

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement. -

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

2. Definitions. -

- (1) In this Act, unless the context otherwise requires, -
 - (a) "**beneficial owner**" means a person whose name is recorded as such with a depository;
 - (b) "**Board**" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;
 - (c) "**bye-laws**" means bye-laws made by a depository under section 26;
 - (d) "**Company Law Board**" means the Board of Company Law Administration constituted under section 10E of the Companies Act, 1956;
 - (e) "**depository**" means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;
 - (f) "**issuer**" means any person making an issue of securities;
 - (g) "**participant**" means a person registered as such under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;
 - (h) "**prescribed**" means prescribed by rules made under this Act;
 - (i) "**record**" includes the records maintained in the form of books or stored in a computer or in such other form as may be determined by regulations;
 - (j) "**registered owner**" means a depository whose name is entered as such in the register of the issuer;
 - (k) "**regulation** : means the regulations made by the Board;
 - (l) "**security**" means such security as may be specified by the Board;
 - (m) "**service**" means any service connected with recording of allotment of securities or transfer of ownership of securities in the record of a depository.
- (2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 or the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992, shall have the meanings respectively assigned to them in those Act.

CHAPTER II

CERTIFICATE OF COMMENCEMENT OF BUSINESS

3. Certificate of commencement of business by depositories -

- (1) No depository shall act as a depository unless it obtains a certificate of commencement of business from the Board.
- (2) A certificate granted under sub-section (1) shall be in such form as may be specified by the regulations.
- (3) The Board shall not grant a certificate under sub-section (1) unless it is satisfied that the depository has adequate systems and safeguards to prevent manipulation of records and transactions;
Provided that no certificate shall be refused under this section unless the depository concerned has been given a reasonable opportunity of being heard.

CHAPTER III

**RIGHTS AND OBLIGATIONS OF DEPOSITORIES,
PARTICIPANTS, ISSUERS AND BENEFICIAL OWNERS**

4. Agreement between depository and participant

- (1) A depository shall enter into an agreement with one or more participants as its agent.
- (2) Every agreement under sub-section (1) shall be in such form as may be specified by the bye-laws.

5. Services of depository

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

6. Surrender of certificate of security

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

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

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

7. Registration of transfer of securities with depository

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

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

8. Options to receive security certificate or hold securities with depository

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

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

9. Securities in depositories to be in fungible form

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

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

10. Rights of depositories and beneficial owner

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

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

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

11. Register of beneficial owner

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

12. Pledge or hypothecation of securities held in a depository

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

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

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

13. Furnishing of information and records by depository and issuer

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

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

14. Option to opt out in respect of any security

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

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

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

15. Act 18 of 1891 to apply to depositories

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

16. Depositories to indemnify loss in certain cases

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

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

17. Rights and obligations of depositories, etc.

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

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

CHAPTER IV

ENQUIRY AND INSPECTION

18. Power of Board to call for information and enquiry

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

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

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

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

19. Power of Board to give directions in certain cases

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

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

(ii) to prevent the affairs of any depository or participant being conducted in the manner detrimental to the interests of investors or securities market.

it may issue such directions -

- (a) to any depository or participant or any person associated with the securities market; or
- (b) to any issuer,

as may be appropriate in the interest of investors or the securities market.

CHAPTER V **PENALTY**

20. Offences

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

21. Offences by companies

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

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

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

Explanation -

For the purpose of this section, -

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm, means a partner in the firm.

CHAPTER VI **MISCELLANEOUS**

22. Cognizance of offences by courts

(1) NO court shall take cognizance of any offence punishable under this Act or any regulations or bye-laws made thereunder, save on a complaint made by the Board.

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

23. Appeals

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

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

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

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

(4) The procedure for disposing of an appeal shall be such as may be prescribed. Provided that before disposing of an appeal the appellant shall be given a reasonable opportunity of being heard.

24. Power of Central Government to make rules

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

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

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

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

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

25. Power of Board to make regulations

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

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

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

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

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

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

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

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

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

26. Power of depositories to make bye-laws

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

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

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

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

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

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

(e) the procedure for transactions within the depository;

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

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

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

- (i) the procedure for conveying information to the participants and beneficial owners on dividend declaration, shareholder meetings and other matters of interest to the beneficial owners;
- (j) the manner of distribution of dividends, interest and monetary benefits received from the company among beneficial owners;
- (k) the manner of creating pledge or hypothecation in respect of securities held with a depository;
- (l) inter se rights and obligations among the depository, issuer, participants and beneficial owners;
- (m) the manner and the periodicity of furnishing information to the Board, issuer and other persons;
- (n) the procedure for resolving disputes involving depository, issuer, company or a beneficial owner;
- (o) the procedure for proceeding against the participant committing breach of the regulations and provisions for suspension and expulsion of participants from the depository and cancellation of agreements entered with the depository;
- (p) the internal control standards including procedure for auditing, reviewing and monitoring.

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

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

27. Rules and regulations to be laid before Parliament

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

28. Application of other laws not barred

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

29. Removal of difficulties

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

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

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

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

31. Repeal and saving

- (1) The Depositories (Third) Ordinance, 1996 is hereby repealed.
(2) Notwithstanding such appeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE
(See section 30)

AMENDMENTS TO CERTAIN ENACTMENTS
PART I
AMENDMENT TO THE INDIAN STAMP ACT, 1899
(2 OF 1899)
AMENDMENT

Securities not liable to stamp duty

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

'8A. Notwithstanding anything contained in this Act,-

- (a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;
- (b) where an issuer issues certificate of security under sub-section (3) of section 14 of the Depositories Act, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under this Act;
- (c) transfer of registered ownership of shares from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;
- (d) transfer of beneficial ownership of shares, such shares being shares of a company dealt with by a depository shall not be liable to duty under article 62 of Schedule I of this Act.

Explanation -

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