

**CLUSTER 10**

**The Securities and Exchange Board of India Act, 1992**

**The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015**

1. On completion of 60 years of age as on 31st March 2014, Mr. Jain retired as Professor from a university. From 1st April 2014, he was appointed as Chairman of the Securities and Exchange Board of India for a period of three years. Under the provisions of the Securities and Exchange Board of India Act, 1992, decide whether he can be re-appointed on the same post after expiry of the original tenure? Also state whether it could be possible for him to relinquish the office before expiry of his tenure? [CA Final Nov 2017]

**Ans.** The given problem relates to Section 5 read with Section 4 of the Securities and Exchange Board of India Act, 1992 and rules. As per Section 4, the Chairman and the other members shall be persons of ability, integrity and standing who have should capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the SEBI.

In the given case, Mr. Jain who has retired as Professor from a university is appointed as the Chairman. His appointment is in accordance with Section 4 as it can be reasonably assumed that he is a person of ability, integrity and standing who has special knowledge of law, finance, economics, accountancy or administration.

As per Rule 3, the Chairman can be appointed for a maximum period of 5 years. On completion of his term, he may be reappointed also. However, no person shall hold office as Chairman after he has attained the age of 65 years.

Mr. Jain was appointed as Chairman for a period of 3 years on 1st April, 2014. So, the period of office of Mr. Jain as the Chairman comes to an end on 31st March, 2017. He may be reappointed at the post of the Chairman. As on the date of reappointment, he has attained the age of 63 years. Since, no person shall hold office as Chairman after he has attained the age of 65 years. he may be reappointed as the Chairman for a period not exceeding 2 years, i.e. up to 31st March, 2021.

As per Section 5, the Chairman shall also have the right to relinquish his office, at any time before the expiry of his period of office, by giving to the Central Government notice of not less than 3 months in writing.

Thus, Mr. Jain is entitled to relinquish his office at any time before the expiry of his period of office. For this purpose, he is required to give at least 3 months written notice to the Central Government.

2. Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry [CA Final May 2016]

OR

Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of MR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry. [CA Final Nov 2018]

**Ans.** As per section 11 (4) of the Securities and Exchange Board of India Act, 1992, the Board may, by an order, for reasons to be recorded in writing, in the interest of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

1. suspend the trading of any security in a recognised stock exchange;
2. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
3. suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
4. impound and retain the proceeds or securities in respect of any transaction which is under investigation;
5. attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder: However only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;
6. direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

**3. State the circumstances under which Securities and Exchange Board of India may prohibit a company from issuing prospectus, any offer document or advertisement soliciting money from public for the issue of securities. [CA Final Nov 2006]**

OR

**Point out the circumstances where under the following powers may be exercised by the Securities and Exchange Board of India:**

**(i) Prohibiting a company from issuing or publishing any document or advertisement soliciting money from public for the issue of securities.**

**(ii) Pass cease and desist order in relation to any listed company.**

**What remedies are available to the companies against such orders under the Securities and Exchange Board of India Act, 1992. [CA Final June 2009, May 2011]**

**Ans. Regulate or prohibition of issue of prospectus etc. (Section 11A):** SEBI may take the following measures for the protection of investors, without prejudice to the Companies Act, 2013:

1. It may specify by regulations: (a) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and (b) the manner in which such matters shall be disclosed by the companies;
2. It may, by a special or general order, (a) prohibit any company from issuing of prospectus, any offer document, or advertisement soliciting money form the public for the issue of securities; and (b) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

It may specify the requirements for listing and transfer of securities and other matters incidental thereto

**4. Explain briefly the powers of SEBI under Securities and Exchange Board of India Act, 1999 to seize the records of a stock broker or other Intermediaries associated with securities market. [CA Final May 2004]**

**Ans. Seizure of documents by the Investigating Authority**

1. The Investigating Authority may make an application to the Magistrate of the First Class for an order for the seizure of books and papers. He has reasonable ground to believe that book, registers, other documents and records may be destroyed, mutilated, altered, falsified or secreted.

2. After considering the application, the Magistrate may authorise the Investigating Authority -- (i) to enter, with such assistance as may be required, the places where such books etc. are kept; (ii) to search those places in the manner specified in the order; (iii) to seize such books etc. as Investigating Authority considers necessary.
3. The Investigating Authority may keep the books etc. till the conclusion of the investigation.

**5. State the circumstances under which Securities and Exchange Board of India may pass cease and desist order in respect of any listed company. [CA Final Nov 2006]**

OR

**Point out the circumstances where under the following powers may be exercised by the Securities and Exchange Board of India:**

**(i) Prohibiting a company from issuing or publishing any document or advertisement soliciting money from public for the issue of securities.**

**(ii) Pass cease and desist order in relation to any listed company.**

**What remedies are available to the companies against such orders under the Securities and Exchange Board of India Act, 1992. [CA Final June 2009]**

**Ans. Cease and desist order by SEBI:**

1. After causing an enquiry, if SEBI is of the opinion that any person has violated or is likely to violate any provisions of the act or rules or regulations made there under, it may pass an order requiring such person to cease and desist from committing such violation.
  2. Such an order shall be passed by SEBI in respect of any listed public company; or a public company, which intends to get its securities, listed on any recognized stock exchange only if it has reasonable ground to believe that such company has been indulging in insider trading or market manipulation.
- 6. Mr. Raman, an investor is not satisfied with the dealings of his stock broker, who is registered with Delhi Stock Exchange. Mr. Raman approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries. [CA Final Nov 2003]**

OR

**A group of investors are upset with the functioning of two leading stockbrokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances. Explain briefly what type of defaults by the stock brokers come within the purview of SEBI Act, 1992. [CA Final May 2002]**

OR

**What are the defaults for which a stock broker may be penalized under the provisions of Securities and Exchange Board of India Act, 1992 in respect of his dealings with the investors? [CA Final May 2000]**

**Ans. Procedure for adjudication**

**Power to adjudicate -**

1. To impose penalty, SEBI should hold an inquiry.
2. SEBI shall appoint any of its officers not below the rank of Division Chief to be an adjudicating officer.
3. A reasonable opportunity of being heard is given before imposing any penalty.
4. While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person to give evidence or to produce any **DOCUMENT** and if, on such inquiry, he is satisfied that the **PERSON HAS** failed to comply with any of the

provisions he **MAY** impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

5. Board has power to enhance the quantum of punishment on consideration of erroneous order passed by adjudicating officer, if it is not in the interest of security market. Before passing an order opportunity of being heard shall be given.

**Following factors are to be taken into consideration by the adjudicating officer while deciding amount of penalty - Section 15**

1. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
  2. The amount of loss caused to an investor or group of investors as a result of the default.
  3. The repetitive nature of the default.
  4. No court shall take cognizance of any offence punishable under this Act or any rules or regulations made there under, except on a complaint made by SEBI.
7. **What provision has been made under Section 15G of the SEBI Act, 1992 in connection with penalty for insider trading? [CA Final Nov 2000]**

OR

**Under what circumstances can the Securities and Exchange Board of India, under the provisions of the SEBI Act, 1992 take penal action against a stock broker for defaults and against the different persons for insider trading? [CA Final Nov 1997]**

OR

**Explain the procedure as prescribed under the Securities and Exchanges Board of India Act, 1992 for determining the penalty for insider trading and the factors to be taken into account in this regard. [CA Final May 1998]**

OR

**On the complaint of Mr. Kamlesh Gupta, after enquiry SEBI finds that Mr. P. Mehra a Chief Executive Officer of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action can SEBI take against Mr. P. Mehra under the Securities and Exchange Board of India Act, 1992. [CA Final Nov 2002]**

OR

**Shri Ranjan Lal, managing director of RLM Limited is also a director of Modern Technologies Limited. On Coming to know that the latter company will issue bonus shares shortly he persuaded the Board of directors of RLM Limited to invest in equity shares of Modern Technologies Limited to the extent of Rs. 5 lakhs at the rate of Rs. 500 per share by passing a Board resolution on 27 May, 2002. Will Shri Ranjan Lal be liable under the Securities and Exchange Board of India Act, 1992 even though he has not directly dealt in equity shares of Modern Technologies Limited? Examine with reference to the relevant provisions of the SEBI Act. [CA Final Nov 2002]**

OR

**What do you understand by the term 'Price Sensitive Information' as contemplated in the Securities and Exchange Board of India Act, 1992? What is the information which can be deemed to be 'Price Sensitive Information'? [CA Final May 2008]**

**Ans.** Price sensitive information: Price sensitive information means any information which relates to the company either directly or indirectly; and which if published is likely to materially affect the prices of securities in the market.

The following shall be deemed to be price sensitive information:

1. Periodical financial results of the company;
2. Intended declaration of dividend [both interim and final];
3. Issue of securities or buy-back of securities;

4. Any major expansion plans or execution of new projects;
5. Amalgamations, mergers and takeovers;
6. Disposal of whole or substantial part of the undertaking; and
7. Any significant changes in policies, plans or operations of the company.

**Insider trading:** No insider shall

- either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;
- communicate, counsel or procure, directly or indirectly any unpublished price sensitive information to any person, who while in possession of such unpublished price sensitive information shall not deal in securities.

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

**Section 3A.** No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.

**Violation of provisions relating to insider trading:** Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.

**Penalty for insider trading**

If any insider who, -

1. either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or
2. communicates any unpublished price-sensitive information to any person, with or without his request of such information except as required in the ordinary course of business or under any law;
3. counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty of Rs 10 lakhs extending up to Rs.25 crores or 3 times the amount of profits made out of insider trading, whichever is higher.

**8. SEBI received complaints from some investors alleging that ABC Limited and some brokers are indulging in price manipulation in the shares of ABC Limited. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct.**

**Ans.** The given problem relates to Sections 11, 12A, 15HA and 15HB of the Securities and Exchange Board of India Act, 1992.

Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practice relating to securities market. Therefore, under Section 11, SEBI is empowered to exercise the following powers:

- (a) Suspend the trading of any security in a recognized stock exchange.
- (b) Restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities.

As per Section 15HB, SEBI may impose penalty up to Rs. 1 crore on any person who fails to comply with any provision of the Act, for which no separate penalty has been provided

As per Section 12A, no person shall directly or indirectly -

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

- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in

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

As per Section 15HA, if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of Rs. 25 crores or 3 times the amount of profits made out of such practices, whichever is higher.

In the given case, ABC Limited and the brokers who indulged in price manipulation in the shares of ABC Limited are liable to penalty of Rs. 25 crores or 3 times the amount of profits made out of such practices, whichever is higher.

**9. State the factors that must be taken into account by the adjudicating officer while determining the quantum of penalty in such cases. [CA Final May 2000]**

**Ans.** Following factors are to be taken into consideration by the adjudicating officer while deciding amount of penalty - Section 15

- The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
- The amount of loss caused to an investor or group of investors as a result of the default.
- The repetitive nature of the default.
- No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, except on a complaint made by SEBI.

**10. SEBI received a complaint from an investor that he has not received the payment due to him from a registered stock broker. Explain the action that can be taken by SEBI against the stock broker under the provisions of Securities and Exchange Board of India Act, 1992 and the factors that will be taken into account while taking such action. [CA Final May 2003]**

OR

An investor has complained to SEBI that he has not received the payment due to him from the stock broker registered with Calcutta Stock Exchange Association Ltd., The complainant has requested SEBI to take appropriate action against the stock broker. You are required to state with reference to the provisions of Securities and Exchange Board of India Act, 1992 the answer to the following:

- (i) What action SEBI can take against the stock broker on the complaint as stated above?
- (ii) What is the procedure to be adopted and what are the factors that will be taken into account while taking such action? [CA Final Nov 2005]

OR

An investor has complained to SEBI that he has not received the payment due to him from the stock broker registered with Calcutta Stock Exchange Association Ltd. The complainant has requested SEBI to take appropriate action against the stock broker. You are required to state with reference to the provisions of Securities and Exchange Board of India Act, 1992 the answer to the following:

- (i) What action SEBI can take against the stock broker on the complaint as stated above?
- (ii) What is the procedure to be adopted and what are the factors that will be taken into account while taking such action? [CA Final Nov 2005]

**Ans.**

**1. Penalty for non-payment by a stock broker**

A registered stock broker is liable to penalty under Section 15F in respect of certain defaults. Accordingly, if a stock broker fails to make payment of the amount due to the investor in the manner and within the period specified in the regulations, he shall be liable to a penalty of

Rs. 1 lakh for each day during which such failure continues or Rs. 1 crore, whichever is less (Section 15F).

## 2. Procedure for adjudication

As per Section 15I, SEBI shall appoint any of its officers (not below the rank of Division Chief) to be an adjudicating officer for holding an enquiry in the prescribed manner. The adjudicating officer shall give an opportunity of being heard before imposing any penalty.

## 3. Factors to be taken into consideration while imposing penalty

As per Section 15J, while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors:

- (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.

## 11. What is the required qualification for the appointment of?

### (i) The Presiding Officer

### (ii) Member of the Securities Appellate Tribunal as per the provisions of the Securities and Exchange Board of India (SEBI) Act, 1992? [CA Final May 2015]

**Ans.** A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the SAT unless he

- a) is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of High Court for at least seven years, in the case of the Presiding Officer; and
- b) is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or

In the case of a Technical Member

- (i) is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or
- (ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance.

## 12. Mr. Clever who is registered as an Intermediary fails to enter into an agreement with his client and hence penalized by SEBI under Section 15B of the SEBI Act. Advise Mr. Clever as to what remedies are available to him against the order of SEBI. [CA Final Nov 2002]

OR

Explain the remedies available under Securities and Exchange Board of India Act, 1992 to companies aggrieved by the orders of SEBI. [CA Final Nov 2006]

OR

Mr. DB is a member of RPA Ltd. He obtains an order against the company for redressal of his grievances against the company. But the company fails to redress the grievances of Mr. DB within the time fixed by the SEBI. The Board thereafter imposed penalty upon the company u/s 15C of the SEBI Act, RPL Ltd. Seek your advice whether it has any remedy against the order of SEBI. Advise. [CA Final Nov 2008]

OR

Point out the circumstances where under the following powers may be exercised by the Securities and Exchange Board of India:

- (i) Prohibiting a company from issuing or publishing any document or advertisement soliciting money from public for the issue of securities.
- (ii) Pass cease and desist order in relation to any listed company.

What remedies are available to the companies against such orders under the Securities

and Exchange Board of India Act, 1992. [CA Final June 2009]

OR

The Securities and Exchange Board of India issued an order against ABC Limited for redressal of grievance of one of its members. On failure on the part of the company the Board imposed penalty upon the company under Section 15C of the Securities and Exchange Board of India Act, 1992. The Company seeks your advice whether it has any remedy against the order of the said Board. [CA Final Nov 2010]

**Ans. Remedies against SEBI order (Appeal to SAT):**

- As per Sec. 15T of the SEBI Act, 1992 provides that any person aggrieved by an order of the Board made, under this Act or the rules or regulations made there under may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
- Such appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Board is received and it shall be in such form and be accompanied by such fee as may be prescribed.
- However, the Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within the said period.
- The Tribunal may, after giving the parties an opportunity of being heard, pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against.

**Further Appeal to the Supreme Court:**

- Sec. 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order to him on any question of fact or law arising out of such order.
- The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

**13. Mr. S, a member of MN Ltd., obtained an order from the Securities and Exchange Board of India (SEBI) against the company. But the company failed to redress the grievance of Mr. S within the time fixed. Consequently, SEBI imposed penalty on the company. The company, however, did not pay the penalty also. State how the penalty can be recovered from the company? [CA Final Nov 2015]**

OR

Mr. Ravi failed to pay the penalty imposed by the Adjudicating Officer for an offence committed under Securities and Exchange Board of India Act, 1992. After the penalty has become due, Mr. Ravi, otherwise than for adequate consideration, transferred his residential property to his sister and the fixed deposits with banks in favour of his minor son. The minor son has become major and deposits continue to be held by his son.

With reference to the provisions of SEBI Act, 1992 discuss,

(i) Whether the residential property and fixed deposits with banks can be attached by the Recovery Officer for the purpose of recovering the penalty?

(ii) Whether the Recovery Officer can seek assistance of local district administration for attaching the property? [CA Final Nov 2018]

**Ans.** The given problem relates to Section 28A of the Securities and Exchange Board of India Act, 1992.

**Provisions**

1. As per Section 28A, If a person fails to pay the penalty imposed by the adjudicating officer, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes:



- (a) Attachment and sale of the person's movable property
- (b) Attachment of the person's bank accounts
- (c) Attachment and sale of the person's immovable property
- (d) Arrest of the person and his detention in prison
- (e) Appointing a receiver for the management of the person's movable and immovable properties.

2. Further, Section 28A provides that the Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising his powers.

In this question,

(i) Mr. Ravi has failed to penalty imposed by the Adjudicating Officer. So, the penalties may be recovered by the Recovery Officer in accordance with the provisions contained in Section 28A.

The Recovery Officer is empowered to attach and sell the residential property which was transferred by Mr. Ravi in the name of his sister, since such transfer was made for inadequate consideration, and Section 28A empowers the Recovery Officer to recover the penalty by way of attachment and sale of the persons immovable property.

Also, the Recovery Officer is empowered to attach the fixed deposits with banks which were transferred by Mr. Ravi in the name of his son, since such transfer was made for inadequate consideration and Section 28A empowers the Recovery Officer to recover the penalty by way of attachment and sale to the person's bank accounts.

(ii) The Recovery Officer is empowered to seek the assistance of the local district administration so as to enable him to recover the penalty in accordance with the provisions of Section 28A.

**14. List the common obligations of listed entities assigned under the SEBI (LODR) Regulations, 2015 [ ICAI Mock exam, August 2018]**

**Ans.** Common obligations of listed entities assigned under the SEBI (LODR) Regulations, 2015:

1) General obligation of compliance (Regulation 5) The listed entity shall ensure that key managerial personnel, directors, promoters or any other person dealing with the listed entity, complies with responsibilities or obligations, if any, assigned to them under these regulations.

2) Compliance Officer and his Obligations (Regulation 6) A listed entity shall appoint a qualified Company Secretary as the Compliance Officer.

The compliance officer of the listed entity shall be responsible for-

- i. ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
- ii. co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
- iii. ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.
- iv. monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.

3) Share Transfer Agent (Regulation 7) The listed entity shall appoint a share transfer agent or manage the share transfer facility in house.

**15. List the quarterly compliances for a listed entity under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015?**

**Ans.** Quarterly compliances for a listed entity under the SEBI (LODR) Regulations, 2015:

**1) Grievance Redressal Mechanism - Reg. 13(3):** The listed entity shall file with the recognized stock exchange(s) on a quarterly basis, within 21 days from the end of each quarter, a

statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

**2) Other Corporate Governance Requirements - Reg. 27(2):** The listed entity shall submit quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s), within 15 days from close of quarter.

**3) Holding of Specified Securities and Shareholding Pattern - Reg. 31(1):** The listed entity shall submit to the stock exchange a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines:

- a) 1 day prior to listing of its securities on the stock exchange(s);
- b) On a quarterly basis, within 21 days from the end of each quarter; and
- c) Within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2% of the total paid-up share capital.

**16. State the types and functions of the various committees constituted under the SEBI (LODR) Regulations, 2015 [RTP Nov 2018]**

**Ans.** Types & Functions of Various committees constituted under the SEBI (LODR) Regulations:

**1) Features of Qualified and Independent Audit Committee as per Regulation 18 of SEBI (LODR) Regulations, 2015:**

- a) The audit committee shall have minimum 3 directors as members. 2/3<sup>rd</sup> of the members of audit committee shall be independent directors.
- b) All members of audit committee shall be financially literate and at least 1 member shall have accounting or related financial management expertise.
- c) The Chairperson of the Audit Committee shall be an independent director.
- d) The Chairperson of the Audit Committee shall be present at AGM to answer shareholder queries.
- e) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives, to be present at the meetings of the committee.
- f) The Company Secretary shall act as the secretary to the committee.

**2) Nomination and Remuneration Committee (Regulation 19):**

The Board of directors shall constitute the nomination and remuneration committee as follows:

- a) The committee shall comprise of at least 3 directors;
- b) All directors of the committee shall be Non-Executive Directors; and
- c) At least 50% of the directors shall be independent directors.
- d) The Chairperson of the nomination and remuneration committee shall be an independent director.
- e) The chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

**3) Stakeholders Relationship Committee (Regulation 20):**

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

- a) The chairperson of this committee shall be a non-executive director.
- b) The Board of Directors shall decide other members of this committee.
- c) At least 3 directors, with at least one being an independent director, shall be members of the committee.

**4) Risk Management Committee: (Regulation 21)**

It shall be mandatory for a listed entity to constitute the Risk Management Committee only if it is covered within top 500 listed entities, determined on the basis of market capitalization, as at the end of the immediately previous financial year.

- a) Senior executives of the listed entity may be appointed as the members of the Risk Management Committee. However, the majority of members of the Risk Management Committee shall consist of members of the Board of directors.
- b) Only a director of the listed entity can be appointed as the Chairperson of the Risk management committee.

**17. M/s PQR Ltd., is a listed entity with its subsidiary, Twig Ltd. State the Corporate Governance requirements with respect to the subsidiary of Listed Entity as per the SEBI (LODR) Regulations, 2015 [ ICAI Mock Exam March 2018, October 2019]**

**Ans. Management of Subsidiary Companies:**

Regulation 24 of SEBI (LODR) Regulations, 2015 provide the following:

- a) At least one independent director on the board of the listed entity shall be a director on the board of an unlisted material subsidiary, incorporated in India.
- b) The audit committee of the listed entity shall also review the Financial Statement in particular, the investments made by the unlisted subsidiary.
- c) The minutes of the meetings of the board of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.
- d) The management of the unlisted subsidiary shall periodically bring to the notice of the board of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.
- e) A listed company shall not dispose of its shares in its material subsidiary resulting in reduction of shareholding to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.
- f) Selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.

**18. M/s Behemoth limited is a large-sized listed Indian company with focus on design and delivery of custom-made information Technology applications for various business entities in India and abroad. The management wants to know whether they are required to constitute Risk Management committee as per LODR, 2015 and if so, required, what should be its composition. Advise.**

**Ans. Requirement and Composition of Risk Management Committee:**

As per Regulation 21 of SEBI (LODR) Regulations, 2015 requires the board of directors of companies to constitute a Risk Management Committee.

**Composition of Risk Management Committee:**

1. Mandatory constitution of Risk Management Committee by certain companies  
It shall be mandatory for a listed entity to constitute the Risk Management Committee only if it is covered within top 500 listed entities, determined on the basis of market capitalization, as at the end of the immediately previous financial year.
2. **Composition of the Risk Management Committee:** Senior executives of the listed entity may be appointed as the members of the Risk Management Committee. However, the majority of members of the Risk Management Committee shall consist of members of the

Board of directors. Only a director of the listed entity can be appointed as the Chairperson of the Risk management committee.

**3. Role and responsibilities of the Risk Management Committee:**

The Board of directors of the listed entity shall define the role and responsibilities of the Risk Management Committee.

The Board of directors of the listed entity may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit. Such function shall specifically cover cyber security.

**4. Meetings of the Committee:**

The risk management committee shall meet at least once in a year.

**19. Clandestine Limited, a company incorporated in India has six members in its Audit Committee. Due to recessionary conditions in India the revenue of the company is going down and there is slowdown in other activities of the company. Therefore, it was expected that there would not be significant work for members of the Audit Committee. Considering the overall recession in the company and the economy, the members of the Committee decided unanimously to meet once in a year only on March 31, 2018. They reviewed monthly information system of the Company and found no errors. As an auditor of Dishonest Limited Would you consider the decision taken by the Audit committee is in line with SEBI (LODR) Regulations, 2015?**

**Ans.**

**Validity of Audit committee decisions w.r.t. meetings and review -Regulation 18 of SEBI (LODR) Regulations, 2015**

1. The audit committee should meet at least 4 times in a year and not more than 120 days shall elapse between two meetings.
2. Audit committee should mandatorily review certain areas like management discussion and analysis, statement of significant related party transactions, letters of internal control weaknesses, internal audit reports etc.

**The given case is discussed as follows:**

1. In the present case, members of audit committee decided to meet only once in a year and review only the monthly information system which does not meet the requirement of regulation 18 of SEBI (LODR) Regulations, 2015 as stated above.
2. Decision taken by audit committee to conduct meeting once in a year and review of only monthly information system is not in line with the requirements of Regulation 18 of SEBI (LODR) Regulations, 2015.

**Power of Audit Committee:**

As per SEBI (LODR) Regulations, 2015, the audit committee may exercise following powers, in addition to others:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise.