

# **EXECUTIVE PROGRAMME**

## **SUPPLEMENT FOR CAPITAL MARKETS AND SECURITIES LAWS**

**(Relevant for students appearing in December, 2015 Examination)**

### **MODULE 2 - PAPER 6**

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## CAPITAL MARKETS AND SECURITIES LAWS

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## NEW REGULATIONS

### A. SEBI (RESEARCH ANALYST) REGULATIONS, 2014

The Securities and Exchange Board of India (SEBI) had on November 29, 2013 issued a consultation paper on draft SEBI (Research Analyst) Regulations, 2013 on its website inviting comments and suggestions from the public to regulate research analysts, intermediaries and independent entities who are engaged in preparation of research reports and giving opinion and recommendations concerning a security or securities. Subsequent to receipt of comments from the public and market participants, SEBI has notified the SEBI (Research Analysts) Regulations, 2014 on September 01, 2014. These regulations shall come into force on the ninetieth day from the date of their publication in the Official Gazette.

These Regulations inter-alia lay down the eligibility criteria for seeking registration, procedure for grant of registration certificate and management of conflicts of interest and disclosure requirements. As per these Regulation “research analyst” means a person who is primarily responsible for,-

- i. preparation or publication of the content of the research report; or
- ii. providing research report; or
- iii. making 'buy/sell/hold' recommendation; or
- iv. giving price target; or
- v. offering an opinion concerning public offer, with respect to securities that are listed or to be listed in a stock exchange, whether or not any such person has the job title of 'research analyst' and includes any other entities engaged in issuance of research report or research analysis.

Explanation.-The term also includes any associated person who reports directly or indirectly to such a research analyst in connection with activities provided above;

"Research entity" means an intermediary registered with SEBI who is also engaged in merchant banking or investment banking or brokerage services or underwriting services and issue research report or research analysis in its own name through the individuals employed by it as research analyst and includes any other intermediary engaged in issuance of research report or research analysis;

The highlights of the SEBI (Research Analysts) Regulations, 2014 are as under:

- No person shall act as a research analyst or research entity or hold itself out as a research analyst unless he has obtained a certificate of registration from SEBI under these regulations.
- The certificate of registration granted shall be valid for five years from the date of its issue.
- Any person acting as research analyst or research entity before the commencement of these regulations may continue to do so for six months from such commencement or, if it has made

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an application for a certificate of registration under sub-regulation (2) within the said period of six months, till the disposal of such application.

- Investment advisers, credit rating agencies, portfolio managers, asset management companies, fund managers of Alternative Investment Funds or Venture Capital Funds are exempt from these regulations.
- A professional qualification or post-graduate degree or post-graduate diploma in finance, accountancy, business management, commerce, economics, capital market, financial services or markets as also an National Institute of Securities Markets (NISM) or equivalent certification to ensure that investors get the right financial advice.
- The research report prepared should have complete disclosures in respect of financial interest, receipt of compensation, etc, so that investors can understand the actual or potential conflicts of interest and their likely impact on the quality of the research report published.
- Foreign entities or any person living outside India engaged in issuance of research report or research analysis in respect of securities listed or proposed to be listed on stock exchange shall enter into an agreement with a research analyst or research entity registered under these regulations.
- A research report shall not be made available selectively to internal trading personnel or a particular client or class of clients in advance of other clients who are entitled to receive the research report.
- Research analyst or research entity who distributes any third-party research report shall disclose any material conflict of interest of such third-party research provider or he shall provide a web address that directs a recipient to the relevant disclosures.
- Research analyst or research entity shall take steps to ensure that facts in its research reports are based on reliable information and shall define the terms used in making recommendations, and these terms shall be consistently used.
- Research analyst or research entity shall maintain the following records: (i) research report duly signed and dated (ii) research recommendation provided (iii) rationale for arriving at research recommendation (iv) record of public appearance.
- A research analyst who is an individual or partnership firm shall have net tangible assets of value not less than Rs 1 lakh.
- A research analyst who is body corporate or limited liability partnership firm shall have a net worth of not less than Rs 25 lakh.

- The regulations also specify restrictions on trading and on compensation of the persons who make comments or recommendations concerning securities or public offer through public media.
- There are some restrictions on dealing in securities recommended – 30 days before and 5 days after the publication of research reports; restrictions on recommendation of securities traded in – previous 30 days and restriction on purchase of IPO/FPO shares, if issuer is engaged in same industry as covered by research analysts.
- SEBI may *suo motu* or upon receipt of information or complaint appoint one or more persons as inspecting authority to undertake inspection of the books of accounts records and documents relating to research analyst or research entity.

#### B. SEBI (INFRASTRUCTURE INVESTMENT TRUSTS) REGULATIONS, 2014

SEBI had come out with a consultation paper on Infrastructure Investment Trusts ("InvITs") on December 20, 2013 for public comments and based on the comments received on the consultative paper and in pursuance to the Budget Announcement, Finance Bill for FY2014-15 provided various provisions in the Income Tax Act with respect to InvITs., SEBI has notified SEBI (Infrastructure Investment Trusts) Regulations, 2014 ("InvIT Regulations") thereby providing a framework for registration and regulation of Infrastructure Investment Trusts ("InvITs") 26th September, 2014.

"InvIT" or 'Infrastructure Investment Trust' shall mean the trust registered as such under these regulations.

"InvIT assets" means assets owned by the InvIT, whether directly or through a SPV, and includes all rights, interests and benefits arising from and incidental to ownership of such assets.

"SPV" or "special purpose vehicle" means any company or LLP,– (i) in which the InvIT holds or proposes to hold controlling interest and not less than fifty per cent. of the equity share capital or interest: Provided that in case of PPP projects where such acquiring or holding is disallowed by government or regulatory provisions under the concession agreement or such other agreement, this clause shall not apply and shall be subject to provisions under proviso to sub-regulation (3) of regulation 12; (ii) which holds not less than ninety per cent. of its assets directly in infrastructure projects and does not invest in other SPVs; and (iii) which is not be engaged in any other activity other than activities pertaining to and incidental to the underlying infrastructure projects.

The Salient features of the InvIT Regulations, include the following:

- a. Infrastructure is as defined by Ministry of Finance vide its notification dated October 07, 2013 and shall include any amendments/additions made thereof.
- b. InvITs shall be set up as a trust and registered with SEBI. It shall have parties such as Trustee, Sponsor(s), Investment Manager and Project Manager.
- c. The trustee of an InvIT shall be a SEBI registered debenture trustee who is not an associate of the Sponsor/Manager.

- d. InvITs shall invest in infrastructure projects, either directly or through SPV. In case of PPP projects, such investments shall only be through SPV.
- e. An InvIT shall hold or propose to hold controlling interest and more than 50% of the equity share capital or interest in the underlying SPV, except where the same is not possible because of a regulatory requirement/ requirement emanating from the concession agreement. In such cases sponsor shall enter into an agreement with the InvIT, to ensure that no decision taken by the sponsor, including voting decisions with respect to the SPV, are against the interest of the InvIT/ its unit holders.
- f. Sponsor(s) of an InvIT shall, collectively, hold not less than 25% of the total units of the InvIT on post issue basis for a period of at least 3 years, except for the cases where a regulatory requirement/concession agreement requires the sponsor to hold a certain minimum percent in the underlying SPV. In such cases the consolidated value of such sponsor holding in the underlying SPV and in the InvIT shall not be less than the value of 25% of the value of units of InvIT on post-issue basis.
- g. The proposed holding of an InvIT in the underlying assets shall be not less than Rs 500 crore and the offer size of the InvIT shall not be less than Rs 250 crore at the time of initial offer of units.
- h. The aggregate consolidated borrowing of the InvIT and the underlying SPVs shall never exceed 49% of the value of InvIT assets. Further, for any borrowing exceeding 25% of the value of InvIT assets, credit rating and unit holders' approval is required.
- i. An InvIT which proposes to invest at least 80% of the value of the assets in the completed and revenue generating Infrastructure assets, shall :
  - i. raise funds only through public issue of units.
  - ii. have a minimum 25% public float and at least 20 investors.
  - iii. have minimum subscription size and trading lot of Rs ten lakhs and Rs five lakhs respectively.
  - iv. distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to the investors, atleast on a half yearly basis.
  - v. through a valuer, undertake a full valuation on a yearly basis and updation of the same on a half yearly basis and declare NAV within 15 days from the date of such valuation/updation.
- j. A publicly offered InvIT may invest the remaining 20% in under construction infrastructure projects and other permissible investments, as defined in the regulations. However, the investments in under construction infrastructure projects shall not be more than 10% of the value of the assets.

- k. An InvIT which proposes to invest more than 10% of the value of their assets in under construction infrastructure projects shall:
- i. raise funds only through private placement from Qualified Institutional Buyers and body corporates.
  - ii. have minimum investment and trading lot of Rs. 1 crore.
  - iii. have minimum of 5 investors with each holding not more than 25% of the units
  - iv. distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to the investors, atleast on a yearly basis
  - v. undertake full valuation on yearly basis and declare NAV within 15 days from the date of such valuation.

l. Conditions for InvITs investing in under construction projects

- i. For PPP project(s)
  1. has achieved completion of at least 50% of the construction of the infrastructure project as certified by an independent engineer; or
  2. has expended not less than 50% of the total capital cost set forth in the financial package of the relevant project agreement.
- ii. For Non-PPP project(s), the Infrastructure Project has received all the requisite approvals and certifications for commencing construction of the project;
- m. Listing shall be mandatory for both publicly offered and privately placed InvITs and InvIT shall make continuous disclosures in terms of the listing agreement.
- n. Detailed provisions for related party transactions, valuation of assets, disclosure requirements, rights of unit holders, etc. are provided in the Regulations.

However, for any issue requiring unit holder's approval, the voting by any person who is a related party in such transaction as well as its associates shall not be considered.

### C. SEBI (REAL ESTATE INVESTMENT TRUSTS) REGULATIONS, 2014

SEBI had come out with a consultation paper on draft SEBI (Real Estate Investment Trusts) Regulations, 2013 on Oct 10, 2013 for public comments. Based on the comments received upon the draft regulations for Real Estate Investment Trusts (REIT's), the SEBI on 26th September 2014 finally notified the final regulations SEBI (Real Estate Investment Trust) Regulations, 2014 thereby providing a framework for registration and regulation of REIT's.

"REIT" or "Real Estate Investment Trust" shall mean a trust registered as such under these regulations.

"REIT assets" means real estate assets and any other assets owned by the REIT whether directly or through a special purpose vehicle.

Salient features of the REIT Regulations include the following:

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- a. REITs shall be set up as a trust and registered with SEBI. It shall have parties such as Trustee, Sponsor(s) and Manager.
- b. The trustee of a REIT shall be a SEBI registered debenture trustee who is not an associate of the Sponsor/manager.
- c. REIT shall invest in commercial real estate assets, either directly or through SPVs. In such SPVs a REIT shall hold or proposes to hold controlling interest and not less than 50% of the equity share capital or interest.
- d. Further, such SPVs shall hold not less than 80% of its assets directly in properties and shall not invest in other SPVs.
- e. Once registered, the REIT shall raise funds through an initial offer. Subsequent raising of funds may be through follow-on offer, rights issue, qualified institutional placement, etc. The minimum subscription size for units of REIT shall be Rs 2 lakhs. The units offered to the public in initial offer shall not be less than 25% of the number of units of the REIT on post-issue basis.
- f. Units of REITs shall be mandatorily listed on a recognized Stock Exchange and REIT shall make continuous disclosures in terms of the listing agreement. Trading lot for such units shall be Rs 1 Lakh.
- g. For coming out with an initial offer, the value of the assets owned/proposed to be owned by REIT shall be of value not less than Rs 500 crore. Further, minimum issue size for initial offer shall be Rs 250 crore.
- h. The Trustee shall generally have an overseeing role in the activity of the REIT. The manager shall assume operational responsibilities pertaining to the REIT. Responsibilities of the parties involved are enumerated in the Regulations.
- i. A REIT may have multiple sponsors, not more than 3, subject to each holding at least 5% of the units of the REIT. Such sponsors shall collectively hold not less than 25% of the units of the REIT for a period of not less than 3 years from the date of listing. After 3 years, the sponsors, collectively, shall hold minimum 15% of the units of REIT, throughout the life of the REIT.
- j. Not less than 80% of the value of the REIT assets shall be in completed and revenue generating properties. Not more than 20% of the value of REIT assets shall be invested in following :
  - (i) developmental properties,
  - (ii) mortgage backed securities,
  - (iii) listed/ unlisted debt of companies/body corporates in real estate sector,
  - (iv) equity shares of companies listed on a recognized stock exchange in India which derive not less than 75% of their operating income from Real Estate activity,
  - (v) government securities,



(vi) money market instruments or Cash equivalents.

However investments in developmental properties shall be restricted to 10% of the value of the REIT assets.

- k. A REIT shall invest in at least 2 projects with not more than 60% of value of assets invested in one project. Detailed investment conditions are provided in the Regulations.
- l. REIT shall distribute not less than 90% of the net distributable cash flows, subject to applicable laws, to its investors, atleast on a half yearly basis.
- m. REIT, through a valuer, shall undertake full valuation on a yearly basis and updation of the same on a half yearly basis and declare NAV within 15 days from the date of such valuation/updation.
- n. The borrowings and deferred payments of the REIT at a consolidated level shall not exceed 49% of the value of the REIT assets. In case such borrowings/ deferred payments exceed 25%, approval from unit holders and credit rating shall be required.
- o. Detailed provisions for related party transactions, valuation of assets, disclosure requirements, rights of unit holders, etc. are provided in the Regulations. However, for any issue requiring unit holders' approval, voting by a person who is a related party in such transaction as well as its associates shall not be considered.

#### D. SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES) REGULATIONS, 2013

With a view to foster the fund raising options for Corporates and Banks and at the same time ensuring transparency and interest of investors, Securities Exchange Board of India (SEBI), has notified a new set of Regulations to govern the issuance and listing of Non-Convertible Redeemable Preference Shares (NCRPS), to be called SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 vide Notification No. LAD-NRO/GN/2013-14/11/6063 dated 12.06.2013.

SEBI has issued the following regulations for issue and listing of securities:

1. SEBI (Issue and Listing of Debt Securities) Regulations, 2008 which is applicable to non-convertible debt securities i.e. debentures, bonds and such other securities of a body corporate or any statutory body constituted by virtue of a legislation;
2. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 which is applicable to equity shares and convertible securities only.

#### **Applicability**

These regulations shall apply to:

- (1) public issue of non-convertible redeemable preference shares;

(2) listing of non-convertible redeemable preference shares on a recognized stock exchange which are issued by a public company through public issue or on private placement basis; and

(3) issue and listing of Perpetual Non-Cumulative Preference Shares and Perpetual Debt Instrument, issued by banks on private placement basis in compliance with Guidelines issued by Reserve Bank of India.

***Public issue of NCRPS and its listing***

1. The Promoters/ the issuer should not have been restrained / prohibited / debarred from accessing the securities market or dealing in securities and such order is not in force.
2. The issuer shall make an application to one or more recognized stock exchange for listing and in-principal approval for listing has to be obtained.
3. The Issue has been assigned a rating of not less than "AA-" or equivalent by a credit rating agency registered with SEBI;
4. Minimum tenure of NCRPS should be 3 year;
5. The Issuer shall create a Capital Redemption Reserve, as per the provisions of Companies Act, 1956;
6. The object of issue should not be providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management, other than to subsidiaries of the issuer;
7. The issue may be a fixed price issue or pricing may be determined through Book Building process in accordance with the procedure to be specified by SEBI
8. The redemption of NCRPS shall take place as per the terms of the offer document.
9. The Issue may be underwritten by an underwriter registered with SEBI.

***Listing of NCRPS issued on Private Placement basis:***

1. Issuer to comply with the provisions of the Companies Act, 1956, rules prescribed thereunder and other applicable laws;
2. Credit rating must be obtained from one of credit rating agencies;
3. Minimum application size for each investor is not less than ` 1 million;
4. Creation of capital redemption reserve in accordance with the provisions of the Companies Act, 1956;
5. The object of issue should not be providing loan to or acquisition of shares of any person who is part of the same group or who is under the same management, other than to subsidiaries of the issuer;
6. Issuer to make specified disclosures;
7. Issuer to comply with the listing agreement.

Relaxation of strict enforcement of Rule 19 of Securities Contracts (Regulation) Rules, 1957 (SCR Rules)

SEBI has relaxed compliance with Rule 19(2)(b) of SCR Rules with regard to minimum public offer for listing of NCRPS issued by way of a public issue or a private placement.

***Continuous Listing Conditions***

1. All the issuers making public issues of NCRPS or seeking listing of NCRPS issued on private placement basis shall comply with the conditions of listing specified in the respective listing agreement for non-convertible redeemable preference shares.
2. Each rating obtained by an issuer shall be reviewed by the registered credit rating agency atleast once a year and any revision in the rating shall be promptly disclosed by the issuer to the stock exchange(s) where the non-convertible redeemable preference shares are listed.
3. Any change in rating shall be promptly disseminated to investors and prospective investors in such manner as the stock exchange where such securities are listed may determine from time to time.
4. The issuer and stock exchanges shall disseminate all information and reports on NCRPS including compliance reports filed by the issuers regarding the non-convertible redeemable preference shares to the investors and the general public by placing them on their websites.

***Trading of NCRPS***

1. The NCRPS issued to the public or on a private placement basis, which are listed in recognized stock exchanges, shall be traded and such trades shall be cleared and settled in recognized stock exchanges subject to conditions specified by SEBI.
2. In case of trades of NCRPS which have been made over the counter, such trades shall be reported on a recognized stock exchange having a nation-wide trading terminal or such other platform as may be specified by SEBI.
3. Comply with such additional conditions for reporting of trades on the recognized stock exchange or other platform as may be specified by SEBI.

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## AMENDMENTS IN SEBI ACT, RULES AND REGULATIONS

### A. DEBT MARKET

#### a. Amendment to SEBI (Issue and Listing of Debt Securities) Regulations, 2008 notification dated 24th March, 2015

After regulation 17, the following regulation shall be inserted, namely,-

*"Right to recall or redeem prior to maturity*

17A. An issuer making public issue of debt securities may recall such securities prior to maturity date at his option (call) or provide such right of redemption prior to maturity date (put) to all the investors or only to retail investors, at their option, subject to the following:

(a) Such right to recall or redeem debt securities prior to maturity date is exercised in accordance with the terms of issue and detailed disclosure in this regard is made in the offer document including date from which such right is exercisable, period of exercise (which shall not be less than three working days), redemption amount (including the premium or discount at which such redemption shall take place);

(b) The issuer or investor may exercise such right with respect to all the debt securities issued or held by them respectively or with respect to a part of the securities so issued or held ;

(c) In case of partial exercise of such right in accordance with the terms of the issue by the issuer , it shall be done on proportionate basis only;

(d) No such right shall be exercisable before expiry of twenty four months from the date of issue of such debt securities;

(e) Issuer shall send notice to all the eligible holders of such debt securities at least twenty one days before the date from which such right is exercisable;

(f) Issuer shall also provide a copy of such notice to the stock exchange where the such debt securities are listed for wider dissemination and shall make an advertisement in the national daily having wide circulation indicating the details of such right and eligibility of the holders who are entitled to avail such right ;

(g) Issuer shall pay the redemption proceeds to the investors along with the interest due to the investors within fifteen days from the last day within which such right can be exercised;

(h) Issuer shall pay interest at the rate of fifteen per cent. per annum for the period of delay, if any,

(i) After the completion of the exercise of such right, the issuer shall submit a detailed report to the stock exchange for public dissemination regarding the debt securities redeemed during the exercise period and details of redemption thereof.

Explanation.- For the purpose of this regulation, retail investor shall mean the holder of debt securities having face value not more than rupees two lakh."

(ii) after regulation 20, the following regulation shall be inserted, namely,-

*"Consolidation and re-issuance*

20A. An issuer may carry out consolidation and re-issuance of its debt securities, subject to the fulfillment of the following conditions:

- (a) there is such an enabling provision in its articles under which it has been incorporated;
- (b) the issue is through private placement;
- (c) the issuer has obtained fresh credit rating for each re-issuance from at least one credit rating agency registered with the Board and is disclosed;
- (d) such ratings shall be revalidated on a periodic basis and the change, if any, shall be disclosed;
- (e) appropriate disclosures are made with regard to consolidation and reissuance in the Term Sheet."

**b. Amendments to SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 notification dated 9th April, 2015**

In regulation 4,-

(a) in sub-regulation (2), after clause (d), the following shall be inserted, namely:-

“(e) any scheduled commercial bank other than a regional rural bank;

(f) any public financial Institution as defined under clause (72) of section 2 of the Companies Act, 2013; and (g) any other person as may be specified by Board."

(b) after sub-regulation (2), following sub-regulation shall be inserted, namely:-

“(2A) An applicant seeking registration to act as a trustee shall,-

(a) have a networth of not less than two crore rupees.

Explanation.– For the purposes of this regulation, "networth" means the aggregate value of paid up share capital plus free reserves (excluding reserves created out of revaluation) reduced by the aggregate value of accumulated losses and deferred expenditure not written off;

(b) have in its employment a minimum of two persons who, between them, have atleast five years experience in activities related to securitisation and atleast one among them shall have a professional qualification in law from any university or institution recognised by the Central Government or any State Government or a foreign university:

Provided that the above-said requirements are not applicable on the National Housing Bank established by the National Housing Bank Act, 1987 and National Bank for Agriculture and Rural Development established by the National Bank for Agriculture and Rural Development Act, 1981 ."

(ii) in regulation 11, after sub-regulation (2), the following sub-regulation shall be inserted, namely:-

"(3) A trustee shall,-

(a) supervise the implementation of the covenants regarding creation of security for the securitised debt instruments;

(b) do such acts as are necessary in the event the security becomes enforceable and supervise the enforcement of the security in the interest of the investors;

(c) carry out such acts as are necessary for resolving the grievances of the investors and for the protection of interest of the investors;

(d) ensure on a continuous basis that the trust property of a particular scheme/tranche is available at all times to pay the securitised debt instruments holders of that particular scheme/tranche;

(e) exercise due diligence to ensure compliance by the originators, with the listing agreements (if applicable), the trust deed or any other transaction document and if the originator is a banking company or non-banking financial company as defined in the Reserve Bank of India Act, 1934, trustee shall ensure that it has complied with the guidelines prescribed for securitisation by Reserve Bank of India;

(f) take appropriate measures for protecting the interest of the investors including informing the board about any action, legal proceeding, etc., initiated against it in respect of any material breach or noncompliance by it, of any law, rules, regulations, directions of the Board or of any other regulatory body;

(g) ensure that the securitised debt instruments have been repaid or redeemed in accordance with the provisions and conditions under which they were offered to the investors;

(h) call for periodic reports from the originator regarding the performance of the underlying asset pool, atleast on quarterly basis;

(i) communicate to the investors regarding the compliance by the servicer with its obligations and the actions taken thereof, atleast on quarterly basis;

(j) obtain a certificate from the auditor(s) of originator regarding the disclosures of underlying asset pool assigned to the securitisation trust, as made by the originator, on quarterly basis;

(k) share such reports and auditors certificate as received from the originator or the auditor(s) of originator, with the credit rating agency which is rating the securitised debt instrument;

(l) call a meeting of all the investors on a requisition, in writing signed by at least one-tenth of investors in value for the time being outstanding or at the occurrence of an event, which constitutes a servicer default or which in the opinion of the trustees affects the interest of the investors;

(m) maintain the net worth as per the requirements specified in these regulations on a continuous basis and inform the Board immediately in respect of any shortfall in the net worth and take necessary corrective action to restore the net worth within a period of six months;

(n) ensure that any change in registration status or any administrative, civil or penal action taken by Board or any material change in financial position which may adversely affect the interests of investors is promptly informed to the investors;

(o) not relinquish responsibility as trustee in respect of the issue, unless and until another trustee is appointed in its place;

(p) have necessary infrastructure to discharge its duties including the following:

(i) collecting information and reports from servicers/originator;

(ii) generating cash flow reports, payment reports and meet all reporting requirements required under the Board's or Reserve Bank of India's guidelines/circulars;

(iii) recording investor information;

(iv) entering and maintaining data for the special purpose distinct entity, including cash flows, audited financials, taxation aspects etc.;

(v) issuing cheques/demand drafts or generating RTGS/NEFT requests etc., for interest and principal payments;

(vi) sufficient access controls to ensure confidentiality of data;

(vii) sufficient systems for backup and disaster recovery.

(q) appoint a compliance officer for performing duties including:

(i) monitoring the compliance of the acts, rules and regulations, notifications, guidelines, instructions, etc., issued by the Board, Central Government and State Government(s);

(ii) redressal of investors grievances.

## B. MUTUAL FUNDS

### a. Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure

- SEBI vide circular no. CIR/MRD/DSA/32/2013 dated October 04, 2013 had permitted Mutual Fund Distributors to use recognised stock exchanges' infrastructure to purchase and redeem mutual fund units directly from Mutual Fund/Asset Management Companies on behalf of their clients.
- Paragraph 5 of the aforesaid circular is as under:

"The MF distributors shall not handle payout and pay in of funds as well as units on behalf of investor. The recognised stock exchange shall put necessary system in place to ensure that pay in will be directly received by recognised Clearing Corporation and payout will be directly made to investor account. In the same manner, units shall be credited and debited directly from the demat account of investors".

In this regard, in order to broad base the reach of this platform, SEBI has decided to permit non demat transactions also in the Mutual fund through stock exchange platform.

### b. Amendment to SEBI (Mutual Funds) (Second Amendment) Regulations, 2014

In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, in regulation 21, in sub-regulation (1), in clause (f),

(a) in the first proviso, the words "these regulations" shall be substituted with the words "Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2014";

(b) after the third proviso, the following proviso shall be inserted, namely,-

"Provided further that in cases where the Board is satisfied that an asset management company is taking steps to meet the networth requirement within the specified time, the asset management company may be allowed to launch upto two new schemes per year."

### c. Amendment to SEBI (Mutual Fund) Regulations, 1996 notification dated 15<sup>th</sup> of May, 2015

In regulation 24,-

(i) in clause (b), after the words and symbol "provident funds," and before the words "if any of such activities", the following shall be inserted namely,-

"or Category I foreign portfolio investor as specified in Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014," ;



(ii) in clause (b), in the first proviso, after clause (vi), the following proviso shall be inserted, namely,-

"Provided that the requirements of this clause shall not apply if the funds managed are of Category I foreign portfolio investors and/or Category II foreign portfolio investors which are appropriately regulated broad based funds, as specified in Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014."

(iii) in the Explanation, after the words "For the purpose of this regulation" and before the comma, the symbol and words ", with the exception of proviso to clause (vi) of first proviso to clause (b)" shall be inserted.

### C. ALTERNATIVE INVESTMENT FUND

#### Amendment to SEBI (Foreign Venture Capital Investors) Regulations, 2000

In SEBI (Foreign Venture Capital Investors) Regulations, 2000, in regulation 2, in sub-regulation (1), -

(i) clause (j) and the corresponding Third Schedule shall be omitted;

(ii) clause (m) shall be substituted with the following:-

"(m) "venture capital undertaking" means a domestic company:

(i) which is not listed on a recognised stock exchange in India at the time of making investment; and

(ii) which is engaged in the business for providing services, production or manufacture of article or things and does not include following activities or sectors:

(1) non-banking financial companies, other than Core Investment Companies (CICs) in the infrastructure sector, Asset Finance Companies (AFCs), and Infrastructure Finance Companies (IFCs) registered with Reserve Bank of India;

(2) gold financing;

(3) activities not permitted under industrial policy of Government of India;

(4) any other activity which may be specified by the SEBI in consultation with Government of India from time to time. "

**D. REGULATORY FRAMEWORK GOVERNING STOCK EXCHANGES****a. Amendments to the Securities Contracts (Regulation) Act, 1956**

In section 12A of the Securities Contracts (Regulation) Act, 1956 (hereafter in this Chapter referred to as the principal Act), the following Explanation shall be inserted, namely:—

“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.”.

- In section 23A of the principal Act, in clauses (a) and (b), for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 23B of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 23C of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 23D of the principal Act, for the words “liable to a penalty not exceeding one crore rupees”, the words “liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees” shall be substituted.
- In section 23E of the principal Act, for the words “liable to a penalty not exceeding twenty-five crore rupees”, the words “liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees” shall be substituted.
- In section 23F of the principal Act, for the words “liable to a penalty not exceeding twenty-five crore rupees”, the words “liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees” shall be substituted.

- In section 23G of the principal Act, for the words “liable to a penalty not exceeding twenty-five crore rupees”, the words “liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees” shall be substituted.
- In section 23H of the principal Act, for the words “liable to a penalty which may extend to one crore rupees”, the words “liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees” shall be substituted.
- In section 23-I of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:-

“(3) The SEBI 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.”

- After section 23J of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

“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 SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The SEBI 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 purposes of settlement under this section, the procedure as specified by the SEBI 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 SEBI or the adjudicating officer, as the case may be, under this section.”.

- After section 23JA of the principal Act as so inserted, the following section shall be inserted, namely:—

'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 SEBI, 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 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 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 SEBI under section 12A, 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 SEBI who may be authorised, by general or special order in writing to exercise the powers of a Recovery Officer.’

- In section 23L of the principal Act, in sub-section (1), after the word, figure and letter “section 4B”, the words, brackets, figures and letter “or sub-section (3) of section 23-I” shall be inserted.
- In section 26 of the principal Act, sub-section (2) shall be omitted.
- After section 26 of the principal Act, the following sections shall be inserted, namely:—

“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.

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) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried 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.

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.

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.

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.”.

In section 31 of the principal Act, in sub-section (2), after clause (b), the following clauses shall be inserted, namely:—

“(c) the terms determined by the SEBI 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.”.

- After section 31 of the principal Act, the following section shall be inserted, namely:—

“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.”.

#### **b. Amendment to Securities Contracts (Regulation) Rules, 1957**

In the Securities Contracts (Regulation) Rules, 1957,

(i) in rule 19, in sub-rule (2),—

(a) for clause (b), the following clause shall be substituted, namely:—

“(b) (i) at least twenty five per cent. of each class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees;

(ii) at least such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value of four hundred crore rupees, if the post issue capital of the company calculated at offer price is more than one thousand six hundred crore rupees but less than or equal to four thousand crore rupees;

(iii) at least ten per cent. of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above four thousand crore rupees:

Provided that the company referred to in sub-clause (ii) or sub-clause (iii), shall increase its public shareholding to at least twenty five per cent. within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India:

Provided further that this clause shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) Third Amendment Rules, 2014, if it satisfies the conditions prescribed in clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement.”;

(b) clause (c) shall be omitted;

(ii) in rule 19A, in sub-rule (1),—

(a) the words “other than public sector Company” shall be omitted;

(b) for the proviso the following proviso shall be substituted, namely:—

“Provided that every listed public sector company which has public shareholding below twenty five per cent., on the date of commencement of the Securities Contracts (Regulation) (Second Amendment) Rules, 2014, shall increase its public shareholding to at least twenty five per cent., within a period of three years, in the manner, as may be specified, by the Securities and Exchange Board of India.”;

(c) in rule 19A, in the Explanation to sub-rule (1), the words, brackets and figures “sub-clause (ii) of” shall be omitted.

(iii) in rule 19A, sub-rule (3) shall be omitted.

### **c. Amendment to Securities Contracts (Regulation) Rules, 1957 Notification dated 25th February, 2015**

(i) in rule 2, for clause (e), the following clause shall be substituted, namely:—

“(e) “public shareholding” means equity shares of the company held by public including shares underlying the depository receipts if the holder of such depository receipts has the right to issue voting instruction and such depository receipts are listed on an international exchange in accordance with the Depository Receipts Scheme, 2014:

Provided that the equity shares of the company held by the trust set up for implementing employee benefit schemes under the regulations framed by the Securities and Exchange Board of India shall be excluded from public shareholding.”;

(ii) in rule 19, in sub-rule (2), in clause (b), before sub-clause (i), the following shall be inserted, namely:—

“The minimum offer and allotment to public in terms of an offer document shall be-”;

(iii) in rule 19A, after sub-rule (3), the following new sub-rule shall be inserted, namely:—

“(4) Where the public shareholding in a listed company falls below twenty-five per cent. in consequence to the Securities Contracts (Regulation) (Amendment) Rules, 2015, such company shall increase its public shareholding to at least twenty-five per cent. in the manner specified by the Securities and Exchange Board of India within a period of three years, as the case may be, from the date of notification of:

(a) the Depository Receipts Scheme, 2014 in cases where the public shareholding falls below twenty five per cent. as a result of such scheme;

(b) the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 in cases where the public shareholding falls below twenty-five per cent., as a result of such regulations.”

## E. SEBI ACT, 1992

### Amendments to SEBI Act, 1992

- In section 11 of the Securities and Exchange Board of India Act, 1992 (hereafter in this Chapter referred to as the principal Act),—

(i) in sub-section (2),—

(a) for clause (ia), the following clause shall be substituted, namely:—

“(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 SEBI, shall be relevant to any investigation or inquiry by the SEBI in respect of any transaction in securities;”

(b) after clause (ia), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 6th day of March, 1998, namely:—

“(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;”;

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) 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 SEBI and such amount shall be utilised by the Board in accordance with the regulations made under this Act.”.

- In section 11AA of the principal Act,—

(i) in sub-section (1),—



(a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;

(b) the following proviso shall be inserted, namely:—

“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.”;

(ii) in sub-section (2), in the opening portion, for the word “company”, the word

“person” shall be substituted;

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

“(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.”;

(iv) in sub-section (3),—

(a) after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (2A)” shall be inserted;

(b) after clause (viii), the following clause shall be inserted, namely:—

“(ix) such other scheme or arrangement which the Central Government may, in consultation with the SEBI, notify,”.

- In section 11B of the principal Act, the following Explanation shall be inserted, namely:—

“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.”.

- In section 11C of the principal Act,—

(i) in sub-section (8), for the words “the Judicial Magistrate of the first class having jurisdiction”, the words “the Magistrate or Judge of such designated court in Mumbai, as may be notified by the Central Government” shall be substituted;

(ii) after sub-section (8), the following sub-section shall be inserted, namely:—

“(8A) The authorised officer may requisition the services of any police officer or any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (8) and it shall be the duty of every such officer to comply with such requisition.”;

(iii) in sub-section (9), for the words “the Magistrate” occurring at both the places, the words “the Magistrate or Judge of the Designated Court” shall be substituted;

(iv) in sub-section (10), for the words “the Magistrate”, the words “the Magistrate or Judge of the Designated Court” shall be substituted.

- In section 15A of the principal Act, in clauses (a), (b) and (c), for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 15B of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 15C of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 15D of the principal Act,—

(i) in clause (a), for the words “of one lakh rupees for each day during which he sponsors or carries on any collective investment scheme including mutual funds, or one crore rupees, whichever is less”, the words “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” shall be substituted;

(ii) in clauses (b), (c), (d), (e) and (f), for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.

- In section 15E of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 15F of the principal Act,—

(i) in clause (a), for the words “a penalty not exceeding five times the amount”, the words, “a penalty which shall not be less than one lakh rupees but which may extend to” shall be substituted;

(ii) in clause (b), for the words “of one lakh rupees for each day during which such failure continues, or one crore rupees, whichever is less”, the words “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” shall be substituted;

(iii) in clause (c), for the words “of one lakh rupees or five times the amount of brokerage”, the words “which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage” shall be substituted.

- In section 15G of the principal Act, for the words “of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher”, the words “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” shall be substituted.
- In section 15H of the principal Act, for the words “of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher”, the words “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 such failure, whichever is higher” shall be substituted.
- In section 15HA of the principal Act, for the words “of twenty- five crore rupees or three times the amount of profits made out of such practices, whichever is higher”, the words “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” shall be substituted.
- In section 15HB of the principal Act, for the words “liable to a penalty which may extend to one crore rupees”, the words “liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees” shall be substituted.
- In section 15-I of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—
- “(3) The SEBI 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.”.

- After section 15JA of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

“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 SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The SEBI 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 SEBI or adjudicating officer, as the case may be, under this section.”.

- In section 15T of the principal Act, sub-section (2) shall be omitted.
- In section 26 of the principal Act, sub-section (2) shall be omitted.
- After section 26 of the principal Act, the following sections shall be inserted, namely:—

“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.

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) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried 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.

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.

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.

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."

- After section 28 of the principal Act, the following section shall be inserted, namely:—

'28A. (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the SEBI 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 SEBI, 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 XVIIID 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.'

- In section 30 of the principal Act, in sub-section (2),—

(i) after clause (c), the following clauses shall be inserted, namely:—

“(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;”;

(ii) after clause (d), the following clauses shall be inserted, namely:—

“(da) the terms determined by the SEBI 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.”.

- After section 34 of the principal Act, the following section shall be inserted, namely:—

“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 SEBI 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.”.

## F. DEPOSITORIES

### a. Amendments to the Depositories Act, 1996

- In section 19 of the Depositories Act, 1996 (hereafter in this Chapter referred to as the principal Act), the following Explanation shall be inserted, namely:—
- “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.”.
- In section 19A of the principal Act, in clauses (a), (b) and (c), for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 19B of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 19C of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 19D of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 19E of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.

- In section 19F of the principal Act, for the words “of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less”, the words “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” shall be substituted.
- In section 19G of the principal Act, for the words “liable to a penalty which may extend to one crore rupees”, the words “ liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees” shall be substituted.
- In section 19H of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The SEBI 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 23A, whichever is earlier.”.

- After section 19-I of the principal Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 20th day of April, 2007, namely:—

“19-IA. (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 19 or section 19H, as the case may be, may file an application in writing to the SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The SEBI 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 SEBI under the Securities and Exchange Board of India Act, 1992 shall apply.

(4) No appeal shall lie under section 23A against any order passed by the SEBI or the adjudicating officer under this section.”.



- After section 19-IA of the principal Act as so inserted, the following section shall be inserted, namely:—

'19-IB. (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 19 or fails to pay any fees due to the SEBI, 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 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 XVIIID 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 23A 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 SEBI under section 19, 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.

- In section 22 of the principal Act, sub-section (2) shall be omitted.
- After section 22B of the principal Act, the following sections shall be inserted, namely:—

“22C. (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.

22D. 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) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried 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.

22E. 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.

22F. (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.

22G. 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.”.

- In section 23A of the principal Act, sub-section (2) shall be omitted.
- In section 25 of the principal Act, in sub-section (2), after clause (g), the following clauses shall be inserted, namely:—

“(h) the terms determined by the SEBI for settlement of proceedings under subsection (2) of section 19-IA;

(i) any other matter which is required to be, or may be, specified by regulations or in respect of which provision to be made by regulations.”.

- After section 30 of the principal Act, the following section shall be inserted, namely:—  
“30A. 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.”.
- Notwithstanding the fact that the Securities Laws (Amendment) Ordinance, 2014 has ceased to operate, anything done or any action taken or purported to have been done or taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act as if such provisions had been in force at all material times.

#### **b. Single Registration for Depository Participants under SEBI (Depositories and Participants) Regulations, 1996**

- a. If a new entity desires to act as a participant in any of the depository, then the entity shall apply to SEBI for certificate of initial registration through the concerned depository in the manner prescribed in the DP Regulations.
- b. If an entity has been granted a certificate of registration to act as a participant through one depository and wishes to act as a participant with the other depository then it shall directly apply to the concerned depository for approval in the manner as prescribed in the DP Regulations. The concerned depository, on receipt of the application, may grant approval to the entity after exercising due diligence and on being satisfied about the compliance of all relevant eligibility requirements including the following:
  - i. The applicant, its directors, proprietor, partners and associates satisfy the Fit and Proper Criteria as defined in the SEBI (Intermediaries) Regulations, 2008;
  - ii. The applicant has taken satisfactory corrective steps to rectify the deficiencies or irregularities observed in the past inspections or in case of actions initiated/ taken by SEBI/ depository(s) or other regulators. The depository may also seek details whether the Board of the applicant is satisfied about the steps taken. They may also carry out inspection, wherever considered appropriate;
  - iii. Recovery of all pending fees/ dues payable to SEBI and depository; and
  - iv. payment of registration fees as prescribed in the DP Regulations.

The depositories shall report to SEBI about the approval as stated above on a monthly basis.

- c. The participant shall apply to SEBI for permanent registration through any of the depositories in which it is acting as a participant as per the DP Regulations.
- d. The participants shall continue to pay the applicable annual fees and registration fees as specified in Part A of Second Schedule in the manner specified in Part thereof w.r.t. their respective depository(ies), as the case may be.

#### **c. Amendment to Basic services Demat Account (BSDA)**

- DP shall send atleast one annual physical statement of holding to the stated address of the BO in respect of accounts with no transaction and nil balance even after the account has remained in such state for one year. The DP shall inform the BO that the dispatch of the physical statement may be discontinued if the account continues to remain zero balance even after one year.
- Accounts with zero balance and nil transactions during the year: DP shall send atleast one annual physical statement of holding to the stated address of the BO in respect of accounts with no transaction and nil balance even after the account has remained in such state for one year. The DP shall inform the BO that if no Annual Maintenance Charge (AMC) is received by the DP, the dispatch of the physical statement may be discontinued for the account which continues to remain zero balance even after one year.
- However, irrespective of the above, the DPs shall send electronic statement of holding to all the BOs whose email ids are registered with them. Also, if a BO requests for a physical statement, the DPs shall provide the same.

### **G. LISTING AND DELISTING OF SECURITIES**

#### **a. Amendments in Clause 49 of the Listing Agreement**

- *Applicability of Clause 49*

The Clause 49 of the Listing Agreement shall be applicable to all companies whose equity shares are listed on a recognized stock exchange. However, compliance with the provisions of Clause 49 shall not be mandatory, for the time being, in respect of the following class of companies:

- (a) Companies having paid up equity share capital not exceeding Rs.10 crore and Net Worth not exceeding Rs.25 crore, as on the last day of the previous financial year;

Provided that where the provisions of Clause 49 becomes applicable to a company at a later date, such company shall comply with the requirements of Clause 49 within six months from the date on which the provisions became applicable to the company.

- (b) Companies whose equity share capital is listed exclusively on the SME and SME-ITP Platforms.

- *Clarification on applicability of appointment of woman director*

The provisions regarding appointment of woman director as provided in Clause 49 (II)(A)(1) shall be applicable with effect from April 01, 2015.

- *Clause 49(II)(B)(1)(c)*

The clause shall be substituted with the following:

"(c) apart from receiving director's remuneration, has or had no material pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year."

- *Clause 49(II)(B)(3)(a)*

The clause shall be substituted with the following:

"The maximum tenure of Independent Directors shall be in accordance with the Companies Act, 2013 and clarifications/ circulars issued by the Ministry of Corporate Affairs, in this regard, from time to time.

- *Clause 49(II)(B)(4)(b)*

The clause shall be substituted with the following:

"(b) The terms and conditions of appointment shall be disclosed on the website of the company."

- *Clause 49(II)(B)(7)*

The clause shall be substituted with the following:

"7. Familiarisation programme for Independent Directors

- a. The company shall familiarise the independent directors with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc., through various programmes.
- b. The details of such familiarisation programmes shall be disclosed on the company's website and a web link thereto shall also be given in the Annual Report."

- *Clause 49(IV)(A)*

The clause shall be substituted with the following:

"A. The company through its Board of Directors shall constitute the nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director.

Provided that the chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee."

- *Clause 49(V)(D)*

The clause shall be substituted with the following:

"(D) The company shall formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed on the company's website and a web link thereto shall be provided in the Annual Report."

- *Clause 49(V) (F)*

The clause shall be substituted with the following:

"(F). No company shall dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal."

- *Clause 49(V)(G)*

The clause shall be substituted with the following:

"(G). Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal."

Explanation (i): For the purpose of sub-clause (V)(A), the term "material non listed Indian subsidiary" shall mean an unlisted subsidiary, incorporated in India, whose income or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated income or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.

Explanation (ii): For the purpose of sub-clause (V)(C), the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.

Explanation (iii): For the purpose of sub-clause (V), where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned."

- *Clause 49(VI)*

The clause 49(VI)(C) shall be substituted with the following:

"(C) The company through its Board of Directors shall constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. "

The following clauses shall be inserted after Clause 49(VI)(C):

"(D) The majority of Committee shall consist of members of the Board of Directors.

(E)Senior executives of the company may be members of the said Committee but the Chairman of the Committee shall be a member of the Board of Directors."

- *Clause 49(VII)(A)*

The following explanation shall be inserted after Clause 49(VII)(A):

"Explanation: A "transaction" with a related party shall be construed to include single transaction or a group of transactions in a contract."

- *Clause 49(VII)(B)*

The clause shall be substituted with the following:

"B. For the purpose of Clause 49 (VII), an entity shall be considered as related to the company if:

- (i) such entity is a related party under Section 2(76) of the Companies Act, 2013; or
- (ii) such entity is a related party under the applicable accounting standards."

- *Clause 49(VII)(C)*

The clause shall be substituted with the following:

"(C) The company shall formulate a policy on materiality of Related Party Transactions and also on dealing with Related Party Transactions.

Provided that a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the company as per the last audited financial statements of the company."

- *Clause 49(VII)(D)*

The clause shall be substituted with the following:

"(D) All Related Party Transactions shall require prior approval of the Audit Committee. However, the Audit Committee may grant omnibus approval for Related Party Transactions proposed to be entered into by the company subject to the following conditions:

- a. The Audit Committee shall lay down the criteria for granting the omnibus approval in line with the policy on Related Party Transactions of the company and such approval shall be applicable in respect of transactions which are repetitive in nature.
- b. The Audit Committee shall satisfy itself the need for such omnibus approval and that such approval is in the interest of the company;
- c. Such omnibus approval shall specify (i) the name/s of the related party, nature of transaction, period of transaction, maximum amount of transaction that can be entered into, (ii) the indicative base price / current contracted price and the formula for variation in the price if any and (iii) such other conditions as the Audit Committee may deem fit;

Provided that where the need for Related Party Transaction cannot be foreseen and aforesaid details are not available, Audit Committee may grant omnibus approval for such transactions subject to their value not exceeding Rs.1 crore per transaction.

- d. Audit Committee shall review, atleast on a quarterly basis, the details of RPTs entered into by the company pursuant to each of the omnibus approval given.
- e. Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year".

- *Clause 49(VII)(E)*

The following proviso and explanations shall be inserted after Clause 49(VII)(E):

"Provided that sub-clause 49 (VII)(D) and (E) shall not be applicable in the following cases:

(i) transactions entered into between two government companies;

(ii) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Explanation (i): For the purpose of Clause 49(VII), "Government Company" shall have the same meaning as defined in Section 2(45) of the Companies Act, 2013."

Explanation(ii): For the purpose of Clause 49(VII), all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not."

- *Clause 49(VIII)(A)(2)*

The clause shall be substituted with the following:

"(2) The company shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report."

- *Clause 49(VIII)(F), (G) and (H)*

These clauses shall stand deleted.

- *Clause 49(IX)*

The words " The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:" shall be substituted with:

"The CEO or the Managing Director or manager or in their absence, a Whole Time Director appointed in terms of Companies Act, 2013 and the CFO shall certify to the Board that :"



**b. Amendment to SEBI (Delisting of Equity Shares) Regulations, 2009 notification dated 24th March, 2015**

In regulation 2, in sub-regulation (1), after clause (iv), the following clause shall be inserted:-

"(iva) "promoter group" shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;"

(II) in regulation 2, in sub-regulation (2),

(i) after the words and symbols "'person acting in concert', 'promoter'" word and symbols ", 'acquirer'" shall be inserted;

(ii) the words, symbols and figures "Securities and Exchange board of India( Substantial Acquisition of Shares and takeovers) Regulations, 1997" shall be substituted with the words, symbols and figures "Securities and Exchange board of India( Substantial Acquisition of Shares and takeovers) Regulations, 2011".

(III) in regulation 4, (i) after sub-regulation (1), the following sub-regulation shall be inserted, namely:-

"(1A) No promoter or promoter group shall propose delisting of equity shares of a company, if any entity belonging to the promoter or promoter group has sold equity shares of the company during a period of six months prior to the date of the board meeting in which the delisting proposal was approved in terms of sub-regulation (1B) of regulation 8.";

(ii) in sub- regulation (5), the words ' promoter or other person' shall be substituted with the words ' acquirer or promoter or promoter group or their related entities'.

(IV) in regulation 8, (i) after sub-regulation (1), the following sub-regulations shall be inserted, namely:-

"(1A) Prior to granting approval under clause (a) of sub-regulation (1), the board of directors of the company shall,-

- (i) make a disclosure to the recognized stock exchanges on which the equity shares of the company are listed that the promoters/acquirers have proposed to delist the company;
- (ii) appoint a merchant banker to carry out due-diligence and make a disclosure to this effect to the recognized stock exchanges on which the equity shares of the company are listed;
- (iii) obtain details of trading in shares of the company for a period of two years prior to the date of board meeting by top twenty five shareholders as on the date of the board meeting convened to consider the proposal for delisting, from the stock exchanges and details of off-market transactions of such shareholders for a period of two years and furnish the information to the merchant banker for carrying out due-diligence;

(iv) obtain further details in terms of sub-regulation (1D) of regulation 8 and furnish the information to the merchant banker.

(1B) The board of directors of the company while approving the proposal for delisting shall certify that :

(i) the company is in compliance with the applicable provisions of securities laws;

(ii) the acquirer or promoter or promoter group or their related entities, are in compliance with sub-regulation (5) of regulation 4;

(iii) the delisting is in the interest of the shareholders.

(1C) For certification in respect of matters referred to in sub-regulation (1B), the board of directors of the company shall take into account the report of the merchant banker as specified in sub-regulation (1E) of regulation 8.

(1D) The merchant banker appointed by the board of directors of the company under clause (ii) of sub-regulation (1A) shall carry out due-diligence upon obtaining details from the board of directors of the company in terms of clause (iii) of sub-regulation (1A) of regulation 8:

Provided that if the merchant banker is of the opinion that details referred to in clause (iii) of sub-regulation (1A) of regulation 8 are not sufficient for certification in terms of sub-regulation (1E) of regulation 8, he shall obtain additional details from the board of directors of the company for such longer period as he may deem fit.

(1E) Upon carrying out due-diligence as specified in terms of sub-regulation (1D) of regulation 8, the merchant banker shall submit a report to the board of directors of the company certifying the following:

(a) the trading carried out by the entities belonging to acquirer or promoter or promoter group or their related entities was in compliance or not, with the applicable provisions of the securities laws; and

(b) entities belonging to acquirer or promoter or promoter group or their related entities have carried out or not, any transaction to facilitate the success of the delisting offer which is not in compliance with the provisions of sub-regulation (5) of regulation 4."

(ii) in sub-regulation (3), the word 'thirty' shall be substituted with the word 'five'.

(V) in regulation 10,-

(i) in sub-regulation (1),

(a) After the word "The" and before the words "promoters of the company", the words "acquirers or", shall be inserted;

(b) the word "upon" shall be substituted with the words "within one working day from the date of";

(ii) in sub-regulation (4), after the word "the" and before the words "promoter shall appoint", the words "acquirer or", shall be inserted;

(iii) in sub-regulation (5), the word "promoter" shall be substituted with the words and symbol "acquirer/promoter";

(iv) in sub-regulation (6), the word "promoter" wherever occurring shall be substituted with the words and symbol "acquirer/promoter";

(v) after sub-regulation (6), the following sub-regulation shall be inserted, namely:-

"(7) No entity belonging to the acquirer, promoter and promoter group of the company shall sell shares of the company during the period from the date of the board meeting in which the delisting proposal was approved till the completion of the delisting process."

(VI) in regulation 11, (i) in sub-regulation(1), after the word "the" and before the words "promoter shall open", the words "acquirer or", shall be inserted;

(ii) in sub-regulation(2), after the word "the" and before the words "promoter shall forthwith", the words "acquirer or", shall be inserted.

(VII) in regulation 12, in sub-regulation (1),-

(i) after the word "the" and before the words "promoter shall despatch", the words "acquirer or", shall be inserted;

(ii) the words 'forty five' shall be substituted with the word 'two';

(iii) the words and symbol", so as to reach them at least five working days before the opening of the bidding period" shall be omitted.

(VIII) in regulation 13, (i) in sub-regulation (1), the words "fifty five" shall be replaced with the word "seven";

(ii) after sub-regulation (1) of regulation 13, the following sub-regulation shall be inserted, namely,-

"(1A) The acquirer or promoter shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board.";

(iii) in sub-regulation (2), the words "minimum period of three working days and a maximum" shall be omitted.

(IX) in regulation 14, in sub-regulation (2), the words "A promoter" shall be substituted with the words "An acquirer or promoter ".

(X) in regulation 15,-

(i) sub-regulation (2) shall be substituted with the following, namely:-

"The floor price shall be determined in terms of regulation 8 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,as may be applicable.";

(ii) sub-regulation (3) shall be omitted.

(XI) in regulation 16,-

(i) in sub-regulation (1), after the word "the" and before the words "promoter shall not be", the words "acquirer or", shall be inserted;

(ii) in sub-regulation (2),

(a) after the word "the" and before the words "promoter decides not to accept", the words "acquirer or", shall be inserted;

(b) in clause (a), after the word "the" and before the words "promoter shall not acquire", the words "acquirer or", shall be inserted;

(c) in clause (c), after the word "the" and before the words "promoter may close ", the words "acquirer or", shall be inserted;

(d) clause (d) shall be omitted;

(iii)sub-regulation (3) shall be omitted.

(XII) Regulation 17 shall be substituted with the following, namely:-

"17. An offer made under chapter III shall be deemed to be successful only if,-

(a) the post offer promoter shareholding (along with the persons acting in concert with the promoter) taken together with the shares accepted through eligible bids at the final price determined as per Schedule II, reaches ninety per cent. of the total issued shares of that class

excluding the shares which are held by a custodian and against which depository receipts have been issued overseas; and

(b) at least twenty five per cent of the public shareholders holding shares in the demat mode as on date of the board meeting referred to in sub-regulation (1B) of regulation 8 had participated in the Book Building Process:

Provided that this requirement shall not be applicable to cases where the acquirer and the merchant banker demonstrate to the stock exchanges that they have delivered the letter of offer to all the public shareholders either through registered post or speed post or courier or hand delivery with proof of delivery or through email as a text or as an attachment to email or as a notification providing electronic link or Uniform Resource Locator including a read receipt.

Explanation.- In case the delisting offer has been made in terms of regulation 5A of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the threshold limit of ninety per cent. for successful delisting offer shall be calculated taking into account the post offer shareholding of the acquirer taken together with the existing shareholding, shares to be acquired which attracted the obligation to make an open offer and shares accepted through eligible bids at the final price determined as per Schedule II.

(XIII) In regulation 18,-

(i) the word "promoter" shall be substituted with the words and symbol "promoter/acquirer";

(ii) the word "eight" shall be substituted with the word "five ".

(XIV) In clause (a) of sub-regulation (2) of regulation 19, the following proviso would be inserted, namely:-

"Provided that the acquirer shall not be required to return the shares if the offer is made pursuant to regulation 5A of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011."

(XV) After regulation 25, the following regulation shall be inserted, namely:-

*"25A. Power to relax strict enforcement of the regulations*

(1) The Board may for reasons recorded in writing, grant relaxation from strict enforcement of any of the requirements of these regulations, if the Board is satisfied that the relaxation is in the interests of investors in securities and the securities market.

(2) For seeking exemption under sub-regulation (1), the promoter or the acquirer or the company shall file an application with the Board, supported by a duly sworn affidavit, giving details for seeking such exemption and the grounds on which the exemption has been sought.

(3) The promoter or the acquirer or the company, as the case may be, shall along with the application referred to under sub-regulation (3) pay a non-refundable fee of rupees fifty thousand, by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

(4) The Board may after affording reasonable opportunity of being heard to the applicant and after considering all the relevant facts and circumstances, pass a reasoned order either granting or rejecting the exemption or relaxation sought as expeditiously as possible."

(XVI) In regulation 27,-

(i) sub-regulation (1) shall be substituted with following, namely:-

"(1) Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV, if,-

a) the company has a paid up capital not exceeding ten crore rupees and net worth not exceeding twenty five crore rupees as on the last date of preceding financial year;

b) the equity shares of the company were not traded in any recognised stock exchange for a period of one year immediately preceding the date of board meeting referred to in sub-regulation (1B) of regulation 8; and

c) the company has not been suspended by any of the recognised stock exchanges having nationwide trading terminals for any non-compliance in the preceding one year;"

(ii) sub-regulation (2) shall be omitted;

(iii) in sub-regulation (3). the words, symbols and figure "or sub-regulation (2)", shall be omitted.

(XVII) In regulation 31, sub-regulation (2) shall be substituted with following, namely:-

"Any proposal for delisting made by company or any promoter or acquirer who wanted to delist securities of the company, prior to commencement of these regulations and where the offer price has not been determined in terms of sub-regulation (1) of regulation 15 as on the date of such commencement, shall be proceeded with under the Securities and Exchange Board of India (Delisting of Equity) Regulations, 2009 as amended by the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2015."

## H. ISSUE OF SECURITIES

### a. Amendment to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

- In regulation 26, sub-regulation (6), -

A. in clause (b) of second proviso, the symbol "." shall be substituted with symbol " ; " ;

B. after clause (b) of second proviso, a new clause shall be inserted, namely:-

"(c) if the specified securities offered for sale were issued under a bonus issue on securities held for a period of at least one year prior to the filing of draft offer document with the SEBI and further subject to the following, -

(i) such specified securities being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the SEBI; and

(ii) such specified securities not being issued by utilization of revaluation reserves or unrealized profits of the issuer. "

- For regulation 41, the following shall be substituted, namely:-

*"Minimum net offer to public*

41. The minimum net offer to the public shall be subject to the provisions of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulations) Rules, 1957."

- In regulation 43, in sub-regulation (3), the word "thirty" shall be substituted with the word "sixty".
- After regulation 71, the following new regulation shall be inserted, namely:-

*"Frequently traded shares*

71A. For the purpose of this Chapter, "frequently traded shares" means shares of an issuer, in which the traded turnover on any stock exchange during the twelve calendar months preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer:

Provided that where the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares. "

- In regulation 76, -

A. in the title of the regulation, the words and symbol " - Frequently traded shares " shall be inserted after the words "Pricing of equity shares" ;

B. the words "closing prices" wherever occurring, shall be substituted with the words "volume weighted average price".

(vi) after regulation 76, the following regulations shall be inserted, namely:-

*" Pricing of equity shares – Infrequently traded shares*

76A. Where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies:

Provided that the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent merchant banker or an independent chartered accountant in practice having a minimum experience of ten years, to the stock exchange where the equity shares of the issuer are listed.

*Adjustments in pricing - Frequently or infrequently traded shares*

76B. The price determined for preferential issue in accordance with regulation 76 or regulation 76A, shall be subject to appropriate adjustments, if the issuer :

- a. makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
  - b. makes a rights issue of equity shares;
  - c. consolidates its outstanding equity shares into a smaller number of shares;
  - d. divides its outstanding equity shares including by way of stock split;
  - e. re-classifies any of its equity shares into other securities of the issuer;
  - f. is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments. "
- In Schedule XI, in Part A, in para (10), in sub-para (c), for the word "thirty" the word "sixty" shall be substituted;

**b. Amendment to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 notification dated 24th March, 2015**

(i) in regulation 4, in sub-regulation (3), -

A. in clause (a), the word "twelve" shall be substituted with the word "eighteen";

B. in clause (b), the symbol " . " shall be substituted with symbol " ; " ;

C. after clause (b), the following new clauses shall be inserted, namely:-

“(c) the price or conversion formula of the warrants shall be determined upfront and at least 25% of the consideration amount shall also be received upfront;

(d) in case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant shall be forfeited by the issuer.”

(ii) in regulation 54, in sub-regulation (7), in the proviso, the words, numbers and symbol “the part payment on application shall not be less than 25% of the issue price and” shall be inserted after the word and symbol “investors,”.



**c. Amendment to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 notification dated 5<sup>th</sup> of May, 2015**

In regulation 70, after sub-regulation (4), the following shall be inserted, namely, -

“(5) Conversion of debt into equity under strategic debt restructuring scheme -The provisions of this Chapter shall not apply where the preferential issue of equity shares is made to the consortium of banks and financial institutions pursuant to conversion of their debt, as part of the strategic debt restructuring scheme in accordance with the guidelines specified by the Reserve Bank of India, subject to the following conditions:

(a) conversion price shall be determined in accordance with the guidelines specified by the Reserve Bank of India for strategic debt restructuring scheme, which shall not be less than the face value of the equity shares;

(b) conversion price shall be certified by two independent qualified valuers, and for this purpose 'valuer' shall have the same meaning as assigned to it under clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002;

(c) equity shares so allotted shall be locked-in for a period of one year from the date of trading approval: Provided that for the purposes of transferring the control, the consortium of banks and financial institutions may transfer their shareholding to an entity before completion of the lock-in period subject to continuation of the lock-in on such shares for the remaining period with the transferee;

(d) applicable provisions of Companies Act, 2013 are complied with, including the requirement of special resolution.

(6) The provisions of this Chapter shall not apply when any other secured lenders opt to join the strategic debt restructuring scheme in accordance with the guidelines specified by the Reserve Bank of India and convert their debt into equity share in accordance with sub-regulation (5). "

**I. REGULATORY FRAMEWORK RELATING TO SECURITIES MARKET INTERMEDIARIES**

**a. Amendment to the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992**

Single registration for Stock Brokers & Clearing Members

- As per the amendment, the existing requirement of obtaining registration as stock broker/ clearing member for each stock exchange/clearing corporation has been done away with and instead a single registration with any stock exchange/ clearing corporation shall be required. For operating in any other stock exchange(s)/ clearing corporation(s), approval will be required from the concerned stock exchange or clearing corporation.

- For the purpose of implementing the revised registration requirements, the following guidelines are being issued:
  - a. If a new entity desires to register as a stock broker or clearing member with any stock exchange or clearing corporation, as the case may be, then the entity shall apply to SEBI through the respective stock exchange or clearing corporation in the manner prescribed in the Broker Regulations. The entity shall be issued one certificate of registration, irrespective of the stock exchange(s)/ clearing corporation(s) or number of segment(s).
  - b. If the entity is already registered with SEBI as a stock broker with any stock exchange, then for operating on any other stock exchange(s) or any clearing corporation, the entity can directly apply for approval to the concerned stock exchange or clearing corporation, as per the procedure prescribed in the Broker Regulations for registration. The stock exchange/ clearing corporation shall report to SEBI about such grant of approval.
  - c. Similarly, if any entity is already registered with SEBI as a clearing member in any clearing corporation, then for operating in any other clearing corporation(s) or any stock exchange, the entity shall follow the procedure as prescribed in Clause b above.
  - d. Fees shall be applicable for all the stock brokers, self clearing members and clearing members as per Schedule V of the Broker Regulations. As per current requirement, the entity shall continue to be liable to pay fees for each segment approved by the stock exchange or clearing corporation, as per the Schedule to the Brokers Regulations.
    - The stock exchange or clearing corporation shall grant approval for operating in any segment(s) or additional segment(s) to the SEBI registered stock broker, self-clearing member or clearing member, as the case may be, after exercising due diligence and on being satisfied about the compliance of all relevant eligibility requirements, and shall also, *inter alia* ensure:
      - a. The applicant, its directors, proprietor, partners and associates satisfy the Fit and Proper Criteria as defined in the SEBI (Intermediaries) Regulations, 2008;
      - b. The applicant has taken satisfactory corrective steps to rectify the deficiencies or irregularities observed in the past in actions initiated/ taken by SEBI/ stock exchanges(s) or other regulators. The stock exchange or clearing corporation may also seek details whether the Board of the applicant is satisfied about the steps taken. They may also carry out inspection, wherever considered appropriate; and
      - c. Recovery of all pending fees/ dues payable to SEBI, stock exchange and clearing corporation;
        - The stock exchange(s) and clearing corporation(s) shall coordinate and share information with one another, about their members.

**b. Amendment to SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011**

In the SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011, after regulation 16, the following regulation shall be inserted, namely,-

"Sharing of KYC information in the financial sector

16A. (1) The entities, regulated by other regulators in the financial sector specified by the Board from time to time, may access the system of KRA for undertaking KYC of their clients who engage them for financial services.

(2) The provisions of these regulations shall, mutatis mutandis, apply to the entities regulated by other regulators specified in sub-regulation (1).

(3) The system of KRA may be connected with any central KYC registry authorised by the Central Government for the purpose of collation and sharing of the KYC information in the financial sector. "

## J. TAKEOVER CODE-AN OVERVIEW

### a. Amendment to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 Notification dated 24th March, 2015

After regulation 5, the following regulation shall be inserted, namely:-

#### *Delisting offer*

"5A. (1) Notwithstanding anything contained in these regulations, in the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may delist the company in accordance with provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009:

Provided that the acquirer shall have declared upfront his intention to so delist at the time of making the detailed public statement .

(2) Where an offer made under sub-regulation (1) is not successful,-

(i) on account of non-receipt of prior approval of shareholders in terms of clause (b) of sub-regulation (1) of regulation 8 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or

(ii) in terms of regulation 17 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; or

(iii) on account of the acquirer rejecting the discovered price determined by the book building process in terms of sub-regulation (1) of regulation 16 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, the acquirer shall make an announcement within

two working days in respect of such failure in all the newspapers in which the detailed public statement was made and shall comply with all applicable provisions of these regulations.

(3) In the event of the failure of the delisting offer made under sub-regulation

(1), the acquirer, through the manager to the open offer, shall within five working days from the date of the announcement under sub-regulation (2), file with the Board, a draft of the letter of offer as specified in sub-regulation (1) of regulation 16 and shall comply with all other applicable provisions of these regulations:

Provided that the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the scheduled date of payment of consideration to the shareholders and the actual date of payment of consideration to the shareholders.

Explanation: For the purpose of this sub-regulation, scheduled date shall be the date on which the payment of consideration ought to have been made to the shareholders in terms of the timelines in these regulations.

(4) Where a competing offer is made in terms of sub-regulation (1) of regulation 20,-

(a) the acquirer shall not be entitled to delist the company;

(b) the acquirer shall not be liable to pay interest to the shareholders on account of delay due to competing offer;

(c) the acquirer shall comply with all the applicable provisions of these regulations and make an announcement in this regard, within two working days from the date of public announcement made in terms of sub-regulation (1) of regulation 20, in all the newspapers in which the detailed public statement was made.

(5) Shareholders who have tendered shares in acceptance of the offer made under sub-regulation (1), shall be entitled to withdraw such shares tendered, within 10 working days from the date of the announcement under sub-regulation (2) .

(6) Shareholders who have not tendered their shares in acceptance of the offer made under sub-regulation (1) shall be entitled to tender their shares in acceptance of the offer made under these regulations. "

(II) After sub-regulation (6) of regulation 18, the following sub-regulation shall be inserted:

"(6A) The acquirer shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board."

(III) In sub-regulation (1) of regulation 22, after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that in case of a delisting offer made under regulation 5A, the acquirer shall complete the acquisition of shares attracting the obligation to make an offer for acquiring shares in terms of regulations 3, 4 or 5, only after making the public announcement regarding the success of the delisting proposal made in terms of sub-regulation (1) regulation 18 of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009."

**b. Amendment to SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 Notification dated 5<sup>th</sup> of May, 2015**

In regulation 10, after clause (h) of sub-regulation (1) the following shall be inserted namely:-

" (i) Conversion of debt into equity under Strategic Debt Restructuring Scheme - Acquisition of equity shares by the consortium of banks, financial institutions and other secured lenders pursuant to conversion of their debt as part of the Strategic Debt Restructuring Scheme in accordance with the guidelines specified by the Reserve Bank of India:

Provided that the conditions specified under sub-regulation (5) or (6) of regulation 70 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as may be applicable, are complied with. "

**c. Mechanism for acquisition of shares through Stock Exchange pursuant to Tender-Offers under Takeovers, Buy Back and Delisting - SEBI Circular No. CIR/CFD/POLICYCELL/1/2015 dated April 13, 2015**

***Applicability***

a. This circular shall be applicable to all the offers for which Public Announcement is made on or after July 01, 2015.

b. For all impending offers, acquirer/ promoter/ company shall have the option to follow this mechanism or the existing one.

c. In case an acquirer or any person acting in concert with the acquirer who proposes to acquire shares under the offer is not eligible to acquire shares through stock exchange due to operation of any other law, such offers would follow the existing 'tender offer method'.

d. In case of competing offers under Regulation 20 of the Takeover Regulations, in order to have a level playing field, in the event one of the acquirers is ineligible to acquire shares through stock exchange mechanism, then all acquirers shall follow the existing 'tender offer method'.

***Procedure for tendering and settlement of shares through Stock Exchange***

***ACQUISITION WINDOW***

a. The facility for acquisition of shares through Stock Exchange mechanism pursuant to offer shall be available on the Stock Exchanges having nationwide trading terminals in the form of a separate window(the "Acquisition Window").

b. The acquirer or company may choose to use the Acquisition Window provided by more than one Stock Exchange having nationwide trading terminal and in that case, one of the exchanges shall be chosen as the "Designated Stock Exchange"(DSE).

c. The Recognised Stock Exchanges having nationwide trading terminals shall also facilitate acquirers to provide the platform in case of companies exclusively listed on Recognised Regional Stock Exchanges.

d. In case of competing offers under Regulation 20 of the Takeover Regulations, each acquirer will apply for and use separate Acquisition Windows during the tendering period. If one acquirer chooses to use acquisition window of one Stock Exchange having nationwide trading terminal, it would not be mandatory for the other acquirer to choose the same Stock Exchange.

e. The acquirer/ company shall appoint a stock broker registered with the Board for the offer. Such broker may also undertake transactions on behalf of sellers.

*Placing of orders and basis of acceptance*

f. At the beginning of the tendering period, the order for buying the required number of shares shall be placed by acquirer/ company through his stock broker.

g. During the tendering period, the order for selling the shares will be placed by eligible sellers through their respective stock brokers during normal trading hours of the secondary market.

h. Such shares would be transferred to a special account of the clearing corporation specifically created for this purpose prior to placing the bid. The stock brokers shall also forward to the Clearing Corporation such details regarding the shares tendered as may be required by the Merchant Banker.

i. The cumulative quantity tendered shall be made available online to the market throughout the trading session at specific intervals by each of the Stock Exchanges during the tendering period on the basis of shares transferred to the special account of the clearing corporation.

*Finalisation of basis of acceptance*

j. In case of offer under Takeover Regulations, the Merchant Banker to the offer shall finalise the basis of acceptance of the shares depending upon the level of acceptances received in the offer.

k. In case of offer under Buy Back Regulations, the company is required to announce a Record Date for the purpose of determining the entitlement and the names of the security holders who are eligible to participate in the proposed Buy-Back. Based on this information, eligible shareholders can tender shares in the Buy-Back using the Acquisition Window of the Stock Exchanges through selling brokers. However, reconciliation for acceptances shall be conducted by the Merchant banker and the Registrar to the offer after closing of the Offer and the final list shall be provided to the Stock Exchanges to facilitate settlement.

*Execution of trades and settlement*

l. Once the basis of acceptance is finalised, the clearing corporation would facilitate execution and settlement of trades by transferring the required number of shares from the special account to the escrow account of the acquirer/ company.

m. The trades shall be carried out in the manner similar to settlement of trades in the secondary market process including providing an option for direct payout to the shareholders. This would include settlement of trades of physical shares as well.

n. Excess shares, if any, would be returned to the seller brokers by Clearing Corporation.

o. The seller broker would then issue contract note for the shares accepted and also return the balance to their respective clients.

*p. Disclosures*

Additional disclosures required in Detailed Public Statement, Letter of Offer for Takeover Regulations, in Public Announcement for Buyback Regulations and Delisting Regulations:

i. Name and address of the stock broker appointed by the Acquirer/Company;

ii. Name of the Recognised Stock Exchanges with nationwide trading terminals where the Acquisition Window shall be available including the name of the Designated Stock Exchange.

iii. Methodology for placement of orders, acceptances and settlement of shares held in dematerialised form and physical form

iv. Details of the special account opened with Clearing Corporation.

*q. Participation by Physical Shareholders*

With regard to the participation of shareholders holding physical shares, the procedure similar to the buyback for physical shares through the open market method of buyback as specified in regulation 15A of SEBI (Buyback of Securities) regulations, 1998 shall apply.

*r. Tendering of Locked in-shares*

For shares which are locked-in, the selling shareholder can tender the shares in the same manner which is in existence currently i.e. through off-market.

## K. INVESTOR PROTECTION

### SCORES

- SEBI launched a centralized web based complaints redress system 'SCORES' in June 2011. The purpose of SCORES is to provide a platform for aggrieved investors, whose grievances, pertaining to securities market, remain unresolved by the concerned listed company or registered intermediary after a direct approach.
- SCORES also provides a platform, overseen by SEBI through which the investors can approach the concerned listed company or SEBI registered intermediary in an endeavor towards speedy redressal of grievances of investors in the securities market. It would, however, be advisable that investors may initially take up their grievances for redressal

with the concerned listed company or registered intermediary, who are required to have designated persons/officials for handling issues relating to compliance and redressal of investor grievances.

- SEBI has issued various circulars/directions from time to time with respect to SCORES. In order to enable the users to have an access to all the applicable circulars/directions at one place, this Circular on SCORES consolidates the current provisions.
- Stock Brokers, Sub-Brokers and Depository Participants are not required to obtain SCORES authentication since complaints against these intermediaries shall continue to be routed through the platforms of the concerned Stock Exchange/Depository.
- The registered intermediaries shall submit the details in hard copy (Form-B) to the Department/Division of SEBI which has granted them registration to operate in the securities market. SCORES user id and password of an intermediary shall be created only after receiving approval from the concerned Department/Division of SEBI.
- In case of complaints against listed companies, the same can be processed by companies in-house or through its Registrar to Issue and Share Transfer Agent (RTI/STA). In case the complaints are processed by the RTI/STA on behalf of the listed company, the company should indicate in the enclosed Form-A whether they require the facility to forward complaints to the RTI/STA, so that the ATRs can be uploaded by them. In such cases, the name of the RTI/STA, the name of the Compliance Officer of the listed company and email id of the listed company should be furnished, so that the user id and password can be provided accordingly. In case the complaints are processed by the RTI/STA on behalf of the listed company, any failure on the part of the RTI/STA to redress the complaints or failure to update ATR in SCORES, will be treated as failure of the listed company to furnish information to SEBI and non redressal of investor complaints by the listed company.
- All listed companies and SEBI registered intermediaries shall review their investors grievances redressal mechanism so as to further strengthen it and correct the existing shortcomings, if any. The listed companies and SEBI registered intermediaries, to whom complaints are forwarded through SCORES, shall take immediate efforts on receipt of a complaint, for its resolution, within thirty days. The listed companies and SEBI registered intermediaries shall keep the complainant duly informed of the action taken thereon.
- The listed companies and SEBI registered intermediaries shall update the ATR along with supporting documents, if any, electronically in SCORES. ATR in physical form need not be sent to SEBI. The proof of dispatch of the reply of the listed company / SEBI registered intermediary to the concerned investor should also be uploaded in SCORES and preserved by the listed company / SEBI registered intermediary, for future reference.
- Action taken by the listed companies and SEBI registered intermediaries will not be considered as complete if the relevant details/ supporting documents are not uploaded in SCORES and consequently, the complaints will be treated as pending.
- A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES. Hence, mere filing of ATR by a listed company or SEBI registered



intermediary with respect to a complaint will not mean that the complaint is not pending against them.

- Failure by listed companies and SEBI registered intermediaries to file ATR under SCORES within thirty days of date of receipt of the grievance shall not only be treated as failure to furnish information to SEBI but shall also be deemed to constitute non-redressal of investor grievance.

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**REPLACED OR REPEALED SEBI REGULATIONS****A. SEBI (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2014**

SEBI has notified the SEBI (Foreign Portfolio Investors) Regulations, 2014 (FPI Regulations). These New Regulations had replaced SEBI (Foreign Institutional Investors) Regulations, 1995. The New Regulations provides for the framework for Foreign Portfolio Investors (FPI) and Designated Depository Participant (DDP). The objective of the FPI Regulations is to simplify compliance requirements and have uniform guidelines for various categories of Foreign Portfolio Investors (FPIs) like Foreign Institutional Investors (FIIs) including their sub-accounts, if any and Qualified Foreign Investors (QFIs).

The FPI Regulations have been framed by SEBI considering the provisions of FII Regulations, QFIs framework and the recommendations of the “Committee on Rationalization of Investment Routes and Monitoring of Foreign Portfolio Investments”. The report was submitted by the Committee on 12 June 2013 to SEBI. After considering the recommendations of the Committee, SEBI issued a press release dated 5 October 2013 indicating the salient features of the draft SEBI (Foreign Portfolio Investors) Regulations, 2013. On 7 January 2014, SEBI notified the SEBI (Foreign Portfolio Investors) Regulations, 2014 (FPI Regulations). The same shall be effective with effect from 7 January 2014. Subsequently, the SEBI has also vide a Circular dated 8 January 2013 issued operating guidelines for Designated Depository Participants (DDP) who would grant registration to Foreign Portfolio Investors (FPI).

On notification of the FPI Regulations, the FII Regulations stand repealed and SEBI Circulars on QFIs stand rescinded. However, the existing FIIs or QFIs who hold a valid certificate of registration are automatically deemed to be FPIs under the FPI Regulations till the expiry of the block of 3 years for which the fees have been paid under the FII Regulations. Further, notwithstanding such repeal and rescission, SEBI may continue to grant certificate of registration as a FII or sub-account under the FII Regulations till 31 March 2014 which may be extended upto 30 June 2014 by SEBI. The key highlights of the FPI Regulations are summarized below:

**Registration requirements and eligibility criteria for a FPI****Definition of FPI**

Designated Depository Participants (DDPs) are authorised to grant registration to FPIs on behalf of the SEBI. The application for grant of registration is to be made to the DDP in a prescribed form alongwith the specified fees. FPI means a person who satisfies the prescribed eligibility criteria. The eligibility criteria for a FPI, inter-alia, includes:

(a) the applicant is a person not resident in India;

- (b) the applicant is resident of a country whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with SEBI;
- (c) the applicant being a bank, is a resident of a country whose central bank is a member of Bank for International Settlements;
- (d) the applicant is not resident in a country identified in the public statement of Financial Action Task Force as:
  - (i) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
  - (ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;
- (e) the applicant is not a non-resident Indian;
- (f) the applicant is legally permitted to invest in securities outside the country of its incorporation or establishment or place of business;
- (g) the applicant is authorized by its Memorandum of Association and Articles of Association or equivalent document(s) or the agreement to invest on its own behalf or on behalf of its clients;
- (h) the applicant has sufficient experience, good track record, is professionally competent, financially sound and has a generally good reputation of fairness and integrity;
- (i) the grant of certificate to the applicant is in the interest of the development of the securities market;
- (j) the applicant is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008; and
- (k) any other criteria specified by SEBI from time to time.

#### **Different Categories of FPI**

Registration as a FPI can be obtained in one of the three categories specified by SEBI as under:

- (i) Category I which shall include Government and Government related investors such as central banks, Governmental agencies, sovereign wealth funds and international or multilateral organizations or agencies;
- (ii) Category II shall broadly include the following:

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- (a) funds such as mutual funds, investment trusts, insurance/reinsurance companies;
- (b) regulated persons such as banks, asset management companies, investment managers/ advisors, portfolio managers;
- (c) funds that are not appropriately regulated but whose investment manager is appropriately regulated:
- (d) university funds and pension funds; and
- (e) university related endowments already registered with SEBI as foreign institutional investors or sub-accounts.

(iii) Category III shall include all others FPIs not eligible under Category I and II foreign portfolio investors such as endowments, charitable societies, charitable trusts, foundations, corporate bodies, trusts, individuals and family offices.

(iv) Any other category as may be specified by the SEBI from time to time.

**Registration requirements for existing FIIs and QFIs**

- i. FIIs/ sub-accounts may, subject to payment of conversion fees, continue to trade in securities till the expiry of its registration or obtaining of a certificate of registration as foreign portfolio investor, whichever is earlier.
- ii. QFIs would be required to obtain a Certificate of Registration as a FPI within one year from 7 January 2014 (i.e. the date of commencement of the FPI Regulations).

**Designated Depository Participant (DDP)**

**Application for approval**

- i. A person can act as a DDP only after obtaining an approval of SEBI. However, an existing registered custodian of securities and qualified depository participant shall be deemed to have been granted approval as a DDP subject to the payment of prescribed fees.
- ii. An application for approval to act as a DDP shall be made to SEBI through the depository in which the applicant is a participant accompanied by the prescribed fees.

**Eligibility criteria for DDP**

SEBI shall grant an approval to a person to act as DDP subject to satisfaction of, inter-alia, the following conditions:

- (a) The applicant is a participant and custodian registered with the SEBI;
- (b) The applicant is an Authorized Dealer Category-1 bank authorized by the Reserve Bank of India;

- (c) The applicant has multinational presence either through its branches or through agency relationships with intermediaries regulated in their respective home jurisdictions;
- (d) The applicant has systems and procedures to comply with the requirements of FATF Standards, Prevention of Money Laundering Act, 2002, and the rules and circulars prescribed thereunder.
- (e) A Certificate of Registration granted to a DDP shall be permanent unless suspended or cancelled by SEBI or surrendered by the DDP.

### **Conditions for issuance of offshore derivative instruments by FPI**

An FPI shall issue ODIs only to those subscribers which meet the eligibility criteria as laid down in Regulation 4 of the SEBI (Foreign Portfolio Investor) Regulations, 2014. Regulation 4 requires that an FPI applicant shall not be granted registration unless it satisfies *inter alia* the following conditions namely:

- a. the applicant is resident of a country whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding or a signatory to bilateral Memorandum of Understanding with the SEBI;
- b. the applicant being a bank, is a resident of a country whose central bank is a member of Bank for International Settlements;
- c. the applicant is not resident in a country identified in the public statement of Financial Action Task Force as:
  - i. a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
  - ii. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;

An FPI shall issue ODIs only to those subscribers which do not have opaque Structure (s), as defined under Explanation 1 of Regulation 32(1)(f) of SEBI (Foreign Portfolio Investors) Regulations, 2014.

### **Obligations and responsibilities of FPI**

The obligations and responsibilities of FPI, inter-alia, include:

- (a) FPIs to obtain a Permanent Account Number (i.e. Indian income-tax registration number) from the Indian Revenue authorities.
- (b) FPI to appoint a compliance officer who shall be responsible for monitoring the compliance of various rules, regulations, notifications, etc issued by the DDP or SEBI or the Central Government.
- (c) A FPI (or any of its employees) shall not render directly or indirectly any investment advice about any security in the publicly accessible media, unless a disclosure of his interest including long or short position in the said security has been made, while rendering such advice.

- (d) An employee rendering such an advice is also required to disclose the interest of his dependent family members and his employer.

### Liability for action in case of default

A FPI, DDP, depository or any other person who contravenes any of the provisions of these regulations shall be liable for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 and/or the relevant provisions of the Act or the Depositories Act, 1996.

### Key differences between FII Regulations and FPI Regulations

Particulars	FII regulations	FPI regulations
Regulatory Structure	2 Tier structure – FIIs and Sub-accounts	No tiers
Registering Institution	SEBI	DDP on behalf of SEBI
Need to be a resident in a country where securities market regulator is a signatory to IOSCO's MMOU or a signatory to bilateral MMOU with SEBI	Not applicable for Sub-accounts	Applicable to all
Investment limit for Foreign Individual / Foreign Corporate	5% of issued capital	Below 10% of issued capital
Investment Limit in Equity Shares	Upto 10% of issued capital	Below 10% of issued capital
Investment in unlisted equity shares	Permitted	Not permitted
Issuance / subscription of ODIs (Participatory Notes)	Permitted for all FIIs (not Sub-accounts)	Permitted for Category I and Category II FPIs except for unregulated broad based funds

### Change in investment conditions / restrictions for FPI investments in Corporate Debt securities SEBI Circular NO. CIR/IMD/FIIC/1/2015 dated February 03, 2015

- All future investments within the USD 51 bn Corporate Debt limit category, including the limits vacated when the current investment by an FPI runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years.
- Furthermore, FPIs shall not be permitted to invest in liquid and money market mutual fund schemes.

- There will, however, be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to domestic investors.

**Change in investment conditions for FPI investments in Government Debt securities SEBI Circular No. CIR/IMD/FIIC/2/2015 dated February 05, 2015**

FPIs shall be permitted to invest in Government securities, the coupons received on their investments in Government securities. Such investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in Government securities.

For the purpose of investment of coupons, the FPIs shall have an investment period of 5 working days from the date of receipt of the coupon. A re-investment facility of 5 working days shall be provided on the Government securities that have been purchased by utilizing the coupons. All other existing conditions for investment by FPIs in the Government securities market remain unchanged for this additional facility as well. It is further clarified that coupons received on these Government securities purchased by investment of coupons shall also have the same facility.

The coupons invested in purchasing Government securities shall be classified into a separate investment category which is over and above the USD 30 billion Government debt limit. The depositories shall put in place the necessary systems for the daily reporting by the custodians of the FPIs and shall also disseminate this coupon investment data along with the daily debt utilization data.

**B. SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014**

SEBI has notified the SEBI (Share Based Employee Benefits) Regulations, 2014 on 28th October, 2014 repealing SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999, for regulation of all schemes by companies for the benefit of their employees involving dealing in shares, directly or indirectly, with a view to facilitate smooth operation of such schemes while preventing any possible manipulation and matters connected therewith or incidental thereto.

**Applicability**

- The provisions of these regulations shall apply to following, -
  - (i) employee stock option schemes;
  - (ii) employee stock purchase schemes;
  - (iii) stock appreciation rights schemes;
  - (iv) general employee benefits schemes; and
  - (v) retirement benefit schemes.
- The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock exchange in India, and has a scheme:

- (i) for direct or indirect benefit of employees; and
- (ii) involving dealing in or subscribing to or purchasing securities of the company, directly or indirectly; and
- (iii) satisfying, directly or indirectly, any one of the following conditions:
  - a. the scheme is set up by the company or any other company in its group;
  - b. the scheme is funded or guaranteed by the company or any other company in its group;
  - c. the scheme is controlled or managed by the company or any other company in its group.

#### Non Applicability

Shares issued to employees in compliance with the provisions pertaining to preferential allotment as specified in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

#### Highlights of the Regulations

The highlights of the regulations are as follows:

- To ensure a smooth transition for complying with the new regulatory framework, the existing employee benefit schemes have been provided with a time period of one year from the date of notification.
- Company can implement schemes either directly or by setting up an irrevocable trust(s). However, if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes. Further, if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s).
- No scheme shall be offered to employees of a company unless the shareholders of the company approve it by passing a special resolution in the general meeting.
- Companies having employee stock option programmes are allowed to buy their own company shares subject to certain conditions.
- Company shall constitute a compensation committee for administration and superintendence of the schemes.
- Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as at the end of the previous financial year.
- For undertaking secondary market acquisitions companies are required to take shareholders' approval through special resolution;
- The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months.



- Restrictions on sale of shares by trusts except certain circumstances.
- Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person.
- In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.
- The shares arising after the initial public offering (IPO) of an unlisted company, out of options or SAR granted under any scheme prior to its IPO to the employees shall be listed immediately upon exercise in all the recognised stock exchanges where the shares of the company are listed subject to compliance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- In addition to the information that a company is required to disclose, in relation to employee benefits under the Companies Act, 2013, the board of directors of such a company shall also disclose the details of the scheme(s) being implemented, as specified by SEBI in this regard.
- The general employee benefit schemes and retirement benefit schemes may hold own shares / listed holding company's shares subject to a ceiling which shall not exceed 10% of the total assets held by such schemes.
- Such schemes holding shares which amount to more than the prescribed ceiling of 10% of total assets shall reduce the same within a period of 5 years from the date of notification of the Regulations.
- The employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him, till shares are issued upon exercise of option.
- The amount payable by the employee, if any, at the time of grant of option, may be forfeited by the company if the option is not exercised by the employee within the exercise period; or may be refunded to the employee if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the ESOS.

**Requirements specified under the SEBI (Share Based Employee Benefits) Regulations, 2014- SEBI Circular CIR/CFD/POLICY CELL/2/2015 dated June 16, 2015**

SEBI has issued detailed disclosure norms for listed companies which opt to reward their employees using ESOPs, SARs and such other share based employee benefits.

**MINIMUM PROVISIONS IN A TRUST DEED**

The schemes involving secondary acquisition or gift or both, has to be implemented mandatorily through a trust. Other schemes may also be implemented through a trust. The SEBI requires certain provisions to be incorporated in the Trust Deed:

- i. Details of the Trust- its name, object, source of funds, its usage and details of scheme, settler, trustees;
- ii. Powers and Duties of trustee(s);
- iii. Provisions on dissolution of the Trust;
- iv. Provisions specifying that the trustee shall not act in any manner that would be detrimental to the interests of the beneficiaries;
- v. Other clauses to safeguard the interests of the beneficiaries

### **COMPENSATION COMMITTEE**

A company shall constitute a compensation committee, as per section 178 of Companies Act, 2013, for administration and superintendence of the schemes. As per the regulation, the committee is required to formulate detailed terms and conditions of the schemes. SEBI has provided an inclusive list of such provisions:

- a. Quantum of the benefit;
- b. Kind of benefits;
- c. Conditions to avail the benefits;
- d. Period within which the employee shall exercise the option;
- e. Exercise period of the option in the event of termination or resignation of an employee;
- f. Right of an employee to exercise all options at one time or at various points of time;
- g. The procedure for making a fair and reasonable adjustment to the entitlement of options/ SARs in case of corporate actions such as rights issues, bonus issues, merger, sale of division, etc.
- h. Rules for employees who are on long leave;
- i. Eligibility to avail benefits;
- j. The procedure for cashless exercise of options/ SARs.

### **SHAREHOLDERS' APPROVAL**

As per the provisions of regulations, no scheme shall be offered to the employees of a company unless the shareholders of the company approve it by passing a special resolution. The explanatory statement to the notice shall include the information as specified by SEBI in this regard.

### **LISTING REQUIREMENT**

In case new issue of shares is made under the scheme, it has to be listed immediately on the stock exchange. A statement has to be filed by the company and obtain an in-principle approval from the stock exchange. Such statement shall include the description of the schemes in detail. The mandatory contents have been specified in the circular.

The company shall also notify the concerned stock exchange as and when an exercise of option/SAR is made. The format for such notification has been provided by the SEBI.

### **DISCLOSURES BY BOARD OF DIRECTORS**

The Board of Directors in their report shall disclose any material change in the scheme(s) and whether the scheme(s) is/are in compliance with the regulations. The following details shall be disclosed on the company's website and a web-link thereto shall be provided in the report of board of directors:

- a. Relevant disclosures relating to the accounting standards;
- b. Diluted EPS on issue of shares pursuant to all the schemes;
- c. Details related to ESOS;
- d. Details related to ESPS;
- e. Details related to SAR;
- f. Details related to General Employee Benefit Scheme/Retirement Benefit Scheme (GEBS/RBS);
- g. Details related to Trust;

#### MANDATORY DISCLOSURES

No ESOS/SAR shall be offered unless the disclosures, as specified by the SEBI in this regard, are made by the company to the prospective option/SAR grantees. The disclosure documents specified are:

- a. Statement of Risks;
- b. Information about the company;
- c. Salient features of the scheme.

#### C. SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

SEBI has issued and notified the SEBI (Prohibition of Insider Trading) Regulations, 2015 (Regulations) on 15th January, 2015 based on recommendations of sodhi committee. These Regulations are effective from 120th day of the date of notification i.e. on and from 15th May, 2015, by repealing SEBI (Prohibition of Insider Trading) Regulations 1992.

The new regulations strengthen the legal and enforcement framework, align Indian regime with international practices, provide clarity with respect to the definitions and concepts, and facilitate legitimate business transactions.

Sl. No	Particulars	Regulation No./Schedule No.	Details
1	Chapter I- Preliminary	1 and 2	Regulation 1 covers short title, commencement of regulations which are effective from May 15, 2015  Regulation 2 covers the definitions including compliance officer, connected person, Unpublished Price Sensitive Information, Generally available information, immediate relative, insider etc

2	Chapter II – Restriction on communication and trading by insiders	3,4 and 5	<p>Regulation 3 – Restricts communication or procurement of unpublished price sensitive information.</p> <p>Regulation 4- Restricts trading when in possession of unpublished price sensitive information.</p> <p>Regulation 5 – Insider shall be entitled to formulate his trading plan and intimate the same to compliance officer for approval. It also imposes certain conditions attached to trading plan. Compliance officer to monitor the implementation of the trading plan.</p>
3	Chapter III- Disclosure of trading by Insiders	6 and 7	<p>Regulation 6- General provisions relating to disclosures by different persons.</p> <p>Regulation 7-</p> <ul style="list-style-type: none"> <li>• Every promoter/Key Managerial Personnel and director to make initial disclosure within 30 days of these regulations taking effect;</li> <li>• Every KMP/Director/Promoter to give within seven days of becoming so to make initial disclosure of his holdings.</li> <li>• Every promoter, employee and director to disclosure within 2 days of such transaction, including a series of transactions over any calendar quarter exceeds traded value of Rs 10 lakhs.</li> <li>• Every company to notify the stock exchange within two days of receipt of above information.</li> <li>• Every other connected persons to disclosure holding/trading as may be determined by the company.</li> </ul>
4	Chapter IV – Code of Fair Disclosure and Conduct	Regulation 8 and 9	Regulation 8: Board of Director to formulate code of fair disclosure as per principles laid down by Schedule A which is to be intimated to the stock exchange.

			Regulation 9: Board of Directors to formulate code of conduct in line with Schedule B and a designated compliance officer to administer the code of conduct and other requirements under these regulations.
5	Chapter V- Miscellaneous	Regulation 10,11 and 12	Regulation 10 – Sanction for violations  Regulation 11- Directions by SEBI for removal of difficulties  Regulation 12 – Repeal and savings  Repeal of SEBI(Prohibition of Insider Trading) Regulations 1992  Any reference to SEBI (Prohibition of Insider Trading) Regulations 1992 in other regulations/guidelines etc shall be deemed to be a reference to the corresponding provisions of SEBI (Prohibition of Insider Trading) Regulations 2015.
6	Schedule A- Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair disclosure of Unpublished Price Sensitive Information(UPSI)	Schedule A	Schedule A covers principles on handling and dissemination of UPSI, designation of chief investor relations officer to deal with UPSI etc
7	Schedule B – Minimum Standards for Code of Conduct to regulate, monitor and report trading by insiders	Schedule B	Schedule B covers aspects including reporting of compliance officer to the Board, handling of information on need to know basis, employees and connected persons to be governed by an internal code and conduct governing dealing in securities, closure of trading window, restricted list of securities, declarations before approval of trades etc.,

Summary of the Regulations is as under:

- Both listed companies and companies that are 'proposed to be listed' are covered.
- The definition of "Insider" has been made wider by including any person connected with the company.
- The Insider will also be any person in possession of or having access to "unpublished price sensitive information" {UPSI} relating to a company or its securities.
- The "connected person" would mean any person currently or during past specified period, associated in any capacity with the company including through frequent communication with its officers, or on the basis of contractual, fiduciary or employment relationship, or as a director etc.
- This association allows or reasonably expects him to allow access to UPSI of the company. Moreover, the association can be direct or indirect. There are specified categories of persons who shall be deemed to be connected person unless contrary is established.
- In the case of connected person the onus of establishing, that they are not in possession of UPSI, shall be on such person. Immediate relative the connected person is also covered as connected person with a right to rebut the presumption.
- Companies would be entitled to require third party connected persons to disclose their trading and holdings in securities of the company.
- "Unpublished price sensitive information" (UPSI) has been defined as information not generally available and which may materially affect the price of securities on coming into public domain.
- Illustrative guidance of UPSI has been given aligning with listing agreement and providing platform of disclosure. Earlier, the definition of UPSI had reference to company only.
- The new Regulations cover both the company and its securities. Also in line with Companies Act, 2013, prohibition on derivative trading on securities of a company has also been provided.
- The concept of "trading" has replaced the concept of "dealing" thus giving a broad and inclusive definition. Trading includes subscribing, buying, selling, dealing, agreeing to subscribe, buy, etc.
- This is to cover transactions done by insiders which are not strictly buying, selling etc, such as pledging etc based on and when in possession of UPSI.
- "Generally Available Information" will be that which is accessible to the public on a non discriminatory basis and on a platform which is ordinarily a stock exchange.
- Disclosure of UPSI in public domain has been made mandatory before trading, so as to rule out asymmetry of information in the market.
- A new concept of giving "note" against many provisions to explain them has been introduced.

- There is prohibition on (i) communicating, providing or allowing access of UPSI, (ii) procurement of UPSI; except for legitimate purposes, performance of duties or discharge of legal obligations.
- UPSI is permitted to be communicated etc to make an open offer under SEBI Takeover Regulations, moreover for substantial transactions, such as, mergers and acquisitions involving trading in securities and change of control to assess a potential investment. It should be in the best interest of the company.
- UPSI is permitted to be communicated etc also for transactions that do not entail an open offer if it is in the best interests of the company. The public disclosure of such unpublished price sensitive information has to be made well before the proposed transaction, to obviate any information asymmetry in the market.
- For the purposes of communication etc of UPSI, the company must require third parties, who are likely to obtain access to UPSI, to enter with it confidentiality & non disclosure agreements.
- Prohibition is also in trading in securities when in possession of UPSI. In certain circumstances an insider is permitted to prove his innocence.
- Pertinently it is not relevant while charging an insider for violations, the reason for the transaction or the purpose to which he applies the proceeds of the transaction. That he has traded when in possession of UPSI is what would need to be established at the outset to bring a charge.
- The insider is permitted to prove his innocence by demonstrating the circumstances statutorily provided.
- Insiders who are liable to possess UPSI all round the year would have the option to formulate prescheduled irrevocable & mandatory Trading plan which cannot be deviated. It has to be approved by the compliance officer of a company and can be put into action only six months after receiving the approval. Trading plan has to be disclosed on the stock exchanges and to be strictly adhered to. Such plan shall be available for bona fide transactions. Basically the Plan provides an exception to the general rule that insider should not trade when in possession of UPSI. It however does not confer complete immunity.
- Disclosure of trade in securities has to be made not only by the person executing it but also by his immediate relatives and other persons for whom the concerned person takes trading decisions.
- Obligation of initial disclosure of holding of securities in a company is on the promoters, directors and key managerial personnel. Every promoter, employee and director of a company is required to make certain continuing disclosures to a company if the value of securities traded over a calendar quarter breaches the specified threshold. Disclosures by other connected persons have also been provided at the discretion of the company.
- Every company shall have a code of practices and procedures for fair disclosure of 'unpublished price sensitive information' and a code of conduct to regulate, monitor and

report trading by its employees and other connected persons. Principle based Code of Fair Disclosure and Code of Conduct has been prescribed.

- Strict implementation of the need to know principle has been provided.
- The concept of trading window norms has been provided in the code during which employees and connected persons {designated persons} in the organisation may execute trades subject to preclearance by compliance officer.
- The trading window shall be required to be closed when designated persons can reasonably be expected to possess UPSI. No trading is permitted by such persons or their immediate relatives during closure period.

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## THE DEPOSITORY RECEIPTS SCHEME, 2014

### The Depository Receipts Scheme, 2014 (Effective From December 15, 2014)

- The Depository Receipts Scheme, 2014 (“2014 Scheme”) which was notified by the Central Government with effect from December 15, 2014. With the notification of the 2014 Scheme, the erstwhile provisions dealing with depository receipts in the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 (“1993 Scheme”) stand repealed except to the extent they are relating to foreign currency convertible bonds.
- The 2014 Scheme is based on the recommendations of the Sahoo Committee, which under the chairmanship of Mr. M.S. Sahoo, undertook a comprehensive review of the 1993 Scheme and proposed significant revisions.
- Permission to issue unsponsored depository receipts, issuance of depository receipts against all types of securities (and not only equity shares), expanding the definition of “Issuer”, Custodian”, Depository”, permissible jurisdictions etc., are few of the key features.
- Unlike the 1993 Scheme, a company need not obtain approval of Ministry of Finance before issuing depository receipts. However, approval if any required under FDI policy would still be required.
- Clause 3 of the scheme describes the eligibility of issue of depository receipts. The following persons are eligible to issue or transfer permissible transactions to a foreign depository for the issue of depository receipts:
  - Any Indian company, listed or unlisted, private or public;
  - Any other issuer of permissible securities;
  - Any person holding permissible securities

which has not been specifically prohibited from accessing the capital market or dealing in securities. Unsponsored depository receipts on the back of the listed permissible securities can be issued only if such depository receipts gave the holder the right to issue voting instruction and are listed on an international exchange.

- Clause 2(g) defines the term ‘permissible jurisdiction’ as foreign jurisdiction which is a member of the Financial Action Task Force on Money Laundering and the regulator of the securities market in that jurisdiction is a member of the International Organization of Securities Commission. Schedule I of the scheme gives the list of permissible jurisdiction.

- Under the 2014 scheme, the companies will be allowed to issue DRs in all kinds of permissible securities including shares, debentures, bonds, derivatives, units of a mutual fund, collective investment schemes, Government securities and right or interest in securities. In the 1993 Scheme, companies could issue DRs only against equity shares of Indian companies.

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