

SEBI Act, 1992

By:
CA Kamal Garg

Objects of the SEBI Act

1. Protection of the **interests of investors**;
2. Promoting orderly and healthy **growth of the securities market**;
3. **Regulation of the securities market** and other incidental matters;
4. Promoting the **fair dealings by the issuer of securities** and ensuring a market place where they can raise funds at a relatively low cost;
5. **Regulating and developing a code of conduct and fair practices by intermediaries** like brokers, merchant bankers, etc., with a view to making them more competitive and professional;
6. **Monitoring the activities** of stock exchanges, mutual funds and merchant bankers, etc.

Establishment of SEBI [Section 3]

- **CG empowered** to set up SEBI by N/N in OGz;
- In exercise of such powers, SEBI has been established:
 1. As a **body corporate**;
 2. Having **perpetual succession**;
 3. Having **common seal**;
 4. Having powers to acquire, hold and dispose of **property** (both movable and immovable);
 5. To **contract**; and
 6. To **sue or be sued**

Management of SEBI [Section 4]

- SEBI Members appointed by CG;
- Its constitution is as follows:
 1. Chairman = 1;
 2. Members from amongst the officials of the Ministry of CG dealing with finance and administration of the Companies Act, 1956 = 2;
 3. Member from amongst the RBI officials = 1;
 4. Other Members = 5 (of which ≥ 3 be whole time members)

Management of SEBI [Section 4]..contd.

- **General superintendence, direction & management** of SEBI affairs vest with **Board of Members**;
- **Chairman shall also have powers of general superintendence and direction** of SEBI affairs, unless otherwise provided;
- Chairman and the other members **shall be** the persons of:
 1. Ability, integrity and standing having capacity to deal with problems relating to securities mkt.;
 2. Have special knowledge **or** experience of law, finance, economics, accountancy, administration or any other discipline, **which CG opines** shall be useful to SEBI

Power of SEBI u/s 11A

- **Power to regulate issue and transfer of securities, etc.:**
Without prejudice to the provisions of the Companies Act, 1956, **SEBI may:**
 - for the **protection of investors**,
 - **specify, by regulations:**
 1. The **matters relating to issue of capital**, transfer of securities and other incidental matters; **AND**
 2. The manner in which such matters shall be **disclosed by the companies**.

Power of SEBI u/s 11A

- **Power to prohibit issue of prospectus, offer documents, etc.:**

Without prejudice to the provisions of the Companies Act, 1956, **SEBI may:**

- for the **protection of investors,**
- **specify, by general or special orders:**
 1. Prohibit any company from issuing of **prospectus, any offer document** or advertisement soliciting money from the public for the issue of securities; **or**
 2. **Specify the conditions** subject to which the prospectus, **such offer document, if not prohibited, may be issued**

Power of SEBI u/s 11A

- **Power to specify requirements for listing, etc.:**

Without prejudice to the provisions of Section 21 of SCRA, 1956, SEBI may specify the requirements for:

1. Listing;
2. Transfer of securities; and
3. Other matters incidental thereto.

Power of SEBI to order Investigation [Section 11C]

- **Grounds for ordering investigation:** Where SEBI has **reasonable ground** to believe that:
 1. Transactions in **securities are being dealt with in a manner detrimental** to the investors or the securities market;
 2. Any intermediary or any person associated with the securities market has **violated any of the provisions of this Act or the Rules or the Regulations made or the Directions issued** by SEBI thereunder

Power of SEBI to order Investigation [Section 11C]

- **Duties of directors, officers and employees:**

Every **Mgr, MD, Officer** and **other employee of the company** and every **intermediary** shall be duty bound to:

1. **Preserve and produce** to the Investigating Authority (IA) all **books, registers, other documents and records** which are in their custody or power;
2. **Furnish such information** as the IA may consider relevant or necessary for its investigation purposes

Power of SEBI to order Investigation [Section 11C]

- **Powers of IA:**

1. To **retain books**, etc. for 6 months;
2. May **again call for such books**, etc.;
3. Shall **give certified copies of books**, etc. to any person producing them, if he so requires;
4. To **examine on oath** any officer or employee of any intermediary or any person associated with securities market;
5. To **take notes on any examination** on oath in writing;
6. To **use such notes as evidence** in legal proceedings

Power of SEBI to order Investigation [Section 11C]

- **Seizure of Documents by IA:**

1. IA to **apply to First Class Magistrate** before seizure;
2. **Application to be made on reasonable ground** that these may be destroyed, mutilated, altered, falsified or secreted;
3. After considering IA's application, **Magistrate may authorise IA:**
 - To **enter**, with such assistance as may be required, the places, where such books, etc. are kept;
 - To **search** those places in specified manner;
 - To **seize** books, etc. as IA considers necessary
4. **IA may keep books**, etc. till conclusion of investigation;
5. **Magistrate should be informed** when it returns the books, etc.
6. Before returning books, etc. IA may put **identification marks** on them

Cease and Desist Proceedings [Section 11D]

- SEBI empowered to **pass an order** requiring a **person** to:
 1. Cease; **and**
 2. Desist
 - From committing **or**
 - From causing

the violation of the Act or Rules made thereunder
- **Conditions to pass C&D order:**
 1. SEBI shall make **prior enquiry**;
 2. SEBI shall not pass C&D order against:
 - any **listed company**; or
 - a **public company intending to get its securities** on RSE

Unless it has **reasonable ground to believe** that such company has indulged in **insider trading or market manipulation**

Penalties under the SEBI Act

- **Section 15A to Section 15E:**
 - **Lower of:**
 1. Rs. 1 lakh per day; **or**
 2. Rs. 1 crore

Penalties under the SEBI Act

- **Section 15A:**
 1. Failure to furnish any document, return or report to SEBI;
 2. Failure to file any return or furnish any information, books or other documents to SEBI;
 3. Failure to maintain the books of account or records
- **Section 15B:** Failure by an intermediary to enter into an agreement with his client;
- **Section 15C:** If SEBI calls upon a listed company or any intermediary to redress the investor grievance, but fails to redress such grievance within the time specified by SEBI

Penalties under the SEBI Act

• Section 15D:

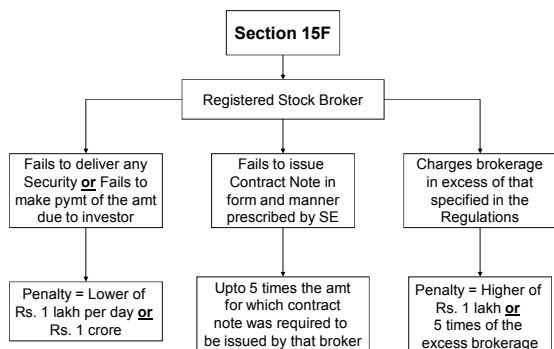
1. Carrying on any Collective Investment Scheme (CIS) without obtaining Certificate of Registration;
2. A **person** registered with SEBI to carry CIS, but makes any of the following defaults:
 - Non-compliance with T&C of RC;
 - Failure to make an application for listing its scheme;
 - Failure to despatch unit certificates of any scheme;
 - Failure to refund application monies paid by the investors;
 - Failure to invest money collected by it

Penalties under the SEBI Act

• Section 15E:

- Failure by any AMC of a MF to comply with any of the Regulations as to restrictions on the activities of AMC

Penalties under the SEBI Act



Penalties under the SEBI Act

- **Section 15G to Section 15H:**
 - **Higher of:**
 1. Rs. 25 crores; or
 2. 3 times the amount of profit made out of default

Penalties under the SEBI Act

- **Section 15G:** Where an Insider:
 1. deals in securities of a body corporate listed on any SE on the basis of unpublished price sensitive information (UPSI);
 2. communicates any UPSI to any person except as required in the ordinary course of business or under any law;
 3. counsels, or procures for any other person to deal in any securities of any body corporate on the basis of UPSI
- **Section 15H:** Failure to:
 1. Disclose aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate;
 2. Make public announcement to acquire shares at a minimum price;
 3. Make a public offer by sending letter of offer to the shareholders of the concerned company;
 4. Make payment of consideration to the shareholders who sold their shares pursuant to letter of offer

Penalties under the SEBI Act

- **Section 15HA:** Person indulging in fraudulent and unfair trade practices relating to securities;
- **Section 15HB:** Failure to comply with any provision of this Act, Rules, or Regulations made thereunder or directions issued by SEBI **for which no separate penalty has been provided;**
- **Penalty for both** Section 15HA and Section 15HB:
 - Maximum of Rs. 1 crore

Penalties under the SEBI Act

- **Section 24:**
 1. Failure to pay the penalty imposed by the Adjudicating Officer; or
 2. Failure to comply with any of his directions or orders
- **Penalty u/s 24:**
 1. **Imprisonment:** $\geq$ 1 Month **BUT** $\leq$ 10 Years; or
 2. **Fine:** $\leq$ Rs. 25 crores; or
 3. **Both**

Procedure for Adjudication [Section 15I and 15J]

- **Section 15I:**
 1. **SEBI shall appoint Adjudicating Officer** to hold enquiries for imposing penalties under the Act;
 2. AO shall give **OBH before imposing penalty**;
 3. **AO Powers:**
 - Summon and enforce attendance;
 - Receive evidence and compel production of any document which may be useful for enquiry;
 - Impose such penalty as he thinks fit

Procedure for Adjudication [Section 15I and 15J]

- **Section 15J:**
 1. **Factors to be taken into account by AO before imposing penalty:**
 - Amount of disproportionate gain or unfair advantage made as a result of default;
 - Amount of loss caused to an investor or group of investors as a result of default;
 - Repetitive nature of the default

Appeal to SAT [Section 15T]

- **CG by notification establish SAT;**
- **No appeal can be made to SAT against an Order made with the consent of the parties;**
- **Appeal to be filed within 45 days** of the Order (condonation possible for sufficient reasons);
- **3 duly signed Copies** of Appeal Application **to be filed** with necessary information
- **Appeal against SAT Order involving question of Law can be filed to SC within 60 days** (condonation possible for sufficient reasons) [Section 15Z]

Composition of Offences [Section 24A]

Offence 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
 - Court
- before which such proceedings are pending

Power to Grant Immunity (Section 24B)

- **CG may grant immunity to any person from prosecution** for any offence under this Act who is alleged to have violated any of the provisions of this Act/ Rules/ Regulations, **on recommendation of SEBI;**
- **This can be granted when the person has made a full and true disclosure** in respect of alleged violations;
- **No such immunity shall be granted** 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;
- **SEBI recommendations not binding** upon CG;
- **An immunity granted to a person can be withdrawn** by CG

CG Power to supersede SEBI
[Section 17]

- CG Opines that there are circumstances of:
 1. Grave emergency;
 2. SEBI persistent default in compliance of CG directions under this Act, thereby deteriorating its financial position;
 3. Public interest
- N/n to be published;
- Supersession can be for $\leq$ 6 months;
- SEBI property vests with CG during supersession
