

Securities Laws (Amendment) Act, 2004

Section 17 - Insertion of New Sections 19a, 19b, 19c, 19d, 19e, 19f, 19g, 19h, 19-i and 19j

After Section 19 of the Depositories Act, 1996 (hereafter in this Chapter referred to as the principal Act), the following Sections shall be inserted, namely:-

"19A. Penalty for failure to furnish information, return, etc.-- Any person, who is required under this Act or any rules or regulations or bye-laws made thereunder, -

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

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

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

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

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

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

19E. Penalty for failure to reconcile records.-- If a depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), fails to reconcile the records of dematerialised securities with all the securities issued by the issuer as specified in the regulations, such depository or participant or issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

19F. Penalty for failure to comply with directions issued by Board under Section 19.-- 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.

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

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

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

19-I. Factors to be taken into account by adjudicating officer.-- While adjudging the quantum of penalty under Section 19H, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default ;
- (c) the repetitive nature of the default.

19J. Crediting sum realised by way of penalties to Consolidated Fund of India.-- All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India."