



Legal framework for investors protection in India

N.S.Sanathi¹ and K. Balanaga Gurunathan²¹Department of Business Administration, KSR College of Engineering, Tiruchengode – 637 215, Tamil Nadu, India.²Department of Management Studies, KSR College of Technology, Tiruchengode – 637 215, Tamil Nadu, India.

ARTICLE INFO

Article history:

Received: 18 October 2011;

Received in revised form:

16 March 2012;

Accepted: 24 March 2012;

Keywords

Investor,
Protection,
Legislation.

ABSTRACT

Investor protection is one of the essential roles of authorities to make them involved in the financial market. Stock market plays a predominant role in the financial market. Investor protection helps to develop the market so that mobilization of funds can be increased. Increase in market potential is another way to increase growth of the market. Every nation has own legislation frameworks for stock market which is varying from country to country. In India, there is a strong need for an effective regulation for stock market so that the investors' interest can be safeguarded in a better way¹. In order to regulate stock market and the participants of stock market there are various legislations are framed. It minimizes the risks and protects the investor. An attempt has been made to review the Indian legislations which are standardizing the Indian stock market and the legal formalities to be carried out by the market players.

© 2012 Elixir All rights reserved.

Introduction

Investor protection is one of the essential roles of authorities to make them involved in the financial market. Stock market plays a predominant role in the financial market. Investor protection helps to develop the market, so that mobilization of funds can be increased. Increase in market potential is another way to increase the growth of the market. Every nation have their own legislation framework for the stock market. That varies from country to country. In India, there is a strong need for an effective regulation for stock market so that the investors' interest can be safeguarded in a better way¹. In order to regulate stock market and the participants of stock market there are various legislations are framed. It minimizes the risks and protects the investor. Among other legislations the Companies Act 1956, the Securities Contracts (Regulation) Act 1956, the Securities Exchange Board of India Act 1992, and Depositories Act 1996 have a direct bearing on regulation and investor protection.

As such, in this paper an attempt has been made to analyze the legal provisions of

- i. The Companies Act, 1956
- ii. The Securities Contracts (Regulation) Act, 1956
- iii. The Securities Exchange Board of India Act, 1992
- iv. Depositories Act, 1996.

The companies act, 1956

The Companies Act contains 658 Sections, 15 Schedules and several rules. In India, any person likes to form private or public companies, associations and partnerships; they have to be registered as companies under the Companies Act.

The Companies Act 1956 (herein after referred to as the "Act") is a comprehensive piece of legislation administering the all the companies in India. It deals with incorporation of company and matters incidental thereto. It provides the

provisions with respect to names of companies, memorandum and articles. It deals with prospectus and allotment and others matters relating to issue of shares or debentures. The Act also regulates underwriting, the use of premium and discounts on issues, rights and bonus issues, payment of interest and dividends, supply of annual reports and other information.

Objectives of the act

The objective of the Act is to provide all the legislative procedures, restriction, rules and regulations and other information relates to companies. One of the objectives of the Act is, to protect the legitimate interest of the owners and shareholders by ensuring effective participation and control. It provides legislative standards to reduce the risk of the shareholders which are discussed in the following sections.

Disclosures of information in the prospectus

All public companies intended to issue share, must issue a prospectus by providing details about the company. Prospectus is any document includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares, debentures, and a body corporate (Section 2 (36)).

Powers of SEBI in Company Act

SEBI has powers to administer the companies in the aspects of issue of prospectus, issue and transfer of securities and non payment of dividend by listed companies and public companies which are intend to list on recognized stock exchanges in India. (Section 55A).

Every prospectus issued by companies shall state the following general information of the company like,

- a. name and address of registered office of the company, auditors and lead managers.
- b. Consent of the Central Government for present issue
- c. Industrial license
- d. Name of the stock exchange made for listing
- e. Statement declaring refund of issue if minimum subscription of 90% is not received
- f. Date of opening and closing of issue

¹ Singh H.K, Meera Singh(2001), "Mutual Funds and Indian Capital Market-Performance and Profitability", Kanishka publishers, Distributors, New Delhi-110 002, P. 17.

- g. Rating of proposed share and underwriting of the issue.
- h. Statement by board of directors stating that details of all monies received from public, utilization and un utilization of money.
- i. Capital structure of the company
- j. Information about company, management and project

Deposits are not to be invited without issuing an advertisement and prospectus should be registered before the date of its publication (58A). The terms of contract mentioned in prospectus should not be varied and it should not include an expert statement who is involved in the formation or promotion of the company (Section 57). Every person who is authorized in prospectus shall liable for the loss or damages or any untrue statement given in prospectus. They shall be punishable with imprisonment for a term.

Prospectus should be registered with the registrar along with the name of the director, authorized agent before its publication (Section 60).

Any financial institution, public sector bank or scheduled bank whose main object is financing shall file a shelf prospectus. Shelf prospectus is a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus (Section 60A).

Penalty and punishments

The director, promoter or every person authorized the issue of the prospectus is responsible for any loss or damage is occurred due to untrue statement included in the prospectus (Section 62) and if he failed to prove either that the statement was immaterial or that he has reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both (Section 63).

If a prospectus is issued in contravention of Section 57 or 58, the company and every person/party involved in the issue is punishable with fine which may be extend to Rs.50,000.(Section 59).

Any person, knowing or recklessly making any statement, promise or forecast which is false, deceptive or misleading or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into or to offer to enter into any agreement for, acquiring, disposing of, subscribing for or underwriting shares or debentures shall be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to one lakh rupees or with both (section 68)

Any person who makes in a fictitious name an application to a company for acquiring or subscribing for, induces a company to allot, register any transfer of shares to him or any other person in a fictitious name shall be punishable with imprisonment for a term which may extend to five years (Section 68A).

Any person who acquires any share in contravention of the provisions of section 108A shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to fifty thousand rupees, or with both (Section 108I).

If any company made default with registration particulars while filing its application with the registrar the company, and every officer of the company or other person who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues, they

shall be punishable with fine which may extend to ten thousand rupees (Section 142).

If a person is convicted of any offence in connection with the promotion, formation or management of a company or in the course of winding up a company, a person has been guilty of any offence for which he is punishable (whether he has been convicted or not) (Section 203).

Dividend should be paid to the registered holder of such share or to his order or to his bankers (Section 206). Where a dividend has been declared by a company but has not been paid, or the warrant has not been posted, within thirty days from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues (Section 207).

Allotment of shares

A listed public companies which intend to sell their shares by listing in any recognized stock exchanges in Indian, be administered by the Securities and Exchange Board of India. Deposits are not to be invited without issuing an advertisement and prospectus should be registered before the date of its publication (58A). The terms of contract mentioned in prospectus should not be varied and it should not include an expert statement who is involved in the formation or promotion of the company (Section 57). Every person who is authorized in prospectus shall liable for the loss or damages or any untrue statement given in prospectus. They shall be punishable with imprisonment for a term.

Allotment of shares is prohibited unless minimum subscription received which specified in prospectus. All the shares are to be allotted through stock exchange where the company is listed. Whenever companies have share capital makes any allotment of its shares with thirty days. A company may issue two types of share capital namely Preference share capital and Equity share capital.

Every company which accepts deposits from small depositors shall intimate to the tribunal any default made by it in repayment of any such deposits. No allotment shall be made unless minimum subscription is made.(Section 69). No allotment shall be made unless statement in lieu of prospectus delivered to Registrar at least three days before the first allotment (Section 70).

Every company has to make an application to one or more recognized stock exchanges for permission to issue shares before the issue of prospectus (Section 73).

Limitations of a company

No company limited by shares, and no company limited by guarantee and having a share capital, shall have power to buy its own shares (Section 77).

Companies are restricted to acquire without prior approval of the Central Government, no individual, firm, group, constituent of a group, body corporate shall jointly or severally acquire or agree to acquire, any equity shares in a public company, or a private company which is a subsidiary of a public company. If the total nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity shares already held in the

company by such individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management, exceed twenty-five per cent of the paid-up equity share capital of such company.

When a company make changes in the controlling of the company that would be prejudicial to the interests of the company or to the public, Central Government may direct not to transfer or block of shares (Section 108D(1)).

Company annual general meeting

Every company has to conduct the Annual General Meeting every year and they have to provide the information of all business transactions like

- (i) the consideration of the accounts, balance sheet and the reports of the Board of directors and auditors,
- (ii) the declaration of a dividend, (iii) the appointment of directors in the place of those retiring, and (iv) the appointment of and the fixing of the remuneration of, the auditors (Section 173).

If a company made default in holding an annual general meeting the Central Government may call, or direct the calling of, a general meeting of the company as the Central Government thinks expedient in relation to the calling, holding and conducting of the meeting (Section 167) and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and in the case of a continuing default, with a further fine which may extend to two thousand five hundred rupees for every day after the first during which such default continues (Section 168).

Managerial remuneration

The total managerial remuneration payable by a public company or a private company directors and its manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company (Section 198).

Dividend declaration

Every company has to declare or pay the dividend out of the current year or previous years profits of the company or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government (Section 205).

After the declaration of a dividend, If a company has not been paid a dividend or claimed, within thirty days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed within the said period of thirty days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called "Unpaid Dividend Account of Company Limited/Company (Private) Limited" (Section 205A).

Educating investors

The Central Government shall establish a fund to be called the Investor Education and Protection Fund (hereafter in this section referred to as the "Fund") from the amounts in the unpaid dividend accounts of companies, the application moneys received by companies for allotment of any securities and due for refund, matured deposits with companies, matured debentures with companies, the interest accrued on the amounts referred to in clauses, grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund and the interest or other income received out of the investments made from the

Fund (Section 205C). This fund has been taken for promotion of investors' awareness and protection of the interests of investors.

Maintenance of relevant records

Every company shall keep proper books of account with respect to (a) all sums of money received and expended by the company (b) all sales and purchases of goods by the company (c) the assets and liabilities of the company and (d) companies engaged in production, processing, manufacturing or mining activities, such particulars relating to utilization of material or labour or to other items of cost as may be prescribed (Section 209). The books shall be open to inspection during business hours (i) by the Registrar, or (ii) by an officer authorized by the Central Government or by Securities and Exchange Board of India (Section 209A).

The Central Government constitute an Advisory Committee called the National Advisory Committee on Accounting Standards to advise the Central Government on the formulation and laying down of accounting policies and accounting standards for adoption by companies or class of companies under this Act (Section 210A).

Securities contracts (regulation) act, 1956

Securities Contracts (Regulation) Act, 1956 (herein after referred to as the "SC(R) Act") is to prevent undesirable transactions in securities by regulating the business of dealing securities. The SC(R) Act incorporated for the purpose of assisting, regulating or controlling the business of buying and selling or dealing in securities carried by individuals or society in India. The Act has been amended from time to time according to the needs of capital market.

This Act has 31 Sections and was administered by the Central Government. After the enactment of SEBI Act 1992, SEBI board has powers concurrently to administrate almost all the provisions of this Act.

The preamble of securities contracts (regulation) act, 1956

SC(R) Act provides direct and indirect control in all aspects of securities trading. From establishment stock exchange to listing the company in recognized stock exchanges it prevents all undesirable actions by regulating and providing the procedures in a prescribed manner. The Central Government has powers to grant of recognition of stock exchanges and withdrawal of such recognition.

Recognition and withdrawal of stock exchanges

Any stock exchange, which is desirous of being recognized, has to make an application in the prescribed manner to the Central Government (Section 3).

Every application shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation, control of contracts, copy of rules relating in general to the constitution of the stock exchange. In particular the application shall be accompanied by the following

- The governing body of stock exchange, its constitution and powers of management.
- The manner in which the business is transacted.
- The powers and duties of the office bearers of the stock exchange.
- The admission into the stock exchange of various classes of members, the qualifications for membership, and the exclusion, suspension, expulsion and re-admission of members.
- The procedure for the registration of partnership as member of the stock exchange, nomination and appointment of authorized representatives and clerks.

If the Central Government and SEBI makes necessary inquiry to obtain further information like, The rules and bye-laws of stock exchange applying for registration are fulfill the condition prescribed and ensure fair dealing and to protect investors (Section 4(1)).

If the Central Government and SEBI are satisfied, it may grant recognition to the stock exchange. Every grant of recognition to a stock exchange shall be publishes in the Gazette of India and also in the official Gazette of the state in which the principal office of the stock exchange is situating (Section 4(5)). If the recognized stock exchange has not been corporatized or demutualised or it fails to submit the scheme (Section 4B(1)) with in specified time , the scheme has been rejected by SEBI(Section 4B(5)), the reorganization grant to such stock exchange under Section 4 has been withdrawn.

Delegation of Powers to Securities and Exchange Board of India Following powers of Central Government are transferred to the SEBI to administer the Stock Exchange.

- a) To call for periodic returns from recognized stock exchanges (Section 6(2)).
- b) To prescribe maintenance of certain document by the Stock Exchange (Section 6(2)).
- c) To call upon a recognized Stock Exchange or any member of the Stock Exchange to furnish explanation or information relating to the affairs of the Stock Exchange or its members.
- d) To appoint any person to enquire into the affairs of the governing body of any Stock Exchange (section 6 (3)).
- e) To approve the bye-laws of the Stock Exchange for regulation and control of the Contracts (Section 9).
- f) To amend the bye-laws of Stock Exchanges (Section 10).
- g) To compel a public limited company to its shares on recognized stock exchanges (Section 21)
- h) To amend rules, direct certain rules to be made rules in respect of relating to contents in the application for recognition of stock exchanges (Sections 3 & 8)
- i) To seek furnishing of annual reports by Stock Exchanges (Section 7)
- j) To supersede the governing body of a recognized stock exchange (Section 12)
- k) To prevent undesirable speculations in specified securities in any state or area (Section 16)
- l) To make or amend rules or Articles of Association of stock exchanges regarding voting rights to members of exchange at any meeting (Section 7(A)(2))
- m) To issue notification declaring this section apply to an area. Consequent upon which contracts issued in that area otherwise than between members of a exchange or through or with such member shall be illegal (Section 13).
- n) To regulate and control the business or dealing in spot delivery contract (Section 18(2))

Listing of securities in stock exchanges in india

The term "listing" is admission of Securities of Securities of a company for dealing in recognized stock exchanges. According to the companies (amendment) Act 1998, every company desires to offer shares or debentures to the public for subscription by the issue of a prospectus have to make an application to one or more recognized stock exchanges for permission of the Securities intending to be so offered to be dealt with in the Stock Exchanges (Section 73(1) of Companies Act).

Any person can apply in any recognized stock exchange to list the securities by satisfying the conditions of the listing

agreement with the stock exchange. A recognized stock exchange may delist the securities, after recording the reasons (Section 21).

A recognized stock exchange can refuse to list the securities of any public company or collective investment scheme under the reasonable ground. In this case a company shall be entitled to furnish the reasons with the stock exchange or Securities Appellate Tribunal against the refusal of stock exchange with in fifteen days from the date of the decision of the stock exchange (Sections 22, 22A)

Rights for the holders

Holder of any security has rights to receive and retain any dividend declared by the company whose name is registered on the books of the company (Section 27).

In case of transfer for security, unless the transferee who claims the dividend from the transferor has lodged the security and all other documents relating to the transfer which is required by the company for being registered in his name within fifteen days of the date on which the dividend became due. The period shall be extended in case of delay in transfer of documents due to post or in case of death of transferee or in case of loss of the transfer deed by theft (Section 27(1)(ii)).

It is right of the transferee to enforce his rights against transferor in relation to the transfer where the company has refused to register the transfer of the security in the name of the transferee (Section 27 (2)(b)).

Holder of mutual fund has rights holder to receive and retain any income declared by mutual funds (Section 27B(1)).

In case of transfer for units or instruments, Even though the units are transferred unless the transferee who claims the income issued by mutual fund from the transferor has lodged the all documents relating to the transfer which is required by the mutual fund for being registered in his name within fifteen days of the date on which the income became due. The period shall be extended in case of delay in transfer of documents due to post or in case of death of transferee or in case of loss of the transfer deed by theft (Section 27B (1)(ii)).

It is right of the transferee being units or other instruments issued by mutual funds to enforce his rights against transferor in relation to the transfer where the mutual fund has refused to register the transfer of the security being units issued by mutual fund in the name of the transferee(Section 27B(2)(b)).

Securities and exchange board of india act, 1992

Securities and Exchange Board of India is an Act to provide for the establishment of a Board to protect the interests of investors in securities and promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

This act is amended by time to time. There are 35 sections which are divided into seven chapters in which it clearly indicates the dominant role of SEBI Act towards investors protection from risk.

Central Government appoints a board named Securities and Exchange Board of India for the establishment of this Act. SEBI is an independent and effective regulator. It has sound regulations in respect of intermediaries, trading mechanism, settlement cycles, risk management of companies.² The board shall consist of a chairman, two members from ministry, one from Reserve Bank of India, five members from other is

² Indian Securities Market-Review, National Stock Exchange , Vol VI, 2008, pp. 04.

appointed by the Central Government. The board head office is at Mumbai and establishes offices at other places in India. (Section 3 & 4).

Appointed members shall be removed if the person is insolvent, unsound mind, and convicted of an offence. (Section 6).

The board shall meet at such times and places regard to the transaction of business and the decision for a problem is taken by majority votes of the members present. (Section 7).

Functions of board

It is the duty of the Board to protect the interest of investors in securities and to promote the development of, and to regulate the securities market. The following are the various functions of board

- a. Regulating the business in stock exchange and any other securities markets
- b. Registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustee of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associate with securities markets in any manner.
- c. Registering and regulating the working of the depositories, custodians for securities, foreign institutional investors, credit rating agencies and such other intermediaries.
- d. Registering and regulating the working of venture capital funds, collective investment schemes and mutual funds.
- e. Promoting and regulating self-regulatory organization
- f. Prohibiting fraudulent and unfair trade practices relating to securities markets.
- g. Promoting investors' education and training of intermediaries of securities markets
- h. Prohibiting insider trading in securities
- i. Regulating substantial acquisition of shares and takeover of companies.
- j. Calling for information from associated persons and undertaking inspection, conducting inquiries and audits.
- k. Conducting research and publish information useful to all market participants.
- l. Promotion of fair practices, code of conduct for self-regulatory organizations.
- m. Levying charges or fees for carrying out the purpose of regulation.
- n. Performing such functions which are specified in Companies Act, 1956, Securities Contracts (Regulation) Act, 1956, The Depositories Act, 1996 as may be delegated by Central Government.

No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and other intermediary who are associated with securities market shall buy, sell or deal in securities after obtained the certificate of registration the Board in accordance with the regulations made under this Act(Section 12).

SEBI Act prohibits the manipulative and deceptive devices, insider trading and substantial acquisition of securities or control. No person shall directly or indirectly purchase or sale of any securities listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act. (Section 12A).

Penalties

If any person failed to furnish the any document, return or report to the Board 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 (Section 15A).

Intermediary has to address the grievances of the investors within specified time given by the board. If anybody fails, they shall be punishable with the penalty of one lakh rupees for each day during which such failure or one crore rupees, whichever is less (Section 15C).

A person one who is dealing with mutual funds and collective investment schemes has to get certificate from the Board. If the sponsors or a person carries on any collective investment scheme without certificate, they shall be liable to be liable to a penalty of one lakh rupees for each day during which the sponsors or carries on any such collective investment scheme including mutual funds, or one crore rupees, whichever is less. (Section 15 D(a)).

If the registered sponsors of collective investment schemes includes mutual funds fails to comply with the terms and conditions of certificate of registration and fails to make an application for listing of its schemes as provided for in the regulations governing, 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.(Section 15D(b)(c)).

Registered collective investment scheme including mutual funds fails to dispatch unit certificates of any scheme as per the regulation governing and refund the application monies paid by the investors, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.(Section 15D(d)).

If a collective investment scheme company fails to refund the application monies paid by the investors and fails to invest the collected money within the period given in the regulations, they shall be liable to pay a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.(Section 15F(e)(f)).

If the Asset Management Company fails to comply with the regulations, they 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.(Section 15E).

If a registered stock broker fails to issue contract notes, they shall be liable to a penalty which is less than five times the amount for which the contract note was required to be issued by that broker.(Section 15F(a)).

If any person deals in securities of any stock exchange on the basis of any unpublished price sensitive information or communicates any unpublished price-sensitive information to any person or counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading whichever is higher (Section 15G).

If any person, fails to disclose the aggregate of their shareholding, to make a public announcement to acquire shares at a minimum price, to make a public offer by sending letter of offer to the shareholders, shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher. (Section 15H).

If any person enjoys 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.(Section 15HA)

SEBI appoints an adjudicating officer to inquire about the compliance and he has the power to summon and enforce any person to give evidence or to produce any relevant document. On such inquiry if he is not satisfy with the person he may impose the penalty to that person.(Section 15I).

The adjudicating officer has to consider the following factor which making an inquiry against the compliant.

- (i) The amount of disproportionate gain or unfair advantage, wherever is quantifiable, made as a result of the default;
- (ii) The amount of loss caused to an investor or group of investors as a result of the default;
- (ii) The repetitive nature of the default. (Section 15J)

All the amount realised by way of penalties under this Act shall be credited to the Consolidated Fund of India (Section 15JA).

Central Government established Securities Appellate Tribunal to exercise the jurisdiction, powers and to have a discussion on disputes under this Act or any other law for the time being in force. (Section 15K) and they have powers to regulate their own procedure (Section 15U).

Securities Appellate Tribunal have powers to summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents;

- (c) receiving evidence on affidavits; (d) issuing commissions for the examination of witnesses or documents; (e) reviewing its decisions; (f) dismissing an application for default or deciding it *ex parte*; (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; (h) any other matter which may be prescribed (Section 15U (2)).

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer or a Securities Appellate Tribunal. No injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.(Section 15Y).

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 and the period may extended another sixty days by supreme court if the applicant prevented to file within said period. (Section 15Z).

Power of board

The board shall exercise its powers or the performance of its functions as per the directions of the Central Government given in writing to it from time to time(16)(1) but it has been given opportunity to express its views. The central government decision is not final decision, it question as one of policy.(16)(2)

Central Government act in place of the board for some period not exceeding six months, when there is an emergency or when the board has made some default. (Section 17(1)).

The Board has to furnish the returns and statements of proposed or existing programme for the promotion and development of the securities market in the prescribed form to the Central Government (Section 18).

The Board may delegate its powers and functions to any member officer when it is necessary (Section 19).

The Board may make regulations to carry out the activities to serve the purpose of the act.(section 30).

The guidelines prescribed by SEBI are well-intentioned. These guidelines have been framed to provide an adequate safety net for the investors' interest protection. But, generally, MFs are not providing adequate information regarding the nature of risk and investment pattern³.

Depositories act, 1996

Depositories Act provides regulations to the depositories in securities and for matters connected therewith or incidental thereto. The regulations has been given in 31 sections.

In this Act, "beneficial owner" means a person whose name is recorded as such with a depository(Section 2(1(f))). "Depository" means a company formed and registered under the Companies Act, 1956 (Section 1 of 1956) and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act (Section 2(1(e))) and "issuer" means any person making an issue of securities(Section 2(1(f))).

No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board (Section 3). A depository shall enter into an agreement with one or more participants as its agent (Section 4).

Any person who has entered into an agreement shall surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer in such manner as may be specified by the regulations (Section 6).

The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository (Section 10).

The depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it (Section 10(2)), the beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository (Section 10(3)).

Every depository shall furnish to the issuer information about the transfer of securities in the name of beneficial owners. Every issuer shall make available to the depository copies of the relevant records in respect of securities held by such depository (Section 13).

Without prejudice to the provisions of any other law for the time being in force, any loss caused to the beneficial owner due to the negligence of the depository or the participant, the depository shall indemnify such beneficial owner (Section 16).

Power of SEBI in depositories Act

SEBI has power to authorise any person to make an enquiry or inspection in relation to the affairs of the issuer, beneficial owner, depository or participant. They have to submit a report of such enquiry or inspection within specified period mentioned in the order(Section 18).

SEBI has powers to give directions to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market (Section 19).

Penalties

Any person, who is required by this Act have to furnish any information, document, books, returns or report to the Board, fails to furnish the same within the time specified, he shall be liable to a penalty of one lakh rupees for each day during which

³ Singh H.K, Meera Singh(2001), "Mutual Funds and Indian Capital Market-Performance and Profitability", Kanishka publishers, Distributors, New Delhi-110 002, P. 22.

such failure continues or one crore rupees, whichever is less for each such failure (Section 19A)

If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary is fails to enter into agreement, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for every such failure (Section 19B).

If any depository or participant or any issuer or its agent or any person, who is registered as an intermediary called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agents 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 (Section 19C)

If any issuer or its agent or any person, who is registered as an intermediary fails to dematerialize or issue the certificate of securities of a depository by the investors, within the time specified or abets in delaying the process of dematerialization or issue the certificate of securities of a depository of securities, such issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less (Section 19D)

If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary fails to reconcile the records of dematerialized securities with all the securities issued by the issuer as specified in the regulations, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less (Section 19E).

If any person fails to comply with the directions issued by the Board under section 19, within the time specified by it, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less (Section 19F).

if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty five crore rupees, or with both (Section 20(1)).

If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both (Section 20(2)).

If a company has been committed an offence, the in-charge is responsible to the conduct of the business of the company and shall be liable to punishment (Section 21).

No court inferior to save on a complaint made by the Central Government or State Government or the Securities and Exchange Board of India or by any person (Section 22).

Any person aggrieved by an order of the Board made or the regulations may prefer an appeal to the Central Government. If the appellant satisfies the Central Government by sufficient cause for not preferring the appeal within the prescribed period an appeal may be admitted after the expiry period (Section 23).

Securities appellate board

The Securities Appellate Tribunal shall be guided by the principles of natural justice and, subject to the other provisions of this Act and rules. It has powers to regulate their own procedure including the places at which they shall have their sittings (Section 23A).

The appellant may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his case before the Securities Appellate Tribunal (Section 23C). No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by this Act and no injunction can be granted by any court or other authority in respect of any action taken or to be taken (Section 23E).

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 (Section 23F).

A depository shall make byelaws consistent with the provisions of this Act and the regulations with the previous approval of the Board (Section 26(1)).

If the depository fails or neglects to comply with such order within the specified period, the Board may make the bye-laws or amend or revoke the bye-laws made either in the form specified in the order or with such modifications as the Board thinks fit (Section 26(1)).

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament (Section 27).

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may publish the order in the Official Gazette, to make such provisions not inconsistent with the provisions of this Act which is necessary or expedient for removing the difficulty (Section 29).

Conclusion

India has well regulated legislation framework to run the market in a systematic way. The Company Act, 1956 prevents initial misleading and systemize the companies provides the guidelines to do business by starting a company. Securities Contract regulations Act, 1956 control the business dealings of the stock market, the transactions are monitored and prevent fraudulent dealings. The Securities Exchange Board of India Act, 1992 incorporated especially to protect the investor and promote the business.

Depositories Act, 1996 regulates the depositories which hold securities like shares, debentures, bonds, government securities, mutual fund units etc. These regulations try to prevent misleading, misrepresentation and fraudulent actions in the stock market. Still it can be seen many fraudulent activities in stock market. Continuous monitoring and proper documentation alone does not prevent the investor from loss. Educating investor is making them to escape from the loss.

The investor also should be involved in the trading they should not blindly go with the intermediaries. They must have the responsibility of managing their hard earned money with the help of intermediaries. The tightened rules and regulations does not protect the investor until the investor is not understand their role on the investment.

References

- The Companies Act, 1956

- The Securities Contracts (Regulation) Act, 1956
- The Securities Exchange Board of India Act, 1992
- Depositories Act, 1996.