

SECURITIES LAWS & CAPITAL MARKET

Amendments for June 20

CS Vikas Vohra *Corporate BaBa*





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Foundation :Business Environment & Law
Executive :Company Law / Securities Laws & Capital Markets
Professional :Drafting, Pleadings, and Appearances



CA CS Harish A. Mathariya (Founder)

Foundation :Fundamentals of Accounting & Auditing
Executive :Corporate & Management Accounting



Adv Chirag Chotrani

Foundation :Business Management, Ethics & Entrepreneurship
Executive :Jurisprudence, Interpretation & General Laws / Setting up of Business Entities and Closure
:Economic Business & Commercial Laws,
Professional :Governance, Risk Management, Compliances and Ethics / Corporate Funding and Listing in Stock Exchanges



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On behalf of **TEAM YES**

CS Vikas Vohra CA CS Harish A. Mathariya
Founders

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CHAPTER 3 - DEPOSITORIES

CERTIFICATE OF COMMENCEMENT OF BUSINESS BY DEPOSITORIES

No depository shall act as a depository unless it obtains a certificate of commencement of business from the SEBI in such form as may be specified by the SEBI (Depositories and Participants) Regulations, 2018. The SEBI shall not grant a certificate unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions. However no certificate shall be refused unless the depository concerned has been given a reasonable opportunity of being heard.

CHAPTER 6 - TAKEOVER CODE - AN OVERVIEW

INDIRECT ACQUISITION OF SHARES OR CONTROL

Indirect acquisition means the acquisition of shares, voting rights or control over any other company which would enable the acquirer of shares, voting rights or control to exercise such percentage of voting rights, which would otherwise have triggered an open offer process.

Certain indirect acquisitions are regarded as 'deemed direct acquisitions' if such indirect acquisition satisfy the following conditions such as:

- (a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired exceeds 80 percent; or
- (b) the proportionate sales turnover of target company as a percentage of the consolidated sales turnover of the entity or business being acquired exceeds 80 percent; or
- (c) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired exceeds 80 percent;

DISCLOSURE OF ENCUMBERED SHARES (REGULATION 31)

Sub Regulation 4 & 5 Inserted:

(4) The promoter of every target company shall declare on a **yearly basis** that he, along with persons acting in concert, has **not made any encumbrance, directly or indirectly, other than those already disclosed during the financial year.**

(5) The declaration required under sub-regulation (4) shall be made within **seven working days** from the end of each financial year to -

- (a) every **stock exchange** where the shares of the target company are listed; and
- (b) the **audit committee** of the target company.

SUBMISSION OF DRAFT LETTER OF OFFER

The Acquirer shall submit a draft letter of offer to SEBI within 5 working days from the date of detailed public announcement along with a non-refundable fee as applicable.

Sr. No.	Consideration payable under the Open Offer	Fees (Rs.)
1.	Upto ten crore rupees	Five lakh rupees (Rs. 5,00,000)
2.	More than ten crore rupees but less than or equal to one thousand crore rupees	0.5 per cent of the offer size
3.	More than one thousand crore rupees	Five crore rupees (Rs. 5,00,00,000) plus 0.125 per cent of the portion of the offer size in excess of one thousand crore rupees (1000,00,00,000)

GENERAL EXEMPTIONS

Regulation 2A Inserted:

“(2A) An increase in the voting rights of any shareholder beyond the threshold limits stipulated in sub-regulations (1) and (2) of regulation 3, without the acquisition of control, pursuant to the conversion of equity shares with superior voting rights into ordinary equity shares, shall be exempted from the obligation to make an open offer under regulation 3.”

CHAPTER 4 - SEBI (ICDR) REGULATIONS, 2018

SR EQUITY SHARES

SR equity shares means the equity shares of an issuer having superior voting rights compared to all other equity shares issued by that issuer.

ELIGIBILITY REQUIREMENTS FOR AN INITIAL PUBLIC OFFER [REGULATION 6]

An issuer not satisfying the eligibility conditions shall be eligible to make an initial public offer only if the issue is made through the book-building process and the issuer undertakes to allot at least seventy five per cent of the net offer to qualified institutional buyers and to refund the full subscription money, if it fails to do so.

If an issuer has issued SR equity shares to its promoters/founders, the said issuer shall be allowed to do an initial public offer of only ordinary shares for listing on the Main Board subject to compliance with the provisions of these regulations and these clauses -

- the issuer shall be intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition.
- the SR shareholder shall not be part of the promoter group whose collective net worth is more than rupees 500 crores. While determining the collective net worth, the investment of SR shareholder in the shares of the issuer company shall not be considered.
- The SR shares were issued only to the promoters/founders who holds an executive position in the issuer company;
- The issue of SR equity shares had been authorized by a special resolution passed at a general meeting of the shareholders of the issuer, where the notice calling for such general meeting specifically provided for:
 - a. the size of issue of SR equity shares,
 - b. ratio of voting rights of SR equity shares vis-à-vis the ordinary shares,
 - c. rights as to differential dividends, if any
 - d. sunset provisions, which provide for a time frame for the validity of such SR equity shares,
 - e. matters in respect of which the SR equity shares would have the same voting right as that of the ordinary shares.

- The SR equity shares have been held for a period of at least 6 months prior to the filing of the red herring prospectus;
- The SR equity shares shall have voting rights in the ratio of a minimum of 2:1 upto a maximum of 10:1 compared to ordinary shares and such ratio shall be in whole numbers only;
- The SR equity shares shall have the same face value as the ordinary shares;
- The issuer shall only have one class of SR equity shares;
- The SR equity shares shall be equivalent to ordinary equity shares in all respects, except for having superior voting rights.

MINIMUM PROMOTERS' CONTRIBUTION IN CASE OF AN IPO

The minimum promoters' contribution shall be as follows:

- a) the promoters shall contribute twenty per cent., as the case may be, either by way of equity shares including SR equity shares held, if any, or by way of subscription to convertible securities by way of subscription to convertible securities.

MINIMUM PROMOTERS' CONTRIBUTION IN CASE OF FPO [REGULATION 113]

The SR equity shares of promoters, if any, shall be eligible towards computation of minimum promoters' contribution.

LOCK-IN REQUIREMENTS

For Securities Held by Promoters [Regulations 16 & 115]

In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:

- (a) The promoters contribution including contribution made by AIFs or FVCIs or scheduled commercial banks or PFIs or insurance companies registered with IRDA, shall be locked-in for a period of three years from the date of commencement of commercial production or from the date of allotment in the IPO/FPO, whichever is later;
- (b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year from the date of allotment in the initial public offer.

Further, the SR equity shares shall be under lock-in until conversion into equity shares having voting rights same as that of ordinary shares or shall be locked-in for a period specified above, whichever is later.

PLEDGE OF LOCKED IN SHARES [REGULATIONS 21 & 119]

Specified securities **except SR equity shares**, held by the promoters and locked in may be pledged as collateral security for a loan granted by a scheduled commercial bank or a public financial institution or a systemically important non-banking finance company or a housing finance company, subject to the following:

- a) if the specified securities are locked-in in terms of clause (a) of Lock-in of specified securities held by the promoters, the loan has been granted to the issuer company or its subsidiary/subsidiaries for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the terms of sanction of the loan
- b) if the specified securities are locked-in in terms of clause (b) of Lock-in of specified securities held by the promoters and the pledge of specified securities is one of the terms of sanction of the loan.

TRANSFERABILITY OF LOCKED-IN SPECIFIED SECURITIES [REGULATIONS 22 & 120]

Subject to the provisions of the SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011, the specified securities **except SR equity shares** held by the promoters and locked-in as per regulation 115 may be transferred to another promoter or any person of the promoter group or a new promoter or a person in control of the issuer:

However, lock-in on such specified securities shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer them till the lock-in period stipulated in these regulations has expired.

CHAPTER 9- SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014

DEFINITION OF EMPLOYEES UNDER ESOP

However, in case of Startup Company, as defined in notification number G.S.R. 127(E), dated 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India the conditions mentioned in table point (i) and (ii) shall not apply upto ~~five~~ **ten** years from the date of its incorporation or registration.

CHAPTER 7 - SEBI (BUY BACK OF SECURITIES) REGULATIONS, 2018

For the purposes of these regulations, the term "shares" shall include equity shares having superior voting rights.

CHAPTER 8 - SEBI (DELISTING OF EQUITY SHARES) REGULATIONS, 2009

PROCEDURE FOR VOLUNTARY DELISTING FROM ALL THE STOCK EXCHANGES

This is a mere extract of the procedure and not the entire procedure. Have included only that part, which has additions/amendments. For detailed procedure, you may refer to ICSI Module or the Notes you are referring to for studies.

DUE DILIGENCE BY THE MERCHANT BANKER

- (1) Prior to granting approval, the board of directors of the company shall -
 - (a) make a disclosure to the recognized stock exchanges that the promoters/acquirers have proposed to delist the company;
 - (b) appoint a merchant banker to carry out due-diligence;
 - (c) obtain details of trading in shares of the company for a period of two years prior to the date of board meeting by top twenty five shareholders as on the date of the board meeting convened to consider the proposal for delisting, from the stock exchanges and details of off-market transactions of such shareholders for a period of two years and furnish the information to the merchant banker for carrying out due-diligence;
 - (d) obtain further details as required and furnish it to the merchant banker.
- (2) The board of directors of the company while approving the proposal for delisting shall certify that:
 - (a) the company is in compliance with the applicable provisions of securities laws;
 - (b) the acquirer or promoter or promoter group or their related entities, are in compliance with the regulations;
 - (c) the delisting is in the interest of the shareholders.
- (3) For certification in respect of matters referred above, the board of directors of the company shall take into account the report of the merchant banker.
- (4) The merchant banker shall carry out due-diligence upon obtaining details from the board of directors. However if the merchant banker is of the opinion that details referred are not

sufficient for certification, he shall obtain additional details from the board of directors of the company for such longer period as he may deem fit.

- (5) Upon carrying out due-diligence, the merchant banker shall submit a report to the board of directors of the company certifying the following:
- (a) the trading carried out by the entities belonging to acquirer or promoter or promoter group or their related entities was in compliance or not, with the applicable laws;
 - (b) any of the acquirer or promoter or promoter group entity or persons acting in concert or their related entities have carried out or not, any transaction to facilitate the success of the delisting offer which is not in compliance with the provisions of regulations.

PROMOTER NOT TO SELL SHARES [REGULATION 10(7)]

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

COUNTER OFFER [REGULATION 16(1A)]

If the price discovered is not acceptable to the acquirer or the promoter, the acquirer or the promoter may make a counter offer to the public shareholders within two working days of the price discovered, in the manner specified by the Board.

However the counter offer price shall not be less than the book value of the company as certified by the merchant banker.

CHAPTER 12 - MUTUAL FUNDS

ELIGIBILITY CRITERIA FOR APPOINTMENT OF ASSET MANAGEMENT COMPANY

1. in case the asset management company is an existing asset management company it has a **sound track record, general reputation and fairness in transactions;**
2. the asset management company is a **fit and proper person;**
3. the **directors** of the asset management company are persons having **adequate professional experience** in finance and financial services related field and not found guilty of moral turpitude or convicted of any economic offence or violation of any securities laws;
4. the **key personnel** of the asset management company have not been found guilty of **moral turpitude** or convicted of **economic offence or violation of securities laws** or worked for any asset management company or mutual fund or any intermediary during the period when its registration has been **suspended or cancelled at any time by the Board;**
5. the **board of directors** of such asset management company has **at least fifty per cent directors, who are not associate of, or associated in any manner with, the sponsor or any of its subsidiaries or the trustees;**
6. the **Chairman** of the asset management company is **not a trustee of any mutual fund;**
7. the asset management company has a **networth** of not less than rupees **fifty crore;**

TRUSTEE

A trustee is a person or firm that holds and administers property or assets for the benefit of a third party.

No person shall be eligible to be appointed as a trustee unless—

1. he is a person of **ability, integrity and standing;** and
2. has **not been found guilty of moral turpitude;** and
3. has **not been convicted of any economic offence or violation of any securities laws;** and has furnished particulars as specified.

No asset management company and no director (including independent director), officer or employee of an asset management company shall be eligible to be appointed as a trustee of any mutual fund.

No person who is appointed as a trustee of a mutual fund shall be eligible to be appointed as a trustee of any other mutual fund

Two-thirds of the trustees shall be independent persons and shall not be associated with the sponsors or be associated with them in any manner whatsoever.

In case a company is appointed as a trustee then its directors can act as trustees of any other trust provided that the object of the trust is not in conflict with the object of the mutual fund.

SYSTEMATIC INVESTMENT PLAN (SIP) IN MUTUAL FUND

An SIP allows an investor to invest a fixed amount regularly in a mutual fund scheme, typically an equity mutual fund scheme. An SIP helps investor to stagger the investments in equity mutual fund schemes over a period. Most mutual fund advisors do not recommend investing a lumpsum in equity mutual funds.

CHAPTER 5 - SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

HALF YEARLY COMPLIANCES

23(9)	The listed entity shall submit to the stock exchange, disclosures of related party on consolidated basis.	within thirty days from the date of publication of its standalone and consolidated financial results for the half year
33(3)	The listed entity shall also submit as part of its standalone or consolidated financial results for the half year a statement of assets and liabilities and a statement of cash flows by way of a note.	Once in six months

YEARLY COMPLIANCES

33(3)	<p>The listed entity shall submit annual audited standalone financial results with audit report and Statement on Impact of Audit Qualifications applicable only for audit report with modified opinion to the stock exchange.</p> <p>If listed entity has subsidiaries, it shall, while submitting annual audited standalone financial results, also submit annual audited consolidated financial results along with the audit report and Statement on Impact of Audit Qualifications applicable only for audit report with modified opinion.</p> <p>In case of audit reports with unmodified opinion(s), the listed entity shall furnish a declaration to that effect to the Stock Exchange while publishing the annual audited financial results.</p> <p>The listed entity shall also submit the audited or limited reviewed financial results in respect of the last quarter along-with the results for the entire financial year)</p>	within 60 days from the end of the financial year.
34	The listed entity shall submit the annual report along with the Notice of the Annual General Meeting to the stock exchange.	Not later than the day of

	<p>Amongst others, the annual report shall also consist the following: audited financial statements i.e. balance sheets, profit and loss accounts etc and Statement on Impact of Audit Qualifications as stipulated in regulation 33(3)(d), if applicable.</p> <p>Business responsibility report by the top one thousand listed entities based on market capitalization (calculated as on March 31 of every financial year).</p>	<p>commencement of dispatch to its shareholders.</p>
34(1) (b)	<p>In case any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent</p>	<p>within 48 hours after the annual general meeting</p>
36	<p>The listed entity shall send annual report to the holders of securities</p>	<p>Twenty one days before AGM (in soft or hard copy)</p>

EVENT BASED COMPLIANCES

31A (8)	<p>The listed entity shall disclose to the stock exchange the deemed material events i.e., receipt of request for re-classification by the listed entity from the promoter(s) seeking re-classification; Minutes of the board meeting considering such request which would include the views of the board on the request; etc.</p>	<p>within 24 hours from the occurrence of the event</p>
39(2)	<p>The listed entity shall issue certificates or receipts or advices, as applicable, of subdivision, split, consolidation, renewal, exchanges, endorsements, issuance of duplicates thereof or issuance of new certificates or receipts or advices, as applicable, in cases of loss or old decrepit or worn out certificates or receipts or advices, as applicable</p>	<p>within thirty days from the date of such lodgement</p>
39(3)	<p>The listed entity shall submit information with respect to loss of share certificates and issue of the duplicate certificates to the stock exchange</p>	<p>Within two days of getting information.</p>

40(1) Proviso	Transfer or transmission or transposition of securities	Requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository
40(3)	The listed entity shall register transfers of its securities in the name of the transferee(s) and issue certificates or receipts or advices, as applicable, of transfers; or issue any valid objection or intimation to the transferee or transferor, as the case may be,	within fifteen days from the date of such receipt of request for transfer.
42(2)	The listed entity shall intimate the record date or date of closure of transfer books to all the stock exchange(s)	
42(2)	In case of Right Issue	At least three working days in advance (excluding the date of intimation and record date)
42(2)	Other than Right Issue	At least 7 clear working days in advance (excluding the date of intimation and record date)
43A	Dividend Distribution Policy by the top five hundred listed entities based on market capitalization (calculated as on March 31 of every financial year)	To formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites
46	The listed entity shall maintain a functional website containing the basic information about the listed entity and update any change in the content of its website.	within two working days from the date of change in content

Note: as per Regulation 36(4), the information and documents made by the listed entity-

(a) to the stock exchanges shall be in XBRL; and

(b) to the stock exchanges and on its website, shall be in a format that allows users to find relevant information easily through a searching tool.

IN-PRINCIPLE APPROVAL OF RECOGNIZED STOCK EXCHANGE(S) [REGULATION 28]

The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognised stock exchange(s) in the following manner:

- (a) From all the stock exchange(s);
- (b) From all the stock exchange(s) in which the securities of the issuer are proposed to be listed;
- (c) From all recognised stock exchange(s) having nationwide trading terminals.

The requirement of obtaining in-principle approval from recognised stock exchange(s), shall not be applicable for securities issued pursuant to the scheme of arrangement for which the listed entity has already obtained No-objection Letter from recognised stock exchange(s) in accordance with regulation 37.

ROLE OF A COMPANY SECRETARY IN PRACTICE

Certificate regarding Transfer of Securities

Certification to the effect that all transfers have been completed within the stipulated time.
[Regulation 40(9)]

Certificate Regarding Compliance of Conditions of Corporate Governance under SEBI Listing Regulations

SEBI listing regulations authorizes Company Secretary in Practice to issue certificate regarding compliance of conditions of Corporate Governance. [Schedule V, clause E]

Certificate Regarding Maintenance of 100% Asset Cover

To issue half yearly certificate regarding maintenance of 100% security cover in respect of listed non-convertible debt securities. [Regulation 56(1)] (d)]

Secretarial Audit Report

Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit and shall annex with its Annual Report, a Secretarial Audit Report, given by

a Company Secretary in Practice, in such form as may be specified with effect from the year ended March 31, 2019. [Regulation 24A]

Certification regarding Director's Disqualification

A certificate from a Company Secretary in Practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as Directors of Companies by the Board/ Ministry of Corporate Affairs or any such Statutory Authority. [Schedule V, Part C, Clause 10 (i)]

CASE STUDIES

CASE 1

Hotsun Company is a medium-sized listed company. Mr. Mohan is a wealthy business entrepreneur and the original founder of the company. He owns 28% of the ordinary shares and is the major shareholder, but he is no longer a member of the board of directors, having resigned several years ago when the company obtained its stock market quotation.

Although he is no longer a director, Mohan continues to show considerable interest in the business affairs of the company. Recently he has been demanding that the board should consult him on issues of business strategy and dividend policy. He also believes that at least two non-executive directors should resign because they contribute nothing of value to the board. Two members of the board agree, and argue that Mohan should be consulted regularly on important issues, given his success in leading the company in the past. However, the majority of the board members are hostile and resent Mohan's continual interference.

After a recent argument with the chairman, Mohan has threatened to sue members of the board for gross dereliction of their duties as directors. He has also demanded the resignation of a board member who is the owner of a property company that has just sold a property to Hotsun Company at a price that Mohan considers excessive. The chairman was unaware of this matter.

Required

As company secretary, prepare a report for the chairman advising him about

- (a) the powers of the board under the Companies Act, 2013
- (b) the appropriate measures for dealing with Mohan and responsibility of the board towards Mohan.
- (d) the provisions of RPT considering the allegations made by Mohan.

Suggested Solution -

(a) Powers of the Board: As per Section 179(3) of the Companies Act, 2013, the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

- to make calls on shareholders in respect of money unpaid on their shares;
- to authorise buy-back of securities under section 68;
- to issue securities, including debenture, whether in or outside India;
- to borrow monies;
- to invest the funds of the company;
- to grant loans or give guarantee or provide security in respect of loans;
- to approve financial statement and the Board's report;
- to diversify the business of the company;
- to approve amalgamation, merger or reconstruction;
- to take over a company or acquire a controlling or substantial stake in another company;
- to make political contributions;
- to appoint or remove key managerial personnel (KMP);
- to appoint internal auditors and secretarial auditor.

(b) Mr. Mohan was one of the founder directors of the Company and a major shareholder of the company holding 28% of the shares. A responsible business acts with care and loyalty towards its shareholders and in good faith for the best interests of the corporation. Business therefore has a responsibility to:

- Apply professional and diligent management in order to secure fair, sustainable and competitive returns on shareholder investments.

- Disclose relevant information to shareholders, subject only to legal requirements and competitive constraints.

- Conserve, protect, and increase shareholder wealth.

- Respect shareholder views, complaints, and formal resolutions.

(c) According to Section 2(76) of Companies Act 2013, "related party", with reference to a company, means-

(i) a director or his relative;

(ii) a key managerial personnel or his relative;

(iii) a firm, in which a director, manager or his relative is a partner;

(iv) a private company in which a director or manager or his relative is a member or director;

(v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent. (2%) of its paid-up share capital;

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

Provided that

nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any body corporate which is-

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venturer of the company;";

Explanation.— For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

(ix) a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Section 188 (1) of the Companies Act 2013 deals with the related party transactions with respect to:

- Sale, purchase or supply of any goods or materials
- Selling or otherwise disposing of, or buying, property of any kind
- Leasing of property of any kind
- Availing or rendering of any services
- Appointment of any agent for purchase or sale of goods, materials, services or property
- Related party's appointment to any office or place of profit in the company, its subsidiary company or associate company, and
- Underwriting the subscription of any securities or derivatives thereof, of the company.

Also, Section 188(1) of the Companies Act 2013 provides that a company shall enter into any contract or arrangement with a related party with respect to Related party transactions only with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to certain conditions.

Here, one of the board members had sold his property to Hotsun Ltd. at a price which Mohan considers excessive. The board member is related party as per Section 2(76) of Companies Act 2013 and selling property of any kind is a related party transaction as per Section 188(1) of the Companies Act 2013.

The law in India does not prohibit RPTs. Instead, the law puts into place a system of checks and balances, such as requirements for approval from the board of directors/shareholders, timely disclosures and prior statutory approvals, to ensure that the transactions are conducted within appropriate boundaries. RPTs are required to be managed transparently, so as not to impose a heavy burden on a company's resources, affect the optimum allocation of resources, distort competition or siphon off public resources.

Therefore, if the related party transaction has taken place with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to certain conditions

then it is allowed as per the laws and regulations and the allegations of Mr. Mohan will not hold much significance.

CASE 2

Dr. Sen, an industrial chemist with 15 years of experience, has recently been appointed to the post of Chief Executive Officer (CEO) of Pharma Ltd., a listed company. He has previously been employed in the company as Research Director. In preparation for his new assignment he has been trying to get to grips with the concept of corporate governance and all that it entails.

The board of Pharma Ltd. comprises of total ten directors (including one women director), six non-executive directors and five were considered independent. The board is responsible for overseeing strategy, approving major corporate initiatives and reviewing performance. There are three board committees - the Audit Committee, Remuneration Committee and Investors Grievance Committees. However, there is no Nomination Committee.

As the Company Secretary and Compliance Officer of Pharma Ltd, he is seeking your assistance to clarify some issues of concern.

You have been asked to prepare a brief report in which you:

- (a) Provide Dr. Sen with a robust definition of corporate governance and a brief explanation of what you understand corporate governance to be.
- (b) Comment on the board composition of Pharma Ltd. with respect to the Companies Act, 2013 and SEBI LODR Regulations, 2015. Also comment whether Dr. Sen should be Chairman of the Company.

Suggested Solution

(a) Corporate Governance has a broad scope. It includes both social and institutional aspects. The heart of corporate governance is transparency, disclosure, accountability and integrity. It is to be borne in mind that mere legislation does not ensure good governance. Good governance flows from ethical business practices even when there is no legislation.

Good corporate governance promotes investor confidence, which is crucial to the ability of entities listed to compete for capital. Good corporate governance is essential to develop added value to the stakeholders as it ensures transparency which ensures strong and balanced economic development. This also ensures that the interests of all shareholders (majority as well as minority shareholders) are safeguarded. It ensures that all shareholders fully exercise their rights and that the organization fully recognizes their rights.

(b) Board Composition: Section 149(1) of the Companies Act 2013 provides that every company shall have a Board of Directors consisting of individuals as directors and shall have—

- A minimum number of three directors in the case of a public company,
- At least two directors in the case of a private company, and
- At least one director in the case of a One Person Company; and
- A maximum of fifteen directors provided that a company may appoint more than fifteen directors after passing a special resolution.

Section 149(4) provides that every public listed company shall have at least one third of total number of directors as independent directors.

Regulation 17(1)(a) of SEBI LODR Regulations, 2015 provides that Board of directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty per cent of the board of directors shall comprise of non-executive directors.

The board of Pharma Ltd. comprises of total ten directors, six non-executive directors and five were considered independent. The total number of directors is more than the minimum required directors and at least one third of total number of directors are independent directors.

Also as per SEBI Regulations, more than fifty per cent of the board of directors comprises of non-executive directors and one women director. Therefore, the board composition of Pharma Ltd. is optimum as per the laws and regulations.

Separation of Chairman and CEO: First proviso to Section 203(1) of the Companies Act, 2013 provides for the separation of role of Chairman and Chief Executive Officer subject to conditions thereunder.

It specifies that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,-

- (a) the articles of such a company provide otherwise;
- (b) the company does not carry multiple businesses:

Regulation 17(1B) of SEBI (LODR) Regulations, 2015 provides that effect from April 1, 2022, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall -

- (a) be a non-executive director;
- (b) not be related to the Managing Director or the Chief Executive Officer as per the definition of the term "relative" defined under the Companies Act, 2013:

Also, it is perceived that separating the roles of chairman and chief executive officer (CEO) increases the effectiveness of a company's board. It is the board's and chairman's job to monitor and evaluate a company's performance. A CEO, on the other hand, represents the management team. If the two roles are performed by the same person, then there is less accountability. A clear demarcation of the roles and responsibilities of the Chairman of the Board and that of the Managing Director/CEO promotes balance of power.

The benefits of separation of roles of Chairman and CEO can be:

Director Communication: A separate chairman provides a more effective channel for the board to express its views on management

Guidance: A separate chairman can provide the CEO with guidance and feedback on his/her performance

Shareholders' interest: The chairman can focus on shareholder interests, while the CEO manages the company

Governance: A separate chairman allows the board to more effectively fulfill its regulatory requirements

Long-Term Outlook: Separating the position allows the chairman to focus on the long-term strategy while the CEO focuses on short-term profitability

Succession Planning: A separate chairman can more effectively concentrate on corporate succession plans.

Therefore, on the basis of abovementioned laws and regulations and the potential benefits of separating Chairman and CEO, Dr. Sen should not be made Chairman of the Company as he is already CEO of the Company.

CHAPTER 15 - STRUCTURE OF CAPITAL MARKET

FOREIGN PORTFOLIO INVESTOR

Foreign Portfolio Investor (FPI) means a person who satisfies the eligibility criteria prescribed under SEBI (Foreign Portfolio Investors) Regulations, 2014 and has been registered under Chapter II of these regulations, which shall be deemed to be an intermediary in terms of the provisions of the SEBI Act, 1992.

All existing Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs) are to be merged into one category called FPI..

Categories of FPI

Category I FPIs include:

- (i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by such Government and Government related investor(s);
- (ii) Pension funds and university funds;
- (iii) Appropriately regulated entities such as insurance or reinsurance entities, banks, asset management companies, investment managers, investment advisors, portfolio managers, broker dealers and swap dealers;
- (iv) Entities from the Financial Action Task Force member countries which are -
 - I. appropriately regulated funds;
 - II. unregulated funds whose investment manager is appropriately regulated and registered as a Category I foreign portfolio investor. However the investment manager undertakes the responsibility of all the acts of commission or omission of such unregulated fund;
 - III. university related endowments of such universities that have been in existence for more than five years;
- (v) An entity (A) whose investment manager is from the Financial Action Task Force member country and such an investment manager is registered as a Category I foreign portfolio investor; or (B) which is at least seventy-five per cent owned, directly or indirectly by another entity, eligible under sub-clause (ii), (iii) and (iv) of clause (a) of this regulation and such an eligible entity is from a Financial Action Task Force member country. However

such an investment manager or eligible entity undertakes the responsibility of all the acts of commission or omission of the applicants seeking registration under this sub-clause.

Category II FPIs include all the investors not eligible under Category I foreign portfolio investors such as -

- (i) appropriately regulated funds not eligible as Category-I foreign portfolio investor;
- (ii) endowments and foundations;
- (iii) charitable organisations;
- (iv) corporate bodies;
- (v) family offices;
- (vi) Individuals;
- (vii) appropriately regulated entities investing on behalf of their client, as per conditions specified by the Board from time to time;
- (viii) Unregulated funds in the form of limited partnership and trusts;

Explanation: An applicant incorporated or established in an International Financial Services Centre shall be deemed to be appropriately regulated.

PENSION FUND

Pension Fund means a fund established by an employer to facilitate and organize the investment of employees' retirement funds which is contributed by the employer and employees.

Pension funds are commonly run by some sort of financial intermediary for the company and its employees like N.P.S. scheme is managed by UTIAMC (Retirement Solutions), although some larger corporations operate their pension funds in-house. Pension funds control relatively large amounts of capital and represent the largest institutional investors in many nations.

Pensions broadly divided into two sector:

A-Formal sector Pensions

Formal sector pensions in India can be divided into three categories; viz pensions under an Act or Statute, Government pensions and voluntary pensions

B- Informal sector Pensions

This scheme will cover unorganized workers who are working or engaged as home based workers, street vendors, cobblers, rag pickers, rickshaw pullers, agriculture workers, construction workers, among others.

SHARES WITH DIFFERENTIAL VOTING RIGHTS

(c) the voting power in respect of shares with differential rights of the company shall not exceed **seventy four per cent of total voting power** including voting power in respect of equity shares with differential rights issued at any point of time;

~~(d) the shares with differential rights shall not exceed twenty six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;~~

~~e) the company having consistent track record of distributable profit for the last three years;~~

FOREIGN CURRENCY CONVERTIBLE BONDS (FCCBS)

Example

Suppose a company 'A' issues bonds with following terms -

Issue Price of the Bond Rs. 1000

Coupon rate 2%

Maturity 2 years

Convertible into equity shares @ Rs.800 per share

Now suppose an investor subscribes to 4 of these bonds. Thus the total investment is Rs.4000. On this investment, he is entitled to get an interest @ 2% for 2 years. On the maturity date, i.e. after 2 years, the investor will have an option - to either claim full redemption of the amount from the company or get the bonds converted into fully paid equity shares @ Rs. 800 per share. Thus if he goes for the conversion he will be entitled to 5 (4000/800) equity shares. The choice he makes will depend on the market price of the share on the date of conversion.

If the shares of the company 'A' is trading at lower than Rs.800, let's say Rs.500, the investor will be better off by claiming full redemption of his bonds and buying the shares from the market. In this case, he will get 8 ($4000/500$) equity shares as against 5 which he was getting on conversion. Similarly if the market price of the share is higher than Rs. 800, the investor will benefit by getting its shares converted. Thus, on the day of maturity, an investor will seek full redemption if the conversion price is higher than the current market price, and will go for conversion if the conversion price is less than the current market price.

CHAPTER 16 - SECURITIES MARKET INTERMEDIARIES

REGISTRARS AND SHARE TRANSFER AGENTS

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every registrar to an issue and share transfer agent holding a certificate shall:

- at all times abide by the Code of Conduct.
- not to act as such registrar for any issue of securities in case he or it is an associate of the body corporate issuing the securities.
- keep and maintain proper books of accounts and records.
- preserve the books of accounts and other records and documents maintained for a minimum period of three years.
- appoint a compliance officer for monitoring the compliance of the Act, rules and regulations.

UNDERWRITERS

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every underwriter shall:

- at all times abide by the Code of Conduct.
- enter into an agreement with each body corporate on whose behalf he is acting as underwriter.
- not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting.
- ensure that the total underwriting obligations under all the agreements does not exceed twenty times the net worth.
- subscribe to such securities within 45 days of the receipt of such intimation from such body corporate.
- keep and maintain proper books of account and records.
- preserve the books of account and other records and documents for a minimum period of five years.
- appoint a compliance officer for monitoring the compliance of the Act, rules and regulations.

BANKERS TO AN ISSUE

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every banker to an issue shall

- maintain books of account, records and the documents.
- furnish the information to the SEBI when required.
- enter into an agreement with the body corporate for whom it is acting as banker to an issue.
- inform SEBI, if any disciplinary action is taken by the Reserve Bank against the banker to an issue only in relation to issue payment work.
- abide by the code of conduct.
- appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations.

STOCK-BROKERS

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every Stock Broker shall

- keep and maintain the proper books of account, records and documents.
- preserve the books of account and other records maintained for a minimum period of five years.
- appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations.

PORTFOLIO MANAGERS

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every portfolio manager shall:

- abide by the Code of Conduct.
- before taking up an assignment, enters into an agreement in writing with such client that clearly defines the inter se relationship between them.
- The discretionary portfolio manager shall individually and independently manage the funds of each client in accordance with the needs of the client whereas the non-

discretionary portfolio manager shall manage the funds in accordance with the directions of the client.

- not accept from the client, funds or securities worth less than fifty lakh rupees.
- act in a fiduciary capacity with regard to the client's funds.
- segregate each client's holding in securities in separate accounts.
- keep the funds of all clients in a separate account.
- transact in securities within the limitation placed by the client himself.
- not derive any direct or indirect benefit out of the client's funds or securities.
- not borrow funds or securities on behalf of the client.
- not lend securities held on behalf of the clients to a third person except as provided under SEBI (Portfolio Managers) Regulations, 2020.
- ensure proper and timely handling of complaints from his clients and take appropriate action immediately.
- ensure that any person or entity involved in the distribution of its services is carrying out the distribution activities in compliance with these regulations.

Capital adequacy requirements

Net worth of minimum of Rs. 5 crores instead of Rs 2 crores.

CUSTODIAN

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every custodian shall

- abide by the Code of Conduct.
- separate and segregate its activity from all other activities.
- have adequate mechanisms for the purposes of reviewing, monitoring, evaluating and inspection the custodian's controls, systems, procedures and safeguards.
- not assign or delegate its functions as a custodian to any other person unless such person is a custodian.
- open a separate custody account for each client, in the name of the client whose securities are in its custody.
- enter into an agreement with each client on whose behalf it is acting as custodian.

- have adequate internal controls to prevent any manipulation of records and documents including audits for securities, goods and rights or entitlements arising from the securities and goods held by it on behalf of its client.
- maintain the records and documents.
- appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations.
- be the duty of the custodian to furnish such information within such reasonable period as the SEBI may specify.

INVESTMENT ADVISERS

GENERAL OBLIGATIONS AND RESPONSIBILITIES

An investment adviser shall

- act in a fiduciary capacity towards its clients.
- not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised.
- maintain an arms-length relationship between its activities as an investment adviser.
- ensure that its investment advisory services are clearly segregated from all its other activities.
- ensure that in case of any conflict of interest of the investment advisory activities with other activities.
- not divulge any confidential information about its client, which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance.
- not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice.
- follow Know Your Client procedure as specified by the SEBI from time to time.
- abide by Code of Conduct.
- not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client.
- shall furnish to the SEBI information and reports as may be specified by the SEBI from time to time.

- ensure that its representatives and partners, as applicable, comply with the certification and qualification requirements at all times.

RESEARCH ANALYSTS

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Research analyst or research entity shall

- maintain an arms-length relationship between its research activity and other activities.
- abide by Code of Conduct.
- furnish to the SEBI information and reports as may be specified by the SEBI from time to time.
- ensure that its employees or partners comply with the certification and qualification requirements at all times.
- maintain the records: (i) research report duly signed and dated; (ii) research recommendation provided; (iii) rationale for arriving at research recommendation; (iv) record of public appearance.
- ensure that all records shall be maintained either in physical or electronic form and preserved for a minimum period of five years.
- conduct annual audit in respect of compliance with these regulations from a CA/CS.
- Research analyst or research entity which is a body corporate or limited liability partnership firm shall appoint a compliance officer who shall be responsible for monitoring the compliance of the provisions of the Act, these regulations and circulars issued by the SEBI.

CREDIT RATING AGENCIES

GENERAL OBLIGATIONS AND RESPONSIBILITIES

Every credit rating agency shall

- abide by the Code of Conduct.
- enter into a written agreement with each client whose securities it proposes to rate.
- during the lifetime of securities rated by it continuously monitor the rating of such securities.

- disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such information shall also be provided simultaneously to the concerned regional stock exchange and to all the stock exchanges where the said securities are listed.
- disclose Rating Definitions and Rationale.
- Where any information is called for by the SEBI from a credit rating agency for the purposes of these regulations, including any report relating to its activities, the credit rating agency shall furnish such information to the SEBI.
- comply with such guidelines, directives, circulars and instructions as may be issued by the SEBI from time to time,
- appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations.
- keep and maintain books of accounts, records and documents for a minimum period of five years.

Capital adequacy requirements

Net worth of minimum of Rs. 55 crores instead of Rs 5 crores.

CHAPTER 14 - SEBI (OMBUDSMAN) REGULATIONS, 2003

COMPLAINTS THAT COME UNDER THE PURVIEW OF SEBI

Complaints arising out of issues that are covered under SEBI Act, Securities Contract Regulation Act, Depositories Act and rules and regulation made there under and relevant provisions of Companies Act, 2013.

MATTERS NOT CONSIDERED AS COMPLAINTS IN SCORES

- a) Complaint not pertaining to investment in securities market.
- b) Anonymous Complaints (except whistleblower complaints).
- c) Incomplete or un-specific complaints.
- d) Allegations without supporting documents.
- e) Suggestions or seeking guidance/explanation.
- f) Not satisfied with trading price of the shares of the companies.
- g) Non-listing of shares of private offer.
- h) Disputes arising out of private agreement with companies/intermediaries.
- i) Matter involving fake/forged documents.
- j) Complaints on matters not in SEBI purview.
- k) Complaints about any unregistered/ un-regulated activity.

COMPLAINTS AGAINST WHICH TYPE OF COMPANIES CANNOT BE DEALT ON SCORES

Complaints against the following companies cannot be dealt through SCORES even though the complaint may be against a listed entity/ SEBI registered intermediary:-

- a) Complaints against the companies which are **unlisted/delisted**, placed on the Dissemination Board of Stock Exchange.
- b) Complaints against a **sick company** or a company where a **moratorium order** is passed in winding up / insolvency proceedings.
- c) Complaints against the companies where the name of company is **struck off from Registrar of Companies (RoC)** or a **Vanishing Company** as per list published by Ministry of Corporate Affairs (MCA). d. **Suspended companies, companies under liquidation, BIFR etc.**
- d) **Complaints that are sub-judice** i.e. relating to cases which are under consideration by court of law, quasi-judicial proceedings etc.

- e) Complaints against companies, falling under the purview of other regulatory bodies viz The Reserve Bank of India (RBI), The Insurance Regulatory and Development Authority of India (IRDAI), the Pension Funds Regulatory and Development Authority (PFRDA), Competition Commission of India (CCI), etc, or under the purview of other ministries viz., MCA, etc.

INFORMANT INCENTIVES AND REWARDS

A new Chapter IIIA has been prescribed under the Regulation for incentive and reward for the informants who submits to the SEBI a Voluntary Information Disclosure relating to any alleged violation of insider trading laws that has occurred, in occurring or has a reasonable belief that it is about to occur. The new provisions prescribes the manner of submitting information, various forms and procedure for determination of rewards and confidentiality of informants.

CHAPTER II - INSIDER TRADING - AN OVERVIEW

INFORMANT

'Informant' means an individual(s), who voluntarily submits to the SEBI a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in a manner provided under these regulations, regardless of whether such individual(s) satisfies the requirements, procedures and conditions to qualify for a reward.

IRRELEVANT, VEXATIOUS AND FRIVOLOUS INFORMATION

Irrelevant, vexatious and frivolous information includes, reporting of information which in the opinion of the SEBI -

- (i) Does not constitute a violation of insider trading laws;
- (ii) Is rendered solely for the purposes of malicious prosecution;
- (iii) Is rendered intentionally in an effort to waste the time and resource of the SEBI.

MONETARY SANCTIONS

'Monetary Sanctions' shall mean any non-monetary settlement terms or any direction of the SEBI, in the nature of disgorgement under securities laws aggregating to at least Rupees one crore arising from the same operative facts contained in the original information.

ORIGINAL INFORMATION

'Original Information' means any relevant information submitted in accordance with these regulations pertaining to any violation of insider trading laws that is:-

- (a) derived from the independent knowledge and analysis of the Informant;
- (b) not known to the SEBI from any other source, except where the Informant is the original source of the information;
- (c) is sufficiently specific, credible and timely to -
 - commence an examination or inquiry or audit,
 - assist in an ongoing examination or investigation or inquiry or audit,
 - open or re-open an investigation or inquiry, or

- inquire into a different conduct as part of an ongoing examination or investigation or inquiry or audit directed by the SEBI;
- (d) not exclusively derived from an allegation made in a judicial or administrative hearing, in a Governmental report, hearing, audit, or investigation, or from the news media, except where the Informant is the original source of the information; and
- (e) not irrelevant or frivolous or vexatious.

Explanation - Information which does not in the opinion of the SEBI add to the information already possessed by the SEBI is not original information.

REWARD

'Reward' means any gratuitous monetary amount for which an Informant is declared eligible as per the provisions of these regulations;

SUBMISSION OF ORIGINAL INFORMATION TO THE BOARD [REGULATION 7 (B)]

An Informant shall submit Original Information by furnishing the Voluntary Information Disclosure Form to the Office of Informant Protection of the SEBI in the format and manner set out in Schedule D. The Voluntary Information Disclosure Form may be submitted through informant's legal representative.

However where the Informant does not submit the Voluntary Information Disclosure Form through a legal representative, the SEBI may require such Informant to appear in person to ascertain his/her identity and the veracity of the information so provided.

The legal representative shall,-

- i. Verify the identity and contact details of the Informant;
- ii. Unless otherwise required by the SEBI, maintain confidentiality of the identity and existence of the Informant, including the original Voluntary Information Disclosure Form;
- iii. Undertake and certify that he/she,-

- (a) Has reviewed the completed and signed Voluntary Information Disclosure Form for completeness and accuracy and that the information contained therein is true, correct and complete to the best of his/her knowledge;
- (b) Has obtained a irrevocable consent from the Informant to provide to the Board with original Voluntary Information Disclosure Form whenever required by the SEBI; and
- (c) Agrees to be legally obligated to provide the original Voluntary Information Disclosure Form within seven (7) calendar days of receiving such requests from the SEBI
- iv. Submits to the SEBI, the copy of the Voluntary Information Disclosure Form in the manner provided in Schedule D of these regulations along with a signed certificate as required under clause (iii).

An Informant shall while submitting the Voluntary Information Disclosure Form shall expunge such information from the content of the information which could reasonably be expected to reveal his or her identity and in case where such information cannot be expunged, the Informant may identify such part of information or any document that the Informant believes could reasonably be expected to reveal his or her identity.

RECEIPT OF ORIGINAL INFORMATION BY THE BOARD [REGULATION 7 (C)]

The Board may designate a division to function as the independent Office of Informant Protection.

The Office of Informant Protection shall perform following as may be specified by the SEBI, including,-

- i. Receiving and registering the Voluntary Information Disclosure Form;
- ii. Making all necessary communications with the Informant;
- iii. Maintaining a hotline for the benefit of potential Informant;
- iv. Maintaining confidentiality of the legal representative of the Informant and act as an interface between the Informant and the officers of the SEBI;
- v. Interacting with the Informant Incentive Committee;
- vi. Issuing press releases and rewards relating to Informant; and

vii. Submitting an annual report to the SEBI relating to the functioning of the Office of Informant Protection.

On receipt of the Voluntary Information Disclosure Form, the Office of Informant Protection shall communicate the substance of the information along with the evidence submitted by the informant to the relevant department or division of the SEBI for examination and initiation of necessary action, if any.

The SEBI shall not be required to send any intimation or acknowledgement to the Informant or any other person, of the examination or action initiated by the SEBI, if any, pursuant to receipt of the Voluntary Information Disclosure Form or information under these regulations, including rejection thereof.

INFORMANT REWARD [Regulation 7(D)]

Upon collection or substantial recovery of the monetary sanctions amounting to at least twice the Reward, the SEBI may at its sole discretion, declare an Informant eligible for Reward and intimate the Informant or his or her legal representative to file an application in the format provided in Schedule-E for claiming such Reward.

However the amount of Reward shall be ten percent of the monetary sanctions collected or recovered and shall not exceed Rupees One crore or such higher amount as the SEBI may specify from time to time.

The SEBI may if deemed fit, out of the total Reward payable, grant an interim reward not exceeding Rupees Ten lacs or such higher amount as the SEBI may specify from time to time, on the issue of final order by the SEBI against the person directed to disgorge.

In case of more than one Informant jointly providing the Original Information, the Reward, shall be divided equally amongst the total number of Informants. The Reward under these regulations shall be paid from the Investor Protection and Education Fund.

DETERMINATION OF AMOUNT OF REWARD. [REGULATION 7 (E)]

- The amount of the Reward, if payable, shall be determined by the SEBI.
- While determining the amount of Reward the SEBI may specify the factors that may be taken into consideration by the Informant Incentive Committee.
- An Informant may be eligible for a Reward whether or not he reported the matter to his organization as per its internal legal and compliance procedures and irrespective of such organization's compliance officer subsequently providing the same Information to the Board.

APPLICATION FOR REWARD [REGULATION 7 (F)]

Informants who are considered tentatively eligible for a Reward, shall submit the Informant Reward Claim Form set out in Schedule E to the SEBI within the period specified in the intimation sent by the Board.

Prior to the payment of a Reward, an Informant shall directly or through his or her legal representative, disclose his or her identity and provide such other information as the SEBI may require.

REJECTION OF CLAIM FOR REWARD [REGULATION 7 (G)]

No Reward shall be made to an Informant:-

- who does not submit original information;
- who has acquired the Original Information, through or as a member, officer, or an employee of:-
 - (a) any regulatory agency constituted by or under any law in India or outside India, including the SEBI;
 - (b) any self-regulatory organization;
 - (c) the surveillance or investigation wings of any recognised stock exchange or clearing corporation; or
 - (d) any law enforcement organization including the police or any central or state revenue authorities.
- against whom the SEBI may initiate or has initiated criminal proceedings under securities laws;

- who wilfully refused to cooperate with the SEBI during its course of investigation, inquiry, audit, examination or other proceedings under securities laws;
- who:
 - (a) knowingly makes any false, fictitious, or fraudulent statement or representation;
 - (b) uses any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry;
 - (c) fails to furnish the complete information available with him or accessible by him in relation to the alleged violation.
- who is obligated, under any law or otherwise, to report such Original Information to the SEBI, including a compliance officer under securities laws. Provided that the SEBI may if deemed fit, at its sole discretion, exempt a person from any of these disqualifications.

INFORMANT CONFIDENTIALITY [REGULATION 7 (H)]

Sharing of information shall be in accordance with such assurances of confidentiality as the SEBI determines appropriate.

PROTECTION AGAINST RETALIATION AND VICTIMIZATION [REGULATION 7 (I)]

Every person required to have a Code of Conduct under these regulations shall ensure that such a Code of Conduct provides for suitable protection against any discharge, termination, demotion, suspension, threats, harassment, directly or indirectly or discrimination against any employee who files a Voluntary Information Disclosure Form, irrespective of whether the information is considered or rejected by the SEBI or he or she is eligible for a Reward under these regulations.

Nothing in these regulations shall prohibit any Informant who believes that he or she has been subject to retaliation or victimisation by his or her employer, from approaching the competent court or tribunal for appropriate relief.

Any employer who violates above, may be liable for penalty, debarment, suspension, and/or criminal prosecution by the SEBI. However nothing in these regulations will require the SEBI to direct re-instatement or compensation by an employer.

INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING [REGULATION 9A]

- The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading. The internal controls shall include the following:
 - (a) all employees who have access to unpublished price sensitive information are identified as designated person;
 - (b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;
 - (d) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;
 - (c) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
 - (e) all other relevant requirements specified under these regulations shall be complied with;
 - (d) periodic process review to evaluate effectiveness of such internal controls.
- The board of directors of every listed company and the board of directors or head(s) of the organisation of intermediaries and fiduciaries shall ensure that the Chief Executive Officer or the Managing Director or such other analogous person ensures compliance with these regulations.
- The Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.
- Every listed company shall formulate written policies and procedures for inquiry in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on becoming aware of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information and inform the Board promptly of such leaks, inquiries and results of such inquiries.

- The listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
- If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

APPEAL TO SECURITIES APPELLATE TRIBUNAL

Violation of the provisions of these regulations attract huge monetary penalty and may lead to criminal prosecution. However those aggrieved by an order of SEBI, may prefer an appeal to the Securities Appellate Tribunal *within a period of forty-five days of the order.*

RECENT JUDGEMENTS AND DEVELOPMENTS:

During the year 2018, it came to the knowledge of SEBI that several unpublished price sensitive information were circulated in private social media networking groups about certain companies ahead of their official announcements to the respective stock exchanges. This calls for immediate change in ongoing Regulations with newer requirements like Policy for leak of unpublished price sensitive information, maintaining structure digital database of persons with whom information are shared, reward and incentive system for informants etc.

In the matter of Insider Trading in the Scrip of Deep Industries Ltd., SEBI during the investigation go beyond the prescribed definition of Connected Persons under the regulation and establishes relationships and nexus of persons, leak of information on the basis of social media network websites and KYC documents with intermediaries of suspected persons and entities involved in the insider trading.

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CS Vikas Vohra, Founder - YES Academy

Vikas is a Commerce and Law Graduate and a Company Secretary by profession. He has to his credit, few other Certifications and specialisations in Corporate and Securities Laws. On the teaching side, he has taught more than 10,000 students.

He is also a speaker at various Management Institutes and ICSI on various Corporate matters and Entrepreneurship. In his previous assignments, he worked as an Associate Vice President with LexValueAdd Consulting Private Limited, an Investment Banking firm based out of Mumbai.

He has significant hands on experience in Mergers and Acquisitions, Public Offerings and consequent listing of the Shares and GDR's on the Bourses, fund raising and Deal Structuring. Before that he also worked with Kirloskar Brothers Investments Limited & Bajaj Auto Limited wherein, he was deeply involved in various M&A activities.

Vikas is presently the Founder of YES Academy for CS, Pune He is also a Co-Founder of PapaZapata (Mexican food chain) & GujjuKhakhra (Indian Breads). He enjoys writing poetry and doing meditation in his free time.



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