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Study Notes

Securities Contracts (Regulation) Act 1956

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Introduction

- The Securities Contracts (Regulation) Act, 1956 (SCRA) is an important piece of legislation which gives Central government regulatory jurisdiction over: **the stock exchanges (recognition and continued supervision)** contracts in securities listing of securities on stock exchange.
- SCRA came in effect from February 20, 1957.
- Most of the powers under the SCRA are **exercisable by Department of Economic Affairs (DEA)** while a few others by SEBI. The powers of the DEA under the SCRA are also concurrently exercised by SEBI and by RBI (in case of gold related securities, money market securities and securities derived from these securities and carry forward contracts in debt securities).

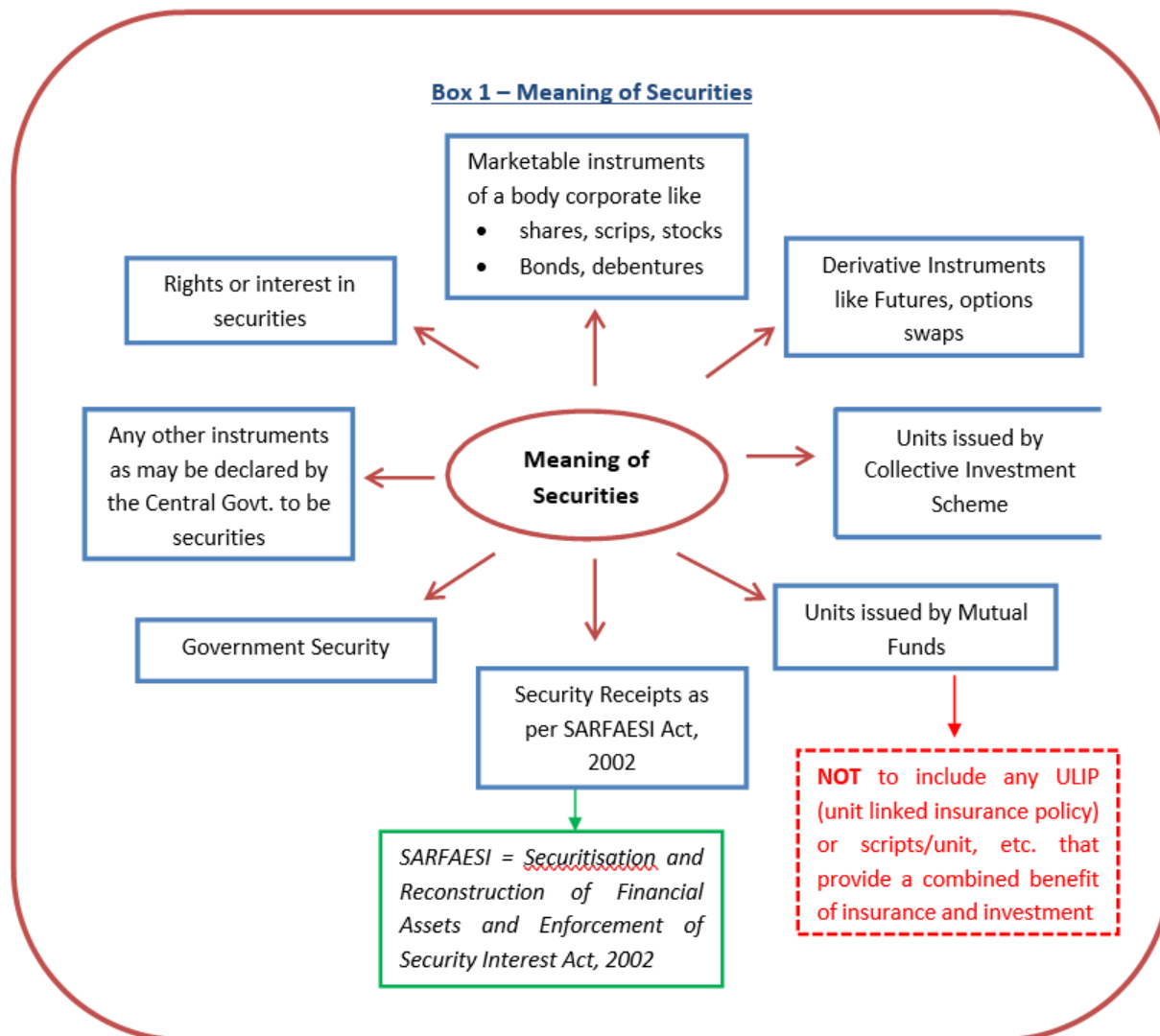
Secondary Market and Stock Exchanges

- The secondary market is the market for trading of already listed instruments. Secondary market **essentially comprises of stock exchanges** which provide platform for purchase and sale of securities by investors. The trading platform of stock exchanges is **accessible only through brokers** and trading of securities is confined only to stock exchanges.
- The stock market or secondary market ensures free marketability, negotiability and price discharge. For these reasons the stock market is referred to as the nerve centre of the capital market or the barometer of the economy, reflecting the economic trend as well as the hopes, aspirations and apprehensions of the investors.

The **functions** of secondary market or the role of stock exchanges include:

- Effective **mobilisation of savings** thereby promoting capital formation
- It provides **liquidity** to the investments of an investor
- The **price** of securities in the secondary market is reflective of all information about the issuer and his business including associated
- It helps **the primary market in allocation of funds** by providing an exit to the investors of primary market.
- It enables those who hold securities to adjust their holdings in response to changes in their assessment of risk and return.

Meaning of Securities



Stock Exchanges in India

- The stock exchanges receive **recognition from Central Government/SEBI**.
- All recognised stock exchanges should be **corporatized and demutualised** in accordance with the provisions contained in Section 4B.
- Where the recognized stock exchange has not been corporatized or demutualised or it fails to submit the scheme within the specified time therefore or the scheme has been rejected by the SEBI, the recognition granted to such stock exchange, shall, be withdrawn.
- The two national stock exchanges are **Bombay Stock Exchange (BSE)** and

National Stock Exchange (NSE). Other known national level stock exchange is **Metropolitan Stock Exchange of India (MSE).**

- Stock exchanges are regulated under the **Securities Contract (Regulation) Act, 1956 and SEBI Act, 1992.**
- Membership of stock exchanges is generally given to persons financially sound and with adequate experience/ training in stock market. A **member of the stock exchange is called 'broker'** who can transact on behalf of his clients as well as on his own behalf. A non-member can deal in securities only through members.
- The enrolment as member is regulated and controlled by SEBI to whom they have to pay an annual charge.
- The stock exchanges are managed by Board of Directors or Council of Management consisting of elected brokers and representatives of Government and Public appointed by SEBI.

Recognition of Stock Exchange

Application for recognition by SE to be accompanied by (Sec 3)

- Bye-laws of SE for regulation of contracts
- Constitution and powers of management
- Powers and duties of office bearers of SE
- Rules for membership of SE
- Procedure for registration of partnerships as members of SE
- Procedure for nomination and appointment of authorised representatives

Grant of recognition to SE by Central Govt/SEBI subject to conditions related to (Sec 4)

- Qualifications for membership of SE
- the manner in which contracts shall be entered into and enforced between members
- representation of Central Govt. on SE (maximum 3 members)
- the maintenance of accounts of members and their audit by CAs

Corporatisation and Demutualisation of Stock Exchanges

- Corporatisation and **Demutualisation** is a process to change the organizational structure of the stock exchanges from non-corporate **mutual** form to corporate **demutualise form** where the ownership /management rights and trading rights are segregated.

Procedure

1. All newly appointed stock exchange to **submit a scheme** for corporatization and demutualisation for approval to SEBI

2. SEBI if it is satisfied that it would be in the **interest of the trade and also in the public interest, approve the scheme** with or without modification
3. **No scheme** to be approved if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised stock exchange or payment of dividends to members have been **proposed out of any reserves or assets of that stock exchange.**
4. SEBI while approving, by an order in writing, restrict
 - a. the voting rights of the shareholders who are also stock broker of the recognised stock exchange
 - b. the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the stock exchange
 - c. the maximum number of representatives of the stock brokers of the recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed one-fourth of the total strength of the governing board

Power of Central Government, Stock Exchange and SEBI

Powers of Central Government	Powers of Stock exchanges	Powers of SEBI
<ul style="list-style-type: none"> • to call for periodical returns and make direct enquiries (up to 5 years) • to direct or make rules • to supersede companies of stock exchanges • to suspend business of recognised stock exchange (for 7 days initially) • to issue directions to any person indulging in transaction which is in contravention to the SCRA • to prohibit contracts in certain cases • to grant immunity • to delegate or to make rules 	<ul style="list-style-type: none"> • make rules restricting voting rights to members • restricting voting right to one vote irrespective of shareholding • restricting appointment of proxy to vote by a member • make bye-laws for the regulation and control of contracts 	<ul style="list-style-type: none"> • to make or amend Bye-laws of recognised stock exchanges • to make regulations • power to adjudicate and hold enquiry for purpose of imposing any penalty • power to issue directions in interest of investors or for proper management

SEBI has concurrent powers with Central government and stock exchanges in above matters.

Penalties and Procedure

- **Penalties-** Section 23 Under this Act, on conviction, 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	For	Penalty
Section 23A	failure to furnish information, return, etc	Not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Section 23B	failure by any person to enter into an agreement with clients	
Section 23C	failure to redress investors' grievance	
Section 23D	failure to segregate securities or money of client or clients	Not be less than one lakh rupees but which may extend to one crore rupees
Section 23E	failure to comply with provision of listing conditions or delisting conditions or grounds	Not be less than five lakh rupees but which may extend to maximum of twenty-five crore rupees.
Section 23F	for excess dematerialisation or delivery of unlisted securities	
Section 23G	For failure to furnish periodical returns etc.	
Section 23GA	failure to conduct business in accordance with rules, etc.	not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.
Section 23H	for contravention where no separate penalty has been provided	not be less than one lakh rupees but which may extend to one crore rupees.
Section 23I	Power to adjudicate	Appoint any officer not below the rank of a Division Chief of SEBI to be an adjudicating officer.
Section 23J	Factors to be taken into account while adjudging quantum of penalty	a. Amount of disproportionate gain b. Amount of loss caused to investor c. Repetitive nature of the default

Section23JA	Settlement of administrative civilproceedings	The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum as per SEBI Act, 1992
Section23JB	Recovery of Amounts	<ul style="list-style-type: none"> • Through attachment and sale of moveable or immoveableproperty • Through attachment of bank account • Arrest of the person anddetention in prison • Appointment of receiver for management of person's property
Section23JC	Continuance of proceedings	Where a person dies, his/her legal representative shall be liable to pay any sum which the deceased would have been liable to except for the penalty imposed after the death of deceased The liability of legal representatives shall be limited to the extent of estate of deceased.
Section23K	Crediting sum realized by way of penalties to Consolidated Fund of India	Sum realised through penalties to be credited to Consolidated Fund of India.
Section23L	Appeal to Securities Appellate Tribunal	Any person aggrieved, by the orderor decision of the recognized stock exchange or the adjudicating officer or any order made by SEBI mayappeal to SAT within a period of 45 days.
Section23M	Offences	Without prejudice to any award ofpenalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulationsmade there under, he/she 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.
Section23N	Composition of certain offences.	Notwithstanding anything in Code of Criminal Procedure,1973 any offences not including imprisonment may be compounded by SAT orcourt.
Section23O	Power to grant immunity	CG on recommendation of Board and if satisfied may grant immunity.

Special Courts

- As per Section 26, no court shall take cognizance of any offence punishable under this Act or any rules or regulations made there under, save on a complaint made by the Board.

Section	For	Remarks
Section 26A	Establishment of Special Courts.	CG for purpose of speedy trials may establish or designate as many special courts as necessary.
Section 26B	Offences triable by Special Court	All offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court.
Section 26C	Appeals and Revision	The High court may exercise all the powers conferred by Code of Criminal Procedure as a Special Court within the local limits of jurisdiction.
Section 26D	Application of code before Special Court.	The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session
Section 26E	Transitional Provisions.	Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area.

Securities Transaction Tax (STT)

In 2004, a direct tax by the name Securities Transaction Tax (STT) was introduced in the Finance Act, as a means of clean and efficient way of collecting taxes from financial market transactions and prevent tax avoidance of capital gains tax.

- STT is a direct tax levied on every purchase and sale of securities that are listed on the recognized stock exchanges in India. **Off-market transactions are out of the purview of STT.**
- STT is governed by Securities Transaction Tax Act (STT Act) and STT Act has specifically listed down various taxable securities transaction on which STT is levied.
- Taxable securities include equity, derivatives, unit of equity oriented mutual fund, bonds, debentures, rights or interests in securities, securitized debt instruments. It also includes unlisted shares sold under an offer for sale to public included in IPO and where such shares are subsequently listed in stock exchanges.
- STT is an amount to be paid over and above transaction value
- STT is required to be paid by either the buyer or seller.
- The rate of STT is decided by Government and modified from time to time if necessary.

The STT rates for various transactions currently are (As of Sep 2020)

Securities Transaction	STT rate
Delivery based purchase/sale of equities on Stock exchange/ Purchase of equity oriented mutual fund	0.1%
Sale of equity oriented mutual fund units in recognized stock exchange and intra-day traded shares	0.025%
Derivative – Sale of an option in securities	0.017%
Derivative – Sale of an option in securities where option is exercised	0.125%
Derivative – Sale of futures in securities	0.01%
Sale of unlisted shares under an offer for sale to public included in IPO and where such shares are subsequently listed in stock exchanges	0.2%