

THE SECURITIES AND EXCHANGE BOARD OF INDIA
(AMENDMENT) ACT, 2002

No. 59 OF 2002

[17th December, 2002.]

An Act further to amend the Securities and Exchange Board of India
Act, 1992.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Securities and Exchange Board of India (Amendment) Act, 2002.

Short title and commencement.

(2) It shall be deemed to have come into force on the 29th day of October, 2002.

15 of 1992.

2. In section 2 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the principal Act), in sub-section (1), after clause (h), the following clause shall be inserted, namely:—

Amendment of section 2.

2 of 1934.

“(ha) “Reserve Bank” means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;”

3. In section 4 of the principal Act,—

Amendment of section 4.

(a) in sub-section (1),—

(i) in clause (b),—

(A) for the word “Ministries”, the word “Ministry” shall be substituted;

1 of 1956.

(B) for the words “and Law”, the words and figures “and administration of the Companies Act, 1956” shall be substituted;

2 of 1934.

(ii) in clause (c), for the words and figures “the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934”, the words “the Reserve Bank” shall be substituted;

(iii) for clause (d), the following clause shall be substituted, namely:—

“(d) five other members of whom at least three shall be the whole-time members.”;

(b) in sub-section (4), for the words “Reserve Bank of India”, the words “Reserve Bank” shall be substituted.

Amendment
of section 11.

4. In section 11 of the principal Act,—

(a) in sub-section (2), after clause (i), the following clause shall be inserted, namely:—

“(ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board.”;

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

“(2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.”;

(c) in sub-section (3),—

(i) in the opening portion, for the words, brackets, letter and figure “clause (i) of sub-section (2)”, the words, brackets, figures and letters “clause (i) or clause (ia) of sub-section (2) or sub-section (2A)” shall be substituted;

(ii) after clause (iii), the following clauses shall be inserted at the end, namely:—

“(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);

(v) issuing commissions for the examination of witnesses or documents.”;

(d) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

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

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.”

5. For section 11A of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 11A.

1 of 1956.

“11A. (1) Without prejudice to the provisions of the Companies Act, 1956, the Board may, for the protection of investors,—

Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities.

(a) specify, by regulations —

(i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and

(ii) the manner in which such matters shall be disclosed by the companies;

(b) by general or special orders—

(i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;

(ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956, the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.” 42 of 1956.

Insertion of
new sections
11C and 11D.

6. After section 11B of the principal Act, the following sections shall be inserted, namely:—

Investigation.

“11C. (1) Where the Board has reasonable ground to believe that—

(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or

(b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder,

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

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power. 1 of 1956.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced:

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

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

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(6) If any person fails without reasonable cause or refuses—

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

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

(7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority —

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record, if it considers necessary for the purposes of the investigation:

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

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

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

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

2 of 1974.

Cease and desist proceedings.

11D. If the Board finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation:

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

Insertion of new Chapter VA.

7. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER VA

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

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

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

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.”

Amendment of section 14.

8. In section 14 of the principal Act, in sub-section (1), clause (aa) shall be omitted.

Amendment of section 15A.

9. In section 15A of the principal Act,—

(i) in clause (a), for the words “a penalty not exceeding one lakh and fifty thousand rupees for each such failure”, the words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” shall be substituted;

(ii) in clause (b), for the words "a penalty not exceeding five thousand rupees for every day during which such failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(iii) in clause (c), for the words "a penalty not exceeding ten thousand rupees for every day during which the failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

10. In section 15B of the principal Act, for the words "a penalty not exceeding five lakh rupees for every such failure", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

Amendment of section 15B.

11. For section 15C of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 15C.

"15C. If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less."

Penalty for failure to redress investors' grievances.

12. In section 15D of the principal Act,—

Amendment of section 15D.

(i) in clause (a), for the words "a penalty not exceeding ten thousand rupees for each day during which he carries on any such collective investment scheme including mutual funds, or ten lakh rupees, whichever is higher", the words "a penalty of one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds, or one crore rupees, whichever is less" shall be substituted;

(ii) in clause (b), for the words "a penalty not exceeding ten thousand rupees for each day during which such failure continues or ten lakh rupees, whichever is higher", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(iii) in clause (c), for the words "a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is higher", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(iv) in clause (d), for the words "a penalty not exceeding one thousand rupees for each day during which such failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(v) in clause (e), for the words "a penalty not exceeding one thousand rupees for each day during which such failure continues", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted;

(vi) in clause (f), for the words "a penalty not exceeding five lakh rupees for each such failure", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

13. In section 15E of the principal Act, for the words "a penalty not exceeding five lakh rupees for each such failure", the words "a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" shall be substituted.

Amendment of section 15E.

Amendment of section 15F.

14. In section 15F of the principal Act,—

(i) in clause (b), for the words “a penalty not exceeding five thousand rupees for each day during which such failure continues”, the words “a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less” shall be substituted;

(ii) in clause (c), for the words “a penalty not exceeding five thousand rupees”, the words “a penalty of one lakh rupees” shall be substituted.

Amendment of section 15G.

15. In section 15G of the principal Act, for the words “not exceeding five lakh rupees”, the words “twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher” shall be substituted.

Amendment of section 15H.

16. In section 15H,—

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

“(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.”;

(b) for the words “not exceeding five lakh rupees”, the words “twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher” shall be substituted.

Insertion of new sections 15HA and 15HB.

17. After section 15H of the principal Act, the following sections shall be inserted, namely:—

“15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.”.

Penalty for fraudulent and unfair trade practices.

Penalty for contravention where no separate penalty has been provided.

Amendment of section 15-I.

18. In section 15-I of the principal Act, in sub-section (I), for the word, figures and letter “and 15H”, the figures, letters and word “15H, 15HA and 15HB” shall be substituted.

Insertion of new section 15JA.

19. After section 15J of the principal Act, the following section shall be inserted, namely:—

“15JA. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.”.

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

Substitution of new sections for sections 15L and 15M.

20. For sections 15L and 15M of the principal Act, the following sections shall be substituted, namely:—

“15L. A Securities Appellate Tribunal shall consist of a Presiding Officer and two other Members, to be appointed, by notification, by the Central Government :

Provided that the Securities Appellate Tribunal, consisting of one person only,

Composition of Securities Appellate Tribunal.

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

15M. (1) A person shall not be qualified for appointment as the Presiding Officer of a Securities Appellate Tribunal unless he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court :

Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal.

Provided that the Presiding Officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

(2) A person shall not be qualified for appointment as Member of a Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy:

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

21. For section 15N of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 15N.

“15N. The Presiding Officer and every other Member of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment :

Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal.

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

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

22. In section 15-O of the principal Act,—

Amendment of section 15-O.

(a) for the words “Presiding Officer of a Securities Appellate Tribunal”, the words “Presiding Officer and other Members of a Securities Appellate Tribunal” shall be substituted;

(b) in the proviso, for the words “said Presiding Officers”, the words “Presiding Officer and other Members of a Securities Appellate Tribunal” shall be substituted.

23. In section 15P of the principal Act, for the words “office of the Presiding Officer”, the words “the office of the Presiding Officer or any other Member,” shall be substituted.

Amendment of section 15P.

24. In section 15Q of the principal Act, —

Amendment of section 15Q.

(a) in sub-section (1),—

(i) for the words “Presiding Officer of a Securities Appellate Tribunal”, the words “the Presiding Officer or any other Member of a Securities Appellate Tribunal” shall be substituted;

(ii) in the proviso, for the words “the said Presiding Officer”, the words “the Presiding Officer or any other Member” shall be substituted;

(b) in sub-section (2), for the words “Presiding Officer” at both the places where they occur, the words “Presiding Officer or any other Member” shall be substituted;

(c) in sub-section (3), for the words "aforesaid Presiding Officer", the words "the Presiding Officer or any other Member" shall be substituted.

Amendment of section 15R. 25. In section 15R of the principal Act, for the words "Presiding Officer", the words "Presiding Officer or a Member" shall be substituted.

Substitution of new section for section 15X. 26. For section 15X of the principal Act, the following section shall be substituted, namely:—

Presiding Officer, Members and staff of Securities Appellate Tribunals to be public servants. "15X. The Presiding Officer, Members and other officers and employees of a Securities Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code."

45 of 1860.

Substitution of new section for section 15Z. 27. For section 15Z of the principal Act, the following section shall be substituted, namely:—

Appeal to Supreme Court. "15Z. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

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

Amendment of section 24. 28. In section 24 of the principal Act, —

(a) in sub-section (1), for the words "one year, or with fine, or with both", the words "ten years, or with fine, which may extend to twenty-five crore rupees or with both" shall be substituted;

(b) in sub-section (2), for the words "three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both", the words "ten years or with fine, which may extend to twenty-five crore rupees or with both" shall be substituted.

Insertion of new sections 24A and 24B. 29. After section 24 of the principal Act, the following sections shall be inserted, namely:—

Composition of certain offences.

"24A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

2 of 1974.

Power to grant immunity.

24B. (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

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

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act, to which such person would have been liable, had not such immunity been granted.”

30. In section 26 of the principal Act, in sub-section (2), for the words “a Metropolitan Magistrate or a Judicial Magistrate of the first class”, the words “a Court of Session” shall be substituted.

Amendment of section 26.

31. In section 29 of the principal Act, in sub-section (2),—

Amendment of section 29.

(i) in clause (db), for the words “Presiding Officers”, the words “Presiding Officers, Members” shall be substituted;

(ii) in clause (dc), for the words “Presiding Officers”, the words “Presiding Officers, or other Members” shall be substituted.

Ord. 6 of 2002.

32. (1) The Securities and Exchange Board of India (Amendment) Ordinance, 2002, is hereby repealed.

Repeal and saving.

Ord. 6 of 2002.

(2) Notwithstanding the repeal of the Securities and Exchange Board of India (Amendment) Ordinance, 2002, anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.