

Sahasri Singar Academy

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Paper 13

Corporate Laws and Compliances

Sec B - Other Corporate Laws

CMA Final Group 3



CMA CS Yamuna Sridhar

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2. SEBI Laws and Reg

Part A – The Securities and Exchange Board of India, 1992 [SEBI]

2.1.1. Introduction

Constituted as the regulator of capital markets | GoI | 12th April 1988

Initial Status:

A non-statutory body | No statutory power

3 Principal Acts that governed the securities markets in India

The Capital Issues (Control) Act, 1947	Restricted issuer's access Controlled the pricing of issues
The Companies Act, 1956 (now 2013)	Sets out the code of conduct for the corporate sector: Issues Allotment & transfer of securities Disclosures - Public issues
The Securities Contracts (Regulation) Act, 1956	Regulation of transactions in securities through control over stock exchanges

More about The Capital Issues (Control) Act, 1947

Origin – War in 1943

Objective - To channel resources to support the war effort

Retaining of the Act

Controls the raising of capital by companies

To ensure that national resources were channeled in to proper lines, i.e., for desirable purposes to serve goals and priorities of the government

To protect the interests of investors.

Firm – Get approval from CG to issue securities [determines - Amount, type and price of the issue.

Repealing the Act – A liberalization Process, in 1992

Government's control Ceased – Issue | Pricing | Fix the premia & % interest on debentures

Abolition of administrative office - To allow the market to allocate resources to competing uses

SEBI Act, 1992

For effective regulation of the market

To empower with statutory powers for:

- (1) Protect - The interests of investors in securities
- (2) Promote - The development of the securities market
- (3) Regulate - The securities market.

Regulatory Jurisdiction –

Issuance of capital and transfer of securities

To all intermediaries and persons associated with the securities market in the interest of investors or of orderly development for securities market

Can conduct enquiries, audit and inspection of all concerned and adjudicate offences

In short: Autonomy and Authority - To regulate | Develop an orderly securities market

Legal framework:

Governs all the SEs & STs in India

7 Chapters | 35 Sections

Chapters	Description
I	Preliminary
II	Establishment of SEBI
III	Transfer of A/Ls, etc of the existing to the Board
IV	Powers & Functions of board
V	Registration Certificate
VA	Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control
VI	Finance, Accounts and Audit
VIA	Penalties & Adjudication
VIB	Establishment, Jurisdiction, Authority & Procedure of Appellate Tribunal
VII	Misc

The Securities Laws (Amendment) Act, 2014

Passed by Parliament – 1st week of August, 2014 | President's assent - 22 August 2014

Amendment thro: Finance Act | International Financial Services Centres Authority Act, 2019 (w.e.f Oct 2020)

Aim - To amend and plug the existing loopholes in 3 cardinal legislations

3 cardinal legislations – Controls Securities market transactions in India

SEBI Act, 1992 | SCRA, 1996 | Depositories Act, 1996

More Teeth to SEBI:

(a) Widened and Sharpened Powers - Calling for information | 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.

(b) Deemed CIS:

Pooling of funds (scheme / arrangement)

Not registered / covered with SEBI

Corpus amount of ₹ 1000 million or more

(c) Credit to IEPF: [IEPF established by SEBI]

Disgorged Amount [u/s - Sec 11B, SEBI Act / Sec 12A, SCRA, 1956/ Sec 19, The Depositories Act, 1996] utilised by the SEBI

(d) Power to issue directions u/s 11B –

Includes (& deemed to) the power to direct any person,

who made profit or averted loss

by indulging in any transaction or activity in contravention of to the Act / Reg

to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention

(e) In the cases of failure:

Cases of failure	Modes followed by Recovery Officer
<ul style="list-style-type: none">• Pay the penalty imposed by the adjudicating officer• Pay any fees due to the Board• Comply with any direction of SEBI for refund of monies• Comply with a direction of disgorgement order issued u/s 11B	<ul style="list-style-type: none">• Attachment and Sale of the person's movable / Immovable property / Bank A/Cs• Attachment of person's Bank A/Cs• Arrest of the person and his detention in prison• Appointing a receiver for the management of the person's movable / immovable property

2.1.2. SEBI - The watchdog of the Indian Markets

Similar in function to SEC, USA

Regulates the working of the financial markets in India - Investor protection and laying down of ethical standards

Additional Statutory Authority, in 1995, by GoI – An amendment to 1992 Act

Preamble - Describes the basic functions:

“..... to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto.”

Responsive to 3 groups - The issuers of securities | The investors | The market intermediaries

3 functions rolled into 1 body:

Quasi-legislative : Drafts Reg [Legislative capacity]

Quasi-judicial : Conducts investigation and enforcement action [Executive function]

Quasi-executive : Passes rulings and orders [judicial capacity]

Appealing process:

To create accountability

1st Appeal to SAT [A 3 - member tribunal] | 2nd appeal directly to The Supreme Court

Validity of the Board:

Establishment - Chapter II, Sec 3 (1), SEBI,1992

Nature:

Body corporate –

Perpetual succession	Common Seal	To enter into contract	Can sue or be sued
Power to acquire, hold and dispose of movable / immovable property			

The head office - Bombay [Other Offices at other places in India]

Management of the Board – Sec 4

Members

(a)A Chairman

(b) Two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act, 2013

(c) One member from amongst the officials of the Reserve Bank

(d) The remaining five other members shall be appointed by the Central Government of whom at least three shall be the whole-time members

BoM's Vesting Power:

The General superintendence | Direction & Management of the affairs of the Board

Exercise all powers and do all acts and things which may be exercised or done by the Board.

Other Points:

Chairman's Power: [Same as above]

The Chairman and members –

Appointed by the Central Government

Shall be the persons of ability, integrity and standing who have the capacity in dealing with problems relating to securities market

Have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

Terms & Conditions of service [Chairman & members] - Section 5 | Prescribed by the board

CG's Right

- To terminate the services of the Chairman / Member
- B/f expiry period | notice, not less than 3 months in writing | 3 months salary and allowances in lieu thereof

The Chairman's / Member's, Right - To relinquish his office at any time before the expiry | Notice to CG, not less than 3 months in writing

Removal of the office – Sec 6 | CG | an opportunity of being heard

- (i) Adjudicated as insolvent
- (ii) Unsound minded and stands so declared by the competent person
- (iii) has been convicted of an offence which in the opinion of the CG involves moral turpitude.
- (iv) in the opinion of the CG, the member has abused his position as to tender his continuation detrimental to the public interest.

Meetings:

Section 7

- Observe rules of procedure (transaction of business), including quorum
- Presided by Chairman (in the case of inability, chose one amongst them)
- Decision by majority
- Chairman's Second / Casting vote

Section 7A

- Disclosure of interest – By member | If Director of a company | Direct / Indirect pecuniary interest
- Disclosure recorded
- Such person shall not take part in the deliberation / disclosure

Section 8

- Validity of any Act / Proceeding of the Board
- By reason of any vacancy in or any defect in the constitution
- any defect in the appointment of a person acting as a member of the board
- any irregularity in the procedure of the Board not affecting the merits of the case

2.1.2.1 Transfer of A/Ls etc., of the existing Securities and Exchange Board to the Board:

Chapter III | Section 10 | On & from the date of establishment of the Board,

- (a) Deemed Reference - Any reference | in any law | in any contract / instrument shall be deemed as a reference to the Board

- (b) All properties and assets - Movable / Immovable
- (c) All rights and liabilities
- (d) All debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done
- (e) All sums of money due
- (f) All suits and other legal proceedings instituted or which could have been instituted by or against
- (g) Every employee shall hold his office in the Board by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits (Continues / 6 months from opting out period)

2.1.2.2 Power and Functions of SEBI

Chapter IV | Section 11 (1)

Duty of the Board

- (a) to protect the interest of investors in securities, and
- (b) to promote the development of and
- (c) to regulate the securities market by such measures as the Board thinks fit and
- (d) for matters connected therewith and incidental thereto.

Two main functions: Regulatory | Developmental

Regulatory functions: The Board is responsible for:-

Regulating the business

Registering | Regulating the working of intermediaries (from Sec – 12 and 12A) | VCF | CIS | MFs

Promoting | Regulating self-regulatory organizations

Prohibiting fraudulent and unfair trade practices

Promoting Investors’ education and training of intermediaries

Prohibiting insider trading in securities

Regulating SAST | Take-over of companies

Other Functions and Powers – As per SCRA | delegated by CG

calling for information from undertaking inspection Conducting inquiries and audits of SEs MFs securities market intermediaries Self- regulatory organisations	calling for information and record from bank other Authority Board Corporation (Central / State / Provincial Act) under investigation or inquiry
--	--

Levying fees or other charges | Conducting research

Calling from / furnishing information - for the efficient discharge

Performing such other functions as may be prescribed.

Developmental Functions:

Promoting investors’ education

Training of intermediaries

Conducting research and publishing information useful to all market participants

Promotion of fair practices

Promotion of self - regulatory organizations

Undertakes inspection

Any book / register / other document / record - Listed public company

Indulging in insider trading / Fraudulent / Unfair trade practices

Power of the Board - Power of a civil court, CPC, 1908 | Sec 11(3)

Discovery and production of books of account and other documents

Summoning and enforcing the attendance of persons and examining them on oath

Inspection of any books, registers and other documents of any person as in Sec 12 and 12A

Issuing commissions for the examination of witnesses or documents

Additional Powers:

Writing | Investors / Securities Market – Interest

Pending investigation w.r.t.

- suspend the trading
- Restrain persons from accessing the securities market
- Prohibit any person to buy, sell or deal in securities
- Suspend any office-bearer (SE / Self- regulatory organisation) from holding such position
- Impound | Retain the proceeds or securities – w.r.t. investigation
- Attach – Involved Bank A/ SEs | Members Cs | Any person | on violation | order – Judicial Magistrate of the first class | not exceeding one month
- Direct - Intermediary / Person | Not to dispose / alienate an asset under investigation | Opportunity of being heard

Other Powers:

To call periodical returns	To compel listing of securities by public companies
To call information or explanation	
To levy fees or other charges	To grant approval / make or amend to bye-laws of SEs
To control and regulate SEs	To direct enquiries to be made in relation to affairs of stock exchanges or their members
To grant registration to market intermediaries	To grant licenses to dealers in securities – Sec 17, SCRA, 1956

Powers from its primary objective to protect the investors: [Sec 11A]

To Regulate / Prohibit

- The issue of prospectus
- Offer document
- Advertisement soliciting money for issue of securities

Specify by Regulation - The matters:

- Issue of capital
- Transfer of securities and other incidental matter

And its disclosure – By General / Special order:

Prohibit / Specify (Also the requirements for listing and transfer of securities)

Investigating Power: [Sec 11C (1)]

Detrimental Transactions | Order in writing | Direct any person

Duty

To produce to investigating Officer by

Manager | MD | Officer | Other employee of the company | Every intermediary

The books | Registers | Other documents | Record of (give certified copies)

Company / Intermediary

Require to furnish such information

Keep in its Custody for 6 months (Call for if needed again | not later than the conclusion of investigation)

Failure (without reasonable cause / refuses)

To produce | To furnish any information | To appear before the Investigating Authority personally | To answer any question | To sign the notes of any examination

Penalty: Imprisonment – Extend to 1 year | Fine - Extend to ₹ 1 Cr | Both

Continuity – ₹ 5Ls / day

2.1.2.3 Registration Certificate

Chapter V | Section 12 | Register in accordance with the Reg

Persons [Sec 12] - Stock broker | Sub broker | Share agent | Banker to an issue | Trustee of trust deed | Registrar to an issue | Merchant banker, Underwriter, Portfolio manager, Investment advisor

Persons [Sec 12A] – Depository Participant, Custodians of securities, Foreign Institutional Investor, Credit Rating Agency | Others by notification

To deal with securities market | buy | sell | deal in securities

Existing Board: The person shall continue for 3 months, if made an application till its disposal

Payment determined by Reg

VCF | CIS | MFs [Sec 12B]: Prohibited unless Registered | Sponsor / Carry on (caused to be)

2.1.2.4 Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control (Section 12A)

Insider trading

- Trading of securities by insiders

- Material non-public information
- Violation of a fiduciary or similar duty of trust and confidence
- To the issuing company / source information

The main benefit of the insider trading goes to the insider.

“The knowledge of unpublished price sensitive information in hands of persons connected to the companies which put them in an advantageous position over others who lack it, such information can be used to make gains by buying shares a cheaper rate anticipating that it might rise and it can be used to insulate themselves against losses by selling shares before the prices fall down, such kind of transaction entered into by persons having access to any unpublished information”

Insider

- The directors | Officers | SHs (substantial number of shares)
- Persons (Non - Employees): Confidential information | Service Providers - Professional advisors, lawyers, investment bankers

Legal Prohibition:

- SEBI (Prohibition of Insider Trading) Regulation 1992
- SEBI (Prohibition of Insider Trading) Regulation 2015 (Notified -15th Jan, 2015, w.e.f. 15th May 2015)

Note: SEBI (Substantial Acquisition of Shares and Takeovers) Reg, 1997

Sec 12A - No person shall directly or indirectly:

- Use / Employ – Manipulative / Deceptive device / Contravene
- Employ - Device / Scheme / Artifice to defraud
- Engage – Act / practice / course of business – Fraud / deceit
- Insider Trading
- Possession – Material / Non-public information | includes communication to other persons
- Acquire - Control of any company / Securities > % of ESH

Applicability:

- for listed and proposed to be listed companies
- w.r.t. Issue / Purchase / Sale / Dealing

2.1.2.5 Penalties

Chapter VIA | Section 15A to 15HB

Section 15J – AOs “shall have due regard to” the factors

Repetitiveness | Amount of disproportionate gain or unfair advantage, the amount of loss caused to an investor or group of investors.

Sl.No	Section	Nature of Violation	Penalty
1	15A	(a) furnish information etc. (b) file return etc. (c) maintain books of accounts etc. (d) within time or false or incomplete return	Not less than ₹ 1 lakh Continuous Failure - ₹ 1Lakh / day sub. to a max- ₹ 1 Cr
2	15B	To enter into agreement with clients	
3	15C	To redress Investors' grievances on direction by the Board	
4	15D	Certain defaults in case of mutual funds	
5	15E	Observe rules and Reg by an asset management company	
6	15EA	Default in case of alternative investment fund, infrastructure investment trust and real estate trust	WEH: Not less than ₹ 1 lakh Continuous Failure - ₹ 1L / day Upto ₹ 1 Cr 3 * the amount of gains made out of the failure
7	15EB	Penalty for default in case of investment advisor and research analyst for failure to comply with Reg	Not less than ₹ 1 lakh Continuous Failure - ₹ 1Lakh / day upto ₹ 1 Cr
8	15F	Fails to issue contract notes	Not less than ₹ 1 lakh
		Fails to deliver any security or fails to make payment	Not less than ₹ 1 lakh Continuous Failure - ₹ 1Lakh / day sub. to a max- ₹ 1 Cr
		Charges in excess of the brokerage specified	Not less than ₹ 1 lakh and may extend five times of the brokerage
9	15G	Penalty for insider trading	WEH:
10	15H	Penalty for non-disclosure of acquisition of shares and takeovers	Not less than ₹ 10 lakh Upto ₹ 25 Crs 3 * the amount of profits made out of insider trading
11	15HA	Penalty for fraudulent and unfair trade practices	WEH: Not less than ₹ 5 lakh Upto ₹ 25 Crs 3 * the amount of profits made out of insider trading
12	15HB	Penalty for contravention where no separate penalty has been provided	Not less than ₹ 1 lakh and may extend ₹ 1 crore.

2.1.2.6 Adjudication

Power to adjudicate (Sec 15I)

AO – Appointment by Board | not below the rank of a Division Chief | To hold an inquiry | Reasonable opportunity of being heard | To impose penalty (as above)

Power of AO:

To summon & enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence

To produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and impose penalty if satisfied

Factors to adjudge quantum of penalty (Sec 15J)

- (1) the Amount of disproportionate gain / unfair advantage, wherever quantifiable, made as a result of the default.
- (2) the Amount of loss caused to an investor / group of investors as a result of the default.
- (3) the Repetitive nature of the default.

Sec 15JA - Credits the realized penalties to Consolidated Fund of India

2.1.2.7 SAT - Establishment, Jurisdiction, Authority & Procedure [Chapter VIB]

Establishment: Sec 15K

CG - By notification | one or more ATs | Govt notification – matters / places to exercise jurisdiction

Composition: Sec 15L | Presiding Officer + Two Members (Appointment by CG Notification)

Note: B/f SEBI, 2002 – SAT to operate with one person till other two members are appointed

Qualifications: Sec 15M | A sitting / Retired Judge of the Supreme Court / High Court

Presiding Officer - Appointment by CG in consultation with the Chief Justice of India or his nominee

Other qualifications –

A person of ability, integrity and standing | Capacity in dealing with problems relating to securities market

Qualification and experience of corporate law, securities laws, finance, economics or accountancy

Disqualification:

A post at senior management level equivalent to Executive Director in SEBI

During his service / tenure | within two years from the date on which he ceases to hold office

Term of office – 5 years | Eligible for re-appointment

Till age – Presiding Officer: 68 years | Other members – 62 years

2.1.2.8 Appeal to SAT [sec 15T]

Aggrieved Person - by

An order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act / Rules / Reg made there under

An order made by an adjudicating officer under this Act

By the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999.

By an adjudicating officer, with the consent of the parties.

Period of Appeal: within 45 days from the date of the above (+ days on sufficient cause)

Fee: as prescribed

On receipt of an appeal: An opportunity of being heard | Order – confirm / Modify / Set aside

Copy of order to Board | parties to appeal | Concerned AO

Dispose within 6 months from the date of receipt of the appeal

2.1.2.9 Appeal to the Supreme Court (Section 15 Z)

Appeal to Supreme Court | within 60 days (+ not exceeding 60 days on sufficient cause)

2.1.2.10 Procedure and Powers of the Securities Appellate Tribunal (Section 15U)

Procedure:

Shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908)

Guided by the principles of natural justice and provisions and rules of this Act

Regulates their own procedure including the places at which they shall have their sittings. T

Powers:

The same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908):

- Summoning and enforcing the attendance of any person and examining him on oath
- Requiring the discovery and production of documents
- Receiving evidence on affidavit
- Issuing commissions for the examination of witnesses or documents
- Reviewing its decisions
- Dismissing an application for default or deciding it ex parte
- setting aside any order of dismissal of any application for default or any order passed by it ex parte
- Any other matter which may be prescribed

Misc:

Sec 193 and 228 | Sec 196, IPC (45 of 1860): Every proceeding of SAT – Deemed Judicial proceeding

Sec 195 and Ch XXVI, CrPC, 1973 (2 of 1974): SAT – Deemed civil court

Appellant – In person | Authorise CA / CMA / CS / Legal Practitioners / any officer

No power to civil court: To entertain any suit / proceeding | To grant injunction

2.1.2.11 Coordination with other Regulatory Authorities, etc

Available for Public Companies / Listed (Shares) Company

Rules and Reg - Connected with the issue and the trading at the primary and the secondary market.

SEBI Coordinates with Government, RBI, Other organs, Intermediaries, Financial Institutions, World Stock Exchanges Other stock exchanges in India.

2.1.2.12 Power to make rules and Reg.

Section 29 & 30: Power | CG – Rules & SEBI – Regulations

Rules / Reg / Guidelines - prescribed by the SEBI:

SEBI (LODR) Reg, 2015	SEBI (SAST) Reg, 1997	SEBI (PIT) Reg, 2015
SEBI (ICDR) (Amendment) Reg, 2009 SEBI (ICDR) (Amendment) Reg, 2015 – Amendments – 2 nd 3 rd 4 th 6 th	SEBI (ESOS and ESPS) Guidelines, 1999 SEBI (Issue of Sweat Equity) Reg, 2002 SEBI (Buy-Back of Securities) Reg, 1998	SEBI (MFs) Reg, 1996 SEBI (CIS) Reg, 1999 SEBI Guidelines for FII SEBI (FIIs) Reg, 1995 SEBI (VCF) Reg, 1996 SEBI (FVCF) Reg
SEBI (Central Listing Authority) Reg, 2003 SEBI (Delisting of Securities) Guidelines, 2003	SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Reg, 2003 & 1995	SEBI (Depositories and Participants) Reg, 1996 SEBI (Custodian of Securities) Reg, 1996 SEBI (Credit Rating Agencies) Reg, 1999
SEBI (Merchant Bankers) Rules, 1992 SEBI (Merchant Bankers) Reg, 1992/ SEBI (Registrars to an issue and Share Transfer Agents) Rules, 1993 and Regulation, 1993	SEBI (Underwriters) Rules, 1993 SEBI (Underwriters) Reg, 1993 SEBI (Debenture Trustees) Rules and Reg, 1993 SEBI (Bankers to an Issue) Rules, 1994 and Reg, 1994	SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 and Reg, 1992 SEBI (Portfolio Manager) Rules, 1993 and Reg, 1993 SEBI (Ombudsman) Reg, 2003

Note: Includes Circulars | Buy - back of securities - Public companies

Annexure - 1

Abbreviation

BoM – Board of Members

CIS – Collective Investment Scheme

ESH – Equity Share Capital

ESOS - Employees Stock Option Scheme

ESPS - Employees Stock Purchase Scheme

GoI – Government of India

ICDR - Issue of Capital and Disclosure Requirements

LODR - Listing Obligations and Disclosure Requirements

MFs - Mutual Funds

PIT - Prohibition of Insider Trading

SAT - Securities Appellate Tribunal

SE – Stock Exchange

SEC – Stock Exchange Commission

SAST - Substantial Acquisition of Shares and Takeover

ST – Securities Transaction

IEPF – Investor Education and Protection Fund

VCF - Venture Capital Funds