

PAPER – 4 : CORPORATE LAWS AND SECRETARIAL PRACTICE
QUESTIONS

The Companies Act, 1956

1. The financial year of a holding company ends on 31st March, while that of its subsidiary ends on 30th June. The subsidiary company wants to extend the financial year from 30th June to 31st March, so that the financial year of both the companies would coincide. Is it possible?
2. A company was using, a flat exclusively as a 'guest house' for its employees and officers. The electricity tariffs was levied on a higher tariff on the ground that it was for a 'commercial purpose.' How would you interpret and construe the meaning of the words used in this case?
3. (a) A Ltd. whose paid up share capital to Rs.3 crores proposes to purchase raw material of Rs.20 lakhs from B Limited. It proposes to purchase raw material of Rs.10 lakhs on cash basis and the balance on 90 days credit. M who is the Managing Director of A Limited is also a director and shareholder of B Limited. Advise the procedure.
(b) If B Limited has four directors and all of them are interested in a contract. Guide?
4. M/s ABC Ltd. was incorporated on 1st January 2002. On 1st November 2004 a political party approaches the company for a contribution of Rs. Ten lakhs for political purpose. Advise in respect of the following:
(i) Is the company legally authorised to give this political contribution?
(ii) Will it make any difference, if the company was in existence on 1st October 2001?
(iii) Can the company be penalised for defiance of Rules of this regard?
5. The Board of Directors of 'A Ltd. having a paid-up share capital of Rs. 40 lakhs appointed 'B Ltd, as sole selling agent for a period of 5 years with effect from 1st January, 2004 and the said appointment was approved by the company in the Annual General Meeting held on 30th April, 2004. The Directors of 'B Ltd. were holding fully paid-up shares of face value of Rs. 3 lakhs in A Ltd., Answer the following explaining the relevant provisions of the Companies Act:
(i) Is the appointment of the sole selling agent in order?
(ii) Would your answer be different if both are Private Companies or if the Directors of B Ltd. (acquired the aforesaid shares in 'A Ltd.) on 1st April 2004?
6. What is meant by oppression'? State whether the aggrieved party would succeed in obtaining relief from Company Law Board on the ground of oppression in the following cases:
(i) The majority of the Board of Directors override the minority directors and the minority directors apply to Company Law Board complaining oppression by majority directors.
(ii) A petition by majority shareholders complaining oppression by minority shareholders.
7. A scheme of merger of ABC Company Limited with XYZ Company Limited with approved by the shareholders at an extraordinary general meeting and the exchange ratio of 3 shares of XYZ Company Limited for 20 shares in ABC Company Limited was approved. The proposal was also okayed by a lending financial institution, which held 45% shares in ABC Company Limited. The valuation was carried out by one of the directors of ABC Company Limited, who was also a senior member of the Institute of Chartered Accountants of India. The valuation was affirmed by three independent valuers nominated by the shareholders in general meeting. However, certain leasehold properties, under license, which were not transferable, were not taken into account in the valuation While the scheme was awaiting the Court's sanction, it was challenged by certain shareholders on the ground that the exclusion of leasehold assets in the valuation, made the scheme Unfair' Decide giving reasons:
(i) Whether the contention of the shareholders is tenable?
(ii) What factors would the court take into account in approving the exchange ratio?

8. Considering the provisions of the Companies Act, 1956, advise a foreign company on filing of 'World Accounts' and the 'Indian Business Accounts' with the Registrar of Companies in India?
9. Joy is an Japanese company having several business units all over the world. It has a robotic unit with its head quarter in Mumbai and has a branch in Singapore. Headquarters at Mumbai controls the branch of robotic unit. What would be the residential status of robotic unit in Mumbai and that of the Singapore branch?
10. ABC Ltd., a company registered under Indian law owns a factory' in Calcutta, wherein it manufactures jute products. By a notification of the State Government, issued during October 2003, due to a strike and lock-out, it was declared a relief undertaking. After four months, in February 2004, the lock-out was lifted. However, during the said period the company's directors defaulted in payment of Provident Fund (PF) and other ancillary dues. During the month of December 2002, the Regional PF Commissioner initiated criminal proceedings against the company and its directors under the Employees PF and Miscellaneous Provisions Act, 1952, for default and delay in payment of PF dues.

Immediately the directors of the company applied to the High Court for relief under Section 633 of the Companies Act, 1956, praying for relief from liable under the PF law. 77th petition is now pending before a single judge. The company desire to know from you, as to the tenability of their claim for relief at the High Court, and as to whether they would be excused and exonerated by the High Court, in respect of the contraventions committed under the PF law.

Briefly discuss the law on the subject and state whether the petition filed by the directors would be admitted or not under the Companies Act.

11. (i) What is the liability of an auditor for failure to point out in his report that dividend is paid out of sale of the company's real estate?
- (ii) Can an auditor be disqualified for indebtedness in the following cases?
 - (a) where he is recovering his fees on a progressive basis even though the job is not complete;
 - (b) Where the auditor's firm has purchased goods from the auditee company and not paid for them for six months?
12. (i) What is the procedure to be followed, when a board meeting is adjourned for want of quorum?
- (ii) What do you understand by the 'passing of resolutions by circulation'?

The FEMA, 1999

13. Briefly state the obligations and time limits by which adjudication and appeal to be completed under FEMA, 1999. Also state the procedure for appealing to and powers of Appellate Tribunal?
14. Explain the compounding offences under the FEMA, 1999?

The SEBI Act, 1992

15. What are the SEBI Guidelines on initial public offers through stock exchange on-line system (E-IPO)?
16. Mr. Clever who is registered as an Intermediary fails to enter into an agreement with his client and hence penalised by SEBI under Section 15B of the SEBI Act. Advise Mr. Clever as to what remedies are available to him against the order of SEBI.
17. State in brief the SEBI guidelines relating to the following:
 - (a) Exemption from eligibility norms.
 - (b) Stock market data.
 - (c) Promise Vs. Performance.

The Securities Contracts (Regulation) Act, 1956

18. (i) Delhi Stock Exchange wants to establish additional Trading Floor. Explain briefly the meaning of and procedure for establishing additional Trading Floor.
- (ii) Complaints of unethical practices have been received against members of the Governing Body of a Recognized Stock Exchange. Examine whether the Government has any power to take action against the Governing Body of the said exchange.
19. What are provisions contained in the Securities Contract (Regulation) Act, 1956 in relation to listing of securities, Refusal of Listing, Appeal against refusal to list and powers of SAT?

The Competition Act, 2002

20. Define
 - (a) Consumer
 - (b) Enterprise

SUGGESTED ANSWERS/HINTS**THE COMPANIES ACT, 1956**

1. In this case, the financial year of the subsidiary precedes that of the holding company by 9 months. In case the subsidiary wants to extend the financial year from 30th June of one year to 31st March of the following year, the financial years of both the holding and subsidiary companies would coincide. But the extension sought is for 9 months, i.e., from 30th June of one year to 31st March of the following year. Such an extension cannot be granted even by the Registrar under the proviso to sub-section (4) of section 210. It appears that the Central Government can, under this section, direct that the provisions of sub-section (4) of section 210 shall not apply in this case. Similarly, in order to ensure that the financial year of the subsidiary does not precede that of the holding company by more than six months, similar direction can be issued by the Central Government under sub-section (2) of this section, extending the financial year of the holding company. Here again, the extension will be for a period of nine months. The financial years of the holding and the subsidiary company will not coincide. But, by virtue of direction under sub-section (2) the requirement of clause (c) of sub-section (2) of section 212 will be fulfilled.
2. For giving a plain and literal meaning to each of the words in the expression “exclusively used as a private residential premises”, it is difficult to hold that the guesthouse maintained by a company or commercial undertaking would come within the aforesaid expression. It connotes that the premises must be exclusively used as a residential premises which in other words would mean where the premises which were used by any person privately for its own residence for a sufficiently continued period and not a premises where a person could come and spend a day or a night and then go back. Guesthouses were maintained by companies or commercial undertakings as a part of their commercial ventures and such premises could not be held to be meant for exclusive use as private residential premises.
3. (a) The provisions of Section 297 are not applicable when the company from whom the materials will be purchased is a public limited company.
 Mr. M has to comply with the provisions of Section 299 and disclose his interest at the Board Meeting and is not to participate in discussion at the meeting, when the above contract is put up for approval of the Board. Even if the shareholding of Mr. M in B Ltd. together with the shareholding, if any, of the directors is 2% or less in B Ltd., disclosure of his interest as director in B Ltd. shall be made.
- (b) In terms of provision of Section 287 of the Companies Act, 1956, Quorum for meeting of Board of Directors of the Company shall be one third of its total strength or two Directors whichever higher. Interested Directors presence shall not be considered for the purpose of quorum. In the present case, there will be no quorum in the board meeting in respect of a contract, as all the directors are interested therein.

The remedy in such case seems to be to increase the strength of Board by appointing at least two disinterested directors as additional directors who are not interested in said contract, if so authorised by Articles and if the said appointment shall be within the maximum number of directors as fixed by the Articles. If this is not found practicable it would be desirable to place the proposed contract before General Meeting for consent. [Department of Company Affairs Letter No. 816(I)61-P-R dated 9/5/81].

4. (i) Since ABC Co. has not completed three years of existence on 2nd November 2004, it is not eligible to give political contribution.
 - (ii) Yes, because in that case, ABC limited shall complete three financial years of its existence, therefore, will be eligible to give political contribution subject to the condition that such a. Contravention of the provisions of this section will make a company liable to fine which may extend to three times the amount so contributed. Further every officer of the company in default would be liable to imprisonment for a term which may extend to three years and also to fine.
 - (iii) The amended section 293A seeks to impose an obligation on every company to disclose in its profit and loss account contributions made by it to any political party or for any political purpose. Contravention of the provisions of this section will make a company liable to fine which may extend to three times the amount so contributed. Further every officer of the company in default would be liable to imprisonment for a term which may extend to three years and also to fine.
5. (i) **Sole Selling Agents:** (i) According to Section 294AA(2) of the Companies Act, 1956 a company shall not appoint any individual, firm or body corporate, who or which has a substantial interest in the company, as sole selling agent of that company unless such appointment has been previously approved by the Central Government.

Here a body corporate is appointed as sole selling agent. A body corporate can be said to have "substantial interest" in the company, if such body corporate or one or more of its directors or any relative of such director, whether singly or taken together hold beneficial interest in the shares of the company, the aggregate amount paid-up on which exceeds Rs. 5 lakhs or 5% of the paid-up share capital of the company, whichever is less. Here 5% of the paid-up share capital of A Ltd. works out to Rs. 2 lakhs. The directors of B Ltd. were holding fully paid-up shares of face value of Rs. 3 lakhs in A Ltd. and hence B Ltd. can be said to have substantial interest in A Ltd. Therefore, the appointment of B Ltd. as sole selling agent requires prior approval of the Central Government under Section 294AA(2). In this case the appointment has been made by the Board of Directors and approved by the company in general meeting. As the prior approval of the Central Government has not been obtained, the appointment is not in order and the company has contravened the provisions of Section 294AA(2).

- (ii) Section 294AA is applicable to both private and public limited companies. So it is immaterial whether A Ltd. is a private in public company. Again the body corporate includes both private and public companies. Hence the provisions of Section 294AA(2) are attracted even if the sole selling agency company is a private company. Therefore even if both the companies are private companies, the appointment of sole selling agent without approval of the Central Government is not in order.

It has been clarified by the Department of Company Affairs that in case the provisions of Section 294AA(2) are not attracted to the appointment of sole selling agents the time of entering of agreement with them, it will not be obligatory on the companies to comply with the said provisions for the continuance of the said appointments for the remaining duration of their current tenure even if the provisions of Section 294AA(2) become applicable after the appointment due to the sole selling agents acquiring substantial interest as defined in the explanation under the Section. If the directors Ltd. were not holding shares in A Ltd. at the time of appointment but acquired the shares subsequently the appointment is in order and it does not violate the provisions of section 294AA(2).

6. **Oppression:** The term oppression' is not defined in the Companies Act. Oppression, according to the Dictionary meaning of the word, is any act exercised in a manner burdensome, harsh and wrongful. The meaning of the term 'oppression' was explained by Lord Cooper in the Scottish case of *Elder v. Elder and Watson Ltd*, as given below:

"The conduct complained of should be at the lowest involve or visible departure from the standards of fair dealing and a violation of the conditions of fair play or which every shareholder who entrusts his money to a company is entitled to rely.

- (i) Oppression of a member as a director: The oppression dealt with by section 397 is only oppression of members in their character as such; and it is only in that character they can involve section 397. The harsh treatment, for instance, of a member who is a director or other officer or employee, by the Board of Directors or management does not come within (section 397). It has been held in *Re. Bellador Silk Ltd.* that if the majority of the Board of Directors override the minority directors the latter cannot resort to section 397 and hence the minority directors will not succeed in getting relief from CLB on the ground of oppression.
- (ii) Right not confined to minority: According to section 399, the right to apply for relief under section 397/398 is given to 100 members or 1/10th of the total number of members or any member or members holding not less than 1/10th of the issued share capital of the company. There is nothing in this section which suggests even indirectly that unless the application is made by minority shareholders it is not maintainable. The right to apply is, therefore, not confined to oppressed minority of the shareholders alone. It was held by Calcutta High Court in *Re. Sindhri Iron Foundry (P) Ltd.* that the oppressed majority also might apply for relief under section 397. Therefore, the petitioners are likely to succeed in getting relief provided the other condition laid down in section 397 (i.e. that to wind up the company would unfairly prejudice such members, but that otherwise the facts would justify the making of a winding-up order on just and equitable ground) is satisfied, even though the Delhi High Court held a contrary view in *Suresh Kumar Sanghi v. Supreme Motors Ltd*,

7. Merger and Scheme of Valuation

- (i) The contention of the shareholders in this case shall not be tenable. The court is not to disturb a scheme unless the person who challenges the valuation satisfies the court that the valuation arrived at was grossly unfair. Valuation in this case was approved by the shareholders and also okayed by the lending institution(s) which are usually well informed and scrutinize the scheme with expert's eye and which are also presumed to act bonafide. In the similar case of *Tata Oil Mills Ltd. Re (1994)*, the court held that the presumption of fairness was writ large on the face of the Scheme. The Court did not attach importance to the fact that certain leasehold assets and properties held under license were excluded from valuation. Such assets, the court said, were neither transferable nor heritable. They are in the nature of a personal privilege. The Supreme Court affirmed this decision in *Hindustan Lever Employees Union v. Hindustan Lever Ltd, (1994)* and accepted the exchange ratio proposed. The Supreme Court found no objection to the valuation being done by one of the directors of TOMCO (ABC Co. in this case). His report did not show any prejudice and was also affirmed by the independent valuers. Supreme Court also enumerated all the possible methods of valuation such as, market price, book value and yield basis and pointed out that a combination of all or some of the methods, may have to be adopted in circumstances of a particular case. Thus based on the above explanation and the decisions given by the Supreme Court, it can be concluded that the contention of the shareholders that the exclusion of certain leasehold assets in the valuation has made the scheme unfair, shall not be tenable.
- (ii) The court would take into account the following factors in determining the final share exchange ratio:
 - 1. The stock exchange prices of the shares of the two companies before the commencement of negotiations or the announcement of the bid.
 - 2. The dividends presently paid on the shares of the two companies.

3. The relative growth prospects of the two companies.
4. The cover for the present dividends of the two companies.
5. The relative gearing of the shares of the two companies.
6. The values of the net assets of the two companies.
7. The voting strength in the merged enterprise of the shareholders of the two companies.
8. The past history of the prices of the shares of the companies.

8. Filing of World Accounts and Indian Business Accounts With the Registrar of Companies:

World Accounts: Three copies of balance-sheet and profit and loss account, including documents relating to every subsidiary of the foreign company, in such form, containing such particulars and including such documents as required under the provisions of the Companies Act, 1956, are required to be filed with the Registrar of Companies. However, the Central Govt., may exempt any foreign company from this requirement by notification in the official gazette.

The World accounts shall be delivered to the Registrars within a period of 9 months from the close of the financial year of the foreign company. The Registrar at New Delhi may extend the said period by 3 months, vide Rule ISA of Companies (Central Government's) General Rules and Forms, 1957.

Indian Business Accounts: Three copies of balance-sheet and profit and loss accounts of Indian business accounts of a foreign company duly audited by a practising Chartered Accountant in India, in the form prescribed in Schedule VI (as modified in terms of Notification, dated 4-10-1957 and 6-1-1959) shall be filed with the Registrar within 9 months of the close of the financial year. The Registrar at New Delhi may extend this period by 3 months. The accounts shall be audited by such person and in such manner as provided in Section 226 and 227 (as modified in terms of the notifications cited above).

The aforesaid accounts have to be filed with the Principal Registrar (i.e., Registrar of Companies, New Delhi) and the concerned Registrar having jurisdiction over the principal place of business of the foreign company (Section 597).

It may be pointed out that the Indian accounts have to be drawn up in Indian rupees as per the requirements of Schedule VI.

The profit and loss account of the Indian business in respect of a foreign company which, if not incorporated under this Act would be deemed to be a private company, shall not be open for inspection by any person other than a member of the company.

9. Joy being a Japanese company would be a person resident outside India. [Section 2(w) Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such person'. The term such person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof person resident in India' would include' an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

However, Singapore branch, though not 'owned' is controlled by robotic unit in Mumbai, which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Singapore branch is 'person resident in India'.

10. The crux of the matter involved in the above case, is whether the words "any proceeding" against an officer of a company, would mean only a proceeding under the Companies Act or any Criminal proceeding under any other law. The provisions of the Companies Act, define "officer" and "officer in default" but there is no definition for the word "proceeding". In the present case, the proceeding has not resulted from or has not been brought about as a consequence of default, refusal,

contravention, non-compliance or failure under the Companies Act, 1956, but has come about as a result of certain acts and omissions committed by the directors of the company ABC Ltd., under the Employees PF and Misc. Provisions Act, 1952. The Court has powers under Section 633 to grant relief only to a director/officer of a company, and not to the company. But the significance of the words “in any proceeding” employed in Section 633(1) require to be understood.

The facts of the case, bear resemblance to those which came up before their Lordships of the Supreme Court in Rabindra Chamarla and Others Vs Registrar of Companies, West Bengal and others, 1992 (73) Comp. Cas. 257 (SC).

Going by the tenor of section 633 of the Companies Act, 1956 and the Supreme Court ruling the directors of ABC Ltd., cannot avail of relief under Section 633 of the Companies Act, 1956 and their Petition is not likely to succeed. It is liable to be dismissed.

11.
- (i)

An auditor who is party to such payment of improper dividend is liable to proceeding by action, or. in case of winding up, to misfeasance summons and that the improperly paid dividend may be recovered from him with interest.
- (ii)

(a)

No. The Auditor cannot be said to be indebted within the meaning of Section 226(3)(d) Companies Act.

(b)

In this case the Auditor of the company is said to be indebted if the amount outstanding from him regarding goods and services purchased from the company audited by him exceeds Rs. 1000 irrespective of the nature of purchase or period of credit allowed to other customers, the provisions regarding disqualification of auditor as contained in Section 225 (3)(d) will be attracted (Guidance Note on Independence of Auditors), Also when the firm is indebted to the company, each and every partner of the firm also is deemed to have been indebted.
12.
- (i)

Section 288 of the Companies Act, 1956 provides: that if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place. It is also provided that section 285 (i.e. frequency of Board meetings) shall not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that provision, could not be held for want of quorum.
- (ii)

Section 289 of the Companies Act, 1956 provides for passing a resolution by circulation, or commonly known as circular resolutions. No such resolution shall be deemed to have been duly passed by the Board or a committee thereof, of a company, unless the following conditions are complied with, viz:

(a)

the draft resolution, together with supporting papers has been circulated, to all the directors, or members of the Committee of the quorum for a Board meeting and

(b)

to all directors of the Board or members of the Committee who are not in India, at their usual address in India, and

(c)

the same has been approved by such of the directors then in India, or by a majority of them, who are entitled to vote on the resolution.

FEMA, 1999

13. Adjudication and Appeal

Time limits

Section No.	Obligation	Time Limit
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Section 14	Penalty to be paid	Within 90 days from the date on which notice for payment of penalty is served.
Section 15	Compounding of Contravention	Within 180 days of receipt of application by Directorate of Enforcement.
Section 16	Complaint under Section 16(1) to be dealt by Adjudicated Authority	Within 1 year of receipt of complaint.
Section 17	Appeal to Special Director (Appeals)	Within 45 days from receipt of order.
Section 19	Appeal to Appellate Tribunal	Within 45 days from receipt of order.
Section 19(5)	Appeal to be dealt with by Appellate Tribunal	Will try to dispose off the appeal within 180 days from receipt of appeal.
Section 35	Appeal to High Court	Within 60 days of communication of order or decision.

Procedure and powers of Appellate Tribunal and Special Director (Appeals) (Section 28)

The Appellate Tribunal and the Special Director (Appeals) shall have, for the purposes of discharging its 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 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) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872); requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examinations of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation of default or deciding it expert;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it expert; and
- (i) any other matter which may be prescribed by the Central Government.

An order made by the Appellate Tribunal or the Special Director (Appeals) under this Act shall be executable by the Appellate Tribunal or the Special Director (Appeals) as a decree of civil court and, for this purpose, the Appellate Tribunal and the Special Director (Appeals) shall have all the powers of a civil court.

Notwithstanding anything contained in sub-section (3), the Appellate Tribunal or the Special Director (Appeals) may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

All proceedings before the Appellate Tribunal and the Special Director (Appeals) shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

14. COMPOUNDING OF OFFENCES

Section 15 of the FEMA 1999 authorises the Reserve Bank and the Enforcement Directorate to compound contraventions of the provisions of Sections 7, 8, 9 and transactions relating to current account.

The Reserve Bank is empowered to compound contravention of the provision as follows:

Sum involved in contravention	By whom?
Rs. 5 lakhs or below	AGM
More than 5 lakhs but less than 20 lakhs	DGM
Rs. 20 lakhs or more but less than 50 lakhs	GM
Rs. 50 lakhs or more	Chief GM

The power of enforcement directorate to compound contraventions are as follows:

Sum involved in contravention	By whom?
Rs. 5 lakhs or below	Deputy Director
More than 5 lakhs but less than Rs. 10 lakhs	Additional Director
Rs. 20 lakhs or more but less than Rs. 50 lakhs	Special Director
Rs. 50 lakhs or more but less than Rs. 1 crore	Special Director with Deputy Legal Advisor
Rs. 1 crore or more	Director of Enforcement with Special Director

No contravention shall be compounded unless the amount involved in such contravention is quantifiable.

- (1) Any contravention under Section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and Officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.
- (2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall initiated or continued, as the case may be, against the person committing such contravention under that Section, in respect of the contravention so compounded.

SEBI ACT, 1992

15. Guidelines on Initial Public Offers through the Stock Exchange On-Line System (E-IPO)

A company proposing to issue capital to public through the on-line system of the stock exchange for offer of securities shall comply with the requirements as contained in CHAPTER XIA in addition to other requirements for public issues as given in these Guidelines, wherever applicable.

Agreement with the Stock exchange

- 1 The Company shall enter into an agreement with the stock exchange (s), which have the requisite system of on-line offer of securities.
- 2 The agreement should specify *inter alia*, the rights, duties, responsibilities and obligations of the company and stock exchange(s) *inter se*. The agreement may also provide for a dispute resolution mechanism between the company and the stock exchange.

Appointment of Brokers

- 1 The stock exchange, shall appoint brokers of the exchange, who are registered with SEBI, for the purpose of accepting applications and placing orders with the company.
- 2 The brokers, so appointed accepting applications and application monies, shall be considered as 'collection centers'.

- 3 The broker/s so appointed, shall collect the money from his/their client for every order placed by him/them and in case the client fails to pay for shares allocated as per the Guidelines, the broker shall pay such amount.
- 4 The company/lead manager shall ensure that the brokers having terminals are appointed in compliance with the requirement of mandatory collection centers.
- 5 The company/lead manager shall ensure that the brokers so appointed are financially capable of honouring their commitments arising out of defaults of their clients, if any.
- 6 The company shall pay to the broker/s a commission/fee for the services rendered by him/them. The exchange shall ensure that the broker does not levy a service fee on his client in lieu of his services.

Appointment of Registrar to the Issue

The company shall appoint a Registrar to the Issue having electronic connectivity with the Stock Exchange/s through which the securities are offered under the system.

Listing

The company may apply for listing of its securities on an exchange other than the exchange through which it offers its securities to public through the on-line system.]

Responsibility of the Lead Manager

- 1 The Lead Manager shall be responsible for co-ordination of all the activities amongst various intermediaries connected in the issue/system.
 - 2 The names of brokers appointed for the issue along with the names of the other intermediaries namely Lead Managers to the issue and Registrars to the Issue should be disclosed in the prospectus and application form.
16. Remedies against SEBI order Section 15B of the Securities and Exchange Board of India Act, 1992 lays down that 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 of one lakhs rupees for each day during which such failure continues or one crores of rupees, whichever is less. [SEBI (Amendment) Act, 2002]

Mr. Clever has been penalised under the above-mentioned provision. Two remedies are available to Mr. Clever in this matter:-

- (i) Appeal to the Securities Appellate Tribunal: Section 15 T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board made, on and after the commencement of the Security Laws (Second Amendment) Act, 1999, under this Act or the rules or regulations made there under may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Such appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Board is received and it shall be in such form and be accompanied by such fee as may be prescribed. However, the Tribunal may entertain an appeal after satisfied that there was sufficient cause for not filing it within the said period.

The Tribunal may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

- (ii) **Appeal to the High Court:** Section 15 Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision or order to him on any question or fact or law arising out of such order. 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 60 days.

17. (a) Exemption from Eligibility Norms

The provisions not applicable in case of,—

- (i) a banking company including a Local Area Bank (hereinafter referred to as Private Sector Banks) set up under sub-section (c) of section 5 of the Banking Regulation Act, 1949 and which has received license from the Reserve Bank of India, or
- (ii) a corresponding new bank set up under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, State Bank of India Act, 1955 and State Bank of India (Subsidiary Banks) Act, 1959 (hereinafter referred to as “public sector banks”).
- (iii) an infrastructure company:
 - ¹[(a) whose project has been appraised by a Public Financial Institution (PFI) or Infrastructure Development Finance Corporation (IDFC) or Infrastructure Leasing and Financing Services Ltd. (IL&FS) or a bank which was earlier a PFI; and]
 - (b) not less than 5% of the project cost is financed by any of the institutions referred to in sub-clause (a), jointly or severally, irrespective of whether they appraise the project or not, by way of loan or subscription to equity or a combination of both.
- (iv) rights issue by a listed company.

(b) Stock Market Data

Particulars of:

- (a) high, low and average market prices of the share of the company
- (b) monthly high and low prices for the six months preceding the date of filing the draft prospectus with Board,
- (c) number of shares traded on the days when the high and low prices were recorded in the relevant stock exchange
- (d) the stock market data referred to above shall be shown separately for periods marked by a change in capital structure, with such period commencing from the date the concerned stock exchange recognises the change in the capital structure (e.g. when the shares have become ex-rights or ex-bonus);
- (e) the market price immediately after the date on which the resolution of the Board of Directors approving the issue was approved;
- (f) the volume of securities traded in each month during the six months preceding the date on which the prospectus is filed with ROC; and
- (g) the volume of business transacted along with high, low and average prices of shares of the company shall also be stated for respective periods.

(c) Promise vis-a-vis Performance

Issuer Company:

- (a) A separate para entitled “Promise Vs. Performance - Last three issues” shall be given indicating whether all the objects mentioned in the respective offer Documents relating to the earlier issues by the company were met and whether all projections made in the said offer documents were achieved.
- (b) If not, non-achievement of objects/projections shall be brought out distinctly shortfall and delays shall be quantified.

Listed Ventures of Promoters:

- (a) A separate para on issues of group/associate companies entitled “Promise v.

¹ Substituted by SEBI/CFD/DIL/DIP/Circular No. 11, dated 14.8.2003, w.e.f. **14.8.2003**.

Performance - Last one Issue of group/associate companies” shall be given indicating whether all the objects mentioned in the respective offer Documents relating to group/associate companies were met and whether all projections made in the offer documents were achieved.

- (b) If not, non-achievement of objects/projections shall be brought out distinctly. Shortfall and delays shall be quantified.

SECURITIES CONTRACTS (REGULATION) ACT, 1956

- 18. (i)** According to Section 13 A of Securities Contracts (Regulation) Act 1956, a Stock Exchange may establish additional trading floor with the prior approval of the Securities Exchange Board of India in accordance with the terms and conditions stipulated by the said Board.

For the purpose of this section ‘Additional Trading Floor’ means a trading ring or trading facility offered by a recognized stock exchange outside its area of operation to enable the investor to buy and sell securities through such trading floor under the regulatory framework of that Stock Exchange.

- (ii) Section 11, of the Securities Contracts (Regulation) Act, 1956 deals with the powers of the Central Government to supersede the Governing body of a recognized Stock Exchange. The Central Government may serve on a governing body a written notice specifying the reasons and after giving an opportunity to the governing body to be heard, may, by notification in the Official Gazette, declare the governing body as superseded. The Central Government after superseding the governing body may appoint any person or persons to exercise and perform all the powers and duties of governing body. It may also appoint one of such nominees as Chairman.

19. Refusal of Listing & Appeal (Section 22)

When Stock Exchanges refuses listing to a company it has to furnish reasons for refusal to the company. Section 73(1) of Companies Act specifies the time period within which stock exchange has to grant listing permission. If Exchange fails to do so within the time limit or refuses to list, Company may within 15 days make an appeal to the Central Government. The Central Government may after hearing the Stock Exchange vary or set aside the decision of the Stock Exchange or grant permission for listing. No appeal under this section shall be allowed after commencement of Securities Laws (Second Amendment) Act, 1999, since appeal before Securities Appellate Tribunal is permitted under Section 22A.

Powers of Securities Appellate Tribunal (Section 22B)

SAT shall have power to regulate their own procedures and will be vested with power vested in Civil Court under Code of Civil Procedure 1908 in respect of following matters:

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

THE COMPETITION ACT, 2002

20. (a) Consumer [Section 2(f)]

"Consumer" means any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
- (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

(b) Enterprise [Section 2(h)]

"Enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

PRE-EXAMINATION NOTES

(1) The Securities Laws (Amendment) Ordinance, 2004

Students may note that the Central government has issued an Ordinance to amend the Securities Contract (Regulation) Act, 1956. The Ordinance came into force w.e.f. 12th October 2004, and shall be applicable for the May 2005 examination. The same is given as under -

The Securities Laws (Amendment) Ordinance, 2004
(No.4 of 2004)

Promulgated by the President in the Fifty-fifth Year of the Republic of India. An Ordinance further to amend the Securities Contracts (Regulation) Act, 1956 and the Depositories Act, 1996.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

	CHAPTER I PRELIMINARY	
	1. (1) This Ordinance may be called the Securities	Short title and

	Laws (Amendment) Ordinance, 2004. (2) It shall come into force at once.	commencement.
	CHAPTER II AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956	
Amendment of section 2.	2. In section 2 of the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as the principal Act),-	42 of 1956.
	(i) clause (aa) shall be re-lettered as clause (ac) thereof and before the clause (ac) as so re-lettered, the following clauses shall be inserted, namely:-	
	‘(aa) “corporatisation” means the succession of a recognised stock exchange, being a body of individuals or a society registered under the Societies Registration Act, 1860, by another stock exchange, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities carried on by such individuals or society; (ab) “demutualisation” means the segregation of ownership and management from the trading rights of the members of a recognised stock exchange in accordance with a scheme approved by the Securities and Exchange Board of India;	21 of 1860.
	(ii) clause (ga) shall be re-lettered as clause (gb) thereof and before the clause (gb) as so re-lettered, the following clause shall be inserted, namely:- ‘(ga) “scheme” means a scheme for corporatisation or demutualisation of a recognised stock exchange which may provide for- (i) the issue of shares for a lawful consideration and provision of trading rights in lieu of membership cards of members of a recognised stock exchange; (ii) the restrictions on voting rights; (iii) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised stock exchange, legal proceedings by, or against, the recognised stock exchange, whether in the name of the recognised stock exchange or any trustee or otherwise and any permission given to, or by, the recognised stock exchange; (iv) the transfer of employees of a recognised stock exchange to another recognised stock exchange; (v) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised stock exchange;’;	
	(iii) in clause (h), after sub-clause (ic), the following sub-clause shall be inserted, namely:- “(id) units or any other such instrument issued to the investors under any mutual fund scheme;”;	

1 of 1956.	(iv) for clause (j), the following clause shall be substituted, namely:- ‘(j) “stock exchange” means – (a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or (b) a body corporate incorporated under the Companies Act, 1956 whether under a scheme of corporatisation and demutualisation or otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities;’.	
	3. After section 4 of the principal Act, the following sections shall be inserted, namely: -	Insertion of new sections 4A and 4B.
	‘4A. On and from the appointed date, all recognised stock exchanges (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 4B: Provided that the Securities and Exchange Board of India may, if it is satisfied that any recognised stock exchange was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, specify another appointed date in respect of that recognised stock exchange and such recognised stock exchange may continue as such before such appointed date. <i>Explanation.</i> For the purposes of this section, “appointed date” means the date which the Securities and Exchange Board of India may, by notification in the Official Gazette, appoint and different appointed dates may be appointed for different recognised stock exchanges:	Corporatisation and demutualisation of stock exchanges.
	4B. (1) All recognised stock exchanges referred to in section 4A shall, within such time as may be specified by the Securities and Exchange Board of India, submit a scheme for corporatisation and demutualisation for its approval: Provided that the Securities and Exchange Board of India may, by notification in the Official Gazette, specify name of the recognised stock exchange, which had already been corporatised and demutualised, and such stock exchange, shall not be required to submit the scheme under this section. (2) On receipt of the scheme referred to in sub-section (1), the Securities and Exchange Board of India may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification. (3) No scheme under sub-section (2) shall be approved by the Securities and Exchange Board of India if the issue of	Procedure for corporatisation and demutualisation.

	shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised stock exchange or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange. (4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by – (a) the Securities and Exchange Board of India in the Official Gazette; (b) the recognised stock exchange in such two daily newspapers circulating in India, as may be specified by the Securities and Exchange Board of India, and upon such publication, notwithstanding anything to the contrary contained in this Act or any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised stock exchange or its members. (5) Where the Securities and Exchange Board of India is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette: Provided that the Securities and Exchange Board of India shall give a reasonable opportunity of being heard to all the persons concerned and the recognised stock exchange concerned before passing an order rejecting the scheme.	
	(6) The Securities and Exchange Board of India may, while approving the scheme under sub-section (2), by an order in writing, restrict- (a) the voting rights of the shareholders who are also stock brokers of the recognised stock exchange; (b) the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the stock exchange; (c) the maximum number of representatives of the stock brokers of the recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed one-fourth of the total strength of the governing board.	
	(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or any	1 of 1956.

	other law for the time being in force, have full effect. (8) Every recognised stock exchange, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2), shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Securities and Exchange Board of India, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights: Provided that the Securities and Exchange Board of India may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.'	
Amendment of section 5.	4. Section 5 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-	
	“(2) Where the recognised stock exchange has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 4B within the specified time therefore or the scheme has been rejected by the Securities and Exchange Board of India under sub-section (5) of section 4B, the recognition granted to such stock exchange under section 4, shall, notwithstanding anything to the contrary contained in this Act, stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition: Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Securities and Exchange Board of India may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 4B.”.	
	5. After section 8 of the principal Act, the following section shall be inserted, namely:-	Insertion of new section 8A.
1 of 1956.	“8A. (1) A recognised stock exchange may, with the prior approval of the Securities and Exchange Board of India, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956, for the purpose of – (a) the periodical settlement of contracts and differences thereunder; (b) the delivery of, and payment for, securities ; (c) any other matter incidental to, or connected with, such transfer. (2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to	Clearing corporation.

	a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Securities and Exchange Board of India for its approval. (3) The Securities and Exchange Board of India may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1). (4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognised stock exchange.”.	
	6. After section 12 of the principal Act, the following section shall be inserted, namely:-	Insertion of new section 12A.
	“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.”.	Power to issue directions.
Amendment of section 13.	7. In section 13 of the principal Act,– (a) for the words “between members of a recognised stock exchange”, the words “between members of a recognised stock exchange or recognised stock exchanges” shall be substituted; (b) for the words “State or area” wherever they occur, the words “State or States or area” shall be substituted; (c) the following proviso shall be inserted, namely:- “Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall–	

	(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India; (ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.”.	
Insertion of new section 21A.	8. After section 21 of the principal Act, the following section shall be inserted, namely:-	
Delisting of securities.	“21A. (1) A recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act: Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.	
	(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals: Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.”.	
Substitution of new section for section 22F.	9. For section 22F of the principal Act, the following section shall be substituted, namely:-	
Appeal to Supreme Court.	“22F. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order: Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”.	
	10. In section 23 of the principal Act,- (a) in sub-section (1), after clause (i), for the words “shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine or with both”, the words “shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both” shall be substituted;	Amendment of section 23.

	(b) in sub-section (2),- (i) for the word and figures “section 21,” the words, figures and letter “section 21 or section 21A” shall be substituted. (ii) for the words “shall, on conviction, be punishable with fine which may extend to one thousand rupees”, the words “shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both” shall be substituted.	
	11. After section 23 of the principal Act, the following sections shall be inserted, namely:-	Insertion of new sections 23A to 23-O.
	“23A. Any person, who is required under this Act or any rules made thereunder, - (a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure; (b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.	Penalty for failure to furnish information, return, etc.
	23B. If any person, who is required under this Act or any bye-laws of a recognised stock exchange made thereunder, to enter into an agreement with his client, fails to enter into such an agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for every such failure.	Penalty for failure by any person to enter into an agreement with clients.
	23C. If any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or it shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.	Penalty for failure to redress Investors’ grievances.
15 of 1992.	23D. If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any	Penalty for failure to segregate securities or moneys of client

	other client, he shall be liable to a penalty not exceeding one crore rupees.	or clients.
Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.	23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.	
Penalty for excess dematerialisation or delivery of unlisted securities.	23F. If any person dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognised stock exchange, he shall be liable to a penalty not exceeding twenty-five crore rupees.	
Penalty for failure to furnish periodical returns, etc.	23G. If a recognised stock exchange fails or neglects to furnish periodical returns to the Securities and Exchange Board of India or fails or neglects to make or amend its rules or bye-laws as directed by the Securities and Exchange Board of India or fails to comply with directions issued by the Securities and Exchange Board of India, such recognised stock exchange shall be liable to a penalty which may extend to twenty-five crore rupees.	
Penalty for contravention where no separate penalty has been provided.	23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.	
Power to adjudicate.	23-I. (1) For the purpose of adjudging under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H, the Securities and Exchange Board of India shall appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty. (2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.	
Factors to be taken into account by the adjudicating officer.	23J. While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely: -	

	(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (b) the amount of loss caused to an investor or group of investors as a result of the default ; (c) the repetitive nature of the default.	
Crediting sum realised by way of penalties to Consolidated Fund of India.	23K. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.	
	23L. (1) Any person aggrieved, by the order or decision of the recognised stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under section 4B, may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals. (2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.	Appeal to Securities Appellate Tribunal.
	(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.	
	(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.	
	(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.	
	23M. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, for which no punishment is provided elsewhere in this Act, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both. (2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his	Offences.

	directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.	
2 of 1974.	23N. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.	Composition of certain offences.
	23-O. (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation: Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity: Provided further that the recommendation of the Securities Exchange Board of India under this sub-section shall not be binding upon the Central Government. (2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.”.	Power to grant immunity.
Amendment of section 25.	12. In section 25 of the principal Act, the words, brackets and figure “sub-section (1) of” shall be omitted.	
Substitution of new section for section 26.	13. For section 26 of the principal Act, the following section shall be substituted, namely:-	
Cognizance of offences by courts.	“26. (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations or bye-laws made thereunder, save on a complaint made by	

	the Central Government or State Government or the Securities and Exchange Board of India or a recognised stock exchange or by any person. (2) No court inferior to that of a Court of Session shall try any offence punishable under this Act.”.	
Insertion of new section 27B.	14. After section 27A of the principal Act, the following section shall be inserted, namely:-	
Right to receive income from mutual fund.	“27B. (1) It shall be lawful for the holder of any securities, being units or other instruments issued by any mutual fund, whose name appears on the books of the mutual fund issuing the said security to receive and retain any income in respect of units or other instruments issued by the mutual fund declared by the mutual fund in respect thereof for any year, notwithstanding that the said security, being units or other instruments issued by the mutual fund, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the mutual fund from the transferor has lodged the security and all other documents relating to the transfer which may be required by the mutual fund with the mutual fund for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the mutual fund became due. <i>Explanation.-</i> The period specified in this section shall be extended – (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instrument issued by the mutual fund; (ii) in case of loss of the transfer deed by theft or any other cause beyond the control of transferee, by the actual period taken for the replacement thereof; and (iii) in case of delay in the lodging of any security, being units or other instruments issued by the mutual fund, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay. (2) Nothing contained in sub-section (1) shall affect- (a) the right of a mutual fund to pay any income from units or other instruments issued by the mutual fund which has become due to any person whose name is for the time being registered in the books of the mutual fund as the holder of the security being units or other instruments issued by the mutual fund in respect of which the income in respect of units or other instruments issued by mutual fund has become due; or (b) the right of transferee of any security, being units or other instruments issued by the mutual fund, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the mutual fund has refused to register the transfer of the security being units or other instruments issued by the	

	mutual fund in the name of the transferee.”.	
	15. In section 30 of the principal Act, in sub-section (2), for the existing clause (<i>ha</i>), the following clauses shall be substituted, namely:- “(ha) the grounds on which the securities of a company may be delisted from any recognised stock exchange under sub-section (1) of section 21A; (hb) the form in which an appeal may be filed before the Securities Appellate Tribunal under sub-section (2) of section 21A and the fees payable in respect of such appeal;	Amendment of section 30.
	(hc) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal;	
	(hd) the manner of inquiry under sub-section (1) of section 23-I;	
	(he) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23L and the fees payable in respect of such appeal;	