

- (c) to require auditors to disclose financial irregularities of listed public companies;
- (d) to licence market intermediaries and register their representatives; and
- (e) to protect assets of the clients.

CHAPTER I

PUBLIC OFFER OF SECURITIES

Public Offer of
Securities

80. A listed public company or any public company which has applied to obtain a listing in an exchange shall not make a public offer of securities either directly or through a third party by way of a prospectus or a similar document or otherwise for the purposes of solicitation of funds from the public unless approved by the Commission or a person authorised by the Commission:

Provided however, the Commission having taken into consideration the volume of securities, class of securities, the number and type of investors, the nature of the issuer or the nature of the securities market may by rules made under this Act require that the approval of the Commission be obtained prior to certain types of public offers of unlisted companies.

Approval of the
Commission for
issue of
securities

81. (1) A listed public company shall obtain the approval of the Commission or any person authorised by the Commission to grant approval in respect of—

- (a) any new issue or offer for sale of securities to the public, whether such issues or offers for sale are by way of a public offer or otherwise;

- (b) private placement of securities;
- (c) rights issues of securities;
- (d) bonus issues of securities; or
- (e) schemes of arrangements, schemes of reconstruction, take over schemes, share option schemes and acquisition of assets by way of issues of securities.

(2) A listed foreign entity seeking a listing on an exchange licensed by the Commission shall apply to the Commission or any person authorised by the Commission for approval to make a public offer of securities.

(3) The board of directors of every listed public company and listed foreign entity shall ensure that the company or the entity shall comply with the rules and requirements of the exchange in which it is listed at all times so long as the company or the entity remains listed on the exchange.

82. (1) The prospectus or similar document prepared by a person making an offer to the public shall comply with the requirements specified in the Companies Act, No. 7 of 2007, and any other requirements specified by the Commission and the rules of an exchange.

Prospectus or
similar
document

(2) A person making an issue of securities to the public shall lodge a copy of the prospectus or a similar document with the Commission or with any person authorised by the Commission for that purpose prior to registration of the prospectus as required under the Companies Act, No. 7 of 2007.

(3) The Commission may examine any prospectus or similar document when a person makes a public offer of securities for the purpose of solicitation of funds from the public.

Commission to
issue stop orders

83. (1) Where the Commission is of the opinion that—

- (a) a prospectus or similar document submitted to a licensed stock exchange under its listing rules or in respect of public offers falling within section 80 does not comply with or is not prepared in accordance with the provisions of this Act or the rules of the exchange as the case may be;
- (b) a prospectus or similar document contains a statement or information that is false or misleading or from which there is a material omission; or
- (c) an issuer has contravened any provision of this Act, regulations, rules or directives made thereunder or has not complied with the requirements imposed under this Act,

the Commission may issue an order to the issuer not to allot, issue, offer or make an invitation to subscribe for or purchase or sell further securities relating to public offers.

(2) The Commission shall not make an order under subsection (1) unless the Commission has given a reasonable opportunity to be heard to any affected person as to whether such an order should be made.

(3) If the Commission considers that any delay in making an order under subsection (1) by giving an opportunity to be heard would be prejudicial to the interest of investors, the Commission may make an interim order without giving an opportunity to be heard.

(4) An interim order under subsection (3) shall, unless previously revoked have effect until the end of twenty one days after the day on which it is made or the conclusion of the hearing in subsection (2), whichever date is later.

(5) An order made under subsection (1) or an interim order made under subsection (3) may be revoked by the Commission by way of a directive if the Commission becomes satisfied that the circumstances that resulted in the making of the order no longer exist.

(6) Where applications to subscribe for or purchase securities to which the prospectus or similar document relates has been made prior to an order under subsection (1) being made—

- (a) but before the securities have been issued to the applicants, the applications shall be deemed to have been withdrawn and cancelled and the issuer or such other person who receives the monies, shall, forthwith repay without interest all monies received from the applicants and if the money is not repaid within fourteen days of the order, the issuer shall be liable to repay the monies with interest as may be specified by the Commission from the expiration of that period; or

- (b) where the securities have been allotted to the applicants, the allotment of securities shall be deemed to be void and the issuer or any other person shall forthwith repay without interest all monies received from the applicants and if such money is not repaid within fourteen days of the date of service of the order the issuer shall be liable to repay such monies with interest at the rate as may be specified by the Commission from the expiration of that period.

(7) Provisions of this section shall not apply in respect of any issuer if any of the securities to which the prospectus or similar document relates have been issued or listed on an exchange and trading in them has commenced.

Purchase, sale or
transfer of
securities

84. (1) A person holding securities in a company listed on an exchange shall buy, sell, gift or otherwise deal in such securities in compliance with the trading procedure adopted by such licensed exchange:

Provided however, where no express trading procedure has been adopted by such exchange, the approval of the Commission shall be obtained.

(2) A person as referred to in subsection (1) may gift any such securities to a relation otherwise than in compliance with such trading procedure, if he gives prior notice to the Commission and the licensed exchange, of the particulars relating to the proposed gift.

(3) In this section “relation” means a parent, spouse, child including step children, brother or sister including step brother or step sister of that person or the spouse of a child of that person.

85. (1) Where it appears to the Commission from the disclosures made to the public that -

Power of the Commission to require the production of documents

- (a) there exist circumstances that the business of a listed public company has been conducted—
 - (i) in a manner that contravenes the provisions of this Act, regulations, rules or directives made thereunder or rules of a market institution; or
 - (ii) in a manner, prejudicial to interest of investors;
- (b) there exist circumstances that the company was listed for a fraudulent or unlawful purpose;
- (c) there exist circumstances that the persons concerned with the listing of a company or the management of its affairs in relation to the listing have been guilty of fraud, wrongdoing or other misconduct; or
- (d) there exist circumstances that the director or management of a listed public company have intentionally suppressed information with respect to the affairs of the company that is required to be provided under this Act, regulations, rules or directives made thereunder or as may reasonably be expected to be released to the public,

the Commission may issue directives to the listed public company requiring such company to produce the documents, electronic records or other information specified in the directive at a specified time and place in order to conduct an inquiry or investigation into the matters specified in the preceding provisions.

(2) The Commission may delegate its authority under subsection (1) to any person to require the submission of documents, electronic records or any other information for the purposes of subsection (1).

(3) The Commission or an authorised person may also require the production of such documents and electronic records in relation to the listed public company which is the subject of an inquiry or investigation, from any person who is in possession of them.

(4) Where such documents or electronic records referred to in subsections (1), (2) and (3) are produced, the Commission or the authorised officer shall require the listed public company–

- (a) to require that person or any other person who is a present or past officer of the listed public company or was at any time employed by the listed public company to provide an explanation of such documents and electronic records; and
- (b) where the records and documents and electronic records are not produced as required, the person required to produce such records, documents or electronic records to give reasons for such failure; or
- (c) where the documents and electronic records are not produced, the person required to produce them shall disclose its location to the best of his knowledge and belief.

(5) Where any listed public company fails to comply with this section, the Commission shall issue a directive to the listed public company under section 86 of this Act.

86. Where the Commission after due inquiry or investigation determines that a listed public company has contravened or failed to comply with any provision of the Act, regulations, rules or directives made thereunder or has furnished the Commission with information that is false, inaccurate or misleading, the Commission may take any enforcement action provided under this Act as deemed appropriate.

Power of the Commission to issue directives to listed public companies

87. (1) A person who furnishes information or cause information to be furnished to the Commission under this Act, regulations, rules or directives made thereunder shall exercise due care to ensure that the information is not false or misleading in any material particular.

Duty not to furnish false information to the Commission

(2) A person who –

- (a) signs a document lodged with the Commission; or
- (b) submits to the Commission a document by electronic means using any identification or other authentication method or procedure assigned to him by the Commission,

shall exercise due care to ensure that the document is not false or misleading in a material particular.

(3) A person who contravenes subsection (1) or (2) commits an offence under this Act.

Duty not to
make false
statements to
market
institutions

88. A person with intent to deceive, makes or furnishes, or knowingly and willfully authorises or permits the making or furnishing of any misleading statement or report to a market institution licensed under this Act in relation to any information that a listed public company is required to furnish under this Act, regulations, rules or directives made thereunder commits an offence under this Act.

Appointing
directors or
chief executive
officer

89. (1) The board of directors of every listed public company shall ensure that the company and its directors comply with the rules and requirements of the exchange on which it is listed on a continuous basis as long as the company remains listed on such exchange.

(2) The directors or chief executive officer of a listed public company shall comply with the fit and proper criteria specified by the Commission by rules or in the rules of an exchange approved by the Commission.

Duties of an
auditor of a
listed public
company

90. (1) If an auditor of a listed public company in the ordinary course of the performance of his duties, becomes aware of-

- (a) any contravention or non compliance with any requirement or provision of this Act, any regulation, rule or directive made thereunder or a breach of any rule of an exchange or any offence involving fraud or dishonesty; or
- (b) any matter which may in his opinion adversely affects or is likely to adversely affect the financial position of the listed public company to a material extent; or
- (c) any irregularity that has or may have a material effect upon the accounts of a listed public company including any irregularity that affects or jeopardizes or may affect or jeopardize the funds or property of any investor in securities,

the auditor shall immediately report such matters referred to in paragraphs (a), (b) or (c) to the audit committee in writing for rectification and if no remedial measure is taken within

two weeks thereof, refer such matters to the board of directors in writing to rectify such matters or deter the commission of a breach where it has not yet occurred.

(2) If no action is taken under subsection (1) by the board of directors to rectify such matters referred to in paragraphs (a), (b) or (c) within two weeks, the auditor shall submit a written report on the matters immediately thereupon—

- (a) in the case of a contravention or non compliance with any requirement or provision of this Act, any regulation, rule or directive issued thereunder or an offence involving fraud or dishonesty, to the Commission; or
- (b) in the case of a breach of or non compliance with any rules of an exchange, to the relevant exchange and the Commission.

(3) No auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and in the performance of any duty imposed on the auditor under this section.

(4) The Commission may at any time during or after an audit, require an auditor of a listed public company to—

- (a) submit such additional information in relation to his audit as the Commission may specify;
- (b) enlarge or extend the scope of his audit of the business and affairs of the listed public company in such manner or to such extent as the Commission may specify;
- (c) carry out any specific examination or establish any procedure in any particular case; or
- (d) submit a report including an interim report on any matter referred to in paragraphs (a) to (c),

and the Commission may specify the time within which such requirements shall be complied with by the auditor.

(5) The auditor shall comply with any requirement of the Commission under subsection (4) and the listed public company shall remunerate the auditor at the rates specified by the Commission in respect of the discharge by him of all additional duties under this section.

(6) The listed public company shall provide such information and access to such information as the auditor shall require in respect of the discharge by him of all of the additional duties under this section.

Prohibition
against undue
influence

91. (1) A person shall not influence, coerce, mislead or authorise any person engaged in –

- (a) the preparation of the financial statements of a listed public company or any of its related companies; or
- (b) the performance of an audit of the financial statements of a listed public company or any of its related companies,

to do anything which he knows or could reasonably have known may cause the financial statements or audited financial statements to be false or misleading in a material particular.

(2) Any person who contravenes subsection (1) commits an offence.

CHAPTER 2

MARKET INTERMEDIARIES

Prohibition
against holding
out as a market
intermediary

92. (1) A person shall not hold out as a market intermediary without obtaining a licence from the Commission.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding twenty five million rupees or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.