

## **SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992**

### CONTENTS

#### **CHAPTER 1 :- CHAPTER 1**

1. Short title and commencement
2. Definitions

#### **CHAPTER 2 :- Registration of merchant bankers**

3. Application for grant of certificate
4. Application to conform to the requirements
5. Furnishing of information, clarification and personal representation
6. Consideration of application
7. Capital adequacy requirement
8. Procedure for registration
9. Renewal of certificate
10. Procedure where registration is not granted
11. Effect of refusal to grant certificate
12. Payment of fees and the consequences of failure to pay fees

#### **CHAPTER 3 :- General obligations and responsibilities**

13. Code of conduct
- 13A. Merchant banker not to associate with any business other than that of the securities market
14. Maintenance of books of accounts, records, etc
15. Submission of half-yearly results
16. Maintenance of books of account, records and other documents
17. Report on steps taken on auditors report
18. Appointment of lead merchant bankers
19. Restriction on appointment of lead managers
20. Responsibilities of lead managers
21. Lead merchant banker not to associate with a merchant banker without registration
22. Underwriting obligations
23. Submission of due diligence certificate
24. Document to be furnished to the Board
25. Continuance of association of lead manager with an issue
26. Acquisition of shares prohibited
27. Information to the Board
28. Disclosures to the Board
- 28A. Appointment of Compliance Officer

## **CHAPTER 4 :- Procedure for inspection**

29. Boards right to inspect
30. Notice before inspection
31. Obligations of merchant banker on inspection by the Board
32. Submission of Report to the Board
33. Communication of findings etc. to the merchant banker
34. Appointment of auditor

## **CHAPTER 5 :- Procedure for action in case of default**

35. Liability for action in case of default
36. Suspension of registration
37. Cancellation of registration
38. Manner of making order of suspension and cancellation
39. Manner of holding enquiry before suspension or cancellation
40. Show-cause notice and order
41. Effect of suspension and cancellation of registration of merchant banker
42. Publication of order of suspension
43. Appeal to the Central Government

## **SCHEDULE 1 :- FORMS**

## **SCHEDULE 2 :- SCHEDULE II**

1. .
2. .
3. .
- 3A. .
4. .

## **SCHEDULE 3 :- Schedule 3**

### **SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992**

In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board, with the previous approval of the Central Government, hereby makes the following regulations, namely :-

#### CHAPTER 1

#### CHAPTER 1

#### **1. Short title and commencement :-**

- (1) These regulations may be called the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.
- (2) They shall come into force on the date of their publication in

the Official Gazette.

## **2. Definitions :-**

In these regulations, unless the context otherwise requires,-

**1**(a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(aa) "body corporate" shall have the meaning assigned to it in or under clause (7) of Sec. 2 of the Companies Act, 1956 (1 of 1956);

(ab) "certificate" means a certificate of registration issued by the Board;

(ac) "change of status or constitution" in relation to a merchant banker

(i) means any change in its status or constitution of whatsoever nature; and

(ii) without prejudice to generality of sub-clause (i), includes

(A) amalgamation, demerger, consolidation or any other kind of corporate restructuring falling within the scope of Sec. 391 of the Companies Act, 1956 (1 of 1956) or the corresponding provisions of any other law for the time being in force;

(B) change in its managing director or whole-time director, and

(C) any change in control over the body corporate;

(ad) "change in control", in relation to a merchant banker being a body corporate, means:

(i) if its shares are listed on any recognised stock exchange, change in control within the meaning of Regulation 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulation, 1997;

(ii) in any other case, change in the controlling interest in the body corporate;

Explanation. For the purpose of sub-clause (ii), the expression "controlling interest" means an interest, whether direct or indirect, to the extent of at least fifty one percent of voting rights in the body corporate;"

(b) "form" means a form specified in Schedule 1;

(c) "inspecting authority" means one or more persons appointed by the Board to exercise powers conferred under Chapter IV ;

<sup>2</sup>(ca) "issue" means an offer of sale or purchase of securities by any body corporate, or by any other person or group of persons on its or his or their behalf, as the case may be, to or from the public, or the holders of securities of such body corporate or person or group of persons through a merchant banker;

(cb) "merchant banker" means any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management.

(d) "principal officer" means-

(i) proprietor, in the case of a proprietary concern ;

(ii) partner, in the case of a partnership firm;

(iii) director, in the case of a body corporate who is responsible for the activities of the merchant banker;

<sup>3</sup>(e)[\* \* \* ]

(f) words and expressions used and not defined in these regulations but defined in the Act <sup>4</sup>[\* \* \* ] shall have the meanings respectively assigned to them in the Act <sup>5</sup> [\* \* \* ].

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, in section 2, clause (a) to (b) shall be inserted by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 , in Regulation 2, after clause (c), the following clauses shall be inserted, namely: "(ca) "issue" means an offer of sale or purchase of securities by any body corporate, or by any other person or group of persons on its or his or their behalf, as the case may be, to or from the public, or the holders of securities of such body corporate or person or group of persons through a merchant banker; (cb) "merchant banker" means any person who is engaged in the business of issue management either by making arrangements regarding selling, buying or subscribing to securities or acting as manager, consultant, adviser or rendering corporate advisory service in relation to such issue management." by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, in Regulation 2, clause (e) shall be omitted as follows :- "(e) "rules" means the Securities and Exchange Board of India (Merchant Bankers) Rules, 1992;" by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, in Regulation 2, in clause (f), the words "and the rules" occurring after the words "defined in the Act" shall be omitted, by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, in Regulation 2, in clause (f), the words "or the rules, as the case may be" occurring at the end shall be omitted, by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

## CHAPTER 2

Registration of merchant bankers

### **3. Application for grant of certificate :-**

(1) An application by a person for grant of a certificate shall be made to the Board in Form A.

**6**(1A) An application for registration made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Schedule II.

(2) The application under sub-regulation (1) shall be made for any one of the following categories of the merchant banker, namely:-

(a) Category I, that is-

(i) to carry on any activity of the issue management, which will, inter alia, consist of preparation of prospectus and other information relating to the issue, determining financial structure, tie-up of financiers and final allotment and refund of the subscriptions; and

(ii) to act as adviser, consultant manager, underwriter, portfolio manager,

(b) Category II, that is to act as adviser, consultant, co-manager, underwriter, portfolio manager;

(c) Category III, that is to act as underwriter, adviser, consultant to an issue;

(d) Category IV, that is to act only as adviser or consultant to an

issue.

(2A) Notwithstanding anything contained in this regulation, with effect from 9th December, 1997,

(i) an application under sub-regulation (2) can be made only for carrying on the activities mentioned in clause (a) therein, and

7 (ii)[\* \* \* ]

(iii) an applicant can carry on the activity as portfolio manager only if he obtains separate certificate of registration under the provisions of Securities and Exchange Board of India (Portfolio Manager) Regulations, 1993

(3) Notwithstanding anything contained in sub-regulation (1), any application made by a merchant banker prior to coming into force of these regulations containing such particulars or as near thereto as mentioned in Form A shall be treated as an application made in pursuance of sub-regulation (1) and dealt with accordingly.

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, in Regulation 3, after sub-regulation (1), the following sub-regulation shall be inserted, namely: "(1A) An application for registration made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Schedule II." by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, in Regulation 3, in sub-regulation (2A), clause (ii) shall be omitted as follows :- "(ii) an applicant can carry on the activity as underwriter only if he obtains separate certificate of registration under the provisions of Securities and Exchange Board of India (Underwriters) Regulations, 1993, and" by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

#### **4. Application to conform to the requirements :-**

Subject to the provisions of sub-regulation (3) of Regulation 3, any application which is not complete in all respects and does not conform to the instructions specified in the form, shall be rejected: Provided that, before rejecting any such application, the applicant shall be given an opportunity to remove within the time specified such objections as may be indicated by the Board.

#### **5. Furnishing of information, clarification and personal representation :-**

(1) The Board may require the applicant to furnish further information or clarification regarding matters relevant to the activity of a merchant banker for the purpose of disposal of the application.

(2) The applicant or its principal officer shall, if so required, appear before the Board for personal representation.

**6. Consideration of application :-**

The Board shall take into account for considering the grant of a certificate, all matters which are relevant to the activities relating to merchant banker and in particular the applicant complies with the following requirements, namely:-

(a) the applicant shall be a body corporate other than a non-banking financial company as defined under clause (f) of Section 45-1 of the Reserve Bank of India Act, 1934 (2 of 1934) as amended from time to time ["Provided that the merchant banker who has been granted registration by the Reserve Bank of India to act as a Primary or Satellite Dealer may carry on such activity subject to the condition that it shall not accept or hold public deposit.".]

(aa) the applicant has the necessary infrastructure like adequate office space, equipment, and manpower to effectively discharge his activities;

(b) the applicant has in his employment minimum of two persons who have the experience to conduct the business of the merchant banker;

(c) a person directly or indirectly connected with the applicant has not been granted registration by the Board;

Explanation.-For the purposes of this clause the expression "directly or indirectly connected" means any person being the associate, subsidiary or interconnected or group company of the applicant in case of the applicant being a body corporate;

(d) the applicant fulfils the capital adequacy requirement specified in Regulation 7;

(e) the applicant, his partner, director or principal officer is not involved in any litigation connected with the securities market which has an adverse bearing on the business of the applicant;

(f) the applicant, his director, partner or principal officer has not at any time been convicted for any offence involving moral turpitude or has been found guilty of any economic offence;

(g) the applicant has the professional qualification from an institution recognised by the Government in finance, law or business management;

(gg) the applicant is a fit and proper person;

(h) grant of certificate to the applicant is in the interest of investors.

## **7. Capital adequacy requirement :-**

**8** The capital adequacy requirement referred to in clause (d) of Regulation 6 shall be a net worth of not less than five crores rupees.

Explanation: For the purpose of this regulation, "net worth" means the sum of paid up capital and free reserves of the application at the time of making application under sub-regulation (1) of Regulation 3.

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, Regulation 7 shall be substituted, the old are as follows :- "7. Capital adequacy requirement-(1) The capital adequacy requirement referred to in sub-regulation (d) of Regulation 6 shall not be less than the net worth of the person making the application for grant of registration. (2) For the purposes of sub-regulation (1), the net worth shall be as follows, namely:- Category \Minimum amount \Category \Minimum amount Category I \Rs 1,00,00,000 \Category III \Rs 20,00,000 Category II \Rs 50,00,000 \Category IV \Nil. Explanation.-For the purposes of this regulation "net worth" means in the case of an applicant which is a partnership firm or a body corporate, the value of the capital contributed to the business of such firm or the paid-up capital of such body corporate plus free reserves, as the case may be, at the time of making application under sub-regulation (1) of Regulation 3." by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

## **8. Procedure for registration :-**

(1) The Board, on being satisfied that the applicant is eligible, shall grant a certificate in Form B [\*\*\*]

[\*\*\*][\*\*\*]

(4) On the grant of a certificate the applicant shall be liable to pay

the fees [\*\*\*]in accordance with Schedule II: [\*\*\*]

### **9. Renewal of certificate :-**

(1) Three months before the expiry of the period of certificate, the merchant banker may, if he so desires, make an application for renewal in Form A.

**9**(1A) An application for renewal made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Schedule II.

(2) The application for renewal, under sub-regulation (1), shall be dealt with in the same manner as if it were a fresh application for grant of a certificate.["Provided that in case of an application for renewal of certificate of registration, the provisions of clause (a) of Regulation 6 shall not be applicable up to June 30th, 1998."]

(3) The Board on being satisfied that the applicant is eligible for renewal of certificate shall grant a certificate in Form B and send an intimation to the applicant [\*\*\*]

[\*\*\*][\*\***10** \*]

(6) On the grant of a certificate the applicant shall be liable to pay the fees [\*\*\*]in accordance with Schedule II : [\*\*\*]

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 , in Regulation 9, sub-regulation (1A) shall be inserted, as follows : "(1A) An application for renewal made under sub-regulation (1) shall be accompanied by a non-refundable application fee as specified in Schedule II." by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

Inserted by "The Securities and Exchange Board of India (Investment Advice by Intermediaries)(Amendment)Regulations, 2001

### **10. Procedure where registration is not granted :-**

(1) Where an application for grant of a certificate under Regulation 3 or of renewal under Regulation 9, does not satisfy the criteria set out in Regulation 6, the Board may reject the application after giving an opportunity of being heard.

(2) The refusal to grant registration shall be communicated by the Board within thirty days of such refusal to the applicant stating therein the grounds on which the application has been rejected.

(3) Any applicant may, being aggrieved by the decision of the Board under sub-regulation (1), apply within a period of thirty days from the date of receipt of such intimation to the Board for reconsideration of its decision.

(4) The Board shall reconsider an application made under sub-regulation (3) and communicate its decision as soon as possible in writing to the applicant.

**11. Effect of refusal to grant certificate :-**

Any merchant banker whose application for a certificate has been refused by the Board shall, on and from the date of the receipt of the communication under sub-regulation (2) of Regulation 10, cease to carry on any activity as merchant banker.

**12. Payment of fees and the consequences of failure to pay fees :-**

(1) Every applicant eligible for grant of a certificate shall pay such fees in such manner and within the period specified in Schedule II.

(2) Where a merchant banker fails to pay the annual fees as provided in sub-regulation (1), read with Schedule II, the Board may suspend the registration certificate, whereupon the merchant banker shall cease to carry on any activity as a merchant banker for the period during which the suspension subsists.

CHAPTER 3

General obligations and responsibilities

**13. Code of conduct :-**

Every merchant banker shall abide by the Code of Conduct as specified in Schedule III.

**13A. Merchant banker not to associate with any business other than that of the securities market :-**

No merchant banker, other than a bank or a financial institution, who has been granted a certificate of registration under these regulations shall ["after June 30th 1998."] carry on any business other than that in the securities market. Notwithstanding anything contained above, a merchant banker who prior to the date of notification of the Securities and Exchange Board of India (Merchant Bankers) Amendment Regulations, 1997, has entered into a contract in respect of a business other than that of the securities market, may, if he so desires, discharge his obligations under such contract.

Explanation.-for the purposes of this regulation:

(i) A "bank" shall mean a banking company as defined under Section 5 of the Banking Regulations Act, 1949 (10 of 1949) and the corresponding new bank set up under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970) and Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 (40 of 1980), State Bank of India Act, 1955 (23 of 1955) and State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959).

(ii) A "public financial institution" shall have the same meaning as assigned to the term under Section 4-A of the Companies Act, 1956 (I of 1956) and shall include Industrial Development Corporations and Financial Corporations established by the Central Government or State Government as the case may be.

Provided that a merchant banker who has been granted certificate of registration to act as primary or satellite dealer by Reserve Bank of India, may carry on such business as may be permitted by the Reserve Bank of India.".]

#### **14. Maintenance of books of accounts, records, etc :-**

(1) Every merchant banker shall keep and maintain the following books of accounts, records and documents, namely:-

(a) a copy of balance-sheet as at the end of each accounting period;

(b) a copy of profit and loss account for that period;

(c) a copy of the auditor's report on the accounts for that period; and

(d) a statement of financial position.

(2) Every merchant banker shall intimate to the Board the place where the books of accounts, records and documents are maintained.

(3) Without prejudice to sub-regulation (1), every merchant banker shall, after the end of each accounting period, furnish to the Board copies of the balance-sheet, profit and loss account and such other documents for any other preceding five accounting years when required by the Board.

#### **15. Submission of half-yearly results :-**

Every merchant banker shall furnish to the Board half-yearly unaudited financial results when required by the Board with a view to monitor the capital adequacy of the merchant banker.

**16. Maintenance of books of account, records and other documents :-**

The merchant banker shall preserve the books of account and other records and documents maintained under Regulation 14 for a minimum period of five years.

**17. Report on steps taken on auditors report :-**

Every merchant banker shall, within two months from the date of the auditor's report, take steps to rectify the deficiencies made out in the auditor's report.

**18. Appointment of lead merchant bankers :-**

(1) All issues should be managed by at least one merchant banker functioning as a lead merchant banker: Provided that, in an issue of offer of rights to the existing members with or without the right of renunciation the amount of the issue of the body corporate does not exceed rupees fifty lakhs, the appointment of a lead merchant banker shall not be essential.

(2) Every lead merchant banker shall, before taking up the assignment relating to an issue, enter into an agreement with such body corporate setting out their mutual rights, liabilities and obligations relating to such issue and in particular to disclosures, allotment and refund.

**19. Restriction on appointment of lead managers :-**

**2** [\*\*\*]

In the SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS) REGULATIONS, 1992, REGULATION 19 shall be Omitted as follows :- "19. Restriction on appointment of lead managers :- (i) such intermediary surrenders its certificate of registration to the Board; \Size of issue \Number of lead merchant \ \bankers (a) \Less than rupees fifty crores \Two (b) \Rupees fifty crores but less than rupees one hundred crores \Three (c) \Rupees one hundred crores but less than rupees two hundred \Four \crores \ (d) \Rupees two hundred crores but less than rupees four hundred \Five \crores \ (e) \Above rupees four hundred crores \Five or more as may be agreed \ \by the Board "by the SECURITIES AND EXCHANGE BOARD OF INDIA (MERCHANT BANKERS)(Amendment) REGULATIONS, 2006

## **20. Responsibilities of lead managers :-**

(1) No lead manager shall agree to manage or be associated with any issue unless his responsibilities relating to the issue mainly, those of disclosures, allotment and refund are clearly defined, allocated and determined and a statement specifying such responsibilities is furnished to the Board at least one month before the opening of the issue for subscription: Provided that, where there are more than one lead merchant bankers to the issue, the responsibilities of each of such lead merchant banker shall clearly be demarcated and a statement specifying such responsibilities shall be furnished to the Board at least one month before the opening of the issue for subscription.

(2) No lead merchant banker shall, agree to manage the issue made by any body corporate, if such body corporate is an associate of the lead merchant banker.

## **21. Lead merchant banker not to associate with a merchant banker without registration :-**

A lead merchant banker shall not be associated with any issue if a merchant banker who is not holding a certificate is associated with the issue.

## **22. Underwriting obligations :-**

(1) In respect of every issue to be managed, the lead merchant banker holding a certificate under Category I shall accept a minimum underwriting obligation of five per cent of the total underwriting commitment or rupees twenty-five lakhs, whichever is less: Provided that, if the lead merchant banker is unable to accept the minimum underwriting obligation, that lead merchant banker shall make arrangement for having the issue underwritten to that extent by a merchant banker associated with the issue and shall keep the Board informed of such arrangement.

## **23. Submission of due diligence certificate :-**

The lead merchant banker, who is responsible for verification of the contents of a prospectus or the letter of offer in respect of an issue and the reasonableness of the views expressed therein, shall submit to the Board at least two weeks prior to the opening of the issue for subscription, a due diligence certificate in Form C.

## **24. Document to be furnished to the Board :-**

(1) The lead manager responsible for the issue shall furnish to the Board, the following documents, namely:-

(i) particulars of the issue;

(ii) draft prospectus or where there is an offer to the existing shareholders, the draft letter of offer;

(iii) any other literature intended to be circulated to the investors, including the shareholders; and

(iv) such other documents relating to prospectus or letter of offer as the case may be.

(2) The documents referred to in sub-regulation (1) shall be furnished at least two weeks prior to date of filing of the draft prospectus or the letter of offer as the case may be with the Registrar of Companies or with the Regional Stock Exchanges, or with both.

(3) The lead manager shall ensure that the modifications and suggestions, if any, made by the Board on the draft prospectus or the letter of offer, as the case may be, with respect to information to be given to the investors are incorporated therein.

**25. Continuance of association of lead manager with an issue :-**

The lead manager undertaking the responsibility for refunds or allotment of securities in respect of any issue shall continue to be associated with the issue till the subscribers have received the share or debenture certificates or refund of excess application money: Provided that where a person other than the lead manager is entrusted with the refund or allotment of securities in respect of any issue, the lead manager shall continue to be responsible for ensuring that such other person discharges the requisite responsibilities in accordance with the provisions of the Companies Act, 1956 (I of 1956) and the listing agreement entered into by the body corporate with the stock exchange.

**26. Acquisition of shares prohibited :-**

No merchant banker or any of its directors, partner or manager or principal officer shall either on their respective accounts or through their associates or relatives, enter into any transaction in securities of bodies corporate on the basis of unpublished price sensitive information obtained by them during the course of any professional

assignment either from the clients or otherwise.

**27. Information to the Board :-**

Every merchant banker shall submit to the Board complete particulars of any transaction for acquisition of securities of any body corporate whose issue is being managed by that merchant banker within fifteen days from the date of entering into such transaction.

**28. Disclosures to the Board :-**

A merchant banker shall disclose to the Board, as and when required, the following information, namely :-

- (i) his responsibilities with regard to the management of the issue;
- (ii) any change in the information or particulars previously furnished, which have a bearing on the certificate granted to it;
- (iii) the names of the body corporate whose issues he has managed or has been associated with;
- (iv) the particulars relating to breach of the capital adequacy requirement as specified in Regulation 7;
- (v) relating to his activities as a manager, underwriter, consultant or adviser to an issue, as the case may be.

**28A. Appointment of Compliance Officer :-**

**3**

(1) Every merchant banker shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions etc. issued by the Board or the Central Government and for redressal of investors' grievances.

(2) The compliance officer shall immediately and independently report to the Board any non-compliance observed by him and ensure that the observations made or deficiencies pointed out by the Board on/in the draft prospectus or the Letter of Offer as the case may be, do not recur.

Inserted by "The Securities and Exchange Board of India (Investment Advice by Intermediaries)(Amendment)Regulations, 2001

**CHAPTER 4**

Procedure for inspection

## **29. Boards right to inspect :-**

(1) The Board may appoint one or more persons as inspecting authority to undertake inspection of the books of accounts, records and documents of the merchant banker for any of the purposes specified in sub-regulation (2).

(2) The purposes referred to in sub-regulation (1) may be as follows, namely :-

(a) to ensure that the books of account are being maintained in the manner required;

(b) that the provisions of the Act, rules and regulations are being complied with;

(c) to investigate into the complaints received from investors, other merchant bankers or any other person on any matter having a bearing on the activities of the merchant banker; and

(d) to investigate suo motu in the interest of securities business or investor's interest into the affairs of the merchant banker.

## **30. Notice before inspection :-**

(1) Before undertaking an inspection under Regulation 29 the Board shall give a reasonable notice to the merchant banker for that purpose.

(2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors no such notice should be given, it may by an order in writing directing that the inspection of the affairs of the merchant banker be taken up without such notice.

(3) During the course of inspection, the merchant banker, against whom an inspection is being carried out, shall be bound to discharge his obligations as provided under Regulation 31.

## **31. Obligations of merchant banker on inspection by the Board :-**

(1) It shall be the duty of every director, proprietor, partner, officer and employee of the merchant banker, who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to his activities as merchant

banker within such time as the inspecting authority may require.

(2) The merchant banker shall allow the inspecting authority to have reasonable access to the premises occupied by such merchant banker or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the merchant banker or any such other person and also provide copies of documents or other materials which in the opinion of the inspecting authority are relevant for the purposes of the inspection.

(3) The inspecting authority, in the course of inspection, shall be entitled to examine or record statements of any principal officer, director, partner, proprietor and employee of the merchant banker.

(4) It shall be the duty of every director, proprietor, partner, officer or employee of the merchant banker to give to the inspecting authority all assistance in connection with inspection which the merchant banker may reasonably be expected to give.

**32. Submission of Report to the Board :-**

The inspecting authority shall, as soon as may be possible, submit an inspection report to the Board.

**33. Communication of findings etc. to the merchant banker :-**

(1) The Board shall, after consideration of the inspection report, communicate the findings to the merchant banker to give him an opportunity of being heard before any action is taken by the Board on the findings of the inspecting authority.

(2) On receipt of the explanation, if any, from the merchant banker, the Board may call upon the merchant banker to take such measures as the Board may deem fit in the interest of the securities market and for due compliance with the provisions of the Act, rules and regulations.

**34. Appointment of auditor :-**

The Board may appoint a qualified auditor to investigate into the books of account or the affairs of the merchant bankers: Provided that the auditor so appointed shall have the same powers of the inspecting authority as are mentioned in Regulation 29 and the obligations of the merchant banker in Regulation 31 shall be applicable to the investigation under this regulation. Explanation.-

For the purpose of this regulation, the expression "qualified auditor" shall have the same meaning as given in Section 226 of the Companies Act, 1956 (1 of 1956).

#### CHAPTER 5

Procedure for action in case of default

### **35. Liability for action in case of default :-**

(1) A merchant banker who-

(a) fails to comply with any conditions subject to which certificate has been granted;

(b) contravenes any of the provisions of the Act, rules or regulations; shall be liable to any of the penalties specified in sub-regulation (2).

(2) The penalties referred to in sub-regulation (1) may be either-

(a) suspension of registration; or

(b) cancellation of registration.

### **36. Suspension of registration :-**

(1) A penalty of suspension of registration of a merchant banker may be imposed where-

(i) the merchant banker violates the provisions of the Act, rules or regulations;

(ii) the merchant banker-

(a) fails to furnish any information relating to his activities as merchant banker as required by the Board;

(b) furnishes wrong or false information;

(c) does not submit periodical returns, as required by the Board;

(d) does not co-operate in any enquiry conducted by the Board;

(iii) the merchant banker fails to resolve the complaints of the investors or fails to give a satisfactory reply to the Board in this behalf;

(iv) the merchant banker indulges in manipulating or price rigging or cornering activities;

(v) the merchant banker is guilty of misconduct or improper or

unbusinesslike or unprofessional conduct which is not in accordance with the Code of Conduct specified in Scheduled III;

(vi) the merchant banker fails to maintain the capital adequacy requirement in accordance with the provisions of Regulation 7;

(vii) the merchant banker fails to pay the fees;

(viii) the merchant banker violates the conditions of registration;

(ix) the merchant banker does not carry out his obligations as specified in the regulation.

**37. Cancellation of registration :-**

A penalty of cancellation of registration of a merchant banker may be imposed where-

(i) the merchant banker indulges in deliberate manipulation or price rigging or cornering activities affecting the securities market and the investor's interest;

(ii) the financial position of the merchant banker deteriorates to such an extent that the Board is of the opinion that his continuance as merchant banker is not in the interest of investors:

(iii) the merchant banker is guilty of fraud, or is convicted of a criminal offence;

(iv) in case of repeated default of the nature mentioned in Regulation 36, provided that this Board furnishes reasons for cancellation in writing.

**38. Manner of making order of suspension and cancellation**

**:-**

No order of penalty of suspension or cancellation, as the case may be, shall be imposed except after holding an enquiry in accordance with the procedure specified in Regulation 39.

**39. Manner of holding enquiry before suspension or cancellation :-**

(1) For the purpose of holding an enquiry under Regulation 38, the Board may appoint an enquiry officer.

(2) The enquiry officer shall issue to the merchant banker a notice at the registered office or the principal place of business of the merchant banker.

(3) The merchant banker may, within thirty days from the date of receipt of such notice, furnish to the enquiry officer a reply together with copies of documentary or other evidence relied on by him or sought by the Board from the merchant banker.

(4) The enquiry officer shall, give a reasonable opportunity of hearing to the merchant banker to enable him to make submission in support of his reply made under sub-regulation (3).

(5) Before the enquiry officer, the merchant banker may either appear in person or through any person duly authorised by the merchant banker: Provided that no lawyer or advocate shall be permitted to represent the merchant banker at the enquiry: Provided further that where a lawyer or an advocate has been appointed by the Board as a presenting officer under sub-regulation (6), it shall be lawful for the merchant banker to present its case through a lawyer or advocate.

(6) If it is considered necessary, the enquiry officer may ask the Board to appoint a presenting officer to present its case.

(7) The enquiry officer shall, after taking into account all relevant facts and submissions made by the merchant banker, submit a report to the Board and recommend the penalty to be imposed as also the grounds on the basis of which the proposed penalty is justified.

#### **40. Show-cause notice and order :-**

(1) On receipt of the report from the enquiry officer, the Board shall consider the same and issue a show-cause notice as to why the penalty as proposed by the enquiry officer should not be imposed.

(2) The merchant banker shall within twenty-one days of the date of receipt of the show-cause notice send a reply to the Board.

(3) The Board after considering the reply to the show-cause notice, if received, shall as soon as possible but not later than thirty days from the receipt of the reply, if any, pass such order as it deems fit.

(4) Every order passed under sub-regulation (3) shall be self-contained and give reasons for the conclusions stated therein including justification of the penalty imposed by that order.

(5) The Board shall send a copy of the order under sub-regulation

(3) to the merchant banker.

**41. Effect of suspension and cancellation of registration of merchant banker :-**

(1) On and from the date of suspension of the merchant banker, he shall cease to carry on any activity as a merchant banker during the period of suspension.

(2) On and from the date of cancellation, the merchant banker shall with immediate effect cease to carry on any activity as a merchant banker.

**42. Publication of order of suspension :-**

The order of suspension or cancellation of certificate passed under sub-regulation (3) of Regulation 40 shall be published in at least two daily newspapers by the Board.

**43. Appeal to the Central Government :-**

<sup>4</sup> Any person aggrieved by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, (i.e. after 16th December 1999), under these regulations may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter"

Substituted for regulation 43 "Any person aggrieved by an order of the Board may prefer an appeal to the Central Government." by the Securities and Exchange Board of India (Appeal to the Securities Appellate Tribunal) (Amendment) Regulations, 2000

SCHEDULE 1

FORMS

SCHEDULE 2

SCHEDULE II

**1. . :-**

Every merchant banker shall pay a sum of Rupees five lakhs as registration fees at the time of the grant of certificate by the Board.

**2. . :-**

A merchant banker to keep registration in force shall pay renewal fee of Rs 2.5 lakhs every three years from the fourth year from the date of initial registration.

**3. . :-**

(a) The fee referred to in Paragraph 1 shall be paid by the merchant banker within fifteen days from the date of receipt of

intimation from the Board under sub-regulation (1) of Regulation 8.

(b) The fee referred to in Paragraph 2, shall be paid by the merchant banker within fifteen days from the date of receipt of intimation from the Board under sub-regulation (3) of Regulation 9.

**3A. . :-**

**17** The non refundable fee payable along with an application for registration under sub-regulation (1A) of Regulation 3 or an application for renewal of registration under sub-regulation (1A) of Regulation 9 shall be a sum of twenty five thousand rupees.

In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, In Schedule II, after paragraph 3, the following paragraph shall be inserted, namely: "3A. The non refundable fee payable along with an application for registration under sub-regulation (1A) of Regulation 3 or an application for renewal of registration under sub-regulation (1A) of Regulation 9 shall be a sum of twenty five thousand rupees." by the Securities and Exchange Board of India (Merchant Bankers) (Third Amendment) Regulations, 2006.

**4. . :-**

The fees specified in Paragraphs 1 and 2 shall be payable by the merchant banker by a demand draft in favour of 'Securities and Exchange Board of India' payable at Mumbai or at the respective regional office.

SCHEDULE 3

Schedule 3

Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 [Regulation 13] CODE OF CONDUCT FOR MERCHANT BANKERS

**"Schedule III**

Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992

[Regulation 13] **CODE OF CONDUCT FOR MERCHANT BANKERS**

1. A Merchant Banker shall make all efforts to protect the interests of investors.
1. A Merchant Banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business.
2. A Merchant Banker shall fulfill its obligations in a prompt, ethical, and professional manner.
3. A Merchant Banker shall at all times exercise due diligence, ensure

proper

care and exercise independent professional judgment

4. A Merchant Banker shall endeavor to ensure that

- a. inquiries from investors are adequately dealt with;
- b. grievances of investors are redressed in a timely and appropriate manner;
- c. where a complaint is not remedied promptly, the investor is advised of any

further steps which may be available to the investor under the regulatory system.

6. A Merchant Banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.

7. A Merchant Banker shall endeavour to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.

8. A Merchant Banker shall endeavour to ensure that copies of the prospectus, offer document, letter of offer or any other related literature is made available to the investors at the time of issue or the offer.

9. A Merchant Banker shall not discriminate amongst its clients, save and except on ethical and commercial considerations.

10. A Merchant Banker shall not make any statement, either oral or written which would misrepresent the services that the Merchant Banker is capable of performing for any client or has rendered to any client.

11. A Merchant Banker shall avoid conflict of interest and make adequate disclosure of its interest.

12. A Merchant Banker shall put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business or where any conflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner.

13. A Merchant Banker shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as Merchant Banker which would impair its ability to render fair, objective and unbiased services.

14. A Merchant Banker shall always endeavour to render the best possible advice to the clients having regard to their needs.

15. A Merchant Banker shall not divulge to anybody either orally or in writing, directly or indirectly, any confidential information about its clients which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force.

16. A Merchant Banker shall ensure that any change in registration status/any penal action taken by the Board or any material change in the Merchant Banker's financial status, which may adversely affect the interests of clients/investors is promptly informed to

the clients and any business remaining outstanding is transferred to another registered intermediary in- accordance with any instructions of the affected clients.

17. A Merchant Banker shall not indulge in any unfair competition, such as weaning away the clients on assurance of higher premium or advantageous offer price or which is likely to harm the interests of other Merchant Bankers or investors or is likely to place such other Merchant Bankers in a disadvantageous position while competing for or executing any assignment.
18. A Merchant Banker shall maintain arms length relationship between its merchant banking activity and any other activity.
19. A Merchant Banker shall have internal control procedures and financial and operational capabilities which can be reasonably expected to protect its operations, its clients, investors and other registered entities from financial loss

arising from theft, fraud, and other dishonest acts, professional misconduct or omissions.

20. A Merchant Banker shall not make untrue statement or suppress any material fact in any documents, reports or information furnished to the Board.
21. A Merchant Banker shall maintain an appropriate level of knowledge and competence and abide by the provisions of the Act, regulations made thereunder, circulars and guidelines, which may be applicable and relevant to the activities carried on by it. The merchant banker shall also comply with the award of the Ombudsman passed under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.
22. A Merchant Banker shall ensure that the Board is promptly informed about any action, legal proceedings etc., initiated against it in respect of material breach or non compliance by it, of any law, rules, regulations, directions of the Board or of any other regulatory body.
23. (a) A Merchant Banker or any of its employees shall not render, directly or

indirectly, any investment advice about any security in any publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including a long or short position, in the said security has been made, while rendering such advice.

(b) In the event of an employee of the Merchant Banker rendering such advice, the merchant banker shall ensure that such employee shall also disclose the interests, if any, of himself, his dependent family members and the employer merchant banker, including their long or short position in the said security, while rendering such advice.

24. A Merchant Banker shall demarcate the responsibilities of the various intermediaries appointed by it clearly so as to avoid any conflict or confusion in

their job description.

25. A Merchant Banker shall provide adequate freedom and powers to its compliance officer for the effective discharge of the compliance officer's duties.

26. A Merchant Banker shall develop its own internal code of conduct for governing its internal operations and laying down its standards of appropriate

conduct for its employees and officers in carrying out their duties. Such a code may extend to the maintenance of professional excellence and standards, integrity, confidentiality, objectivity, avoidance or resolution of conflict of interests, disclosure of shareholdings and interests etc.

27. A Merchant Banker shall ensure that good corporate policies and corporate governance are in place.

28. A Merchant Banker shall ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience)

29. A Merchant Banker shall ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it in the conduct of its business, in respect of dealings in securities market.

30. A Merchant Banker shall be responsible for the acts or omissions of its employees and agents in respect of the conduct of its business.

31. A Merchant Banker shall ensure that the senior management, particularly decision makers have access to all relevant information about the business on a timely basis.

32. A Merchant Banker shall not be a party to or instrumental for

a. creation of false market;

b. price *rigging* or manipulation or;

c. passing of unpublished price sensitive information in respect of securities which are listed and proposed to be listed in any stock exchange to any person or intermediary in the securities market.