS.

(1) The Board shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

(2) The Chairman or, if for any reason, he is unable to attend a meeting of the Board, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority vote of the members present and voting, and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have a second or casting vote.

7A. MEMBER NOT TO PARTICIPATE IN MEETINGS IN CERTAIN CASES.

Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

8. VACANCIES, ETC., NOT TO INVALIDATE PROCEEDINGS OF BOARD.

No act or proceeding of the Board shall be invalid merely by reason of -

- (a) any vacancy in, or any defect in the constitution of, the Board; or
- (b) any defect in the appointment of a person acting as a member of the Board; or
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

9. OFFICERS AND EMPLOYEES OF THE BOARD.

(1) The Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The term and other conditions of service of officers and employees of the Board appointed under sub-section (1) shall be such as may be determined by regulations.

10. TRANSFER OF ASSETS, LIABILITIES, ETC., OF EXISTING SECURITIES AND EXCHANGE BOARD TO THE BOARD.

(1) On and from the date of establishment of the Board, -

(a) any reference to the existing Securities and Exchange Board in any law other than this Act or in any contract or other instrument shall be deemed as a reference to the Board;

(b) all properties and assets, movable and immovable, of, or belonging to, the existing Securities and Exchange Board, shall vest in the Board;

(c) all rights and liabilities of the existing Securities and Exchange Board shall be transferred to, and be the rights and liabilities of, the Board;

(d) without prejudice to the provisions of clause (c), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Securities and Exchange Board immediately before that date, for or in connection with the purpose of the said existing Board shall be deemed to have been incurred, entered into or engaged to be done by, with or, for, the Board;

(e) all sums of money due to the existing Securities and Exchange Board immediately before that date shall be deemed to be due to the Board;

(f) all suits and other legal proceedings instituted or which could have been instituted by or against the existing Securities and Exchange Board immediately before that date may be continued or may be instituted by or against the Board; and

(g) every employee holding any office under the existing Securities and Exchange Board immediately before that date shall hold his office in the Board by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the Board had not been established and shall continue to do so as an employee of the Board or until the expiry of the period of six months from that date if such employee opts not to be the employee of the Board within such period.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, absorption of any employee by the Board in its regular service under this section shall not entitle such employee to any compensation under that Act or other law and no such claim shall be entertained by any court, tribunal or other authority.

11. FUNCTIONS OF BOARD.

(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

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

(a) regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock-brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(ba) registering and regulating the working of the depositories [participants], custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

(c) registering and regulating the working of [venture capital funds and collective investment schemes], including mutual funds;

(d) promoting and regulating self-regulatory organizations;

(e) prohibiting fraudulent and unfair trade practices relating to securities markets;

(f) promoting investors' education and training of intermediaries of securities markets;

(g) prohibiting insider trading in securities;

(h) regulating substantial acquisition of shares and take-over of companies;

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the [stock exchanges, mutual funds, other persons associated with the securities market] intermediaries and self-regulatory organizations in the securities market;

(j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;

(k) levying fees or other charges for carrying out the purposes of this section;

(l) conducting research for the above purposes;

(la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;

(m) performing such other functions as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) of sub-section (2), the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :-

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place.

11A. MATTERS TO BE DISCLOSED BY THE COMPANIES.

Without prejudice to the provisions of the Companies Act, 1956 (1 of 1956), the Board may, for the protection of investors, specify by regulations, -

(a) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and

(b) the manner in which such matters,

shall be disclosed by the companies.

11B. POWER TO ISSUE DIRECTIONS.

Save as otherwise provided in section 11, if after making or causing to be made an 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 in section 12, or associated with the securities market; or

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

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

12. REGISTRATION OF STOCK-BROKERS, SUB-BROKERS, SHARE TRANSFER AGENTS, ETC.

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

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

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

(1A) No depository, participant, custodian of securities, foreign institutional investor, credit rating agency, or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act :

Provided that a person buying or selling securities or otherwise dealing with the securities market as a depository, [participant] custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to buy or sell securities or otherwise deal with the securities market until such time regulations are made under clause (d) of sub-section (2) of section 30.

(1B) No person shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment scheme including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment scheme operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.

(2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations :

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

13. GRANTS BY THE CENTRAL GOVERNMENT.

The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Board grants of such sums of money as that Government may think fit for being utilized for the purposes of this Act.

14. FUND.

(1) There shall be constituted a Fund to be called the Securities and Exchange Board of India General Fund and there shall be credited thereto -

(a) all grants, fees and charges received by the Board under this Act;

(aa) all sums realized by way of penalties under this Act; and

(b) all sums received by the Board from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting -

(a) the salaries, allowances and other remuneration of the members, officers and other employees of the Board;

(b) the expenses of the Board in the discharge of its functions under section 11;

(c) the expenses on objects and for purposes authorized by this Act.

15. ACCOUNTS AND AUDIT.

(1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

(4) The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

15A. PENALTY FOR FAILURE TO FURNISH INFORMATION, RETURN, ETC.

If any person, who is required under this Act or any rules or regulations made there under, -

(a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

15B. PENALTY FOR FAILURE BY ANY PERSON TO ENTER INTO AGREEMENT WITH CLIENTS.

If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty not exceeding five lakh rupees for every such failure.

15C. PENALTY FOR FAILURE TO REDRESS INVESTORS' GRIEVANCES.

If any person, who is registered as an intermediary, after having been called upon by the Board in writing to redress the grievances of investors, fails to redress such grievances, he shall be liable to a penalty not exceeding ten thousand rupees for each such failure.

15D. PENALTY FOR CERTAIN DEFAULTS IN CASE OF MUTUAL FUNDS.

If any person, who is -

(a) required under this Act or any rules or regulations made there under to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty not exceeding ten thousand rupees for each day during which he carries on any such collective investment scheme, including mutual funds, or ten lakh rupees, whichever is higher;

(b) registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty not exceeding ten thousand rupees for each day during which such failure continues or ten lakh rupees, whichever is higher;

(c) registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is higher;

(d) registered as a collective investment scheme, including mutual funds, fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such dispatch, he shall be liable to a penalty not exceeding one thousand rupees for each day during which such failure continues;

(e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to a penalty not exceeding one thousand rupees for each day during which such failure continues;

(f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to a penalty not exceeding five lakh rupees for each such failure.

15E. PENALTY FOR FAILURE TO OBSERVE RULES AND REGULATIONS BY AN ASSET MANAGEMENT COMPANY.

Where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company shall be liable to a penalty not exceeding five lakh rupees for each such failure.

15F. PENALTY FOR DEFAULT IN CASE OF STOCK-BROKERS.

If any person, who is registered as a stock-broker under this Act, -

(a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker;

(b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues;

(c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

15G. PENALTY FOR INSIDER TRADING.

If any insider who, -

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty not exceeding five lakh rupees.

15H PENALTY FOR NON-DISCLOSURE OF ACQUISITION OF SHARES AND TAKE-OVER.

If any person, who is required under this Act or any rules or regulations made there under, fails to, -

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price,

he shall be liable to a penalty not exceeding five lakh rupees.

15-I. POWER TO ADJUDICATE.

(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G and 15H, the Board shall appoint any of its officers not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer 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.

15J. FACTORS TO BE TAKEN INTO ACCOUNT BY THE ADJUDICATING OFFICER.

While adjudging quantum of penalty under section 15-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.

15K. ESTABLISHMENT OF SECURITIES APPELLATE TRIBUNALS.

(1) The Central Government shall, by notification, establish one or more Appellate Tribunals to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify in the notification referred to in sub-section (1) the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.

15M. QUALIFICATIONS FOR APPOINTMENT AS PRESIDING OFFICER OF THE SECURITIES APPELLATE TRIBUNAL.

A person shall not be qualified for appointment as the Presiding Officer of a Securities Appellate Tribunal unless he -

(a) is, or has been, or is qualified to be, a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years: or

(c) has held office as the Presiding Officer of a Tribunal for at least three years

15N. TERMS OF OFFICE.

The Presiding Officer of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

15-O. SALARY AND ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF PRESIDING OFFICERS.

The salary and allowances payable to and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Presiding Officer of a Securities Appellate Tribunal shall be such as may be prescribed :

Provided that neither the salary and allowances nor the other terms and conditions of service of the said Presiding Officers shall be varied to their disadvantage after appointment.

15P. FILLING UP OF VACANCIES.

If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of a Securities Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the

vacancy and the proceedings may be continued before the Securities Appellate Tribunal from the stage at which the vacancy is filled.

15Q. RESIGNATION AND REMOVAL.

(1) The Presiding Officer of a Securities Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office :

Provided that the said Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

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

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the aforesaid Presiding Officer.

15R. ORDERS CONSTITUTING APPELLATE TRIBUNAL TO BE FINAL AND NOT TO INVALIDATE ITS PROCEEDINGS.

No order of the Central Government appointing any person as the Presiding Officer of a Securities Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

15S. STAFF OF THE SECURITIES APPELLATE TRIBUNAL.

(1) The Central Government shall provide the Securities Appellate Tribunal with such officers and employees as that Government may think fit.

(2) The officers and employees of the Securities Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Securities Appellate Tribunal shall be such as may be prescribed.

15T. APPEAL TO THE SECURITIES APPELLATE TRIBUNAL.

(1) Save as provided in sub-section (2), any person aggrieved by an order made by an Adjudicating Officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

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

(3) 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 made by the Adjudicating Officer is received by him 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.

(4) 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.

(5) 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.

(6) The appeal filed before the securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

15U. PROCEDURE AND POWERS OF THE SECURITIES APPELLATE TRIBUNAL.

(1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 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.

(2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 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-prate;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex-prate;

(h) any other matter which may be prescribed.

(3) 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 (45 of 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 (2 of 1974).

15V. RIGHT TO LEGAL REPRESENTATION.

The appellant may either appear in person or authorize one or more legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

15W. LIMITATION.

The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

15X. PRESIDING OFFICER AND STAFF OF SECURITIES APPELLATE TRIBUNALS TO BE PUBLIC SERVANTS.

The Presiding Officer and other officers and employees of a Securities Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

15Y. CIVIL COURT NOT TO HAVE JURISDICTION.

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act

15Z. APPEAL TO HIGH COURT.

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High 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 High 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.

16. POWER OF CENTRAL GOVERNMENT TO ISSUE DIRECTIONS.

(1) Without prejudice to the foregoing provisions of this Act, the Board shall, in exercise of its powers or the performance of its functions under this Act, [or the

Depositories Act, 1996], be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time :

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

17. POWER OF CENTRAL GOVERNMENT TO SUPERSEDE THE BOARD.

(1) If at any time the Central Government is of opinion -

(a) that on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or

(b) that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do.

the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Board -

(a) all the member shall, as from the date of super session, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of super session specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for appointment :

Provided that the Central Government may, at any time, before the expiration of the period of super session, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

18. RETURNS AND REPORTS.

(1) The Board shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the securities market, as the Central Government may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Board shall, within [ninety days] after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

19. DELEGATION.

The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary

20. APPEALS.

(1) Any person aggrieved by an order of the Board made under this Act, or the rules or regulations made there under may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefore :

Provided that an appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

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

(4) The procedure for disposing of an appeal shall be such as may be prescribed :

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

20A. BAR OF JURISDICTION.

No order passed by the Board under this Act shall be appealable except as provided in section 20 and no civil court shall have jurisdiction in respect of any matter which the Board is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board by, or under, this Act.

21. SAVINGS.

Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

22. MEMBERS, OFFICERS AND EMPLOYEES OF THE BOARD TO BE PUBLIC SERVANTS.

All members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

23. PROTECTION OF ACTION TAKEN IN GOOD FAITH.

No suit, prosecution or other legal proceedings shall lie against the Central Government [or Board] or any officer of the Central Government or any member, officer or other employee of the Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made there under.

24. 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 made there under, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, 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 three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both

25. EXEMPTION FROM TAX ON WEALTH AND INCOME.

Notwithstanding anything contained in the Wealth-tax Act, 1957 (27 of 1957), the Income-tax Act, 1961 (43 of 1961) or any other enactment for the time being in force relating to tax on wealth, income, profits or gains -

(a) the Board;

(b) the existing Securities and Exchange Board from the date of its constitution to the date of establishment of the Board,

shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

26. COGNIZANCE OF OFFENCES BY COURTS.

(1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made there under, save on a complaint made by the Board.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

27. OFFENCES BY COMPANIES.

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

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

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

Explanation : For the purposes of this section, -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm

28. POWER TO EXEMPT.

Omitted

29. POWER TO MAKE RULES.

(1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

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

(a) the term of office and other conditions of service of the Chairman and the members under sub-section (1) of section 5;

(b) the additional functions that may be performed by the Board under section 11;

(c) * * *

(d) the manner in which the accounts of the Board shall be maintained under section 15;

(da) the manner of inquiry under sub-section (1) of section 15-I;

(db) the salaries and allowances and other terms and conditions of service of the Presiding Officers and other officers and employees of the Securities Appellate Tribunal under section 15-O and sub-section (3) of section 15S;

(dc) the procedure for the investigation of misbehavior or incapacity of the Presiding Officers of the Securities Appellate Tribunal under sub-section (3) of section 15Q;

(dd) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 15T and the fees payable in respect of such appeal;

(e) the form and the manner in which returns and report to be made to the Central Government under section 18;

(f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

30. POWER TO MAKE REGULATIONS.

(1) The Board may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made there under to carry out the purposes of this Act.

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

(a) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business;

(b) the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 9;

(c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;

(d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12.

31. RULES AND REGULATIONS TO BE LAID BEFORE PARLIAMENT.

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

32. APPLICATION OF OTHER LAWS NOT BARRED.

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

33. AMENDMENT OF CERTAIN ENACTMENTS.

The enactments specified in Parts I and II of the Schedule to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Board.

34. POWER TO REMOVE DIFFICULTIES.

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty :

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

35. REPEAL AND SAVING.

(1) The Securities and Exchange Board of India Ordinance, 1992 (Ord. 5 of 1992), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

Schedule:

THE SCHEDULE

[See section 33]

AMENDMENT OF CERTAIN ENACTMENTS

I AMENDMENTS TO THE CAPITAL ISSUES (CONTROL) ACT, 1947

[ACT NO. 29 OF 1947]

In section 10, for "to that Government" substitute "to that Government or the Securities and Exchange Board of India".

THE SCHEDULE

[See section 33]

AMENDMENT OF CERTAIN ENACTMENTS

II AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

[ACT NO. 42 OF 1956]

1. Section 2, in clause (h), for sub-clause (ii), substitute the following :-

"(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and";

2. Section 6, -

(i) in sub-section (1), for "Central Government", substitute "Securities and Exchange Board of India";

(ii) in sub-section (2), for "by the Central Government", substitute "by the Securities and Exchange Board of India";

(iii) in sub-section (3), for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";

3. Section 9, for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";

4. Section 10, for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";

5. Section 17, in sub-section (1), for "licence granted by the Central Government", substitute "licence granted by the Securities and Exchange Board of India";

6. Section 21, for "Central Government", substitute "Securities and Exchange Board of India";

7. Section 22A, in sub-section (3), for clause (b), substitute the following :-

"(b) that the transfer of the securities is in contravention of any law or rules made thereunder or any administrative instructions or conditions of listing agreement laid down in pursuance of such laws or rules;;

8. In sub-section (2) of section 23, for "Central Government under section 21 or section 22", substitute "Securities and Exchange Board of India under section 21 or the Central Government under section 22";

9. After section 29, insert the following :-

"29A. Power to delegate. - The Central Government may, by order published in the Official Gazette, direct that the powers 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.