

# The Depositories Act, 1996

February 11, 2013

## 1. SHORT TITLE, EXTENT AND COMMENCEMENT.

- (1) This Act may be called the Depositories Act, 1996.
- (2) It extends to the whole of India.
- (3) It shall be deemed to have come into force on the 20th day of September, 1995.

## 2. DEFINITIONS

- (1) In this act, unless the context otherwise requires,-
  - (a) "beneficial owner" means a person whose name is recorded as such with a depository;
  - (b) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
  - (c) "bye-laws" means bye-laws made by a depository under section 26;
  - (d) "Company Law Board" means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956 (1 of 1956);
  - (e) "depository" means a company formed and registered under the Companies Act, 1956 (1 of 1956), and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
  - (f) "issuer" means any person making an issue of securities;
  - (g) "participant" means a person registered as such under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
  - (h) "prescribed" means prescribed by rules made under this Act;
  - (i) "record" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;
  - (j) "registered owner" means a depository whose name is entered as such in the register of the issuer;
  - (k) "regulations" means the regulations made by the Board;
  - <sup>1</sup>[(ka) "Securities Appellate Tribunal" means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992 (15 of 1992);]
  - (l) "security" means such security as may be specified by the Board;
  - (m) "service" means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.



(2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 (1 of 1956), or the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992), shall have the meanings respectively assigned to them in those Acts.

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**1. Ins. by Act 32 of 1999, sec. 13 (w.e.f. 16-12-1999).**

### **3. CERTIFICATE OF COMMENCEMENT OF BUSINESS BY DEPOSITORIES.**

(1) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.

(2) A certificate granted under sub-section (1) shall be in such form as may be specified by the regulations.

(3) The Board shall not grant a certificate under sub-section (1) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions :

Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.

#### **comments**

Without obtaining a certificate of commencement of business from the Securities and Exchange Board of India no depository can act as a depository.

### **4. AGREEMENT BETWEEN DEPOSITORY AND PARTICIPANT.**

(1) A depository shall enter into an agreement with one or more participants as its agent.

(2) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

### **5. SERVICES OF DEPOSITORY.**

Any person, through a participant, may enter into an agreement, in such form as may be specified by the bye-laws, with any depository for availing its services.

### **6. SURRENDER OF CERTIFICATE OF SECURITY.**

(1) Any person who has entered into an agreement under section 5 shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations.

(2) The issuer, on receipt of certificate of security under sub-section (1), shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly.



(3) A depository shall, on receipt of information under sub-section (2), enter the name of the person referred in sub-section (1) in its records, as the beneficial owner.

## 7. REGISTRATION OF TRANSFER OF SECURITIES WITH DEPOSITORY.

(1) Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee.

(2) If a beneficial owner or a transferee of any security seeks to have custody of such security the depository shall inform the issuer accordingly.

## 8. OPTIONS TO RECEIVE SECURITY CERTIFICATE OR HOLD SECURITIES WITH DEPOSITORY.

(1) Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository.

(2) Where a person opts to hold a security with a depository, the issuer shall intimate such depository the details of allotment of the security, and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of that security.

### comments

Any person, who is subscribing to securities offered by issuer, has got the option either to receive the security certificates or hold securities with a depository.



## 9. SECURITIES IN DEPOSITORIES TO BE IN FUNGIBLE FORM.

(1) All securities held by a depository shall be dematerialized and shall be in a fungible form.

<sup>1</sup>(2) Nothing contained in sections 153, 153A, 153B, 187B, 187C and 372 of the Companies Act, 1956 (1 of 1956), shall apply to a depository in respect of securities held by it on behalf of the beneficial owners.

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**1. Subs. by Act 8 of 1997, sec. 22, for sub-section (2) (w.e.f. 15-1-1997).**

## 10. RIGHTS OF DEPOSITORIES AND BENEFICIAL OWNER.

(1) Notwithstanding anything contained in any other law for the time being in force, a depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

(2) Save as otherwise provided in sub-section (1), the depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it.

(3) The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

**comments**

A depository is deemed to be a registered owner for the purposes of affecting transfer of ownership of security on behalf of a beneficial owner. The depository as a registered owner does not have any voting rights in respect of securities held by him. The beneficial owner is entitled to all the rights and benefits and is subject to all the liabilities in respect of the securities held by a depository.

## 11. REGISTER OF BENEFICIAL OWNER.

Every depository shall maintain a register and an index of beneficial owners in the manner provided in section 150, section 151 and section 152 of the Companies Act, 1956 (1 of 1956).

**Comments**

Sections 150, 151 and 152 of the Companies Act, 1956 (1 of 1956) are reproduced below for ready reference:

"150. Register of members.—(1) Every company shall keep in one or more books a register of its members, and enter therein the following particulars:—

- (a) the name and address, and the occupation, if any, of each member;
- (b) in the case of a company having a share capital, the shares held by each member, distinguishing each share by its number, and the amount paid or agreed to be considered as paid on those shares;
- (c) the date at which each person was entered in the register as a member; and
- (d) the date at which any person ceased to be a member:

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall show the amount of stock held by each of the members concerned instead of the shares so converted which were previously held by him.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees for every day during which the default continues."

"151. Index of members.—(1) Every company having more than fifty members shall, unless the register of members is in such a form as in itself to constitute an index, keep an index (which may be in the form of a card index) of the names of the members of the company and shall, within fourteen days after the date on which any alteration is made in the register of members, make the necessary alteration in the index.

(2) The index shall, in respect of each member, contain a sufficient indication to enable the entries relating to that member in the register to be readily found.

(3) The index shall, at all times, be kept at the same place as the register of members.

(4) If default is made in complying with sub-section (1), (2) or (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees."



"152. Register and index of debenture-holders.—(1) Every company shall keep in one or more books, a register of the holders of its debentures and enter therein the following particulars, namely:—

(a) the name and address, and the occupation, if any, of each debenture-holder;

(b) the debentures held by each holder, distinguishing each debenture by its number, and the amount paid or agreed to be considered as paid on those debentures;

(c) the date at which each person was entered in the register as a debenture-holder; and

(d) the date at which any person ceased to be a debenture-holder.

(2) (a) Every company having more than fifty debenture-holders shall, unless the register of debenture-holders is in such a form as in itself to constitute an index, keep an index (which may be in the form of a card index) of the names of the debenture-holders of the company and shall, within fourteen days after the date on which any alteration is made in the register of debenture-holders make the necessary alteration in the index.

(b) The index shall, in respect of each debenture-holder, contain a sufficient indication to enable the entries relating to that holder in the register to be readily found.

(3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty rupees.

(4) Sub-sections (1) to (3) shall not apply with respect to debentures which ex facie, are payable to the bearer thereof."



## **12. PLEDGE OR HYPOTHECATION OF SECURITIES HELD IN A DEPOSITORY.**

(1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.

(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

## **13. FURNISHING OF INFORMATION AND RECORDS BY DEPOSITORY AND ISSUER.**

(1) Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws.

(2) Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository.

## **14. OPTION TO OPT OUT IN RESPECT OF ANY SECURITY.**

(1) If a beneficial owner seeks to opt out of a depository in respect of any security he shall inform the depository accordingly.

(2) The depository shall on receipt of intimation under sub-section (1) make appropriate entries in its records and shall inform the issuer.

(3) Every issuer shall, within thirty days of the receipt of intimation from the depository and on fulfillment of such conditions and on payment of such fees as may be specified by the regulations, issue the certificate of securities to the beneficial owner or the transferee, as the case may be.

#### **comments**

Any beneficial owner can opt out of a depository in respect of any security by informing the depository.

## **15. ACT 18 OF 1891 TO APPLY TO DEPOSITORIES.**

The Bankers' Books Evidence Act, 1891 (18 of 1891), shall apply in relation to a depository as if it were a bank as defined in section 2 of that Act.

#### **Comments**

"Bank" as defined under sub-section (2) of section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891), means—

(a) any company or corporation carrying on the business of banking;

(b) any partnership or individual to whose books the provisions of Bankers' Books Evidence Act, 1891 shall have been extended;

(c) any post office saving bank or a money order office.

## **16. DEPOSITORIES TO INDEMNIFY LOSS IN CERTAIN CASES.**

(1) Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner.

(2) Where the loss due to the negligence of the participant under sub-section (1) is indemnified by the depository, the depository shall have the right to recover the same from such participant.

## **17. RIGHTS AND OBLIGATIONS OF DEPOSITORIES, ETC.**

(1) Subject to the provisions of this Act, the rights and obligations of the depositories, participants and issuers whose securities are dealt with by a depository shall be specified by the regulations.

(2) The eligibility criteria for admission of securities into the depository shall be specified by the regulations.

## **18. POWER OF BOARD TO CALL FOR INFORMATION AND ENQUIRY.**

(1) The Board, on being satisfied that it is necessary in the public interest or in the interest of investors so to do, may, by order in writing, –

(a) Call upon any issuer, depository, participant or beneficial owner to furnish in writing such information relating to the securities held in a depository as it may require; or

(b) Authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant, who shall submit a report of such enquiry or inspection to it within such period as may be specified in the order.

(2) Every director, manager, partner, secretary, officer or employee of the depository or issuer or the participant or beneficial owner shall on demand produce before the person making the enquiry or inspection all information or such records and other documents in his custody having a bearing on the subject-matter of such enquiry or inspection.

## **19. POWER OF BOARD TO GIVE DIRECTIONS IN CERTAIN CASES.**

Save as provided in this Act, if after making or causing to be made an enquiry or inspection, the Board is satisfied that it is necessary –

(i) In the interest of investors, or orderly development of securities market; or

(ii) To prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market, it may issue such directions, –

(a) To any depository or participant or any person associated with the securities market; or

(b) To any issuer, as may be appropriate in the interest of investors or the securities market.

## **19A. Penalty for failure to furnish information, return, etc..**

<sup>1</sup>[19A. Penalty for failure to furnish information, return, etc.—Any person, who is required under this Act or any rules or regulations or bye-laws made thereunder,—

(a) to furnish any information, document, books, returns or report to the Board, fails to furnish the same within the time specified therefor, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or the bye-laws, fails to file return or furnish the same within the time specified therefor, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004).**



## 19B. Penalty for failure to enter into an agreement..

<sup>1</sup>[19B. Penalty for failure to enter into an agreement.—If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), and is required under this Act or any rules or regulations made thereunder, to enter into an agreement, fails to enter into such agreement, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for every such failure.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004).**

## 19C. Penalty for failure to redress Investors' grievances

<sup>1</sup>[19C. Penalty for failure to redress Investors' grievances.—If any depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), after having been called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004).**



## 19D. Penalty for delay in dematerialisation or issue of certificate of securities..

<sup>1</sup>[19D. Penalty for delay in dematerialisation or issue of certificate of securities.—If any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), fails to dematerialise or issue the certificate of securities on opting out of a depository by the investors, within the time specified under this Act or regulations or bye-laws made thereunder or abets in delaying the process of dematerialisation or issue the certificate of securities on opting out of a depository of securities, such issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004).**

## 19E. Penalty for failure to reconcile records..

<sup>1</sup>[19E. Penalty for failure to reconcile records.—If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), fails to reconcile the records of dematerialised securities with all the securities issued by the issuer as specified in the regulations, such depository or participant or issuer or its agent or intermediary shall be liable to



a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004).**

## 19F. Penalty for failure to comply with directions issued by Board under section 19 of the Act..

<sup>1</sup>[19F. Penalty for failure to comply with directions issued by Board under section 19 of the Act.—If any person fails to comply with the directions issued by the Board under section 19, within the time specified by it, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004).**

## 19G. Penalty for contravention where no separate penalty has been provided.—

<sup>1</sup>[19G. Penalty for contravention where no separate penalty has been provided.—Whoever fails to comply with any provision of this Act, the rules or regulations or bye laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004)..**

## 19H. Power to adjudicate.

<sup>1</sup>[19H. Power to adjudicate.—(1) For the purpose of adjudging under sections 19A, 19B, 19C, 19D, 19E, 19F and 19G, the Board shall appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004).**

## 19-I. Factors to be taken into account by adjudicating officer.

<sup>1</sup>[19-I. Factors to be taken into account by adjudicating officer.—While adjudging the quantum of penalty under section 19H, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004).**

## 19J. Crediting sums realised by way of penalties to Consolidated Fund of India.

<sup>1</sup>[19J. Crediting sums realised by way of penalties to Consolidated Fund of India.—All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.]

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**1. Ins. by Act 1 of 2005, sec. 17 (w.r.e.f. 12-10-2004).**

## 20. OFFENCES.

Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or any regulations or bye-laws made there under shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

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**1. Subs. by Act 1 of 2005, sec. 18, for section 20 (w.r.e.f. 12-10-2004).**

## 21. OFFENCES BY COMPANIES.

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

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

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



Explanation : For the purposes of this section, –

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director", in relation to a firm, means a partner in the firm.

## 22. COGNIZANCE OF OFFENCES BY COURTS.

<sup>1</sup> COGNIZANCE OF OFFENCES BY COURTS.(1) No Court shall take cognizance of any offence punishable under this Act or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

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**1. Subs. by Act 1 of 2005, sec. 19, for section 22 (w.r.e.f. 12-10-2004).**

### 22A. Composition of certain offences.

<sup>1</sup>[22A. Composition of certain offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.]

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**1. Subs. by Act 1 of 2005, sec. 19, for section 22 (w.r.e.f. 12-10-2004).**

### [22B. Power to grant immunity.—

<sup>1</sup>[22B. Power to grant immunity.—(1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central

Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that recommendation of the Board under this sub-section shall not be binding upon the Central Government.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was



granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.]

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**1. Subs. by Act 1 of 2005, sec. 19, for section 22 (w.r.e.f. 12-10-2004).**

## **23. APPEALS.**

(1) Any person aggrieved by <sup>1</sup>an order of the Board made under this Act, or the regulations made there under may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefore :

Provided that an appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed :

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

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**1. Subs. by Act 32 of 1999, sec. 14, for "an order of the Board made" (w.e.f. 16-12-1999).**

## **23A. Appeal to Securities Appellate Tribunal.**

<sup>1</sup>[23A. Appeal to Securities Appellate Tribunal.—(1) Save as provided in sub-section (2), any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999 (32 of 1999), under this Act, or the regulations made thereunder <sup>2</sup>[or by an order made by an adjudicating officer under this Act], may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made by the Board with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board is received by the person referred to in sub-section (1) and it shall be in such form and be accompanied by such fee as may be prescribed:

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



(4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.

(6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.]

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**1. Ins. by Act 32 of 1999, sec. 15 (w.e.f. 16-12-1999).**

**2. Ins. by Act 1 of 2005, sec. 20 (w.r.e.f. 12-10-2004).**

## 23B. Procedure and powers of Securities Appellate Tribunal.

<sup>1</sup>[23B. Procedure and powers of Securities Appellate Tribunal.—(1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they have their sittings.

(2) The Securities Appellate Tribunal shall have, for the purpose of

discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).]

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**1. Ins. by Act 32 of 1999, sec. 15 (w.e.f. 16-12-1999).**

## **23C. Right to legal representation.**

<sup>1</sup>[23C. Right to legal representation.—The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.]

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**1. Ins. by Act 32 of 1999, sec. 15 (w.e.f. 16-12-1999).**

## **23D. Limitation.**

<sup>1</sup>[23D. Limitation.—The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.]

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**1. Ins. by Act 32 of 1999, sec. 15 (w.e.f. 16-12-1999).**

## **23E. Civil court not to have jurisdiction.**

<sup>1</sup>[23E. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.]

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**1. Ins. by Act 32 of 1999, sec. 15 (w.e.f. 16-12-1999).**

## **23F. Appeal to Supreme Court.—**

<sup>1</sup>[23F. Appeal to Supreme Court.—Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.]

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**1. Subs. by Act 1 of 2005, sec. 21, for section 23F (w.r.e.f. 12-10-2004).**

## 24. POWER OF CENTRAL GOVERNMENT TO MAKE RULES.

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

<sup>1</sup>[(a) the manner of inquiry under sub-section (1) of section 19H;

(aa) The time within which an appeal may be preferred under sub-section (1) of section 23;

(b) The form in which an appeal may be preferred under sub-section (3) of section 23 and the fees payable in respect of such appeal;

(c) The procedure for disposing of an appeal under sub-section (4) of section 23.

<sup>2</sup>[(d) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23A and the fees payable in respect of such appeal.]

**1. Subs. by Act 1 of 2005, sec. 22, for clause (a) (w.r.e.f. 12-10-2004). Clause (a), before substitution, stood as under:**

“(a) the time within which an appeal may be preferred under sub-section (1) of section 23;”.

**2. Ins. by Act 32 of 1999, sec. 16 (w.e.f. 16-12-1999).**

## 25. POWER OF BOARD TO MAKE REGULATIONS.

(1) Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made there under to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for –

(a) the form in which record is to be maintained under clause (i) of sub-section (1) of section 2;

(b) the form in which the certificate of commencement of business shall be issued under sub-section (2) of section 3;



(c) the manner in which the certificate of security shall be surrendered under sub-section (1) of section 6;

(d) the manner of creating a pledge or hypothecation in respect of security owned by a beneficial owner under sub-section (1) of section 12;

(e) the conditions and the fees payable with respect to the issue of certificate of securities under sub-section (3) of section 14;

(f) the rights and obligations of the depositories, participants and the issuers under sub-section (1) of section 17;

(g) the eligibility criteria for admission of securities in the depository under sub-section (2) of section 17.

## 26. POWER OF DEPOSITORIES TO MAKE BYE-LAWS.

(1) A depository shall, with the previous approval of the Board, make bye-laws consistent with the provisions of this Act and the regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws shall provide for –

(a) the eligibility criteria for admission and removal of securities in the depository;

(b) the conditions subject to which the securities shall be dealt with;

(c) the eligibility criteria for admission of any person as a participant;

(d) the manner and procedure for dematerialization of securities;

(e) the procedure for transactions within the depository;

(f) the manner in which securities shall be dealt with or withdrawn from a depository;

(g) the procedure for ensuring safeguards to protect the interests of participants and beneficial owners;

(h) the conditions of admission into and withdrawal from a participant by a beneficial owner;

(i) the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;

(j) the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;

(k) the manner of creating pledge or hypothecation in respect of securities held with a depository;

(l) inter se rights and obligations among the depository, issuer, participants and beneficial owners;

(m) the manner and the periodicity of furnishing information to the Board, issuer and other persons;





(n) the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;

(o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;

p) the internal control standards including procedure for auditing, reviewing and monitoring.

(3) Where the Board considers it expedient so to do, it may, by order in writing, direct a depository to make any bye-laws or to amend or revoke any bye-laws already made within such period as it may specify in this behalf.

(4) If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications thereof as the Board thinks fit.

#### **Comments**

The meaning of bye-laws as defined under section 2(1) of this Act is regulated by this section.

## **27. RULES AND REGULATIONS TO BE LAID BEFORE PARLIAMENT.**

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, that rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.



## **28. APPLICATION OF OTHER LAWS NOT BARRED.**

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force relating to the holding and transfer of securities.

## **29. REMOVAL OF DIFFICULTIES.**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty :

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

## **30. AMENDMENTS TO CERTAIN ENACTMENTS.**

The enactments specified in the Schedule to this Act shall be amended in the manner provided therein.

## 31. REPEAL AND SAVING.

(1) The Depositories (Third) Ordinance, 1996 (Ord. 28 of 1996), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

## THE SCHEDULE -1

AMENDMENT TO THE INDIAN STAMP ACT, 1899 (2 OF 1899).

After section 8, the following section shall be inserted, namely :-

'8A. Securities not liable to stamp duty. – Notwithstanding anything contained in this Act, –

(a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;

(b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories Act, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;

(c) transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;

(d) the transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under Article 62 of Schedule I of this Act.

Explanation : For the purposes of this section, the expressions "beneficial owner", "depository", and "issuer" shall have the meanings respectively assigned to them in clauses (a), (e) and (f) of sub-section (1) of section 2 of the Depositories Act, 1996'.

## THE SCHEDULE- 2

II AMENDMENTS TO THE COMPANIES ACT, 1956 (1 OF 1956).

1. In section 2, after clause (45A), the following clause shall be inserted, namely :-

'(45B) "Securities and Exchange Board of India" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (Act No. 5 of 1992).'

2. After section 2, the following section shall be inserted, namely :-

"2A. Interpretation of certain words and expressions. – Words and expressions used and not defined in this Act but defined in the Depositories Act, 1996, shall have the same meanings respectively assigned to them in that Act."

3. In section 41, after sub-section (2), the following sub-section shall be inserted, namely :-



“(3) Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company.”.

4. In section 49, in sub-section (5), after clause (b), the following clause shall be inserted, namely

“(c) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.”.

5. In section 51, the following proviso shall be inserted, namely :-

“Provided that where the securities are held in a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic mode or by delivery of floppies or discs.”.

6. Section 83 shall be omitted.

7. In section 108, after sub-section (2), the following sub-section shall be inserted, namely :-

“(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.”.

8. In section 111, after sub-section (13), the following sub-section shall be inserted, namely :-

“(14) In this section “company” means a private company and includes a private company which had become a public company by virtue of section 43A of this Act.”.

9. After section 111, the following section shall be inserted, namely :-

‘111A. Rectification of register on transfer. – (1) In this section, unless the context otherwise requires, “company” means a company other than a company referred to in sub-section (14) of section 111 of this Act.

(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable.

(3) The Company Law Board may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992, (15 of 1992), or regulations made there under or the Sick Industrial Companies (Special

Provisions) Act, 1985 (1 of 1986).

(4) The Company Law Board while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry.

(5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall



be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board.

(6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended.

(7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the Company Law Board under this section as they apply to the proceedings under that section.’

10. In section 113, after sub-section (3), the following sub-section shall be inserted, namely :-

“(4) Notwithstanding anything contained in sub-section (1), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.”.

11. In section 150, in sub-section (1), in clause (b), the words “distinguishing each share by its number” shall be omitted.

12. In section 152, in sub-section (1), in clause (b), the words “distinguishing each debenture by its number” shall be omitted.

13. After section 152, the following section shall be inserted, namely :-

“152A. Register and index of beneficial owners to be of debenture holder –

The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be, for the purposes of this Act.”.

14. In Schedule II, in Part II, in clause C, after sub-clause (9), the following sub-clause shall be inserted, namely :-

“9A. The details of option to subscribe for securities to be dealt with in a depository.”

## THE SCHEDULE- 3

III AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 (42 OF 1956).

1. In section 2, for clause (i), the following clause shall be substituted, namely :-

‘(i) “spot delivery contract” means a contract which provides for, –

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

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

2. Section 22A shall be omitted.



## THE SCHEDULE- 4

IV AMENDMENT TO THE INCOME-TAX ACT, 1961 (43 OF 1961).

In section 45, after sub-section (2), the following sub-section shall be inserted, namely :-

“(2A) Where any person has had at any time during the previous year any beneficial interest in any securities, then, any profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to income-tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of securities by virtue of sub-section (1) of section 10 of the Depositories Act, 1996, and for the purposes of –

(i) section 48; and

(ii) proviso to clause (42A) of section 2,

the cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first out method.

Explanation : For the purposes of this sub-section, the expressions “beneficial owner”, “depository” and “security” shall have the meanings respectively assigned to them in clauses (a), (e) and (l) of sub-section (1) of section 2 of the Depositories Act, 1996.’

## THE SCHEDULE- 5

AMENDMENT TO THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 (45 OF 1988).

In section 3, for sub-section (2), the following sub-section shall be substituted, namely :-

“(2) Nothing in sub-section (1) shall apply to –

(a) The purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) The securities held by a –

(i) Depository as a registered owner under sub-section (1) of section 10 of the Depositories Act, 1996;

(ii) Participant as an agent of a depository.

Explanation : The expressions “depository” and “participants” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996.’

## THE SCHEDULE- 6

AMENDMENTS TO THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 (15 OF 1992).

1. In section 2, in sub-section (2), for the words, brackets and figures “the Securities Contracts (Regulation) Act, 1956(42 of 1956)”, the words, brackets and figures “the Securities Contracts



(Regulation) Act, 1956 or the Depositories Act, 1996", shall be substituted.

2. In section 11, in clause (ba), for the words "depositories, custodians", the words "depositories, participants, custodians" shall be substituted.

3. In section 12, in sub-section (1A), for the words "depository, custodian", at both the places where they occur, the words "depository, participant, custodian" shall be substituted.

4. In section 16, in sub-section (1), for the words "this Act", the words and figures "this Act or the Depositories Act, 1996" shall be substituted.



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