



with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

1.21.4 Punishment Where no Specific Penalty or Punishment is Provided [Section 450]

If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

1.21.5 Punishment in Case of Repeated Default [Section 451]

If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

1.21.6 Punishment for Wrongful Withholding of Property [Section 452]

(1) If any officer or employee of a company—

- (a) wrongfully obtains possession of any property, including cash of the company; or
- (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

1.21.7 Punishment for Improper use of “Limited” or “Private Limited” [Section 453]

If any person or persons trade or carry on business under any name or title, of which the word “Limited” or the words “Private Limited” or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.

1.21.8 Adjudication of Penalties [Section 454]

- (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may be prescribed.
- (2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).
- (3) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act.

- (4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.
- (5) Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an appeal to the Regional Director having jurisdiction in the matter.
- (6) Every appeal under sub-section (5) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed.
- (7) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.
- (8)
 - (i) Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.
 - (ii) Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

1.21.9 Dormant Company [Section 455]

- (1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation.— For the purposes of this section,—

- (i) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;
 - (ii) “significant accounting transaction” means any transaction other than—
 - (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfil the requirements of this Act or any other law;
 - (c) allotment of shares to fulfil the requirements of this Act; and
 - (d) payments for maintenance of its office and records.
- (2) The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.
- (3) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.
- (4) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
- (5) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.
- (6) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

1.21.10 Application for Obtaining Status of Dormant Company

For the purposes of sub-section (1) of section 455, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

Provided that a company shall be eligible to apply under this rule only, if-

- (i) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;
- (ii) no prosecution has been initiated and pending against the company under any law;
- (iii) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;
- (iv) the company is not having any outstanding loan, whether secured or unsecured:
Provided that if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1;
- (v) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;
- (vi) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;
- (vii) the company has not defaulted in the payment of workmen's dues;
- (viii) the securities of the company are not listed on any stock exchange within or outside India.

1.21.11 Certificate of Status of Dormant Company

The Registrar shall, after considering the application filed in Form MSC-1, issue a certificate in Form **MSC-2** allowing the status of a Dormant Company to the applicant.

1.21.12 Register of Dormant Companies

The Register maintained under the portal maintained by the Ministry of Corporate Affairs on its website www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

1.21.13 Minimum Number of Directors for Dormant Company

A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company.

Provided that the provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.

1.21.14 Return of Dormant Companies

A dormant company shall file a "Return of Dormant Company" annually, inter-alia, indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year.

Provided that the company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

1.21.15 Application for Seeking Status of an Active Company

- (1) An application, under sub-section (5) of section 455, for obtaining the status of an active company shall be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed.

Provided that the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.

- (2) The Registrar shall, after considering the application filed under sub-rule (1), issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.
- (3) Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, under sub-rule (1) of this rule, for obtaining the status of an active company.
- (4) Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

1.21.16 Protection of Action taken in Good Faith [Section 456]

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

1.21.17 Non-Disclosure of Information in Certain Cases [Section 457]

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of the Government or any other person shall not be compelled to disclose to any court, Tribunal or other authority, the source from where he got any information which—

- (a) has led the Central Government to order an investigation under section 210; or
- (b) is or has been material or relevant in connection with such investigation.

1.21.18 Delegation by Central Government of its Powers and Functions [Section 458]

- (1) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification.

Provided that the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer authorised by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction.

- (2) A copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

As per Notification No. S.O.1354(E) dated 21st May, 2014 the Central Government hereby delegates the powers and functions of the Central Government in respect of allotment of Director Identification Number under Sections 153 and 154 of the said Act to the Regional Director, Joint Director, Deputy Director or Assistant Director posted in the office of Regional Director at Noida.

As per the Notification No. S.O. 1352(E) the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmadabad, Hyderabad and Shillong, the power and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if in its opinion such a course of action is necessary in the public interest, namely :—

- (a) clause (i) of sub-section (4) of Section 8 (for alteration of memorandum in case of conversion into another kind of company);
- (b) sub-section (6) of Section 8;
- (c) sub-sections (4) and (5) of Section 13;
- (d) Section 16;
- (e) Section 87;
- (f) sub-section (3) of Section 111;
- (g) sub-section (1) of Section 140; and
- (h) proviso (i) to sub-section (1) of Section 399.

As per the Notification No. S.O. 1353(E) the Central Government hereby delegates to the Registrar of Companies, the power and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers and functions under the said sections, if in its opinion, such a course of action is necessary in the public interest, namely:—

- (a) sub-section (2) of Section 4;
- (b) sub-section (1) of Section 8;
- (c) clause (i) of sub-section (4) of Section 8, except for alteration of memorandum in case of conversion into another kind of company;
- (d) sub-section (5) of Section 8; and
- (e) sub-section (2) of Section 13.

1.21.19 Powers of Central Government or Tribunal to Accord Approval, etc., Subject to Conditions and to Prescribe Fees on Applications [Section 459]

- (1) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—
 - (a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or
 - (b) to give any direction in relation to any matter; or
 - (c) to grant any exemption in relation to any matter,then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of a contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.
- (2) Save as otherwise provided in this Act, every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act—
 - (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or

- (b) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or
 - (c) in respect of any other matter,
- shall be accompanied by such fees as may be prescribed.

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by different classes of companies.

1.21.20 Condonation of Delay in Certain Cases [Section 460]

Notwithstanding anything contained in this Act,—

- (a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and
- (b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

1.21.21 Annual Report by Central Government [Section 461]

The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.

1.21.22 Power to Exempt Class or Classes of Companies from Provisions of this Act [Section 462]

- (1) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—
 - (a) shall not apply to such class or classes of companies; or
 - (b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.
- (2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.
- (3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prorogued or adjourned for more than four consecutive days.
- (4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

1.21.23 Power of Court to Grant Relief in Certain Cases [Section 463]

- (1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit.

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

- (2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust,

he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

- (3) No court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

1.21.24 Prohibition of association or partnership of persons exceeding certain number [Section 464]

- (1) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:

Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred.

- (2) Nothing in sub-section (1) shall apply to—
 - (a) a Hindu undivided family carrying on any business; or
 - (b) an association or partnership, if it is formed by professionals who are governed by special Acts.
- (3) Every member of an association or partnership carrying on business in contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

1.21.25 Repeal of certain enactments and savings [Section 465]

- (1) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed.

Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.

Provided further that until a date is notified by the Central Government under subsection (1) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed.

Provided also that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

- (2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—
 - (a) anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
 - (b) subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution

passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;

- (c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;
 - (d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;
 - (e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;
 - (f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;
 - (g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;
 - (h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;
 - (i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;
 - (j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and
 - (k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.
- (3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 were also a Central Act.

1.21.26 Dissolution of Company Law Board and consequential provisions [Section 466]

- (1) Notwithstanding anything contained in section 465, the Board of Company Law Administration constituted under the Companies Act, 1956 (hereafter in this section referred to as the Company Law Board) shall stand dissolved on the constitution of the Tribunal and the Appellate Tribunal:

Provided that until the Tribunal and the Appellate Tribunal is constituted, the Chairman, Vice-Chairman and Members of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal, who fulfil the qualifications and requirements provided under this Act regarding appointment as President or Chairperson or Member of the Tribunal or the Appellate Tribunal, shall function as President, Chairperson or Member of the Tribunal or the Appellate Tribunal:

Provided further that every officer or other employee, who had been appointed on deputation basis to the Company Law Board, shall, on such dissolution,—

- (i) become officer or employee of the Tribunal or the Appellate Tribunal, if he fulfils the qualifications and requirements under this Act; and

- (ii) stand reverted to his parent cadre, Ministry or Department, in any other case.

Provided also that every officer and the other employee of the Company Law Board, employed on regular basis by that Board, shall become, on and from such dissolution the officer and other employee, respectively, of the Tribunal or the Appellate Tribunal with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if he had continued to serve that Board and shall continue to do so unless and until his employment in the Tribunal or the Appellate Tribunal is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Tribunal or the Appellate Tribunal, as the case may be.

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 14 of 1947. 1947 or in any other law for the time being in force, any officer or other employee who becomes an officer or other employee of the Tribunal or the Appellate Tribunal under the preceding proviso shall not be entitled to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

Provided also that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees who have become officers or employees of the Tribunal or the Appellate Tribunal shall, out of the monies standing to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Tribunal or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the Tribunal or the Appellate Tribunal in such manner as may be prescribed.

- (2) The persons holding the offices of Chairman, Vice-Chairman and Members, and officers and other employees of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal who are not covered under proviso to sub-section (1) shall vacate their respective offices on such constitution and no such Chairman, Vice-Chairman and Members and officers or other employees shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service, if any.

1.21.27 Power of Central Government to amend Schedules [Section 467]

- (1) Subject to the provisions of this section, the Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.
- (2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs.
- Provided that no such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration.
- (3) Every alteration made by the Central Government under sub-section (1) 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 alteration, or both Houses agree that the alteration should not be made, the alteration 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 in pursuance of that alteration.

1.21.28 Powers of Central Government to make rules relating to winding up [Section 468]

- (1) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.

- (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:—
 - (i) as to the mode of proceedings to be held for winding up of a company by the Tribunal;
 - (ii) for the voluntary winding up of companies, whether by members or by creditors;
 - (iii) for the holding of meetings of creditors and members in connection with proceedings under section 230;
 - (iv) for giving effect to the provisions of this Act as to the reduction of the capital;
 - (v) generally for all applications to be made to the Tribunal under the provisions of this Act;
 - (vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
 - (vii) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;
 - (viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
 - (ix) the making of calls; and
 - (x) the fixing of a time within which debts and claims shall be proved.
- (3) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.

1.21.29 Power of Central Government to make rules [Section 469]

- (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.
- (3) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.
- (4) Every rule made under this section and every regulation made by Securities and Exchange Board 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.

1.21.30 Power to remove difficulties [Section 470]

- (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 appear to it to be necessary or expedient for removing the difficulty:
Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of section 1 of this Act.
- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Reference Section 465(1) of the Companies Act, 2013

1.22 INCORPORATION OF PRODUCER COMPANIES AND OTHER MATTERS

1.22.1 Objects of Producer Company [Section 581B]

- (1) The objects of the Producer Company shall relate to all or any of the following matters, namely : -
 - (a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit:
Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;
 - (b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members ;
 - (c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;
 - (d) providing education on the mutual assistance principles to its Members and others ;
 - (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members
 - (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce ;
 - (g) insurance of producers or their primary produce ;
 - (h) promoting techniques of mutuality and mutual assistance ;
 - (i) welfare measures or facilities for the benefit of Members as may be decided by the Board ;
 - (j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner ; (k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.
- (2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

1.22.2 Formation of Producer Company and its Registration [Section 581C]

- (1) Any ten or more individuals, each of them being a producer or any two or more Producer institutions, or a combination of ten or more individuals and Producer institutions, desirous of forming a Producer Company having its objects specified in section 581B and otherwise complying with the requirements of this Part and the provisions of this Act in respect of registration, may form an incorporated Company as a Producer Company under this Act.
- (2) If the Registrar is satisfied that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, he shall, within thirty days of the receipt of the documents required for registration, register the memorandum, the articles and other documents, if any, and issue a certificate of incorporation under this Act.
- (3) A Producer Company so formed shall have the liability of its Members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and be termed a company limited by shares.
- (4) The Producer Company may reimburse to its promoters all other direct costs associated with the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles and the payment thereof shall be subject to the approval at its first general meeting of the Members.
- (5) On registration under sub-section (1), the Producer Company shall become a body corporate as if it is a private limited company to which the provisions contained in this Part apply, without,

however, any limit to the number of Members thereof, and the Producer Company shall not, under any circumstance, whatsoever, become or be deemed to become a public limited company under this Act.

1.22.3 Membership and Voting Rights of Members of Producer Company [Section 581D]

- (1) (a) In a case where the membership consists solely of individual members, the voting rights shall be based on a single vote for every Member, irrespective of his shareholding or patronage of the Producer Company.
- (b) In a case where the membership consists of Producer institutions only, the voting rights of such Producer institutions shall be determined on the basis of their participation in the business of the Producer Company in the previous year, as may be specified by articles:
Provided that during the first year of registration of a Producer Company, the voting rights shall be determined on the basis of the shareholding by such Producer institutions.
- (c) In a case where the membership consists of individuals and Producer institutions, the voting rights shall be computed on the basis of a single vote for every Member.
- (2) The articles of any Producer Company may provide for the conditions, subject to which a Member may continue to retain his membership, and the manner in which voting rights shall be exercised by the Members.
- (3) Notwithstanding anything contained in sub-section (7) or sub-section(2), any Producer Company may, if so authorised by its articles, restrict the voting rights to active Members, in any special or general meeting.
- (4) No person, who has any business interest which is in conflict with business of the Producer Company, shall become a Member of that Company.
- (5) A Member, who acquires any business interest which is in conflict with the business of the Producer Company, shall cease to be a Member of that Company and be removed as a Member in accordance with articles.

1.22.4 Benefits to Members [Section 581E]

- (1) Subject to provisions made in articles, every Member shall initially receive only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares, in proportion to the produce supplied to the Producer Company during the financial year to such extent and in such manner and subject to such conditions as may be decided by the Board.
- (2) Every Member shall, on the share capital contributed, receive only a limited return.
Provided that every such Member may be allotted bonus shares in accordance with the provisions contained in section 581ZJ.
- (3) The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 581ZI, may be disbursed as patronage bonus, amongst the Members, in proportion to their participation in the business of the Producer Company, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting.

1.22.5 Memorandum of Producer Company [Section 581F]

The memorandum of association of every Producer Company shall state: -

- (a) the name of the company with "Producer Company Limited" as the last words of the name of such Company ;
- (b) the State in which the registered office of the Producer Company is to situate ;
- (c) the main objects of the Producer Company shall be one or more of the objects specified in section 581B ;
- (d) the names and addresses of the persons who have subscribed to the memorandum ;

- (e) the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount ;
- (f) the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with sub-section (2) of section 581J ;
- (g) that the liability of its members is limited ;
- (h) opposite to the subscriber's name the number of shares each subscriber takes :
Provided that no subscriber shall take less than one share ;
- (i) in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

1.22.6 Articles of Association [Section 581G]

- (1) There shall be presented, for registration to the Registrar of the State to which the registered office of the Producer Company is, stated by the memorandum of association, to be situate: -
 - (a) memorandum of the Producer Company;
 - (b) its articles duly signed by the subscribers to the memorandum.
- (2) The articles shall contain the following mutual assistance principles, namely : -
 - (a) the membership shall be voluntary and available, to all eligible persons who, can participate or avail of the facilities or services of the Producer Company, and are willing to accept the duties of membership ;
 - (b) each Member shall, save as otherwise provided in this Part, have only a single vote irrespective of the share holding ;
 - (c) the Producer Company shall be administered by a Board consisting of persons elected or appointed as directors in the manner consistent with the provisions of this Part and the Board shall be accountable to the Members;
 - (d) save as provided in this Part, there shall be limited return on share capital ;
 - (e) the surplus arising out of the operations of the Producer Company shall be distributed in an equitable manner by : -
 - (i) providing for the development of the business of the Producer Company ;
 - (ii) providing for common facilities ; and
 - (iii) distributing amongst the Members, as may be admissible in proportion to their respective participation in the business ;
 - (f) provision shall be made for the education of Members, employees and others, on the principles of mutuality and techniques of mutual assistance ;
 - (g) the Producer Company shall actively co-operate with other Producer Companies (and other organisations following similar principles) at local, national or international level so as to best serve the interest of their Members and the communities it purports to serve.
- (3) Without prejudice to the generality of the foregoing provisions of sub-sections (1) and (2), the articles shall contain the following provisions, namely : -
 - (a) the qualifications for membership, the conditions for continuance or cancellation of membership and the terms, conditions and procedure for transfer of shares ;
 - (b) the manner of ascertaining the patronage and voting right based on patronage ;
 - (c) subject to the provisions contained in sub-section (1) of section 581N, the manner of constitution of the Board, its powers and duties, the minimum and maximum number of directors, manner of election and appointment of directors and retirement by rotation, qualifications for being elected or continuance as such and the terms of office of the said directors, their powers and duties, conditions for election or co-option of directors, method of removal of directors and the filling up of vacancies on the Board, and the manner and the terms of appointment of the Chief Executive ;

- (a) the election of the Chairman, term of office of directors and the Chairman, manner of voting at the general or special meetings of Members, procedure for voting, by directors at meetings of the Board, powers of the Chairman and the circumstances under which the Chairman may exercise a casting vote ;
- (b) the circumstances under which, and the manner in which, the withheld price is to be determined and distributed ;
- (c) the manner of disbursement of patronage bonus in cash or by issue of equity shares, or both;
- (d) the contribution to be shared and related matters referred to in subsection (2) of section 581ZI;
- (e) the matters relating to issue of bonus shares out of general reserves as set out in section 581ZJ;
- (f) the basis and manner of allotment of equity shares of the Producer Company in lieu of the whole or part of the sale proceeds of produce or products supplied by the Members ;
- (g) the amount of reserves, sources from which funds may be raised, limitation on raising of funds, restriction on the use of such funds and the extent of debt that may be contracted and the conditions thereof ;
- (h) the credit, loans or advances which may be granted to a Member and the conditions for the grant of the same ;
- (i) the right of any Member to obtain information relating to general business of the company ;
- (j) the basis and manner of distribution and disposal of funds available after meeting liabilities in the event of dissolution or liquidation of the Producer Company ;
- (k) the authorisation for division, amalgamation, merger, creation of subsidiaries and the entering into joint ventures and other matters connected therewith ;
- (l) laying of the memorandum and articles of the Producer Company before a special general meeting to be held within ninety days of its registration ;
- (m) any other provision, which the Members may, by special resolution recommend to be included in articles.

1.22.7 Amendment of Memorandum [Section 581H]

- (1) A Producer Company shall not alter the conditions contained in its memorandum except in the cases, by the mode and to the extent for which express provision is made in this Act.
- (2) A Producer Company may, by special resolution, not inconsistent with section 581B, alter its objects specified in its memorandum.
- (3) A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within thirty days from the date of adoption of any resolution referred to in sub-section (2).

Provided that in the case of transfer of the registered office of a Producer Company from the jurisdiction of one Registrar to another, certified copies of the special resolution certified by two directors shall be filed with both the Registrars within thirty days, and each Registrar shall record the same, and thereupon the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to the other Registrar all documents relating to the Producer Company.

- (4) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Company Law Board on petition.

1.22.8 Amendment of Articles [Section 581I]

- (1) Any amendment of the articles shall be proposed by not less than two-third of the elected directors or by not less than one-third of the Members of the Producer Company, and adopted by the Members by a special resolution.
- (2) A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, shall be filed with the Registrar within thirty days from the date of its adoption.



1.22.9 Option to Inter-State Co-Operative Societies to become Producer Companies [Section 581J]

- (1) Notwithstanding anything contained in sub-section (1) of section 581C, any inter-State co-operative society with objects not confined to one State may make an application to the Registrar for registration as Producer Company under this Part.
- (2) Every application under sub-section (1) shall be accompanied by -
 - (a) a copy of the special resolution, of not less than two-third of total members of inter-State co-operative society, for its incorporation as a Producer Company under this Act ;
 - (b) a statement showing -
 - (i) names and addresses or the occupation of the directors and Chief Executive, if any, by whatever name called, of such co-operative ; and
 - (ii) list of members of such inter-State co-operative society ;
 - (c) a statement indicating that the inter-State co-operative society is engaged in any one or more of the objects specified in section 581B;
 - (d) a declaration by two or more directors of the inter-State co-operative society certifying that particulars given in clauses (a) to (c) are correct.
- (3) When an inter-State co-operative society is registered as a Producer Company, the words "Producer Company Limited" shall form part of its name with any word or expression to show its identity preceding it.
- (4) On compliance with the requirements of sub-sections (1) to (3), the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-operative society applying for registration is registered and thereby incorporated as a Producer Company under this Part.
- (5) A co-operative society formed by producers, by Federation or Union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any Federation or Unions of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application under sub-section (1) and to obtain registration as a Producer Company under this Part.
- (6) The inter-State co-operative society shall, upon registration under sub-section (1), stand transformed into a Producer Company, and there-after shall be governed by the provisions of this Part to the exclusion of the law by which it was earlier governed, save insofar as anything done or omitted to be done before its registration as a Producer Company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.
- (7) Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of the society from its register.

1.22.10 Effect of Incorporation of Producer Company [Section 581K]

Every shareholder of the inter-State co-operative society immediately before the date of registration of Producer Company (hereafter referred to as the transformation date) shall be deemed to be registered on and from that date as a shareholder of the Producer Company to the extent of the face value of the shares held by such shareholder.

1.22.11 Vesting of Undertaking in Producer Company [Section 581L]

- (1) All properties and assets, movable and immovable, of, or belonging to, the inter-State co-operative society as on the transformation date, shall vest in the Producer Company.
- (2) All the rights, debts, liabilities, interests, privileges and obligations of the inter-State co-operative

society as on the transformation date shall stand transferred to, and be the rights, debts, liabilities, interests, privileges and obligations of, the Producer Company.

- (3) Without prejudice to the provisions contained in sub-section (2), all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the society as on the transformation date for or in connection with their purposes, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Producer Company.
- (4) All sums of money due to the inter-State co-operative society immediately before the transformation date, shall be deemed to be due to the Producer Company.
- (5) Every organisation, which was being managed immediately before the transformation date by the inter-State co-operative society shall be managed by the Producer Company for such period, to such extent and in such manner as the circumstances may require.
- (6) Every organisation which was getting financial, managerial or technical assistance from the inter-State cooperative society, immediately before the transformation date, may continue to be given financial, managerial or technical assistance, as the case may be, by the Producer Company, for such period, to such extent and in such manner as that company may deem fit.
- (7) The amount representing the capital of the erstwhile inter-State co-operative society shall form part of the capital of the Producer Company.
- (8) Any reference to the inter-State co-operative society in any law other than this Act or in any contract or other instrument, shall be deemed to be reference to the Producer Company.
- (9) If, on the transformation date, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the incorporation of the Producer Company under section 581C or transformation of the inter-State co-operative society as a Producer Company under section 581J, as the case may be, but the suit, arbitration, appeal or other proceeding, may be continued, prosecuted and enforced by or against the Producer Company in the same manner and to the same extent as it would have, or may have been continued, prosecuted and enforced by or against the inter-State co-operative society as if the provisions contained in this Part had not come into force.

1.22.12 Concession, Etc., to be Deemed to have been granted to Producer Company [Section 581M]

With effect from the transformation date, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the inter-State co-operative society in connection with the affairs and business of the inter-State cooperative society under any law for the time being in force shall be deemed to have been granted to the Producer Company.

1.22.13 Provisions in respect of Officers and Other Employees of Inter-State Co-Operative Society [Section 581N]

- (1) Notwithstanding anything contained in section 581-O, all the directors in the inter-State co-operative society before the incorporation of the Producer Company shall continue in office for a period of one year from the transformation date and in accordance with the provisions of this Act.
- (2) Every officer or other employee of the inter-State co-operative society (except a director of the Board, Chairman or Managing Director) serving in its employment immediately before the transformation date shall, insofar as such officer or other employee is employed in connection with the inter-State co-operative society which has vested in the Producer Company by virtue of this Act, become, as from the transformation date, an officer or, as the case may be, other employee of the Producer Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with

the same rights and privileges as to leave, leave travel concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the erstwhile inter-State cooperative society if its undertaking had not vested in the Producer Company and shall continue to do so as an officer or, as the case may be, other employee of the Producer Company.

- (3) Where an officer or other employee of the inter-State co-operative society opts under sub-section (2) not to be in employment or service of the Producer Company, such officer or other employee shall be deemed to have resigned.
- (4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the inter-State co-operative society to the Producer Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.
- (5) The officers and other employees who have retired before the transformation date from the service of the inter State co-operative society and are entitled to any benefits, rights or privileges, shall be entitled to receive the same benefits, rights or privileges from the Producer Company.
- (6) The trusts of the provident fund or the gratuity fund of the inter-State cooperative society and any other bodies created for the welfare of officers or employees shall continue to discharge functions in the Producer Company as was being done hitherto in the inter-State co-operative society and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the Producer Company.
- (7) Notwithstanding anything contained in this Act or in any other law for the time being in force or in the regulations of the inter-State co-operative society, no director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or substantial part of the business and affairs of the inter-State co-operative society shall be entitled to any compensation against the inter-State co-operative society or the Producer Company for the loss of office or for the premature termination of any contract of management entered into by him with the inter-State cooperative society.

1.22.14 Number of Directors [Section 581-O]

Every Producer Company shall have at least five and not more than fifteen directors :

Provided that in the case of an inter-State co-operative society incorporated as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.

1.22.15 Appointment of Directors [Section 581P]

- (1) Save as provided in section 581N, the Members who sign the memorandum and the articles may designate therein the Board of directors (not less than five) who shall govern the affairs of the Producer Company until the directors are elected in accordance with the provisions of this section.
- (2) The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company.

Provided that in the case of an inter-State co-operative society which has been registered as a Producer Company under sub-section (4) of section 581J in which at least five directors [including the directors continuing in office under sub-section (1) of section 581N] hold office as such on the date of registration of such company, the provisions of this sub-section shall have effect as if for the words "ninety days", the words "three hundred and sixty five days" had been substituted.

- (3) Every person shall hold office of a director for a period not less than one year but not exceeding five years as may be specified in the articles.

- (4) Every director, who retires in accordance with the articles, shall be eligible for re-appointment as a director.
- (5) Save as provided in sub-section (2), the directors of the Board shall be elected or appointed by the Members in the annual general meeting.
- (6) The Board may co-opt one or more expert directors or an additional director not exceeding one-fifth of the total number of directors or appoint any other person as additional director for such period as the Board may deem fit : Provided that the expert directors shall not have the right to vote in the election of the Chairman but shall be eligible to be elected as Chairman, if so provided by its articles.

Provided further that the maximum period, for which the expert director or the additional director holds office, shall not exceed such period as may be specified in the articles.

1.22.16 Vacation of Office by Directors [Section 581Q]

- (1) The office of the director of a Producer Company shall become vacant if-
 - (a) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months ;
 - (b) the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days ;
 - (c) he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director ;
 - (d) the Producer Company, in which he is a director -
 - (i) has not filed the annual accounts and annual return for any continuous three financial years commencing on or after the 1st day of April, 2002 ; or
 - (ii) has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more ;
 - (e) default is made in holding election for the office of director, in the Producer Company in which he is a director, in accordance with the provisions of this Act and articles ;
 - (f) the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason.
- (2) The provisions of sub-section (1) shall, as far as may be, apply to the director of a Producer institution which is a member of a Producer Company.

1.22.17 Powers and Functions of Board [Section 581R]

- (1) Subject to the provisions of this Act and articles, the Board of directors of a Producer Company shall exercise all such powers and to do all such acts and things, as that company is authorised so to do.
- (2) In particular and without prejudice to the generality of the foregoing powers, such powers may include all or any of the following matters, namely: -
 - (a) determination of the dividend payable ;
 - (b) determination of the quantum of withheld price and recommend patronage to be approved at general meeting ;
 - (c) admission of new Members ;
 - (d) pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans ;



- (e) appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles ;
 - (f) exercise superintendence, direction and control over Chief Executive and other officers appointed by it ;
 - (g) cause proper books of account to be maintained ; prepare annual accounts to be placed before the annual general meeting with the auditor's report and the replies on qualifications, if any, made by the auditors ;
 - (h) acquisition or disposal of property of the Producer Company in its ordinary course of business;
 - (i) investment of the funds of the Producer Company in the ordinary course of its business ;
 - (j) sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative ;
 - (k) take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers.
- (3) All the powers specified in sub-sections (1) and (2) shall be exercised by the Board, by means of resolution passed at its meeting on behalf of the Producer Company.

Explanation.— For the removal of doubts, it is hereby declared that a director or a group of directors, who do not constitute the Board, shall not exercise any of the powers exercisable by it.

1.22.18 Matters to be Transacted at General Meeting [Section 581S]

- (1) The Board of directors of a Producer Company shall exercise the following powers on behalf of that company, and it shall do so only by means of resolutions passed at the annual general meeting of its Members, namely : -
- (a) approval of budget and adoption of annual accounts of the Producer Company ;
 - (b) approval of patronage bonus ;
 - (c) issue of bonus shares ;
 - (d) declaration of limited return and decision on the distribution of patronage ;
 - (e) specify the conditions and limits of loans that may be given by the Board to any director ; and
 - (f) approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.

1.22.19 Liability of Directors [Section 581T]

- (1) When the directors vote for a resolution, or approve by any other means, anything done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company.
- (2) Without prejudice to the provisions contained in sub-section (1), the Producer Company shall have the right to recover from its director -
- (a) where such director has made any profit as a result of the contravention specified in sub-section (1), an amount equal to the profit so made ;
 - (b) where the Producer Company incurred a loss or damage as a result of the contravention specified in subsection (1), an amount equal to that loss or damage ;
- (3) The liability imposed under this section shall be in addition to and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force.

1.22.20 Committee of Directors [Section 581U]

- (1) The Board may constitute such number of committees as it may deem fit for the purpose of assisting the Board in the efficient discharge of its functions :
Provided that the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee.
- (2) A committee constituted under sub-section (1) may, with the approval of the Board, co-opt such number of persons as it deems fit as members of the committee :
Provided that the Chief Executive appointed under section 581W or a director of the Producer Company shall be a member of such committee.
- (3) Every such committee shall function under the general superintendence, direction and control of the Board, for such duration, and in such manner as the Board may direct.
- (4) The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board.
- (5) The minutes of each meeting of the committee shall be placed before the Board at its next meeting.

1.22.21 Meetings of Board and Quorum [Section 581V]

- (1) A meeting of the Board shall be held not less than once in every three months and at least four such meetings shall be held in every year.
- (2) Notice of every meeting of the Board of directors shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.
- (3) The Chief Executive shall give notice as aforesaid not less than seven days prior to the date of the meeting of the Board and if he fails to do so, he shall be punishable with fine which may extend to one thousand rupees : Provided that a meeting of the Board may be called at shorter notice and the reasons thereof shall be recorded in writing by the Board.
- (4) The quorum for a meeting of the Board shall be one-third of the total strength of directors, subject to a minimum of three.
- (5) Save as provided in the articles, directors including the co-opted director, may be paid such fees and allowances for attendance at the meetings of the Board, as may be decided by the Members in the general meeting.

1.22.22 Chief Executive and his Functions [Section 581W]

- (1) Every Producer Company shall have a full time Chief Executive, by whatever name called, to be appointed by the Board from amongst persons other than Members.
- (2) The Chief Executive shall be ex officio director of the Board and such director shall not retire by rotation.
- (3) Save as otherwise provided in articles, the qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board.
- (4) The Chief Executive shall be entrusted with substantial powers of management as the Board may determine.
- (5) Without prejudice to the generality of sub-section (4), the Chief Executive may exercise the powers and discharge the functions, namely : -
 - (a) do administrative acts of a routine nature including managing the day-to-day affairs of the Producer Company ;
 - (b) operate bank accounts or authorise any person, subject to the general or special approval of the Board in this behalf, to operate the bank account ;



- (c) make arrangements for safe custody of cash and other assets of the Producer Company ;
 - (d) sign such documents as may be authorised by the Board, for and on behalf of the company;
 - (e) maintain proper books of account ; prepare annual accounts and audit thereof; place the audited accounts before the Board and in the annual general meeting of the Members ;
 - (f) furnish Members with periodic information to appraise them of the operation and functions of the Producer Company ;
 - (g) make appointments to posts in accordance with the powers delegated to him by the Board;
 - (h) assist the Board in the formulation of goals, objectives, strategies, plans and policies;
 - (i) advise the Board with respect to legal and regulatory matters concerning the proposed and on going activities and take necessary action in respect thereof ;
 - (j) exercise the powers as may be necessary in the ordinary course of business ;
 - (k) discharge such other functions, and exercise such other powers, as may be delegated by the Board.
- (6) The Chief Executive shall manage the affairs of the Producer Company under the general superintendence, direction and control of the Board and be accountable for the performance of the Producer Company.

1.22.23 Secretary of Producer Company [Section 581X]

- (1) Every Producer Company having an average annual turnover exceeding five crore rupees in each of three consecutive financial years shall have a whole-time secretary.
- (2) No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.
- (3) If a Producer Company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

1.22.24 Quorum [Section 581Y]

Unless the articles require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting.

1.22.25 Voting Rights [Section 581Z]

Save as otherwise provided in sub-sections (1) and (3) of section 581D, every Member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.

1.22.26 Annual General Meetings [Section 581ZA]

- (1) Every Producer Company shall in each year, hold, in addition to any other meetings, a general meeting, as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a Producer Company and that of the next : Provided that the Registrar may, for any special reason, permit extension of the time for holding any annual general meeting (not being the first annual general meeting) by a period not exceeding three months.
- (2) A Producer Company shall hold its first annual general meeting within a period of ninety days from the date of its incorporation.

- (3) The Members shall adopt the articles of the Producer Company and appoint directors of its Board in the annual general meeting.
- (4) The notice calling the annual general meeting shall be accompanied by the following documents, namely : -
 - (a) the agenda of the annual general meeting ;
 - (b) the minutes of the previous annual general meeting or the extraordinary general meeting ;
 - (c) the names of candidates for election, if any, to the office of director including a statement of qualifications in respect of each candidate;
 - (d) the audited balance-sheet and profit and loss accounts of the Producer Company and its subsidiary, if any, together with a report of the Board of directors of such Company with respect to -
 - (i) the state of affairs of the Producer Company ;
 - (ii) the amount proposed to be carried to reserve ;
 - (iii) the amount to be paid as limited return on share capital ;
 - (iv) the amount proposed to be disbursed as patronage bonus ;
 - (v) the material changes and commitments, if any, affecting the financial position of the Producer Company and its subsidiary, which have occurred in between the date of the annual accounts of the Producer Company to which the balance sheet relates and the date of the report of the Board ;
 - (vi) any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges ;
 - (vii) any other matter which is required to be, or may be, specified by the Board ;
 - (e) the text of the draft resolution for appointment of auditors ;
 - (f) the text of any draft resolution proposing amendment to the memorandum or articles to be considered at the general meeting, along with the recommendations of the Board.
- (5) The Board of directors shall, on the requisition made in writing, duly signed and setting out the matters for the consideration, made by one-third of the Members entitled to vote in any general meeting, proceed to call an extraordinary general meeting in accordance with the provisions contained in sections 169 to 186 of this Act.
- (6) Every annual general meeting shall be called, for a time during business hours, on a day that is not a public holiday and shall be held at the registered office of the Producer Company or at some other place within the city, town or village in which the registered office of the Company is situate.
- (7) A general meeting of the Producer Company shall be called by giving not less than fourteen days prior notice in writing.
- (8) The notice of the general meeting indicating the date, time and place of the meeting shall be sent to every Member and auditor of the Producer Company.
- (9) Unless the articles of the Producer Company provide for a larger number, one-fourth of the total number of members of the Producer Company shall be the quorum for its annual general meeting.
- (10) The proceedings of every annual general meeting along with the Directors' Report, the audited balance sheet and the profit and loss account shall be filed with the Registrar within sixty days of the date on which the annual general meeting is held, with an annual return along with the filing fees as applicable under the Act.

- (11) In the case where a Producer Company is formed by Producer institutions, such institutions shall be represented in the general body through the Chairman or the Chief Executive thereof who shall be competent to act on its behalf.

Provided that a Producer institution shall not be represented if such institution makes a default or failure referred to in clauses (d) to (f) of sub-section (1) of section 581Q.

1.22.27 Share Capital [Section 581ZB]

- (1) The share capital of a Producer Company shall consist of equity shares only.
- (2) The shares held by a Member in a Producer Company, shall as far as may be, be in proportion to the patronage of that company.

1.22.28 Special user Rights [Section 581ZC]

- (1) The producers, who are active Members may, if so provided in the articles, have special rights and the Producer Company may issue appropriate instruments to them in respect of such special rights.
- (2) The instruments of the Producer Company issued under sub-section (1) shall, after obtaining approval of the Board in that behalf, be transferable to any other active Member of that Producer Company.

Explanation.— For the purposes of this section, the expression "special right" means any right relating to supply of additional produce by the active Member or any other right relating to his produce which may be conferred upon him by the Board.

1.22.29 Transferability of Shares and Attendant Rights [Section 581ZD]

- (1) Save as otherwise provided in sub-sections (2) to (4), the shares of a Member of a Producer Company shall not be transferable.
- (2) A Member of a Producer Company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active Member at par value.
- (3) Every Member shall, within three months of his becoming a Member in the Producer Company, nominate, in the manner specified in articles, a person to whom his shares in the Producer Company shall vest in the event of his death.
- (4) The nominee shall, on the death of the Member, become entitled to all the rights in the shares of the Producer Company and the Board of that Company shall transfer the shares of the deceased Member to his nominee.

Provided that in a case where such nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.

- (5) Where the Board of a Producer Company is satisfied that -
 - (a) any Member has ceased to be a primary producer ; or
 - (b) any Member has failed to retain his qualifications to be a Member as specified in articles,the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.

Provided that the Board shall not direct such surrender of shares unless the Member has been served with a written notice and given an opportunity of being heard.

1.22.30 Books of Account [Section 581ZE]

- (1) Every Producer Company shall keep at its registered office proper books of account with respect to -
 - (a) all sums of money received and expended by the Producer Company and the matters in respect of which the receipts and expenditure take place ;

- (b) all sales and purchase of goods by the Producer Company ;
 - (c) the instruments of liability executed by or on behalf of the Producer Company ;
 - (d) the assets and liabilities of the Producer Company ;
 - (e) in case of a Producer Company engaged in production, processing and manufacturing, the particulars relating to utilisation of materials or labour or other items of costs.
- (2) The balance sheet and profit and loss accounts of the Producer Company shall be prepared, as far as may be, in accordance with the provisions contained in section 211.

1.22.31 Internal Audit [Section 581ZF]

Every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Institute of Chartered Accountants Act, 1949.

1.22.32 Duties of Auditor under this Part [Section 581ZG]

Without prejudice to the provisions contained in section 227, the auditor shall report on the following additional matters relating to the Producer Company, namely: -

- (a) the amount of debts due along with particulars of bad debts if any;
- (b) the verification of cash balance and securities ;
- (c) the details of assets and liabilities ;
- (d) all transactions which appear to be contrary to the provisions of this Part ;
- (e) the loans given by the Producer Company to the directors ;
- (f) the donations or subscriptions given by the Producer Company ;
- (g) any other matter as may be considered necessary by the auditor.

1.22.33 Donations or Subscription by Producer Company [Section 581ZH]

A Producer Company may, by special resolution, make donation or subscription to any institution or individual for the purposes of -

- (a) promoting the social and economic welfare of Producer Members or producers or general public; or
- (b) promoting the mutual assistance principles.

Provided that the aggregate amount of all such donation and subscription in any financial year shall not exceed three per cent of the net profit of the Producer Company in the financial year immediately preceding the financial year in which the donation or subscription was made.

Provided further that no Producer Company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.

1.22.34 General and Other Reserves [Section 581ZI]

- (1) Every Producer Company shall maintain a general reserve in every financial year, in addition to any reserve maintained by it as may be specified in articles.
- (2) In a case where the Producer Company does not have sufficient funds in any financial year for transfer to maintain the reserves as may be specified in articles, the contribution to the reserve shall be shared amongst the Members in proportion to their patronage in the business of that company in that year.

1.22.35 Issue of Bonus Shares [Section 581ZJ]

Any Producer Company may, upon recommendation of the Board and passing of resolution in the general meeting, issue bonus shares by capitalisation of amounts from general reserves referred to in section 581ZI in proportion to the shares held by the Members on the date of the issue of such shares.

1.22.36 Loan, Etc., To Members [Section 581ZK]

The Board may, subject to the provisions made in articles, provide financial assistance to the Members of the Producer Company by way of -

- (a) credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months ;
- (b) loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances.

Provided that any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.

1.22.37 Investment in Other Companies, Formation of Subsidiaries, Etc [Section 581ZL]

- (1) The general reserves of any Producer Company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.
- (2) Any Producer Company may, for promotion of its objectives acquire the shares of another Producer Company.
- (3) Any Producer Company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company by special resolution in this behalf.
- (4) Any Producer Company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a Producer Company, specified under sub-section (2), or subscription of capital under sub-section (3), for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves :

Provided that a Producer Company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.

- (5) All investments by a Producer Company may be made if such investments are consistent with the objects of the Producer Company.
- (6) The Board of a Producer Company may, with the previous approval of Members by a special resolution, dispose of any of its investments referred to in sub-sections (3) and (4).
- (7) Every Producer Company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares ; the date of acquisition ; and the manner and price at which any of the shares have been subsequently disposed of
- (8) The register referred to in sub-section (7) shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any Member who may take extracts therefrom.

SCHEDULE I**(See sections 4 and 5)****TABLE -A****MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES**

- 1st The name of the company is "..... Limited / Private Limited".
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited and this liability is limited to the amount unpaid, if any, on the shares held by them.
- 5th The share capital of the company is rupees, divided into shares of rupees each.
- 6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of Merchant		Signed before me: Signature
C.D. of Merchant		Signed before me: Signature
E.F. of Merchant		Signed before me: Signature
G.H. of Merchant		Signed before me: Signature
I.J. of Merchant		Signed before me: Signature
K.L. of Merchant		Signed before me: Signature
M.N. of Merchant		Signed before me: Signature
Total share taken:			

- 7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

- 8th Shri/Smt, son/daughter of, resident of..... aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated the day of



TABLE -B
MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE AND NOT HAVING A SHARE CAPITAL

- 1st The name of the company is " Limited / Private Limited".
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited.
- 5th Every member of the company undertakes to contribute:
- (i) to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member; and
- (ii) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves),
such amount as may be required, not exceeding rupees.
- 6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of Merchant		Signed before me: Signature
C.D. of Merchant		Signed before me: Signature
E.F. of Merchant		Signed before me: Signature
G.H. of Merchant		Signed before me: Signature
I.J. of Merchant		Signed before me: Signature
K.L. of Merchant		Signed before me: Signature
M.N. of Merchant		Signed before me: Signature

- 7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

- 8th Shri/Smt , son/daughter of , resident of aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated the day of

TABLE – C
MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE AND HAVING A SHARE CAPITAL

- 1st The name of the company is "..... Limited/Private Limited".
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
 (b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited.
- 5th Every member of the company undertakes to contribute:
- (i) to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member; and
- (ii) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves),
- such amount as may be required, not exceeding rupees.
- 6th The share capital of the company is..... rupees, divided into..... shares of..... rupees each
- 7th We, the several persons, whose names, addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of Merchant		Signed before me: Signature
C.D. of Merchant		Signed before me: Signature
E.F. of Merchant		Signed before me: Signature
G.H. of Merchant		Signed before me: Signature
I.J. of Merchant		Signed before me: Signature
K.L. of Merchant		Signed before me: Signature
M.N. of Merchant		Signed before me: Signature

- 8th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

- 9th Shri/Smt , son/daughter of , resident of aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)
- Dated the day of

TABLE – D
MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY
AND NOT HAVING SHARE CAPITAL

- 1st The name of the company is “..... Company”.
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is unlimited.
- 5th We, the several persons, whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of..... Merchant		Signed before me: Signature
C.D. of..... Merchant		Signed before me: Signature
E.F. of..... Merchant		Signed before me: Signature
G.H. of..... Merchant		Signed before me: Signature
I.J. of..... Merchant		Signed before me: Signature
K.L. of..... Merchant		Signed before me: Signature
M.N. of..... Merchant		Signed before me: Signature

- 6th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

- 7th Shri/Smt., son/daughter of....., resident of aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of

TABLE -E
MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY
AND HAVING SHARE CAPITAL

- 1st The name of the company is "..... Company".
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
 (b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is unlimited.
- 5th The share capital of the company is..... rupees, divided into..... shares of..... rupees each.
- 6th We, the several persons, whose names, and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of..... Merchant		Signed before me: Signature
C.D. of Merchant		Signed before me: Signature
E.F. of..... Merchant		Signed before me: Signature
G.H. of..... Merchant		Signed before me: Signature
I.J. of..... Merchant		Signed before me: Signature
K.L. of..... Merchant		Signed before me: Signature
M.N. of..... Merchant		Signed before me: Signature

- 7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

- 8th Shri/Smt., son/daughter of....., resident of..... aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of..... .



TABLE -F
ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES
Interpretation

- I. (1) In these regulations—
- (a) “the Act” means the Companies Act, 2013,
 - (b) “the seal” means the common seal of the company.
- (2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Share capital and variation of rights

- II. 1. Subject to the provisions of the Act and these Articles, the shares in the capital of the company shall be under the control of the Directors who may issue, allot or otherwise dispose of the same or any of them to such persons, in such proportion and on such terms and conditions and either at a premium or at par and at such time as they may from time to time think fit.
2. (i) Every person whose name is entered as a member in the register of members shall be entitled to receive within two months after incorporation, in case of subscribers to the memorandum or after allotment or within one month after the application for the registration of transfer or transmission or within such other period as the conditions of issue shall be provided,—
- (a) one certificate for all his shares without payment of any charges; or
 - (b) several certificates, each for one or more of his shares, upon payment of twenty rupees for each certificate after the first.
- (ii) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid-up thereon.
- (iii) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.
3. (i) If any share certificate be worn out, defaced, mutilated or torn or if there be no further space on the back for endorsement of transfer, then upon production and surrender thereof to the company, a new certificate may be issued in lieu thereof, and if any certificate is lost or destroyed then upon proof thereof to the satisfaction of the company and on execution of such indemnity as the company deem adequate, a new certificate in lieu thereof shall be given. Every certificate under this Article shall be issued on payment of twenty rupees for each certificate.
- (ii) The provisions of Articles (2) and (3) shall mutatis mutandis apply to debentures of the company.
4. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.
5. (i) The company may exercise the powers of paying commissions conferred by sub-section (6) of section 40, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section and rules made thereunder.
- (ii) The rate or amount of the commission shall not exceed the rate or amount prescribed in rules made under sub-section (6) of section 40.

- (iii) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.
- 6. (i) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of section 48, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.
- (ii) To every such separate meeting, the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be at least two persons holding at least one-third of the issued shares of the class in question.
- 7. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.
- 8. Subject to the provisions of section 55, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

Lien

- 9. (i) The company shall have a first and paramount lien—
 - (a) on every share (not being a fully paid share), for all monies (whether presently payable or not) called, or payable at a fixed time, in respect of that share; and
 - (b) on all shares (not being fully paid shares) standing registered in the name of a single person, for all monies presently payable by him or his estate to the company.

Provided that the Board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.
- (ii) The company's lien, if any, on a share shall extend to all dividends payable and bonuses declared from time to time in respect of such shares.
- 10. The company may sell, in such manner as the Board thinks fit, any shares on which the company has a lien.

Provided that no sale shall be made—

 - (a) unless a sum in respect of which the lien exists is presently payable; or
 - (b) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.
- 11. (i) To give effect to any such sale, the Board may authorise some person to transfer the shares sold to the purchaser thereof.
- (ii) The purchaser shall be registered as the holder of the shares comprised in any such transfer.
- (iii) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
- 12. (i) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable.
- (ii) The residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.



Calls on shares

13. (i) The Board may, from time to time, make calls upon the members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times. Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.
- (ii) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified, the amount called on his shares.
- (iii) A call may be revoked or postponed at the discretion of the Board.
14. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by installments.
15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
16. (i) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at ten per cent. per annum or at such lower rate, if any, as the Board may determine.
- (ii) The Board shall be at liberty to waive payment of any such interest wholly or in part.
17. (i) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.
- (ii) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
18. The Board—
- (a) may, if it thinks fit, receive from any member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him; and
- (b) upon all or any of the monies so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, twelve per cent. per annum, as may be agreed upon between the Board and the member paying the sum in advance.

Transfer of shares

19. (i) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.
- (ii) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.
20. The Board may, subject to the right of appeal conferred by section 58 decline to register—
- (a) the transfer of a share, not being a fully paid share, to a person of whom they do not approve; or
- (b) any transfer of shares on which the company has a lien.
21. The Board may decline to recognise any instrument of transfer unless—
- (a) the instrument of transfer is in the form as prescribed in rules made under sub-section (1) of section 56;
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; and
- (c) the instrument of transfer is in respect of only one class of shares.

- 22.** On giving not less than seven days' previous notice in accordance with section 91 and rules made thereunder, the registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine.

Provided that such registration shall not be suspended for more than thirty days at any one time or for more than forty-five days in the aggregate in any year.

Transmission of shares

- 23.** (i) On the death of a member, the survivor or survivors where the member was a joint holder, and his nominee or nominees or legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.
- (ii) Nothing in clause (i) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.
- 24.** (i) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either—
- (a) to be registered himself as holder of the share; or
- (b) to make such transfer of the share as the deceased or insolvent member could have made.
- (ii) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share before his death or insolvency.
- 25.** (i) If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.
- (ii) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.
- (iii) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.
- 26.** A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.
- Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the share, until the requirements of the notice have been complied with.
- 27.** In case of a One Person Company—
- (i) on the death of the sole member, the person nominated by such member shall be the person recognised by the company as having title to all the shares of the member;
- (ii) the nominee on becoming entitled to such shares in case of the member's death shall be informed of such event by the Board of the company;
- (iii) such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable;
- (iv) on becoming member, such nominee shall nominate any other person with the prior



written consent of such person who, shall in the event of the death of the member, become the member of the company.

Forfeiture of Shares

28. If a member fails to pay any call, or installment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.
29. The notice aforesaid shall—
- (a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
 - (b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made shall be liable to be forfeited.
30. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.
31. (i) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.
- (ii) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.
32. (i) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.
- (ii) The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.
33. (i) A duly verified declaration in writing that the declarant is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share;
- (ii) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of;
- (iii) The transferee shall thereupon be registered as the holder of the share; and
- (iv) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.
34. The provisions of these regulations as to forfeiture shall apply in the case of non payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Alteration of Capital

35. The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.
36. Subject to the provisions of section 61, the company may, by ordinary resolution,—
- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

- (b) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- (c) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum;
- (d) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

37. Where shares are converted into stock,—

- (a) the holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit.

Provided that the Board may, from time to time, fix the minimum amount of stock transferable, so, however, that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

- (b) the holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.
- (c) such of the regulations of the company as are applicable to paid-up shares shall apply to stock and the words "share" and "shareholder" in those regulations shall include "stock" and "stock-holder" respectively.

38. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law,—

- (a) its share capital;
- (b) any capital redemption reserve account; or
- (c) any share premium account.

Capitalisation of Profits

39. (i) The company in general meeting may, upon the recommendation of the Board, resolve—

- (a) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution; and
 - (b) that such sum be accordingly set free for distribution in the manner specified in clause (ii) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.
- (ii) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (iii), either in or towards—
- (A) paying up any amounts for the time being unpaid on any shares held by such members respectively;
 - (B) paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid-up, to and amongst such members in the proportions aforesaid;
 - (C) partly in the way specified in sub-clause (A) and partly in that specified in sub-clause (B);
 - (D) A securities premium account and a capital redemption reserve account may, for



the purposes of this regulation, be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares;

(E) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.

40. (i) Whenever such a resolution as aforesaid shall have been passed, the Board shall—
- (a) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares if any; and
 - (b) generally do all acts and things required to give effect thereto.
- (ii) The Board shall have power—
- (a) to make such provisions, by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares becoming distributable in fractions; and
 - (b) to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid-up, of any further shares to which they may be entitled upon such capitalisation, or as the case may require, for the payment by the company on their behalf, by the application thereto of their respective proportions of profits resolved to be capitalised, of the amount or any part of the amounts remaining unpaid on their existing shares;
- (iii) Any agreement made under such authority shall be effective and binding on such members.

Buy-Back of Shares

41. Notwithstanding anything contained in these articles but subject to the provisions of sections 68 to 70 and any other applicable provision of the Act or any other law for the time being in force, the company may purchase its own shares or other specified securities.

General Meetings

42. All general meetings other than annual general meeting shall be called extra ordinary general meeting.
43. (i) The Board may, whenever it thinks fit, call an extraordinary general meeting.
- (ii) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at General Meetings

44. (i) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (ii) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.
45. The chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.
46. If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.
47. If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.
48. In case of a One Person Company—
- (i) the resolution required to be passed at the general meetings of the company shall be

deemed to have been passed if the resolution is agreed upon by the sole member and communicated to the company and entered in the minutes book maintained under section 118;

- (ii) such minutes book shall be signed and dated by the member;
- (iii) the resolution shall become effective from the date of signing such minutes by the sole member.

Adjournment of Meeting

49. (i) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (ii) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
 - (iii) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
 - (iv) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Voting Rights

50. Subject to any rights or restrictions for the time being attached to any class or classes of shares,—
- (a) on a show of hands, every member present in person shall have one vote; and
 - (b) on a poll, the voting rights of members shall be in proportion to his share in the paid-up equity share capital of the company.
51. A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.
52. (i) In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.
- (ii) For this purpose, seniority shall be determined by the order in which the names stand in the register of members.
53. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.
54. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.
55. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.
56. (i) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.
- (ii) Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

Proxy

57. The instrument appointing a proxy and the power-of-attorney or other authority, if any, under which it is signed or a notarised copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to

vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default the instrument of proxy shall not be treated as valid.

58. An instrument appointing a proxy shall be in the form as prescribed in the rules made under section 105.
59. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given.

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Board of Directors

60. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.
61. (i) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.
- (ii) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—
- (a) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or
- (b) in connection with the business of the company.
62. The Board may pay all expenses incurred in getting up and registering the company.
63. The company may exercise the powers conferred on it by section 88 with regard to the keeping of a foreign register; and the Board may (subject to the provisions of that section) make and vary such regulations as it may think fit respecting the keeping of any such register.
64. All cheques, promissory notes, drafts, hundis, bills of exchange and other negotiable instruments, and all receipts for monies paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by such person and in such manner as the Board shall from time to time by resolution determine.
65. Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.
66. (i) Subject to the provisions of section 149, the Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.
- (ii) Such person shall hold office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to the provisions of the Act.

Proceedings of the Board

67. (i) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.
- (ii) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.
68. (i) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.
- (ii) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.

69. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.
70. (i) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.
- (ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be Chairperson of the meeting.
71. (i) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.
- (ii) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
72. (i) A committee may elect a Chairperson of its meetings.
- (ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.
73. (i) A committee may meet and adjourn as it thinks fit.
- (ii) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairperson shall have a second or casting vote.
74. All acts done in any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.
75. Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.
76. In case of a One Person Company—
- (i) where the company is having only one director, all the businesses to be transacted at the meeting of the Board shall be entered into minutes book maintained under section 118;
- (ii) such minutes book shall be signed and dated by the director;
- (iii) the resolution shall become effective from the date of signing such minutes by the director.

Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer

77. Subject to the provisions of the Act,—
- (i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board;
- (ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.
78. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.



The Seal

79. (i) The Board shall provide for the safe custody of the seal.
- (ii) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Dividends and Reserve

80. The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.
81. Subject to the provisions of section 123, the Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.
82. (i) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks fit as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, thinks fit.
- (ii) The Board may also carry forward any profits which it may consider necessary not to divide, without setting them aside as a reserve.
83. (i) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.
- (ii) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.
- (iii) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.
84. The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.
85. (i) Any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.
- (ii) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.
86. Any one of two or more joint holders of a share may give effective receipts for any dividends, bonuses or other monies payable in respect of such share.
87. Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act.
88. No dividend shall bear interest against the company.

Accounts

- 89.** (i) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.
- (ii) No member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

Winding up

- 90.** Subject to the provisions of Chapter XX of the Act and rules made thereunder—
- (i) If the company shall be wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members, in specie or kind, the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.
- (ii) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.
- (iii) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories if he considers necessary, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

- 91.** Every officer of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in which relief is granted to him by the court or the Tribunal.

Note: The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any, and such signatures shall be in form specified below:

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of.....Merchant	Signed before me Signature.....
C.D. of.....Merchant	Signed before me Signature.....
E.F. of.....Merchant	Signed before me Signature.....
G.H. of.....Merchant	Signed before me Signature.....
I.J. of.....Merchant	Signed before me Signature.....
K.L. of.....Merchant	Signed before me Signature.....
M.N. of.....Merchant	Signed before me Signature.....

Dated the day of 20.....
Place:



TABLE – G
ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND
HAVING A SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, register an increase of members.
2. All the articles of Table F in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

TABLE – H
ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT
HAVING SHARE CAPITAL

Interpretation

- I. (1) In these regulations—
 - (a) “the Act” means the Companies Act, 2013;
 - (b) “the seal” means the common seal of the company.
- (2) Unless the context otherwise requires, words or expressions contained in these regulations shall have the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Members

- II. 1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.
2. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

General Meetings

3. All general meetings other than annual general meeting shall be called extraordinary general meeting.
4. (i) The Board may, whenever it thinks fit, call an extraordinary general meeting.
(ii) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at General Meetings

5. (i) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
(ii) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.
6. The Chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.
7. If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as Chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.

8. If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.

Adjournment of Meeting

9. (i) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (ii) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (iii) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (iv) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Voting Rights

10. Every member shall have one vote.
11. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.
12. No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.
13. (i) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.
- (ii) Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.
14. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:
- Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.
15. A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.
16. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

Board of Directors

17. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.
18. (i) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.

- (ii) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—
 - (a) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or
 - (b) in connection with the business of the company.

Proceedings of the Board

- 19. (i) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.
 - (ii) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.
- 20. (i) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.
 - (ii) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.
- 21. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.
- 22. (i) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.
 - (ii) If no such chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their members to be Chairperson of the meeting.
- 23. (i) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.
 - (ii) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
- 24. (i) A committee may elect a Chairperson of its meetings.
 - (ii) If no such Chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.
- 25. (i) A committee may meet and adjourn as it thinks proper.
 - (ii) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.
- 26. All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.
- 27. Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer

28. Subject to the provisions of the Act,—

- (i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board.
- (ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

29. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

The Seal

30. (i) The Board shall provide for the safe custody of the seal.

- (ii) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Note: The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any, and such signatures shall be in form specified below:

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of.....Merchant	Signed before me Signature.....
C.D. of.....Merchant	Signed before me Signature.....
E.F. of.....Merchant	Signed before me Signature.....
G.H. of.....Merchant	Signed before me Signature.....
I.J. of.....Merchant	Signed before me Signature.....
K.L. of.....Merchant	Signed before me Signature.....
M.N. of.....Merchant	Signed before me Signature.....

Dated the day of 20.....

Place:



TABLE – I

ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING A SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, register an increase of members.
2. All the articles of Table F in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

TABLE – J

ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.
2. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.
3. All the articles of Table H in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

SCHEDULE II

(See section 123)

Useful Lives to Compute Depreciation

PART 'A'

1. Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value. The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of production or similar units expected to be obtained from the asset by the entity.
2. For the purpose of this Schedule, the term depreciation includes amortisation.
3. Without prejudice to the foregoing provisions of paragraph 1,—
 - (i) In case of such class of companies, as may be prescribed and whose financial statements comply with the accounting standards prescribed for such class of companies under section 133 the useful life of an asset shall not normally be different from the useful life and the residual value shall not be different from that as indicated in Part C, provided that if such a company uses a useful life or residual value which is different from the useful life or residual value indicated therein, it shall disclose the justification for the same.
 - (ii) In respect of other companies the useful life of an asset shall not be longer than the useful life and the residual value shall not be higher than that prescribed in Part C.
 - (iii) For intangible assets, the provisions of the Accounting Standards mentioned under sub-para (i) or (ii), as applicable, shall apply.

PART 'B'

4. The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule.

PART 'C'

5. Subject to Parts A and B above, the following are the useful lives of various tangible assets:

Nature of assets			Useful life
I	Buildings [NESD]		
	(a)	Buildings (other than factory buildings) RCC Frame Structure	60 Years
	(b)	Buildings (other than factory buildings) other than RCC Frame Structure	30 Years
	(c)	Factory buildings	-do-
	(d)	Fences, wells, tune wells	5 Years
	(e)	Others (including temporary structure, etc.)	3 Years
II	Bridges, culverts, bounders, etc. [NESD]		30 Years
III	Roads [NESD]		
	(a)	Carpeted roads	
		(i) Carpeted Roads – RCC	10 Years
		(ii) Carpeted Roads – other than RCC	5 Years
	(b)	Non-Carpeted Roads	3 Years
IV	Plant and Machinery		
	(i)	General rate applicable to plant and machinery not covered under special plant and machinery	
		(a) Plant and Machinery other than continuous process plant not covered under specific industries	15 Years
		(b) Continuous process plant for which no special rate has been prescribed under (ii) below [NESD]	8 Years
	(ii)	Special Plant and Machinery	
		(a) Plant and Machinery related to production and exhibition of Motion Picture Films	
		1. Cinematograph films – Machinery used in the production and exhibition of cinematograph films, recording and reproducing equipments, developing machines, printing machines, editing machines, synchronizers and studio lights except bulbs.	13 Years
		2. Projecting equipment for exhibition of films	- Do -
		(b) Plant and Machinery used in glass manufacturing	
		1. Plant and Machinery except direct fire glass melting furnaces – Recuperative and regenerative glass melting furnaces	13 Years
		2. Plant and Machinery except direct fire glass melting furnaces – Moulds [NESD]	8 Years
		3. Float Glass Melting Furnaces [NESD]	10 Years
		(c) Plant and Machinery used in mines and quarries – portable underground machinery and earth moving machinery used in open cost mining [NESD]	8 Years
		(d) Plant and Machinery used in Telecommunications [NESD]	
		1. Towers	18 Years
		2. Telecom transceivers, switching centres, transmission and other network equipment	13 Years
		3. Telecom – Ducts, Cables and optical fiber	18 Years
		4. Satellites	-do-

		(e)	Plant & Machinery used in exploration, production and refining oil and gas [NESD]	
			<ol style="list-style-type: none"> Refineries Oil and gas assets (including wells), processing plant and facilities Petrochemical Plant Storage tanks and related equipment Pipelines Drilling Rig Field operations (above ground) Portable boilers, drilling tools, well-head tanks, etc. Loggers 	25 Years -do- -do- -do- 30 Years -do- 8 years -do-
		(f)	Plant and machinery used in generation, transmission and distribution of power [NESD]	
			<ol style="list-style-type: none"> Thermal/Gas/Combined Cycle Power Generation Plant Hydro Power Generation Plant Nuclear Power Generation Plant Transmission lines, cables and other network assets Wind Power Generation Plant Electric Distribution Plant Gas Storage and Distribution Plant Water Distribution Plant including pipelines 	40 Years -do- -do- -do- 22 Years 35 Years 30 Years -do-
		(g)	Plant and Machinery used in manufacture of steel	
			<ol style="list-style-type: none"> Sinter Plant Blast Furnace Coke ovens Rolling mill in steel plant Basic oxygen Furnace Converter 	20 Years -do- -do- -do- 25 Years
		(h)	Plant and Machinery used in manufacture of non-ferrous metals	
			<ol style="list-style-type: none"> Metal pot line [NESD] Bauxite crushing and grinding section [NESD] Digester Section [NESD] Turbine [NESD] Equipments for Calcination [NESD] Copper Smelter [NESD] Roll Grinder Soaking Pit Annealing Furnace Rolling Mills Equipments for Scalping, Slitting, etc. [NESD] Surface Miner, Ripper Dozer, etc., used in mines Copper refining plant [NESD] 	40 Years -do- -do- -do- -do- -do- 40 Years 30 Years -do- -do- -do- 25 Years -do-
		(i)	Plant and Machinery used in medical and surgical operations [NESD]	
			<ol style="list-style-type: none"> Electrical Machinery, X-ray and electrotherapeutic apparatus and accessories thereto, medical, diagnostic equipments, namely, Cat-scan, Ultrasound Machines, ECG Monitors, etc. Other Equipments. 	13 Years 15 Years

	(j)	Plant and Machinery used in manufacture of pharmaceuticals and chemicals [NESD]	
		<ol style="list-style-type: none"> 1. Reactors 2. Distillation Columns 3. Drying equipments/Centrifuges and Decanters 4. Vessel/storage tanks 	20 Years -do- -do- -do-
	(k)	Plant and Machinery used in civil construction	
		<ol style="list-style-type: none"> 1. Concreting, Crushing, Piling Equipments and Road Making Equipments 2. Heavy Lift Equipments – <ul style="list-style-type: none"> • Cranes with capacity of more than 100 tones • Cranes with capacity of less than 100 tones 3. Transmission line, Tunneling Equipments [NESD] 4. Earth – moving equipments 5. Others including Material Handling / Pipeline/Welding Equipments [NESD] 	12 Years 20 Years 15 Years 10 Years 9 Years 12 Years
	(l)	Plant and Machinery used in salt works [NESD]	15 Years
V. Furniture and fittings [NESD]			
	(i)	General furniture and fittings	10 Years
	(ii)	Furniture and fittings used in hotels, restaurants and boarding houses, schools, colleges and other educational institutions, libraries; welfare centres; meeting halls, cinema houses; theaters and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions.	8 Years
VI. Motor Vehicles [NESD]			
	1.	Motor cycles, scooters and other mopeds	10 Years
	2.	Motor buses, motor lorries, motor cars and motor taxis used in a business of running them on hire.	6 Years
	3.	Motor buses, motor lorries and motor cars other than those used in a business of running them on hire	8 Years
	4.	Motor tractors, harvesting combines and heavy vehicles	-do-
	5.	Electrically operated vehicles including battery powered or fuel cell powered vehicles	8 Years
VII. Ships [NESD]			
	1.	Ocean-going ships	
	(i)	Bulk Carriers and liner vessels	25 Years
	(ii)	Crude tankers, product carriers and easy chemical carriers with or without conventional tank coatings.	20 Years
	(iii)	Chemicals and Acid Carriers:	
		(a) With Stainless steel tanks	25 Years
		(b) With other tanks	20 Years
	(iv)	Liquified gas carriers	30 Years
	(v)	Conventional large passenger vessels which are used for cruise purpose also	-do-
	(vi)	Coastal service ships of all categories	-do-
	(vii)	Offshore supply and support vessels	20 Years
	(viii)	Catamarans and other high speed passenger for ships or boats	-do-
	(ix)	Drill Ships	25 Years
	(x)	Hovercrafts	15 Years

	(xi)	Fishing vessels with wooden hull	10 Years
	(xii)	Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes	14 Years
2.		Vessels ordinarily operating on inland waters -	
	(i)	Speed boats	13 Years
	(ii)	Other vessels	28 Years
VIII.		Aircrafts or Helicopters [NESD]	20 Years
IX.		Railways siding, locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns [NESD]	15 Years
X.		Ropeway structures [NESD]	15 Years
XI.		Office equipment [NESD]	5 Years
XII.		Computers and data processing units [NESD]	
	(i)	Servers and networks	6 Years
	(ii)	End user devices, such as, desktops, laptops, etc.	3 Years
XIII.		Laboratory equipment [NESD]	
	(i)	General laboratory equipment	10 Years
	(ii)	Laboratory equipments used in educational institutions	5 Years
XIV.		Electrical Installations and Equipment [NESD]	10 Years
XV.		Hydraulic works, pipelines and sluices [NESD]	15 Years

Notes:

1. "Factory buildings" does not include offices, godowns, staff quarters.
2. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a pro rata basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.
3. The following information shall also be disclosed in the accounts, namely:—
 - (i) depreciation methods used; and
 - (ii) the useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.
4. Useful life specified in Part C of the Schedule is for whole of the asset. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.
5. Depreciable amount is the cost of an asset, or other amount substituted for cost, less its residual value. Ordinarily, the residual value of an asset is often insignificant but it should generally be not more than 5% of the original cost of the asset.
6. The useful lives of assets working on shift basis have been specified in the Schedule based on their single shift working. Except for assets in respect of which no extra shift depreciation is permitted (indicated by NESD in Part C above), if an asset is used for any time during the year for double shift, the depreciation will increase by 50% for that period and in case of the triple shift the depreciation shall be calculated on the basis of 100% for that period.
7. From the date this Schedule comes into effect, the carrying amount of the asset as on that date—
 - (a) shall be depreciated over the remaining useful life of the asset as per this Schedule;
 - (b) after retaining the residual value, shall be recognised in the opening balance of retained earnings where the remaining useful life of an asset is nil.
8. "Continuous process plant" means a plant which is required and designed to operate for twenty-four hours a day.

SCHEDULE III
(See section 129)

**General Instructions for Preparation of Balance Sheet and
Statement of Profit and Loss of a Company**

General Instructions

1. Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head or sub-head or any changes, inter se, in the financial statements or statements forming part thereof, the same shall be made and the requirements of this Schedule shall stand modified accordingly.
2. The disclosure requirements specified in this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 2013. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statement unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirements set out in this Schedule.
3. (i) Notes to accounts shall contain information in addition to that presented in the Financial Statements and shall provide where required (a) narrative descriptions or disaggregations of items recognised in those statements; and (b) information about items that do not qualify for recognition in those statements.
(ii) Each item on the face of the Balance Sheet and Statement of Profit and Loss shall be cross-referenced to any related information in the notes to accounts. In preparing the Financial Statements including the notes to accounts, a balance shall be maintained between providing excessive detail that may not assist users of financial statements and not providing important information as a result of too much aggregation.
4. (i) Depending upon the turnover of the company, the figures appearing in the Financial Statements may be rounded off as given below:—

Turnover		Rounding off
(a)	less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
(b)	one hundred crore rupees or more	To the nearest lakhs, millions or crores, or decimals thereof.

- (ii) Once a unit of measurement is used, it shall be used uniformly in the Financial Statements.
5. Except in the case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.
6. For the purpose of this Schedule, the terms used herein shall be as per the applicable Accounting Standards.

Note: This part of Schedule sets out the minimum requirements for disclosure on the face of the Balance Sheet, and the Statement of Profit and Loss (hereinafter referred to as "Financial Statements" for the purpose of this Schedule) and Notes. Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company's financial position or performance or to cater to industry/sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act or under the Accounting Standards.



PART I — BALANCE SHEET

Name of the Company.....

Balance Sheet as at

(Rupees in.....)

Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
1	2	3	4

I. EQUITY AND LIABILITIES

(1) Shareholders' Funds

- (a) Share capital
- (b) Reserves and surplus
- (c) Money received against share warrants

(2) Share Application Money Pending Allotment

(3) Non-Current Liabilities

- (a) Long-term borrowings
- (b) Deferred tax liabilities (Net)
- (c) Other Long term liabilities
- (d) Long-term provisions

(4) Current Liabilities

- (a) Short-term borrowings
- (b) Trade payables
- (c) Other current liabilities
- (d) Short-term provisions

TOTAL

II. ASSETS

(1) Non-Current Assets

- (a) Fixed Assets
 - (i) Tangible assets
 - (ii) Intangible assets
 - (iii) Capital work-in-progress
 - (iv) Intangible assets under development
- (b) Non-current investments
- (c) Deferred tax assets (net)
- (d) Long-term loans and advances
- (e) Other non-current assets

(2) Current Assets

- (a) Current investments
- (b) Inventories
- (c) Trade receivables
- (d) Cash and cash equivalents

- (e) Short-term loans and advances
- (f) Other current assets

Total

See a Companying Notes to the Financial Statements.

Notes:

GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET

1. An asset shall be classified as current when it satisfies any of the following criteria:—
 - (a) it is expected to be realised in, or is intended for sale or consumption in, the company's normal operating cycle;
 - (b) it is held primarily for the purpose of being traded;
 - (c) it is expected to be realised within twelve months after the reporting date; or
 - (d) it is cash or cash equivalent unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date.

All other assets shall be classified as non-current.

2. An operating cycle is the time between the acquisition of assets for processing and their realisation in cash or cash equivalents. Where the normal operating cycle cannot be identified, it is assumed to have a duration of twelve months.
3. A liability shall be classified as current when it satisfies any of the following criteria:—
 - (a) it is expected to be settled in the company's normal operating cycle;
 - (b) it is held primarily for the purpose of being traded;
 - (c) it is due to be settled within twelve months after the reporting date; or
 - (d) the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.

All other liabilities shall be classified as non-current.

4. A receivable shall be classified as a "trade receivable" if it is in respect of the amount due on account of goods sold or services rendered in the normal course of business.
5. A payable shall be classified as a "trade payable" if it is in respect of the amount due on account of goods purchased or services received in the normal course of business.
6. A company shall disclose the following in the notes to accounts.

A. Share Capital

For each class of share capital (different classes of preference shares to be treated separately):

- (a) the number and amount of shares authorised;
- (b) the number of shares issued, subscribed and fully paid, and subscribed but not fully paid;
- (c) par value per share;
- (d) a reconciliation of the number of shares outstanding at the beginning and at the end of the reporting period;
- (e) the rights, preferences and restrictions attaching to each class of shares including restrictions on the distribution of dividends and the repayment of capital;



- (f) shares in respect of each class in the company held by its holding company or its ultimate holding company including shares held by or by subsidiaries or associates of the holding company or the ultimate holding company in aggregate;
- (g) shares in the company held by each shareholder holding more than 5 per cent. shares specifying the number of shares held;
- (h) shares reserved for issue under options and contracts/commitments for the sale of shares/ disinvestment, including the terms and amounts;
- (i) for the period of five years immediately preceding the date as at which the Balance Sheet is prepared:
 - (A) Aggregate number and class of shares allotted as fully paid-up pursuant to contract(s) without payment being received in cash.
 - (B) Aggregate number and class of shares allotted as fully paid-up by way of bonus shares.
 - (C) Aggregate number and class of shares bought back.
- (j) terms of any securities convertible into equity/preference shares issued along with the earliest date of conversion in descending order starting from the farthest such date;
- (k) calls unpaid (showing aggregate value of calls unpaid by directors and officers);
- (l) forfeited shares (amount originally paid-up).

B. Reserves and Surplus

- (i) Reserves and Surplus shall be classified as:
 - (a) Capital Reserves;
 - (b) Capital Redemption Reserve;
 - (c) Securities Premium Reserve;
 - (d) Debenture Redemption Reserve;
 - (e) Revaluation Reserve;
 - (f) Share Options Outstanding Account;
 - (g) Other Reserves—(specify the nature and purpose of each reserve and the amount in respect thereof);
 - (h) Surplus i.e., balance in Statement of Profit and Loss disclosing allocations and appropriations such as dividend, bonus shares and transfer to/ from reserves, etc.;(Additions and deductions since last balance sheet to be shown under each of the specified heads);
- (ii) A reserve specifically represented by earmarked investments shall be termed as a “fund”.
- (iii) Debit balance of statement of profit and loss shall be shown as a negative figure under the head “Surplus”. Similarly, the balance of “Reserves and Surplus”, after adjusting negative balance of surplus, if any, shall be shown under the head “Reserves and Surplus” even if the resulting figure is in the negative.

C. Long-Term Borrowings

- (i) Long-term borrowings shall be classified as:
 - (a) Bonds/debentures;
 - (b) Term loans:
 - (A) from banks.
 - (B) from other parties.

- (c) Deferred payment liabilities;
- (d) Deposits;
- (e) Loans and advances from related parties;
- (f) Long term maturities of finance lease obligations;
- (g) Other loans and advances (specify nature).
- (ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.
- (iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.
- (iv) Bonds/debentures (along with the rate of interest and particulars of redemption or conversion, as the case may be) shall be stated in descending order of maturity or conversion, starting from farthest redemption or conversion date, as the case may be. Where bonds/debentures are redeemable by installments, the date of maturity for this purpose must be reckoned as the date on which the first installment becomes due.
- (v) Particulars of any redeemed bonds/debentures which the company has power to reissue shall be disclosed.
- (vi) Terms of repayment of term loans and other loans shall be stated.
- (vii) Period and amount of continuing default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

D. Other Long-Term Liabilities

Other Long-term Liabilities shall be classified as:

- (a) Trade payables;
- (b) Others.

E. Long-Term Provisions

The amounts shall be classified as:

- (a) Provision for employee benefits;
- (b) Others (specify nature).

F. Short-Term Borrowings

- (i) Short-term borrowings shall be classified as:
 - (a) Loans repayable on demand;
 - (A) from banks.
 - (B) from other parties.
 - (b) Loans and advances from related parties;
 - (c) Deposits;
 - (d) Other loans and advances (specify nature).
- (ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.
- (iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.
- (iv) Period and amount of default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

G. Other Current Liabilities

The amounts shall be classified as:

- (a) Current maturities of long-term debt;
- (b) Current maturities of finance lease obligations;
- (c) Interest accrued but not due on borrowings;
- (d) Interest accrued and due on borrowings;
- (e) Income received in advance;
- (f) Unpaid dividends;
- (g) Application money received for allotment of securities and due for refund and interest accrued thereon. Share application money includes advances towards allotment of share capital. The terms and conditions including the number of shares proposed to be issued, the amount of premium, if any, and the period before which shares shall be allotted shall be disclosed. It shall also be disclosed whether the company has sufficient authorised capital to cover the share capital amount resulting from allotment of shares out of such share application money. Further, the period for which the share application money has been pending beyond the period for allotment as mentioned in the document inviting application for shares along with the reason for such share application money being pending shall be disclosed. Share application money not exceeding the issued capital and to the extent not refundable shall be shown under the head Equity and share application money to the extent refundable, i.e., the amount in excess of subscription or in case the requirements of minimum subscription are not met, shall be separately shown under "Other current liabilities";
- (h) Unpaid matured deposits and interest accrued thereon;
- (i) Unpaid matured debentures and interest accrued thereon;
- (j) Other payables (specify nature).

H. Short-Term Provisions

The amounts shall be classified as:

- (a) Provision for employee benefits.
- (b) Others (specify nature).

I. Tangible Assets

- (i) Classification shall be given as:

- (a) Land;
- (b) Buildings;
- (c) Plant and Equipment;
- (d) Furniture and Fixtures;
- (e) Vehicles;
- (f) Office equipment;
- (g) Others (specify nature).

- (ii) Assets under lease shall be separately specified under each class of asset.

- (iii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related depreciation and impairment losses/reversals shall be disclosed separately.

- (iv) Where sums have been written-off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such

write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

J. Intangible Assets

- (i) Classification shall be given as:
 - (a) Goodwill;
 - (b) Brands /trademarks;
 - (c) Computer software;
 - (d) Mastheads and publishing titles;
 - (e) Mining rights;
 - (f) Copyrights, and patents and other intellectual property rights, services and operating rights;
 - (g) Recipes, formulae, models, designs and prototypes;
 - (h) Licences and franchise;
 - (i) Others (specify nature).
- (ii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related amortization and impairment losses/reversals shall be disclosed separately.
- (iii) Where sums have been written-off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

K. Non-Current Investments

- (i) Non-current investments shall be classified as trade investments and other investments and further classified as:
 - (a) Investment property;
 - (b) Investments in Equity Instruments;
 - (c) Investments in preference shares;
 - (d) Investments in Government or trust securities;
 - (e) Investments in debentures or bonds;
 - (f) Investments in Mutual Funds;
 - (g) Investments in partnership firms;
 - (h) Other non-current investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

- (ii) Investments carried at other than at cost should be separately stated specifying the basis for valuation thereof;

- (iii) The following shall also be disclosed:
 - (a) Aggregate amount of quoted investments and market value thereof;
 - (b) Aggregate amount of unquoted investments;
 - (c) Aggregate provision for diminution in value of investments.

L. Long-Term Loans and Advances

- (i) Long-term loans and advances shall be classified as:
 - (a) Capital Advances;
 - (b) Security Deposits;
 - (c) Loans and advances to related parties (giving details thereof);
 - (d) Other loans and advances (specify nature).
- (ii) The above shall also be separately sub-classified as:
 - (a) Secured, considered good;
 - (b) Unsecured, considered good;
 - (c) Doubtful.
- (iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.
- (iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

M. Other Non-Current Assets

Other non-current assets shall be classified as:

- (i) Long-term Trade Receivables (including trade receivables on deferred credit terms);
- (ii) Others (specify nature);
- (iii) Long term Trade Receivables, shall be sub-classified as:
 - (A) (a) Secured, considered good;
 - (B) Unsecured, considered good;
 - (C) Doubtful.
- (b) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.
- (c) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

N. Current Investments

- (i) Current investments shall be classified as:
 - (a) Investments in Equity Instruments;
 - (b) Investment in Preference Shares;
 - (c) Investments in Government or trust securities;
 - (d) Investments in debentures or bonds;
 - (e) Investments in Mutual Funds;

- (f) Investments in partnership firms;
- (g) Other investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate [indicating separately whether such bodies are: (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities] in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

- (ii) The following shall also be disclosed:
 - (a) The basis of valuation of individual investments;
 - (b) Aggregate amount of quoted investments and market value thereof;
 - (c) Aggregate amount of unquoted investments;
 - (d) Aggregate provision made for diminution in value of investments.

O. Inventories

- (i) Inventories shall be classified as:
 - (a) Raw materials;
 - (b) Work-in-progress;
 - (c) Finished goods;
 - (d) Stock-in-trade (in respect of goods acquired for trading);
 - (e) Stores and spares;
 - (f) Loose tools;
 - (g) Others (specify nature).
- (ii) Goods-in-transit shall be disclosed under the relevant sub-head of inventories.
- (iii) Mode of valuation shall be stated.

P. Trade Receivables

- (i) Aggregate amount of Trade Receivables outstanding for a period exceeding six months from the date they are due for payment should be separately stated.
- (ii) Trade receivables shall be sub-classified as:
 - (a) Secured, considered good;
 - (b) Unsecured, considered good;
 - (c) Doubtful.
- (iii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.
- (iv) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

Q. Cash and Cash Equivalents

- (i) Cash and cash equivalents shall be classified as:
 - (a) Balances with banks;
 - (b) Cheques, drafts on hand;
 - (c) Cash on hand;

- (d) Others (specify nature).
- (ii) Earmarked balances with banks (for example, for unpaid dividend) shall be separately stated.
- (iii) Balances with banks to the extent held as margin money or security against the borrowings, guarantees, other commitments shall be disclosed separately.
- (iv) Repatriation restrictions, if any, in respect of cash and bank balances shall be separately stated.
- (v) Bank deposits with more than twelve months maturity shall be disclosed separately.

R. Short-Term Loans and Advances

- (i) Short-term loans and advances shall be classified as:
 - (a) Loans and advances to related parties (giving details thereof);
 - (b) Others (specify nature).
- (ii) The above shall also be sub-classified as:
 - (a) Secured, considered good;
 - (b) Unsecured, considered good;
 - (c) Doubtful.
- (iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.
- (iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other person or amounts due by firms or private companies respectively in which any director is a partner or a director or a member shall be separately stated.

S. Other Current Assets (Specify Nature)

This is an all-inclusive heading, which incorporates current assets that do not fit into any other asset categories.

T. Contingent Liabilities and Commitments (to the Extent not Provided for)

- (i) Contingent liabilities shall be classified as:
 - (a) Claims against the company not acknowledged as debt;
 - (b) Guarantees;
 - (c) Other money for which the company is contingently liable.
- (ii) Commitments shall be classified as:
 - (a) Estimated amount of contracts remaining to be executed on capital account and not provided for;
 - (b) Uncalled liability on shares and other investments partly paid;
 - (c) Other commitments (specify nature).

- U.** The amount of dividends proposed to be distributed to equity and preference shareholders for the period and the related amount per share shall be disclosed separately. Arrears of fixed cumulative dividends on preference shares shall also be disclosed separately.
- V.** Where in respect of an issue of securities made for a specific purpose, the whole or part of the amount has not been used for the specific purpose at the balance sheet date, there shall be indicated by way of note how such unutilised amounts have been used or invested.
- W.** If, in the opinion of the Board, any of the assets other than fixed assets and non-current investments do not have a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion, shall be stated.

PART II – STATEMENT OF PROFIT AND LOSS

Name of the Company.....

Profit and loss statement for the year ended

(Rupees in.....)

Sl. No.	Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
	1	2	3	4
I.	Revenue from operations		XXX	XXX
II.	Other income		XXX	XXX
III.	Total Revenue (I + II)		XXX	XXX
IV	Expenses:			
	Cost of materials consumed			
	Purchases of Stock-in-Trade			
	Changes in inventories of			
	finished goods		XXX	XXX
	work-in-progress and		XXX	XXX
	Stock-in-Trade		XXX	XXX
	Employee benefits expense		XXX	XXX
	Finance costs			
	Depreciation and amortisation expense			
	Other expenses			
	Total expenses		XXX	XXX
V.	Profit before exceptional and extraordinary items and tax (III-IV)		XXX	XXX
VI.	Exceptional items		XXX	XXX
VII.	Profit before extraordinary items and tax (V-VI)		XXX	XXX
VIII.	Extraordinary items		XXX	XXX
IX.	Profit before tax (VII- VIII)		XXX	XXX
X.	Tax expense:			
	(1) Current tax		XXX	XXX
	(2) Deferred tax		XXX	XXX
XI.	Profit (Loss) for the period from continuing operations (VII-VIII)		XXX	XXX
XII.	Profit/(loss) from discontinuing operations		XXX	XXX
XIII.	Tax expense of discontinuing operations		XXX	XXX
XIV.	Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)		XXX	XXX
XV	Profit (Loss) for the period (XI + XIV)		XXX	XXX
XVI.	Earnings per equity share:			
	(1) Basic		XXX	XXX
	(2) Diluted		XXX	XXX

See accompanying notes to the financial statements.



GENERAL INSTRUCTIONS FOR PREPARATION OF STATEMENT OF PROFIT AND LOSS

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-clause (ii) of clause (40) of section 2 in like manner as they apply to a statement of profit and loss.
2. (A) In respect of a company other than a finance company revenue from operations shall disclose separately in the notes revenue from—

- (a) Sale of products;
- (b) Sale of services;
- (c) Other operating revenues;
- Less: (d) Excise duty.

- (B) In respect of a finance company, revenue from operations shall include revenue from—

- (a) Interest; and
- (b) Other financial services.

Revenue under each of the above heads shall be disclosed separately by way of notes to accounts to the extent applicable.

3. Finance Costs

Finance costs shall be classified as:

- (a) Interest expense;
- (b) Other borrowing costs;
- (c) Applicable net gain/loss on foreign currency transactions and translation.

4. Other income

Other income shall be classified as:

- (a) Interest Income (in case of a company other than a finance company);
- (b) Dividend Income;
- (c) Net gain/loss on sale of investments;
- (d) Other non-operating income (net of expenses directly attributable to such income).

5. Additional Information

A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:—

- (i) (a) Employee Benefits Expense [showing separately (i) salaries and wages, (ii) contribution to provident and other funds, (iii) expense on Employee Stock Option Scheme (ESOP) and Employee Stock Purchase Plan (ESPP), (iv) staff welfare expenses].
- (b) Depreciation and amortisation expense;
- (c) Any item of income or expenditure which exceeds one per cent. of the revenue from operations or ₹1,00,000, whichever is higher;
- (d) Interest Income;
- (e) Interest expense;
- (f) Dividend income;

- (g) Net gain/loss on sale of investments;
- (h) Adjustments to the carrying amount of investments;
- (i) Net gain or loss on foreign currency transaction and translation (other than considered as finance cost);
- (j) Payments to the auditor as (a) auditor; (b) for taxation matters; (c) for company law matters; (d) for management services; (e) for other services; and (f) for reimbursement of expenses;
- (k) In case of Companies covered under section 135, amount of expenditure incurred on corporate social responsibility activities;
- (l) Details of items of exceptional and extraordinary nature;
- (m) Prior period items;
- (ii) (a) In the case of manufacturing companies,—
 - (1) Raw materials under broad heads.
 - (2) goods purchased under broad heads.
- (b) In the case of trading companies, purchases in respect of goods traded in by the company under broad heads.
- (c) In the case of companies rendering or supplying services, gross income derived from services rendered or supplied under broad heads.
- (d) In the case of a company, which falls under more than one of the categories mentioned in (a), (b) and (c) above, it shall be sufficient compliance with the requirements herein if purchases, sales and consumption of raw material and the gross income from services rendered is shown under broad heads.
- (e) In the case of other companies, gross income derived under broad heads.
- (iii) In the case of all concerns having works in progress, works-in-progress under broad heads.
- (iv) (a) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserve, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as to which the balance sheet is made up.
- (b) The aggregate, if material, of any amounts withdrawn from such reserves.
- (v) (a) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.
- (b) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.
- (vi) Expenditure incurred on each of the following items, separately for each item:—
 - (a) Consumption of stores and spare parts;
 - (b) Power and fuel;
 - (c) Rent;
 - (d) Repairs to buildings;
 - (e) Repairs to machinery;
 - (f) Insurance;
 - (g) Rates and taxes, excluding, taxes on income;
 - (h) Miscellaneous expenses,



- (vii) (a) Dividends from subsidiary companies.
- (b) Provisions for losses of subsidiary companies.
- (viii) The profit and loss account shall also contain by way of a note the following information, namely:—
- (a) Value of imports calculated on C.I.F basis by the company during the financial year in respect of—
- I. Raw materials;
 - II. Components and spare parts;
 - III. Capital goods;
- (b) Expenditure in foreign currency during the financial year on account of royalty, know-how, professional and consultation fees, interest, and other matters;
- (c) Total value if all imported raw materials, spare parts and components consumed during the financial year and the total value of all indigenous raw materials, spare parts and components similarly consumed and the percentage of each to the total consumption;
- (d) The amount remitted during the year in foreign currencies on account of dividends with a specific mention of the total number of non-resident shareholders, the total number of shares held by them on which the dividends were due and the year to which the dividends related;
- (e) Earnings in foreign exchange classified under the following heads, namely:—
- I. Export of goods calculated on F.O.B. basis;
 - II. Royalty, know-how, professional and consultation fees;
 - III. Interest and dividend;
 - IV. Other income, indicating the nature thereof.

Note: Broad heads shall be decided taking into account the concept of materiality and presentation of true and fair view of financial statements.

GENERAL INSTRUCTIONS FOR THE PREPARATION OF CONSOLIDATED FINANCIAL STATEMENTS

1. Where a company is required to prepare Consolidated Financial Statements, i.e., consolidated balance sheet and consolidated statement of profit and loss, the company shall mutatis mutandis follow the requirements of this Schedule as applicable to a company in the preparation of balance sheet and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standards including the following:
 - (i) Profit or loss attributable to "minority interest" and to owners of the parent in the statement of profit and loss shall be presented as allocation for the period.
 - (ii) "Minority interests" in the balance sheet within equity shall be presented separately from the equity of the owners of the parent.
2. In Consolidated Financial Statements, the following shall be disclosed by way of additional information:

Name of the entity in the	Net Assets, i.e., total assets minus total liabilities		Share in profit or loss	
	As % of consolidated net assets	Amount	As % of consolidated profit or loss	Amount
1	2	3	4	5
Parent				
Subsidiaries				
Indian				
1.				
2.				
3.				
Foreign				
1.				
2.				
3.				
Minority Interests in all subsidiaries				
Associates (Investment as per the equity method)				
Indian				
1.				
2.				
3.				
Foreign				
1.				
2.				
3.				
Joint Ventures (as per proportionate consolidation/ investment as per the equity method)				
Indian				
1.				
2.				
3.				
Foreign				
1.				
2.				
3.				
Total				

3. All subsidiaries, associates and joint ventures (whether Indian or foreign) will be covered under consolidated financial statements.
4. An entity shall disclose the list of subsidiaries or associates or joint ventures which have not been consolidated in the consolidated financial statements along with the reasons of not consolidating.



SCHEDULE IV

[See section 149(8)]

CODE FOR INDEPENDENT DIRECTORS

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfillment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of Professional Conduct:

An independent director shall:

- (1) uphold ethical standards of integrity and probity;
- (2) act objectively and constructively while exercising his duties;
- (3) exercise his responsibilities in a bona fide manner in the interest of the company;
- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (9) assist the company in implementing the best corporate governance practices.

II. Role and Functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties :

The independent directors shall—

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- (5) strive to attend the general meetings of the company;
- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
- (7) keep themselves well informed about the company and the external environment in which it operates;
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- (11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

IV. Manner of Appointment:

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
- (2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.
- (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.

- (4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out :
 - (a) the term of appointment;
 - (b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
 - (c) the fiduciary duties that come with such an appointment along with accompanying liabilities;
 - (d) provision for Directors and Officers (D and O) insurance, if any;
 - (e) the Code of Business Ethics that the company expects its directors and employees to follow;
 - (f) the list of actions that a director should not do while functioning as such in the company; and
 - (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.
- (5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.
- (6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.

V. Re-Appointment:

The re-appointment of independent director shall be on the basis of report of performance evaluation.

VI. Resignation or Removal:

- (1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.
- (2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.
- (3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

VII. Separate Meetings:

- (1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;
- (2) All the independent directors of the company shall strive to be present at such meeting;
- (3) The meeting shall:
 - (a) review the performance of non-independent directors and the Board as a whole;
 - (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

- (1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.
- (2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

SCHEDULE V
(See sections 196 and 197)

PART - I

**CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR
WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE
CENTRAL GOVERNMENT**

APPOINTMENTS

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—

- (i) the Indian Stamp Act, 1899 (2 of 1899);
- (ii) the Central Excise Act, 1944 (1 of 1944);
- (iii) the Industries (Development and Regulation) Act, 1951 (65 of 1951);
- (iv) the Prevention of Food Adulteration Act, 1954 (37 of 1954);
- (v) the Essential Commodities Act, 1955 (10 of 1955);
- (vi) the Companies Act, 2013;
- (vii) the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (viii) the Wealth-tax Act, 1957 (27 of 1957);
- (ix) the Income-tax Act, 1961 (43 of 1961);
- (x) the Customs Act, 1962 (52 of 1962);
- (xi) the Competition Act, 2002 (12 of 2003);
- (xii) the Foreign Exchange Management Act, 1999 (42 of 1999);
- (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (xiv) the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (xv) the Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);
- (xvi) the Prevention of Money-Laundering Act, 2002; (15 of 2003);

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. (52 of 1974);

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

(c) he has completed the age of twenty-one years and has not attained the age of seventy years.

Provided that where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

(d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;



(e) he is resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—

- (i) for taking up employment in India; or
- (ii) for carrying on a business or vacation in India.

Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

PART II REMUNERATION

Section I.— Remuneration Payable by Companies Having Profits:

Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

Section II.— Remuneration Payable by Companies having no Profit or Inadequate Profit without Central Government Approval:

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:—

(A):

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	30 lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs
(iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of ₹250 crores:

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Explanation.— It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

- (B) In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, — 2.5% of the current relevant profit:

Provided that if the resolution passed by the shareholders is a special resolution, this limit shall be doubled:

Provided further that the limits specified under this section shall apply, if—

- (i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;

- (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;
- (iii) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;
- (iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:—
 - I. General Information:
 - (1) Nature of industry
 - (2) Date or expected date of commencement of commercial production
 - (3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
 - (4) Financial performance based on given indicators
 - (5) Foreign investments or collaborations, if any.
 - II. Information about the appointee:
 - (1) Background details
 - (2) Past remuneration
 - (3) Recognition or awards
 - (4) Job profile and his suitability
 - (5) Remuneration proposed
 - (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)
 - (7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.
 - III. Other information:
 - (1) Reasons of loss or inadequate profits
 - (2) Steps taken or proposed to be taken for improvement
 - (3) Expected increase in productivity and profits in measurable terms.
 - IV. Disclosures:

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—

 - (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
 - (ii) details of fixed component and performance linked incentives along with the performance criteria;
 - (iii) service contracts, notice period, severance fees;
 - (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Section III.— Remuneration Payable by Companies having no Profit or Inadequate Profit without Central Government Approval in Certain Special Circumstances:

In the following circumstances a company may, without the Central Government approval, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—

- (a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration

for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

(b) where the company—

- (i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or
- (ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival,

it may pay remuneration up to two times the amount permissible under Section II.

(c) where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal:

Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—

- (i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;
 - (ii) the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.
 - (iii) the auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.
- (d) a company in a Special Economic Zone as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to ₹ 2,40,00,000 per annum.

Section IV.— Perquisites not Included in Managerial Remuneration:

1. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:—
 - (a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961 (43 of 1961);
 - (b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
 - (c) encashment of leave at the end of the tenure.
2. In addition to the perquisites specified in paragraph 1 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III—
 - (a) Children's education allowance: In case of children studying in or outside India, an allowance limited to a maximum of ₹ 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
 - (b) Holiday passage for children studying outside India or family staying abroad: Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.

- (c) Leave travel concession: Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

Explanation I.— For the purposes of Section II of this Part, "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Explanation II.—

- (a) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment;
- (b) In any other case the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

Explanation III.— For the purposes of this Schedule, "family" means the spouse, dependent children and dependent parents of the managerial person.

Explanation IV.— The Nomination and Remuneration Committee while approving the remuneration under Section II or Section III, shall—

- (a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.;
- (b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Explanation V.— For the purposes of this Schedule, "negative effective capital" means the effective capital which is calculated in accordance with the provisions contained in Explanation I of this Part is less than zero.

Explanation VI.— For the purposes of this Schedule:—

- (A) "current relevant profit" means the profit as calculated under section 198 but without deducting the excess of expenditure over income referred to in sub-section 4 (I) thereof in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.
- (B) "Remuneration" means remuneration as defined in clause (78) of section 2 and includes reimbursement of any direct taxes to the managerial person.

Section V: Remuneration Payable to a Managerial Person in two Companies:

Subject to the provisions of sections I to I V, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

PART III

Provisions Applicable to Parts I and II of this Schedule

1. The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.
2. The auditor or the Secretary of the company or where the company is not required to appointed a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule



have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196.

PART IV

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.

SCHEDULE VI

(See sections 55 and 186)

The term “infrastructural projects” or “infrastructural facilities” includes the following projects or activities:—

- (1) Transportation (including inter modal transportation), includes the following:—
 - (a) roads, national highways, state highways, major district roads, other district roads and village roads, including toll roads, bridges, highways, road transport providers and other road-related services;
 - (b) rail system, rail transport providers, metro rail roads and other railway related services;
 - (c) ports (including minor ports and harbours), inland waterways, coastal shipping including shipping lines and other port related services;
 - (d) aviation, including airports, heliports, airlines and other airport related services;
 - (e) logistics services.
- (2) Agriculture, including the following, namely:—
 - (a) infrastructure related to storage facilities;
 - (b) construction relating to projects involving agro-processing and supply of inputs to agriculture;
 - (c) construction for preservation and storage of processed agro-products, perishable goods such as fruits, vegetables and flowers including testing facilities for quality.
- (3) Water management, including the following, namely:—
 - (a) water supply or distribution;
 - (b) irrigation;
 - (c) water treatment.
- (4) Telecommunication, including the following, namely:—
 - (a) basic or cellular, including radio paging;
 - (b) domestic satellite service (i.e., satellite owned and operated by an Indian company for providing telecommunication service);
 - (c) network of trunking, broadband network and internet services.
- (5) Industrial, commercial and social development and maintenance, including the following, namely:—
 - (a) real estate development, including an industrial park or special economic zone;
 - (b) tourism, including hotels, convention centres and entertainment centres;
 - (c) public markets and buildings, trade fair, convention, exhibition, cultural centres, sports and recreation infrastructure, public gardens and parks;
 - (d) construction of educational institutions and hospitals;
 - (e) other urban development, including solid waste management systems, sanitation and sewerage systems.
- (6) Power, including the following:—
 - (a) generation of power through thermal, hydro, nuclear, fossil fuel, wind and other renewable sources;

- (b) transmission, distribution or trading of power by laying a network of new transmission or distribution lines.
- (7) Petroleum and natural gas, including the following:—
 - (a) exploration and production;
 - (b) import terminals;
 - (c) liquefaction and re-gasification;
 - (d) storage terminals;
 - (e) transmission networks and distribution networks including city gas infrastructure.
- (8) Housing, including the following:—
 - (a) urban and rural housing including public / mass housing, slum rehabilitation, etc;
 - (b) other allied activities such as drainage, lighting, laying of roads, sanitation and facilities.
- (9) Other miscellaneous facilities/services, including the following:—
 - (a) mining and related activities;
 - (b) technology related infrastructure;
 - (c) manufacturing of components and materials or any other utilities or facilities required by the infrastructure sector like energy saving devices and metering devices;
 - (d) environment related infrastructure;
 - (e) disaster management services;
 - (f) preservation of monuments and icons;
 - (g) emergency services (including medical, police, fire and rescue).
- (10) such other facility service as may be prescribed.

SCHEDULE VII
(See sections 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies.

Activities relating to:—

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;
- (viii) social business projects;
- (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) such other matters as may be prescribed; and
- (xi) slum area development.

Explanation.— For the purposes of this item, the term “slum area” shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being force.

Study Note - 2

LAWS AND PROCEDURES FOR CORPORATE RESTRUCTURING



This Study Note includes

2.1 Compromises, Arrangements and Amalgamations

2.2 Prevention of Oppression and Mismanagement

2.1 COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

2.1.1 Power to Compromise or Make Arrangements with Creditors and Members [Section 230]

(1) Where a compromise or arrangement is proposed—

- (a) Between a company and its creditors or any class of them; or
- (b) Between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.— For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

(2) The company or any other person, by whom an application is made under subsection (1) shall disclose to the Tribunal by affidavit—

- (a) All material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;
- (b) Reduction of share capital of the company, if any, included in the compromise or arrangement;
- (c) Any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—
 - (i) A creditor's responsibility statement in the prescribed form;
 - (ii) Safeguards for the protection of other secured and unsecured creditors;
 - (iii) Report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;
 - (iv) Where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and
 - (v) A valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

- (3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed.

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed.

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

- (4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice.

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

- (5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

- (6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

- (7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

(a) Where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) The protection of any class of creditors;

(c) If the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;



(d) If the compromise or arrangement is agreed to by the creditors under sub-section (6), Any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;

(e) Such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement.

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

(9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

(11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed.

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

(12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.— For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

2.1.2 Power of Tribunal to enforce Compromise or Arrangement [Section 231]

(1) Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—

(a) Shall have power to supervise the implementation of the compromise or arrangement; and

(b) May, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

(2) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

2.1.3 Merger and Amalgamation of Companies [Section 232]

(1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

(a) That the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

- (b) That under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies.

The Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

- (2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—
 - (a) The draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;
 - (b) Confirmation that a copy of the draft scheme has been filed with the Registrar;
 - (c) A report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;
 - (d) The report of the expert with regard to valuation, if any;
 - (e) A supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.
- (3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—
 - (a) The transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;
 - (b) The allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person.

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;
 - (c) The continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;
 - (d) Dissolution, without winding-up, of any transferor company;
 - (e) The provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;
 - (f) Where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;
 - (g) The transfer of the employees of the transferor company to the transferee company;

(h) Where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) The transferee company shall remain an unlisted company until it becomes a listed company;

(B) If shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal.

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(i) Where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and

(j) Such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out.

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

(4) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

(5) Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.

(6) The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

(7) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation.— For the purposes of this section,—

(i) In a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is

proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;

- (ii) References to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;
- (iii) A scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and
- (iv) Property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

2.1.4 Merger or Amalgamation of certain Companies [Section 233]

- (1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:—
 - (a) A notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;
 - (b) The objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;
 - (c) Each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
 - (d) The scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.
- (2) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.
- (3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.
- (4) If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days.

Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.
- (5) If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under sub-section (2) stating its objections and requesting that the Tribunal may consider the scheme under section 232.

- (6) On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit.

Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.

- (7) A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.
- (8) The registration of the scheme under sub-section (3) or sub-section (7) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.
- (9) The registration of the scheme shall have the following effects, namely:—
- (a) Transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;
 - (b) The charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;
 - (c) Legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and
 - (d) Where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.
- (10) A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.
- (11) The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital.

Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.

- (12) The provisions of this section shall mutatis mutandis apply to a company or companies specified in sub-section (1) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (b) of subsection (1) of section 232.
- (13) The Central Government may provide for the merger or amalgamation of companies in such manner as may be prescribed.
- (14) A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

2.1.5 Merger or Amalgamation of Company with Foreign Company [Section 234]

- (1) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply mutatis mutandis to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.

Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

- (2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

Explanation.— For the purposes of sub-section (2), the expression “foreign company” means any company or body corporate incorporated outside India whether having a place of business in India or not.

2.1.6 Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract Approved by Majority [Section 235]

- (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.
- (2) Where a notice under sub-section (1) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.
- (3) Where a notice has been given by the transferee company under sub-section (1) and the Tribunal has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall—
 - (a) Thereupon register the transferee company as the holder of those shares; and
 - (b) Within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.
- (4) Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.
- (5) In relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:—



- (a) In sub-section (1), for the words “the shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries,”, the words “the shares affected” shall be substituted; and
- (b) In sub-section (3), the words “together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company” shall be omitted.

Explanation.— For the purposes of this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

2.1.7 Purchase of Minority Shareholding [Section 236]

- (1) In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent. majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.
- (2) The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.
- (3) Without prejudice to the provisions of sub-sections (1) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (2).
- (4) The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a separate bank account to be operated by the transferor company for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days.

Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, fail to receive or claim payment arising out of such disbursement.

- (5) In the event of a purchase under this section, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.
- (6) In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled, and the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.
- (7) In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.
- (8) Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, the shareholders holding seventy-five

per cent. or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a pro rata basis.

Explanation.— For the purposes of this section, the expressions “acquirer” and “person acting in concert” shall have the meanings respectively assigned to them in clause (b) and clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

- (9) When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—
 - (a) The shares of the company of the residual minority equity shareholder had been delisted; and
 - (b) The period of one year or the period specified in the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, had elapsed.

2.1.8 Power of Central Government to Provide for Amalgamation of Companies in Public Interest [Section 237]

- (1) Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.
- (2) The order under sub-section (1) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.
- (3) Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.
- (4) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.
- (5) No order shall be made under this section unless—
 - (a) A copy of the proposed order has been sent in draft to each of the companies concerned;
 - (b) The time for preferring an appeal under sub-section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and
 - (c) The Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by



that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

- (6) The copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

2.1.9 Registration of Offer of Schemes Involving Transfer of Shares [Section 238]

- (1) In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—
- (a) Every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as may be prescribed;
 - (b) Every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and
 - (c) Every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered.

Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

- (2) An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (1).
- (3) The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

2.1.10 Preservation of Books and Papers of Amalgamated Companies [Section 239]

The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

2.1.11 Liability of Officers in respect of Offences Committed prior to Merger, Amalgamation, etc. [Section 240]

Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

2.2 PREVENTION OF OPPRESSION AND MISMANAGEMENT

2.2.1 Application to Tribunal for relief in cases of Oppression, etc. [Section 241]

- (1) Any member of a company who complains that—
 - (a) The affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or
 - (b) The material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.
- (2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

2.2.2 Powers of Tribunal [Section 242]

- (1) If, on any application made under section 241, the Tribunal is of the opinion—
 - (a) That the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and
 - (b) That to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

The Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

- (2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—
 - (a) The regulation of conduct of affairs of the company in future;
 - (b) The purchase of shares or interests of any members of the company by other members thereof or by the company;
 - (c) In the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
 - (d) Restrictions on the transfer or allotment of the shares of the company;
 - (e) The termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;
 - (f) The termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e).

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;



- (g) The setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;
 - (h) Removal of the managing director, manager or any of the directors of the company;
 - (i) Recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
 - (j) The manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);
 - (k) Appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
 - (l) Imposition of costs as may be deemed fit by the Tribunal;
 - (m) Any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.
- (3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.
 - (4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.
 - (5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.
 - (6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.
 - (7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.
 - (8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

2.2.3 Consequence of Termination or Modification of certain Agreements [Section 243]

- (1) Where an order made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section,—
 - (a) Such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

- (b) No managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

- (2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1), and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

2.2.4 Right to apply Under Section 241 [Section 244]

- (1) The following members of a company shall have the right to apply under section 241, namely:—

- (a) In the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- (b) In the case of a company not having a share capital, not less than one-fifth of the total number of its members.

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.— For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

- (2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

2.2.5 Class Action [Section 245]

- (1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—
 - (a) To restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
 - (b) To restrain the company from committing breach of any provision of the company's memorandum or articles;
 - (c) To declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
 - (d) To restrain the company and its directors from acting on such resolution;
 - (e) To restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
 - (f) To restrain the company from taking action contrary to any resolution passed by the members;

- (g) To claim damages or compensation or demand any other suitable action from or against—
 - (i) The company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
 - (ii) The auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
 - (iii) Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part; (h) to seek any other remedy as the Tribunal may deem fit.
- (2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.
- (3) (i) The requisite number of members provided in sub-section (1) shall be as under:—
 - (a) In the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
 - (b) In the case of a company not having a share capital, not less than one-fifth of the total number of its members.
- (ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.
- (4) In considering an application under sub-section (1), the Tribunal shall take into account, in particular—
 - (a) Whether the member or depositor is acting in good faith in making the application for seeking an order;
 - (b) Any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of subsection (1);
 - (c) Whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;
 - (d) Any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;]
 - (e) Where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—
 - (i) Authorised by the company before it occurs; or
 - (ii) Ratified by the company after it occurs;
 - (f) Where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

- (5) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:—
 - (a) Public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;
 - (b) All similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;
 - (c) Two class action applications for the same cause of action shall not be allowed;
 - (d) The cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.
- (6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.
- (7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
- (8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.
- (9) Nothing contained in this section shall apply to a banking company.
- (10) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).

2.2.6 Application of certain provisions to proceedings Under Section 241 or Section 245 [Section 246]

The provisions of sections 337 to 341 (both inclusive) shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241 or section 245.

Study Note - 3

SEBI LAWS AND REGULATIONS

This Study Note includes

- 3.1 The Securities and Exchange Board of India Act, 1992
- 3.2 The Securities Contracts (Regulation) Act, 1956
- 3.3 SEBI (Issue of Capital and Disclosure regulations), 2009
- 3.4 Corporate Governance of Listing Agreement
- 3.5 SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

3.1 THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

PRELIMINARY

Short title, extent & commencement (Section 1)

- (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.

Definitions (Section 2)

- (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;
 - (ba) "collective investment scheme" means any scheme or arrangement which satisfies the conditions specified in Section 11AA;
 - (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;
 - (ha) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;
 - (i) "securities" has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956.
- (2) Words and expressions used and not defined in this Act, but defined in the Securities Contracts (Regulation) Act, 1956, [or the Depositories Act, 1996], shall have the meanings respectively assigned to them in that Act.

ESTABLISHMENT OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

Establishment and incorporation of Board [Section 3]

- (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.

Management of the Board [Section 4]

- (1) The Board shall consist of the following members, namely:-
 - (a) a Chairman;
 - (b) two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act, 1956;
 - (c) one member from amongst the officials of the Reserve Bank;
 - (d) five other members of whom at least three shall be the whole-time 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 respectively.
- (5) The Chairman and the other members referred to in clauses (a) and (d) of subsection (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.

Term of office and conditions of service of Chairman and members of the Board [Section 5]

- (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.

Removal of member from office [Section 6]

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.

Meetings [Section 7]

- (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 votes 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.

Member not to participate in meetings in certain cases [Section 7A]

"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".

Vacancies etc., not to invalidate proceedings of Board [Section 8]

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.

Officers and employees of the Board [Section 9]

- (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.

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

Transfer of assets, liabilities, etc., of existing Securities and Exchange Board to the Board [Section 10]

- (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, 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.

POWERS AND FUNCTIONS OF THE BOARD

Functions of Board [Section 11]

- (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.
 - (ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;
 - (ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard.



Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;

- (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 organisations;
 - (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 organisations in the securities market;
 - (ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;
 - (j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 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.
- (2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.
- (3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub-section (2A), the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely :

- (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;]
 - (iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);
 - (v) issuing commissions for the examination of witnesses or documents.]
- (4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:-
- (a) suspend the trading of any security in a recognised stock exchange;
 - (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
 - (c) suspend any office-bearer of any stock exchange or self- regulatory organisation from holding such position;
 - (d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;
 - (e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;
 - (f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market:

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.]
- (5) The amount disgorged, pursuant to a direction issued, under section 11B or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.



Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities [Section 11A]

- (1) Without prejudice to the provisions of the Companies Act, 1956, the Board may, for the protection of investors, -
 - (a) specify, by regulations –
 - (i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
 - (ii) the manner in which such matters shall be disclosed by the companies;
 - (b) by general or special orders –
 - (i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
 - (ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.
- (2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956, the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.”]

Collective Investment Scheme [Section 11AA]

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

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.
- (2) Any scheme or arrangement made or offered by any person under which,—
 - (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;
 - (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;
 - (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
 - (iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.
- (2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.
- (3) Notwithstanding anything contained in sub-section (2) or sub-Section (2A), any scheme or arrangement—
 - (i) made or offered by a co-operative society registered under the co-operative societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any state;
 - (ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;
 - (iii) being a contract of insurance to which the Insurance Act, 1938, applies;

- (iv) providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
- (v) under which deposits are accepted under section 58A of the Companies Act, 1956;
- (vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956;
- (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;
- (viii) under which contributions made are in the nature of subscription to a mutual fund;
- (ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,

shall not be a collective investment scheme.

Power to issue directions [Section 11B]

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 interest 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

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

Investigation [Section 11C]

- (1) Where the Board has reasonable ground to believe that –
 - (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or
 - (b) 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 directions issued by the Board thereunder,

It may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

- (2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as

the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

- (3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.
- (4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any book, register, other document and record if they are needed again:

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

- (5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.
- (6) If any person fails without reasonable cause or refuses –
 - (a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or
 - (b) to furnish any information which is his duty under sub-section (3) to furnish; or
 - (c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or
 - (d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

- (7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.
- (8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Magistrate or Judge of such designation court in Mumbai, as may be notified by the Central Government for an order for the seizure of such books, registers, other documents and record.
- (8A) The amount disgorged, pursuant to a direction issued, under section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as

the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.

- (9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designated Court may, by order, authorise the Investigating Authority–
- (a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;
 - (b) to search that place or those places in the manner specified in the order; and
 - (c) to seize books, registers, other documents and record, if it considers necessary for the purposes of the investigation.

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

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

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

- (11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures made under that Code.

Cease and desist proceedings [Section 11D]

If the Board finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation:

Provided that the Board shall not pass such order in respect of any listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless the Board has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.

REGISTRATION CERTIFICATE

Registration of stock brokers, sub-brokers, share transfer agents, etc. [Section 12]

- (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 cause to be carried on any venture capital funds or collective investment schemes 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 on or causing to be carried on any venture capital funds or collective investment schemes 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.]

Explanation.- For the removal of doubts, it is hereby declared that, for the purpose of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.

- (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.

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control [Section 12A]

No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (d) engage in insider trading;
- (e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

FINANCE, ACCOUNTS AND AUDIT

Grants by the Central Government [Section 13]

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 utilised for the purposes of this Act.

Fund [Section 14]

- (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;
 - (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 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 authorised by this Act.

Accounts and Audit. (Section 15)

- (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.

PENALTIES AND ADJUDICATION

Penalty for failure to furnish information, return, etc. [Section 15A]

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

- (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (c) to maintain books of accounts or records, fails to maintain the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure by any person to enter into agreement with clients [Section 15B]

If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure to redress investors' grievances [Section 15C]

If any listed company or 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 within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for certain defaults in case of mutual funds. (Section 15D)

If any person, who is –

- (a) required under this Act or any rules or regulations made thereunder 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees.
- (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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

- (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 despatch, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure to observe rules and regulations by an asset management company [Section 15E]

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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure in case of stock brokers [Section 15F]

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 which shall not be less than one lakh rupees but which may extend to 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees.
- (c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Penalty for insider trading [Section 15G]

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 of which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Penalty for non-disclosure of acquisition of shares and takeovers [Section 15H]

If any person, who is required under this Act or any rules or regulations made thereunder, 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; or
- (iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or
- (iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,

he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for fraudulent and unfair trade practices [Section 15HA]

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided [Section 15HB]

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extent to one crore rupees.

Power to adjudicate [Section 15-I]

- (1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB], the Board shall appoint any 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.
- (3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify.

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.

Factors to be taken into account by the adjudicating officer [Section 15J]

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.

Crediting sums realized by way of penalties to Consolidated Fund of India [Section 15JA]

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

Settlement of administrative and civil proceedings [section 15JB]

- (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceeding initiated or to be initiated for the alleged defaults.
- (2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.
- (3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.
- (4) No appeal shall lie under section 15T against any order passed by the Board or Adjudicating officer, as the case may be, under this section.

ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF APPELLATE TRIBUNAL

Establishment of Securities Appellate Tribunals [Section 15K]

- (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 or any other law for the time being in force.
- (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.

Composition of Securities Appellate Tribunal [Section 15L]

A Securities Appellate Tribunal shall consist of a Presiding Officer and two other Members, to be appointed, by notification, by the Central Government:

Provided that the Securities Appellate Tribunal, consisting of one person only, established before the commencement of the Securities and Exchange Board of India (Amendment) Act, 2002, shall continue to exercise the jurisdiction, powers and authority conferred on it by or under this Act or any other law for the time being in force till two other Members are appointed under this section.

Qualification for appointment as Presiding Officer or Member of the Securities Appellate Tribunal [Section 15M]

- (1) A person shall not be qualified for appointment as the Presiding Officer of the Securities Appellate Tribunal unless he—
 - (a) is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court; or
 - (b) is a sitting or retired Judge of a High Court who has completed not less than seven years of service as a Judge in a High Court.

- (1A) The Presiding Officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.
- (2) A person shall not be qualified for appointment as Member of a Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy:

Provided that a member of the Board or any person holding a post at senior management level equivalent to Executive Director in the Board shall not be appointed as Presiding Officer or Member of a Securities Appellate Tribunal during his service or tenure as such with the Board or within two years from the date on which he ceases to hold office as such in the Board.

Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal [Section 15N]

The Presiding Officer and every other Member of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that no person shall hold office as the Presiding Officer of the Securities Appellate Tribunal after he has attained the age of sixty-eight years:

Provided further that no person shall hold office as a Member of the Securities Appellate Tribunal after he has attained the age of sixty-two years.

Salary and allowances and other terms and conditions of service of Presiding Officers [Section 15O]

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 and other Member 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 Presiding Officer and other Members of a Securities Appellate Tribunal shall be varied to their disadvantage after appointment.

Filling up of vacancies [Section 15P]

If, for reason other than temporary absence; any vacancy occurs in the office of the Presiding Officer or any other Member 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.

Resignation and removal [Section 15Q]

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

Provided that the Presiding Officer or any other Member 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 or any other Member 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 misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court, in which the Presiding Officer or any other Member 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 Presiding Officer or any other Member.

Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings [Section 15R]

No order of the Central Government appointing any person as the Presiding Officer or a Member 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.

Staff of the Securities Appellate Tribunal [Section 15S]

- (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.

Appeal to the Securities Appellate Tribunal [Section 15T]

- (1) Save as provided in sub-section (2), any person aggrieved,-
 - (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or
 - (b) 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) Omitted.
- (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 Board or the adjudicating officer, as the case may be, 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 Board, 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 endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and powers of the Securities Appellate Tribunal [Section 15U]

- (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.
- (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, while trying a suit, in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examination of witnesses or documents;
 - (e) reviewing its decisions;
 - (f) dismissing an application for default or deciding it ex parte;
 - (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
 - (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, 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.

Right to legal representation [Section 15V]

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Explanation.– For the purposes of this section,--

- (a) “chartered accountant” means a chartered accountant as defined in clause(b) of sub-section(1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) “company secretary” means a company secretary as defined in clause(c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) “cost accountant” means a cost accountant as defined in clause(b) of subsection(1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) “legal practitioner” means an advocate, vakil or any attorney of any High Court, and includes a pleader in practice.

Limitation [Section 15W]

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

Presiding Officer, Members and staff of Securities Appellate Tribunals to be public servants [Section 15X]

The Presiding Officer, Members 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.

Civil Court not to have jurisdiction [Section 15Y]

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.

Appeal to Supreme Court [Section 15Z]

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 applicant 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.

MISCELLANEOUS**Power of Central Government to issue directions [Section 16]**

- (1) without prejudice to the foregoing provisions of this Act or the Depositories Act, 1996, the Board shall, in exercise of its powers or the performance of its functions under this Act, 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.

Power of Central Government to supersede the Board [Section 17]

- (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 members shall, as from the date of supersession, 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 supersession 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 supersession, 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.



Returns and reports [Section 18]

- (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.

Delegation [Section 19]

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.

Appeals [Section 20]

- (1) Any person aggrieved by an order of the Board made, before the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder 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.

Bar of jurisdiction [Section 20A]

No order passed by the Board or the adjudicating officer under this Act shall be appealable except as provided in section 15T or section 20 and no Civil Court shall have jurisdiction in respect of any matter which the Board or the adjudicating officer 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 or the adjudicating office by, or under, this Act.

Savings [Section 21]

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

Members, Officers and employees of the Board to be public servants [Section 22]

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.

Protection of action taken in good faith [Section 23]

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 thereunder.

Offences [Section 24]

- (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 thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.
- (2) If any person fails to pay the penalty imposed by the Adjudicating Officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years or with fine, which may extend to twenty-five crore rupees or with both.

Composition of certain offences [Section 24A]

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.

Power to grant immunity [Section 24B]

- (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 the 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 recommendation of the Board 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.

Exemption from tax on wealth and income [Section 25]

Notwithstanding anything contained in the Wealth Tax Act, 1957, the Income Tax Act, 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.

Cognizance of offences by courts [Section 26]

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

Establishment of Special Courts [Section 26A]

- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
- (3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

Offences triable by Special Courts [Section 26B]

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

Appeal and revision [Section 26C]

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

Application of Code to proceedings before special Court [Section 26D]

- (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.
- (2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

Transitional Provisions [Section 26E]

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

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this Section.

Offences by companies [Section 27]

- (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.

Recovery of Amounts [Section 28A]

- (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

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

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

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

- (2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).
- (3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.
- (4) For the purposes of sub-sections (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

Power to make rules [Section 29]

- (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, Members 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 misbehaviour or incapacity of the Presiding Officers, or other Members 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 15 -T 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.

Power to make regulations [Section 30]

- (1) The Board may, by notification, make regulations consistent with this Act and the rules made thereunder 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;

- (ca) the utilisation of the amount credited under sub-section (5) of section 11;
- (cb) the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA;
- (cc) the procedure to be followed by the authorised officer for search or seizure under sub-section (9) of section 11C;
- (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.
- (da) A (da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;
- (db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Rules and regulations to be laid before Parliament [Section 31]

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.

Application of other laws not barred [Section 32]

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.

Power to remove difficulties [Section 34]

- (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.

Validation of Certain Acts [Section 34A]

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

Repeal and saving [Section 35]

- (1) The Securities and Exchange Board of India Ordinance, 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.



3.2 THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

PRELIMINARY

Short title, extent and commencement [Section 1]

- (1) This Act may be called the Securities Contracts (Regulation) Act, 1956.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions [Section 2]

In this Act, unless the context otherwise requires,—

- (a) “contract” means a contract for or relating to the purchase or sale of securities;
- (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;
- (ac) “derivative” includes—
 - (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
 - (B) a contract which derives its value from the prices, or index of prices, of underlying securities;
 - (C) commodity derivatives; and
 - (D) such other instruments as may be declared by the Central Government to be derivative.
- (b) “Government security” means a security created and issued, whether before or after the commencement of this Act, by the Central Government or a State Government for the purpose of raising a public loan and having one of the forms specified in clause (2) of section 2 of the Public Debt Act, 1944;
- (bb) “goods” mean every kind of moveable property other than actionable claims, money and securities;
- (bc) “commodity derivative” means a contract –
 - (i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or
 - (ii) for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the Board, but does not include securities as referred to in sub-clauses (A) and (B) of clause (ac);
- (c) “member” means a member of a recognised stock exchange;
- (ca) “non-transferable specific delivery contract” means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other documents of title relating thereto are not transferable;

- (d) "option in securities" means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a teji, a mandi, a teji mandi, a galli, a put, a call or a put and call in securities;
- (e) "prescribed" means prescribed by rules made under this Act;
- (ea) "ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefore, either immediately, or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise:

Provided that where any such contract is performed either wholly or in part:

- (I) by realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or
 - (II) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full price therefor is dispensed with, then such contract shall not be deemed to be a ready delivery contract;
- (f) "recognised stock exchange" means a stock exchange which is for the time being recognised by the Central Government under section 4;
 - (g) "rules", with reference to the rules relating in general to the constitution and management of a stock exchange, includes, in the case of a stock exchange which is an incorporated association, its memorandum and articles of association;
 - (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;
 - (gb) "Securities Appellate Tribunal" means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;
 - (h) "securities" include—
 - (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
 - (ia) derivative;
 - (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
 - (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- (id) units or any other such instrument issued to the investors under any mutual fund scheme;

Explanation. – For the removal of doubts, it is hereby declared that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938;

- (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

- (ii) Government securities;

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

- (iii) rights or interest in securities;

- (i) “spot delivery contract” means a contract which provides for—

- (a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

- (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

- (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.

- (k) “transferable specific delivery contract” means a specific delivery contract which is not a non-transferable specific delivery contract and which is subject to such conditions relating to its transferability as the Central Government may by notification in the Official Gazette, specify in this behalf.

Interpretation of certain words and expressions [Section 2A]

Words and expressions used herein and not defined in this Act but defined in the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the same meanings respectively assigned to them in those Acts.

RECOGNISED STOCK EXCHANGES

Application for recognition of stock exchanges (Section 3)

- (1) Any stock exchange, which is desirous of being recognised for the purposes of this Act, may make an application in the prescribed manner to the Central Government.
- (2) Every application under sub-section (1) shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and

control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange and in particular, to—

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

Grant of recognition to stock exchanges [Section 4]

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

it may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.
- (2) The conditions which the Central Government may prescribe under clause (a) of sub-section (1) for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to,—
 - (i) the qualifications for membership of stock exchanges;
 - (ii) the manner in which contracts shall be entered into and enforced as between members;
 - (iii) the representation of the Central Government on each of the stock exchange by such number of persons not exceeding three as the Central Government may nominate in this behalf; and
 - (iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.
- (3) Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.
- (4) No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.
- (5) No rules of a recognised stock exchange relating to any of the matters specified in sub-section (2) of section 3 shall be amended except with the approval of the Central Government.

Corporatisation and demutualisation of stock exchanges [Section 4A]

On and from the appointed date, all recognised stock exchanges (if not corporatized 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.

Explanation. — 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.

Procedure for corporatisation and demutualization [Section 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 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 other law for the time being in force, have full effect.
- (8) Every recognised stock exchange, in respect of which the scheme for corporatization 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.

Withdrawal of recognition [Section 5]

- (1) If the Central Government is of opinion that the recognition granted to a stock exchange under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may serve on the governing body of the stock exchange a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw, by notification in the Official Gazette, the recognition granted to the stock exchange:

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

- (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.

Power of Central Government to call for periodical returns or direct inquiries to be made. [Section 6]

- (1) Every recognised stock exchange shall furnish to the Securities and Exchange Board of India such periodical returns relating to its affairs as may be prescribed.

- (2) Every recognised stock exchange and every member thereof shall maintain and preserve for such periods not exceeding five years such books of account, and other documents as the Central Government, after consultation with the stock exchange concerned, may prescribe in the interest of the trade or in the public interest, and such books of account, and other documents shall be subject to inspection at all reasonable times by the Securities and Exchange Board of India.
- (3) Without prejudice to the provisions contained in sub-sections (1) and (2), the Securities and Exchange Board of India, if it is satisfied that it is in the interest of the trade or in the public interest so to do, may, by order in writing,—
 - (a) call upon a recognised stock exchange or any member thereof to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange as the Securities and Exchange Board of India may require; or
 - (b) appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to the Securities and Exchange Board of India within such time as may be specified in the order or, in the case of an inquiry in relation to the affairs of any of the members of a stock exchange, direct the governing body to make the inquiry and submit its report to the Securities and Exchange Board of India.
- (4) Where an inquiry in relation to the affairs of a recognised stock exchange or the affairs of any of its members in relation to the stock exchange has been undertaken under sub-section (3),—
 - (a) every director, manager, secretary or other officer of such stock exchange;
 - (b) every member of such stock exchange;
 - (c) if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm; and
 - (d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c), whether directly or indirectly;shall be bound to produce before the authority making the inquiry all such books of account, and other documents in his custody or power relating to or having a bearing on the subject-matter of such inquiry and also to furnish the authorities within such time as may be specified with any such statement or information relating thereto as may be required of him.

Annual reports to be furnished to Central Government by stock exchanges [Section 7]

Every recognised stock exchange shall furnish the Central Government with a copy of the annual report, and such annual report shall contain such particulars as may be prescribed.

Power of recognised stock exchange to make rules restricting voting rights, etc. [Section 7A]

- (1) A recognised stock exchange may make rules or amend any rules made by it to provide for all or any of the following matters, namely:—
 - (a) the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting;
 - (b) the regulation of voting rights in respect of any matter placed before the stock exchange at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the stock exchange;
 - (c) the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange;
 - (d) in clauses (a), (b) and (c).

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

Power of Central Government to direct rules to be made or to make rules [Section 8]

- (1) Where, after consultation with the governing bodies of stock exchanges generally or with the governing body of any stock exchange in particular, the Central Government is of opinion that it is necessary or expedient so to do, it may, by order in writing together with a statement of the reasons therefore, direct recognised stock exchanges generally or any recognised stock exchange in particular, as the case may be, to make any rules or to amend any rules already made in respect of all or any of the matters specified in sub-section (2) of section 3 within a period of two months from the date of the order.
- (2) If any recognised stock exchange fails or neglects to comply with any order made under sub-section (1) within the period specified therein, the Central Government may make the rules for, or amend the rules made by, the recognised stock exchange, either in the form proposed in the order or with such modifications thereof as may be agreed to between the stock exchange and the Central Government.
- (3) Where in pursuance of this section any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India and also in the Official Gazette or Gazettes of the State or States in which the principal office or offices of the recognised stock exchange or exchanges is or are situate, and, on the publication thereof in the Gazette of India, the rules so made or amended shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force, have effect as if they had been made or amended by the recognised stock exchange or stock exchanges, as the case may be.

Clearing corporation [Section 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 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 the 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.

Power of recognised stock exchanges to make bye-laws [Section 9]

- (1) Any recognised stock exchange may, subject to the previous approval of the Securities and Exchange Board of India, make bye-laws for the regulation and control of contracts.



- (2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for:
- (a) the opening and closing of markets and the regulation of the hours of trade;
 - (b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house;
 - (c) the submission to the Securities and Exchange Board of India by the clearing house as soon as may be after each periodical settlement of all or any of the following particulars as the Securities and Exchange Board of India may, from time to time, require, namely:—
 - (i) the total number of each category of security carried over from one settlement period to another;
 - (ii) the total number of each category of security, contracts in respect of which have been squared up during the course of each settlement period;
 - (iii) the total number of each category of security actually delivered at each clearing;
 - (d) the publication by the clearing house of all or any of the particulars submitted to the Securities and Exchange Board of India under clause (c) subject to the directions, if any, issued by the Securities and Exchange Board of India in this behalf;
 - (e) the regulation or prohibition of blank transfers;
 - (f) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;
 - (g) the regulation, or prohibition of budlas or carry-over facilities;
 - (h) the fixing, altering or postponing of days for settlements;
 - (i) the determination and declaration of market rates, including the opening, closing highest and lowest rates for securities;
 - (j) the terms, conditions and incidents of contracts, including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;
 - (k) the regulation of the entering into, making, performance, recession and termination, of contracts, including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts;
 - (l) the regulation of taravani business including the placing of limitations thereon;
 - (m) the listing of securities on the stock exchange, the inclusion of any security for the purpose of dealings and the suspension or withdrawal of any such securities, and the suspension or prohibition of trading in any specified securities;
 - (n) the method and procedure for the settlement of claims or disputes, including settlement by arbitration;
 - (o) the levy and recovery of fees, fines and penalties;
 - (p) the regulation of the course of business between parties to contracts in any capacity;
 - (q) the fixing of a scale of brokerage and other charges;
 - (r) the making, comparing, settling and closing of bargains;

- (s) the emergencies in trade which may arise, whether as a result of pool or syndicated operations or cornering or otherwise, and the exercise of powers in such emergencies, including the power to fix maximum and minimum prices for securities;
 - (t) the regulation of dealings by members for their own account;
 - (u) the separation of the functions of jobbers and brokers;
 - (v) the limitations on the volume of trade done by any individual member in exceptional circumstances;
 - (w) the obligation of members to supply such information or explanation and to produce such documents relating to the business as the governing body may require.
- (3) The bye-laws made under this section may—
- (a) specify the bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (1) of section 14;
 - (b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely:—
 - (i) fine,
 - (ii) expulsion from membership,
 - (iii) suspension from membership for a specified period,
 - (iv) any other penalty of a like nature not involving the payment of money.
- (4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by the Securities and Exchange Board of India, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and shall have effect as from the date of its publication in the Gazette of India:

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

Power of Securities and Exchange Board of India to make or amend bye-laws of recognised stock exchanges [Section 10]

- (1) The Securities and Exchange Board of India may, either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion, if it is satisfied after consultation with the governing body of the stock exchange that it is necessary or expedient so to do and after recording its reasons for so doing, make bye-laws for all or any of the matters specified in section 9 or amend any bye-laws made by such stock exchange under that section.
- (2) Where in pursuance of this section any bye-laws have been made or amended the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and on the publication thereof in the Gazette of India, the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised stock exchange concerned.
- (3) Notwithstanding anything contained in this section, where the governing body of a recognised stock exchange objects to any bye-laws made or amended under this section by the Securities and Exchange Board of India on its own motion, it may, within two months of the publication thereof in the Gazette of India under sub-section (2), apply to the Securities and Exchange Board

of India for revision thereof, and the Securities and Exchange Board of India may, after giving an opportunity to the governing body of the stock exchange to be heard in the matter, revise the bye-laws so made or amended, anywhere any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

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

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

Power of Central Government to supersede governing body of a recognised stock exchange.
[Section 11]

- (1) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised stock exchange should be superseded, then, notwithstanding anything contained in any other law for the time being in force, in the Central Government may serve on the governing body a written notice that the Central Government is considering the supersession of the governing body for the reasons specified in the notice and after giving an opportunity to the governing body to be heard in the matter, it may, by notification in the Official Gazette, declare the governing body of such stock exchange to be superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and, where more persons than one are appointed, may appoint one of such persons to be the chairman and another to be the vice-chairman thereof.
- (2) On the publication of a notification in the Official Gazette under sub-section (1), the following consequences shall ensue, namely:—
- (a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;
 - (b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;
 - (c) all such property of the recognised stock exchange as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry on the business of the stock exchange, shall vest in such person or persons.
- (3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the recognised stock exchange the governing body of which is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section and the Central Government may from time to time, by like notification, vary such period.
- (4) The Central Government may at any time before the determination of the period of office of any person or persons appointed under this section call upon the recognised stock exchange to re-constitute the governing body in accordance with its rules and on such re-constitution all the property of the recognised stock exchange which has vested in, or was in the possession of, the person or persons appointed under sub-section (1), shall re-vest or vest, as the case may be, in the governing body so re-constituted:

Provided that until a governing body is so re-constituted, the person or persons appointed under sub-section (1) shall continue to exercise and perform their powers and duties.

Power to suspend business of recognised stock exchanges [Section 12]

If in the opinion of the Central Government an emergency has arisen and for the purpose of meeting the emergency the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, for reasons to be set out therein, direct a recognised stock exchange to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and, if, in the opinion of the Central Government, the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time:

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

Power to issue directions [Section 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.

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

CONTRACTS AND OPTIONS IN SECURITIES**Contracts in notified areas illegal in certain circumstances [Section 13]**

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

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.

Additional trading floor [Section 13A]

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

Explanation.— For the purposes of this section, “additional trading floor” means a trading ring or trading facility offered by a recognised stock exchange outside its area of operation to enable the investors to buy and sell securities through such trading floor under the regulatory framework of that stock exchange.

Contracts in notified areas to be void in certain circumstances [Section 14]

- (1) Any contract entered into in any State or area specified in the notification under section 13 which is in contravention of any of the bye-laws specified in that behalf under clause (a) of sub-section (3) of section 9 shall be void -
 - (i) as respects the rights of any member of the recognised stock exchange who has entered into such contract in contravention of any such bye-law, and also
 - (ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.
- (2) Nothing in sub-section (1) shall be construed to affect the right of any person other than a member of the recognised stock exchange to enforce any such contract or to recover any sum under or in respect of such contract if such person had no knowledge that the transaction was in contravention of any of the bye-laws specified in clause (a) of sub-section (3) of section 9.

Members may not act as principals in certain circumstances [Section 15]

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

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

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

Power to prohibit contracts in certain cases [Section 16]

- (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.
- (2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

Licensing of dealers in securities in certain areas [Section 17]

- (1) Subject to the provisions of sub-section (3) and to the other provisions contained in this Act, no person shall carry on or purport to carry on, whether on his own behalf or on behalf of any other person, the business of dealing in securities in any State or area to which section 13 has not been

declared to apply and to which the Central Government may, by notification in the Official Gazette, declare this section to apply, except under the authority of a licence granted by the Securities and Exchange Board of India in this behalf.

- (2) No notification under sub-section (1) shall be issued with respect to any State or area unless the Central Government is satisfied, having regard to the manner in which securities are being dealt with in such State or area, that it is desirable or expedient in the interest of the trade or in the public interest that such dealings should be regulated by a system of licensing.
- (3) The restrictions imposed by sub-section (1) in relation to dealings in securities shall not apply to the doing of anything by or on behalf of a member of any recognised stock exchange.

Public issue and listing of securities referred to in sub-clause (ie) of clause (h) of section 2 [Section 17A]

- (1) Without prejudice to the provisions contained in this Act or any other law for the time being in force, no securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 shall be offered to the public or listed on any recognised stock exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.
- (2) Every issuer referred to in sub-clause (ie) of clause (h) of section 2 intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognised stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.
- (3) Where the permission applied for under sub-section (2) for listing has not been granted or refused by the recognised stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent per annum.

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

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

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17 [Section 18]

- (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.
- (2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

Contracts in derivative [Section 18A]

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

- (a) traded on a recognised stock exchange;



- (b) settled on the clearing house of the recognised stock exchange; or
- (c) between such parties and on such terms as the Central Government may, by notification in the Official Gazette, specify,

in accordance with the rules and bye-laws of such stock exchange.

Stock exchanges other than recognised stock exchanges prohibited [Section 19]

- (1) No person shall, except with the permission of the Central Government, organize or assist in organising or be a member of any stock exchange (other than a recognised stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities.
- (2) This section shall come into force in any State or area on such date as the Central Government may, by notification in the Official Gazette, appoint.

LISTING OF SECURITIES

Conditions for listing [Section 21]

Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Delisting of securities [Section 21A]

- (1) A recognised stock exchange may delist the securities, after recording the reasons therefore, 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.

Right of appeal against refusal of stock exchanges to list securities of public companies [Section 22]

Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any public company or collective investment scheme, the company or scheme shall be entitled to be furnished with reasons for such refusal, and may,—

- (a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or
- (b) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1) of section 73 of the Companies Act, 1956 (hereafter in this section referred to as the “specified time”), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown, allow,

appeal to the Central Government against such refusal, omission or failure, as the case may be, and thereupon the Central Government may, after giving the stock exchange an opportunity of being heard,—

- (i) vary or set aside the decision of the stock exchange, or
- (ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Central Government:

Provided that no appeal shall be preferred against refusal, omission or failure, as the case may be, under this section on and after the commencement of the Securities Laws (Second Amendment) Act, 1999.

Right of appeal to Securities Appellate Tribunal against refusal of stock exchange to list securities of public companies [Section 22A]

- (1) Where a recognised stock exchange, acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any company, the company shall be entitled to be furnished with reasons for such refusal, and may,—
 - (a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or
 - (b) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1A) of section 73 of the Companies Act, 1956 (hereafter in this section referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities Appellate Tribunal may, on sufficient cause being shown, allow,

appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, as the case may be, and thereupon the Securities Appellate Tribunal may, after giving the stock exchange, an opportunity of being heard,—

- (i) vary or set aside the decision of the stock exchange; or
- (ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Securities Appellate Tribunal sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Securities Appellate Tribunal.

- (2) Every appeal under sub-section (1) shall be in such form and be accompanied by such fee as may be prescribed.
- (3) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.
- (4) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and powers of Securities Appellate Tribunal [Section 22B]

- (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.
- (2) The Securities Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examination of witnesses or documents;



- (e) reviewing its decisions;
 - (f) dismissing an application for default or deciding it ex parte;
 - (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
 - (h) any other matter which may be prescribed.
- (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 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.

Right to legal representation [Section 22C]

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Explanation. — for the purposes of this section,—

- (a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) “company secretary” means a company secretary as defined in clause (c) of subsection (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

Limitation [Section 22D]

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

Civil court not to have jurisdiction [Section 22E]

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal 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.

Appeal to Supreme Court [Section 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.

PENALTIES AND PROCEDURE

Penalties [Section 23]

- (1) Any person who—
 - (a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or

- (b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or
- (c) contravenes the provisions contained in section 17 or section 17A or section 19; or
- (d) enters into any contract in derivative in contravention of section 18A or the rules made under section 30;
- (e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or
- (f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or
- (g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 wilfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or
- (h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other persons for any business connected with contracts in contravention of any of the provisions of this Act; or
- (i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act;

shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.

- (2) Any person who enters into any contract in contravention of the provisions contained in section 15 or who fails to comply with the provisions of section 21 or section 21A or with the orders of or section 22 or with the orders of the Securities Appellate Tribunal shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.

Penalty for failure to furnish information, return, etc. [Section 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure;
- (b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for failure by any person to enter into an agreement with clients [Section 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for every such failure.

Penalty for failure to redress investors' grievances [Section 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure to segregate securities or moneys of client or clients [Section 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 other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds [Section 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 which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for excess dematerialisation or delivery of unlisted securities [Section 23F]

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

Penalty for failure to furnish periodical returns, etc. [Section 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 shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for contravention where no separate penalty has been provided [Section 23H]

Whoever fails to comply with any provision of this Act, the rules or articles or byelaws 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 shall not be less than one lakh rupees but which may extend to one crore rupees.

Power to adjudicate [Section 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.
- (3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify.

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 23L, whichever is earlier.

Factors to be taken into account by adjudicating officer [Section 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.

Settlement of Administrative and Civil Proceeding [Section 23JA]

- (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.
- (2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.
- (3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.
- (4) No appeal shall lie under section 23L against any order passed by the Board or the adjudicating officer, as the case may be under this section.

Recovery of Amount [Section 23JB]

- (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 12A or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—
 - (a) attachment and sale of the person's movable property;
 - (b) attachment of the person's bank accounts;

- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

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

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

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

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

- (2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).
- (3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 12A, shall have precedence over any other claim against such person.
- (4) For the purposes of sub-section (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing to exercise the powers of a Recovery Officer.

Crediting sums realised by way of penalties to Consolidated Fund of India [Section 23K]

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

Appeal to Securities Appellate Tribunal [Section 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, or sub-Section (3) of Section 23I may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.
- (2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

- (3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (4) The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.
- (5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Offences [Section 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 directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

Composition of certain offences [Section 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.

Power to grant immunity [Section 23O]

- (1) The Central Government may, on recommendation by the Securities and Exchange Board of India, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made there under 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 and 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.

Offences by companies [Section 24]

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

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

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

Explanation.— For the purpose of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals, and
- (b) “director”, in relation to—
- (i) a firm, means a partner in the firm;
 - (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

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

Certain offences to be cognizable [Section 25]

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

Cognizance of offences by courts [Section 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) Omitted.

Establishment of Special Court [Section 26A]

- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
- (3) A person shall not be qualified for appointment as a judge of Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

Offences triable by Special Courts [Section 26B]

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

Appeal and Revision [Section 26C]

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

Application of Code to proceedings before Special Court [Section 26D]

- (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.
- (2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

Transitional provisions [Section 26E]

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

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

MISCELLANEOUS**Title to dividends [Section 27]**

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

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

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

Right to receive income from collective investment scheme [Section 27A]

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

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

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

Right to receive income from mutual fund [Section 27B]

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

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

- (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instrument issued by the mutual fund;

- (ii) in case of loss of the transfer deed by theft or any other cause beyond the control of transferee, by the actual period taken for the replacement thereof; 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 the 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.

Act not to apply in certain cases [Section 28]

- (1) The provisions of this Act shall not apply to—
- (a) the Government, the Reserve Bank of India, any local authority or any corporation set-up by a special law or any person who has effected any transaction with or through the agency of any such authority as is referred to in this clause;
 - (b) any convertible bond or share warrant or any option or right in relation thereto, insofar as it entitles the person in whose favour any of the foregoing has been issued to obtain at his option from the company or other body corporate, issuing the same or from any of its shareholders or duly appointed agents' shares of the company or other body corporate, whether by conversion of the bond or warrant or otherwise, on the basis of the price agreed upon when the same was issued.
- (2) Without prejudice to the provisions contained in sub-section (1), if the Central Government is satisfied that in the interests of trade and commerce or the economic development of the country it is necessary or expedient so to do, it may, by notification in the Official Gazette, specify any class of contracts as contracts to which this Act or any provision contained therein shall not apply, and also the conditions, limitations or restrictions, if any, subject to which it shall not so apply.

Protection of action taken in good faith [Section 29]

No suit, prosecution or other legal proceeding whatsoever shall lie in any court against the governing body or any member, office bearer or servant of any recognised stock exchange or against any person or persons appointed under sub-section (1) of section 11 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made there under.

Power to delegate [Section 29A]

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

Power to make rules [Section 30]

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

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,—
- (a) the manner in which applications may be made, the particulars which they should contain and the levy of a fee in respect of such applications;
 - (b) the manner in which any inquiry for the purpose of recognising any stock exchange may be made, the conditions which may be imposed for the grant of such recognition, including conditions as to the admission of members if the stock exchange concerned is to be the only recognised stock exchange in the area; and the form in which such recognition shall be granted;
 - (c) the particulars which should be contained in the periodical returns and annual reports to be furnished to the Central Government;
 - (d) the documents which should be maintained and preserved under section 6 and the periods for which they should be preserved;
 - (e) the manner in which any inquiry by the governing body of a stock exchange shall be made under section 6;
 - (f) the manner in which the bye-laws to be made or amended under this Act shall before being so made or amended be published for criticism;
 - (g) the manner in which applications may be made by dealers in securities for licences under section 17, the fee payable in respect thereof and the period of such licences, the conditions subject to which licences may be granted, including conditions relating to the forms which may be used in making contracts, the documents to be maintained by licensed dealers and the furnishing of periodical information to such authority as may be specified and the revocation of licences for breach of conditions;
 - (h) the requirements which shall be complied with—
 - (A) by public companies for the purpose of getting their securities listed on any stock exchange;
 - (B) by collective investment scheme for the purpose of getting their units listed on any stock exchange;
 - (ha) the grounds on which the securities of a company may be delisted from any recognised stock exchange under sub-section (1) of section 21A;
 - (hb) the form in which an appeal may be filed before the Securities Appellate Tribunal under sub-section (2) of section 21A and the fees payable in respect of such appeal;
 - (hc) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal;
 - (hd) the manner of inquiry under sub-section (1) of section 23-I;
 - (he) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23L and the fees payable in respect of such appeal;
 - (i) any other matter which is to be or may be prescribed.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Special Provisions related to commodity derivatives [Section 30A]

- (1) Nothing contained in this Act shall apply to non-transferable specific delivery contracts:
Provided that no person shall organise or assist in organising or be a member of any association in any area to which the provisions of section 13 have been made applicable (other than a stock exchange) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.
- (2) Where in respect of any area, the provisions of section 13 have been made applicable in relation to commodity derivatives for the sale or purchase of any goods or class of goods, the Central Government may, by notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of this Act shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.
- (3) Notwithstanding anything contained in sub-section (1), if the Central Government is of the opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to such class or classes of non-transferable specific delivery contracts in such area in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

Power of Securities and Exchange Board of India to make regulations [Section 31]

- (1) Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.
- (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 manner, in which at least fifty-one per cent of equity share capital of a recognised stock exchange is held within twelve months from the date of publication of the order under sub-section (7) of section 4B by the public other than the shareholders having trading rights under sub-section (8) of that section;
 - (b) the eligibility criteria and other requirements under section 17A.
 - (c) the terms determined by the Board for settlement of proceedings under sub-section (2) of section 23JA;
 - (d) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.
- (3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

Validation of Certain Acts [Section 32]

Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.

3.3 SEBI (ISSUE OF CAPITAL AND DISCLOSURE REGULATIONS), 2009

REGULATIONS, 2009

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely:—

PRELIMINARY

Short title and commencement [Regulation 1]

- (1) These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- (2) They shall come into force on the date of their publication in the Official Gazette.

Definitions [Regulation 2]

- (1) In these regulations, unless the context otherwise requires:
 - (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (b) "advertisement" includes notices, brochures, pamphlets, show cards, catalogues, hoardings, placards, posters, insertions in newspaper, cover pages of offer documents, pictures and films in any print media or electronic media, radio, television programme;
 - (c) "anchor investor" means a qualified institutional buyer '[who makes] an application for a value of ten crore rupees or more in a public issue made through the book building process in accordance with these regulations;
 - (d) "Application Supported by Blocked Amount (ASBA)" means an application for subscribing to a public issue or rights issue, along with an authorisation to Self Certified Syndicate Bank to block the application money in a bank account;
 - (e) "Board" means the Securities and Exchange Board of India established under section 3 of the Act;
 - (f) "book building" means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations;
 - (g) "book runner" means a merchant banker appointed by the issuer to undertake the book building process;
 - (h) "composite issue" means an issue of specified securities by a listed issuer on public-cum-rights basis, wherein the allotment in both public issue and rights issue is proposed to be made simultaneously;
 - (i) "control" shall have the same meaning as assigned to it under clause (c) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulations, 1997;
 - (j) "convertible debt instrument" means an instrument which creates or acknowledges indebtedness and is convertible into equity shares of the issuer at a later date at or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not;
 - (k) "convertible security" means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of the security and includes convertible debt instrument and convertible preference shares;
 - (l) "designated stock exchange" means a recognised stock exchange in which securities of an issuer are listed or proposed to be listed and which is chosen by the issuer as a designated

stock exchange for the purpose of a particular issue of specified securities under these regulations:

Provided that where one or more of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange:

Provided further that subject to the provisions of this clause, the issuer may choose a different recognised stock exchange as a designated stock exchange for any subsequent issue of specified securities under these regulations;

- (m) "employee" means a permanent and full-time employee, working in India or abroad, of the issuer or of the holding company or subsidiary company or of that material associate(s) of the issuer whose financial statements are consolidated with the issuer's financial statements as per Accounting Standard 21, or a director of the issuer, whether whole time or part time and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of that person or of the spouse);
- (n) "further public offer" means an offer of specified securities by a listed issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in a listed issuer;
- (na.) "General Corporate Purposes" include such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called, in the draft offer document filed with the Board.
Provided that any issue related expenses shall not be considered as a part of General Corporate Purpose merely because no specific amount has been allocated for such expenses in the draft offer document filed with the Board.]
- (o) "green shoe option" means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism;
- (p) "initial public offer" means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in an unlisted issuer;
- (q) "issue size" includes offer through document and promoters' contribution;
- (r) "issuer" means any person making an offer of specified securities;
- (s) "key management personnel" means the officers vested with executive powers and the officers at the level immediately below the board of directors of the issuer and includes any other person whom the issuer may declare as a key management personnel;
- (t) "listed issuer" means an issuer whose equity shares are listed in a recognized stock exchange;
- (u) "net offer to public" means an offer of specified securities to the public but does not include reservation;
- (v) "net worth" means the aggregate of the paid up share capital, share premium account, and reserves and surplus (excluding revaluation reserve) as reduced by the aggregate of miscellaneous expenditure (to the extent not adjusted or written off) and the debit balance of the profit and loss account;
- (w) "non-institutional investor" means an investor other than a retail individual investor and qualified institutional buyer;
- (x) "offer document" means a red herring prospectus, prospectus or shelf prospectus and information memorandum in terms of section 60A of the Companies Act, 1956 in case of a public issue and letter of offer in case of a rights issues;
- (y) "offer through offer document" means net offer to public and reservations;

- (z) "preferential issue" means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis and does not include an offer of specified securities made through a public issue, rights issue, bonus issue, employee stock option scheme, employee stock purchase scheme or qualified institutions placement or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities;
- (za) "promoter" includes:
- (i) the person or persons who are in control of the issuer;
 - (ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;
 - (iii) the person or persons named in the offer document as promoters:
- Provided** that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter;
- Provided further** that a financial institutions, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person;
- Provided further** that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;
- (zb) "promoter group" includes:
- (i) the promoter;
 - (ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and
 - (iii) in case promoter is a body corporate:
 - (A) a subsidiary or holding company of such body corporate;
 - (B) anybody corporate in which the promoter holds ten per cent or more of the equity share capital or which holds ten per cent or more of the equity share capital of the promoter;
 - (C) anybody corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent or more of the equity share capital in that body corporate also holds twenty per cent or more of the equity share capital of the issuer; and
 - (iv) in case the promoter is an individual:
 - (A) anybody corporate in which ten per cent or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;
 - (B) anybody corporate in which a body corporate as provided in (A) above holds ten per cent or more, of the equity share capital;
 - (C) any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent of the total; and
 - (v) all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group":

Provided that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person:

Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

- (zc) "public issue" means an initial public offer or further public offer;
- (zd) "qualified institutional buyer" means:
 - (i) a mutual fund, venture capital fund [Alternative Investment Fund] and foreign venture capital investor registered with the Board;
 - (ii) a foreign institutional investor and sub-account (other than a sub-account which is a foreign corporate or foreign individual), registered with the Board;
 - (iii) a public financial institution as defined in section 4A of the Companies Act, 1956;
 - (iv) a scheduled commercial bank;
 - (v) a multilateral and bilateral development financial institution;
 - (vi) a state industrial development corporation;
 - (vii) an insurance company registered with the Insurance Regulatory and Development Authority.
 - (viii) A provident fund with minimum corpus of twenty five crore rupees;
 - (ix) A pension fund with minimum corpus of twenty five crore rupees;
 - (x) National Investment Fund set up by resolution F. No. 2/3/2005 – DDII dated November 23, 2005 of the Government of India published in the Gazette of India;
 - (xi) Insurance funds set up and managed by army, navy or air force of the Union of India;
 - (xii) Insurance funds set up and managed by the Department of Posts, India;
- (ze) "retail individual investor" means an investor who applies or bids for specified securities for a value of not more than [two] lakh rupees;
- (zf) "retail individual shareholder" means a shareholder of a listed issuer, who:
 - (i) [***]
 - (ii) Applies or bids for specified securities for a value of not more than [two] lakh rupees;
- (zg) "rights issue" means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose;
- (zh) "Schedule" means schedule annexed to these regulations;
- (zi) "Self Certified Syndicate Bank" means a banker to an issue registered with the Board, which offers the facility of Application Supported by Blocked Amount;
- (zj) "specified securities" means equity shares and convertible securities;
- (zk) "stabilising agent" means a merchant banker who is responsible for stabilizing the price of equity shares under a green shoe option, in terms of these regulations;

"syndicate member" means an intermediary registered with the Board and who is permitted to carry on the activity as an underwriter;
- (zm) "unlisted issuer" means an issuer which is not a listed issuer.