

UNIT 5

# DEPOSITORY ACT, 1996

# INTRODUCTION

- In general sense, depository simply means a place where things are stored.
- The depository act was enacted by the indian parliament to provide a legal framework for the establishment of depositories.
- The term “depository” is a registered organization which helps an investors to buy or sell securities such as shares, debentures, and bonds in an electronic form.

# DEPOSITORY ACT, 1996

- The Depositories Act, 1996 provides for regulation of depositories in securities and for matters connected there to.
- According to sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992;"depository" means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities an Exchange Board of India Act, 1992.

- The Depositories Act, 1996 provides a legal framework for establishment of depositories to facilitate holding of securities including shares in the demat form (electronic form) and to effect transfer of securities through book entry.
- The Act establishes the depository system in India by providing for setting up of one or more depositories to enable the investors to hold securities in non-physical form (known as dematerialized form) and to affect transfer of securities by way of book entries in accounts maintained by the depository.

- The Act which initially came into force as an ordinance viz. “The Depositories Ordinance, 1995, ”was designed to provide a legal framework for establishment of depositories to record ownership details in book entry form.

## Registration of transfer of securities with depository:

- Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee.
- If a beneficial owner or a transferee of any security seeks to have custody of such security, the depository shall inform the issuer accordingly.

# PARTIES TO A DEPOSITORY:

In a depository system, the following parties are involved

- the depository;
- the beneficial owner;
- the participant;
- the issuer.

# THE TERMS USED IN THE DEPOSITORIES ACT, 1996 ARE DEFINED AS UNDER:

- “Beneficial owner” means a person whose name is recorded as such with a depository.
- “Depository” means a company, formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under sub-section (1A) of section 12 of the SEBI Act, 1992.
- “Issuer” means any person making an issue of securities.



# THE TERMS USED IN THE DEPOSITORIES ACT, 1996 ARE DEFINED AS UNDER:

- “Participant” means a person registered as such under sub-section (1A) of section 12 of the SEBI Act, 1992.
- “Registered owner” means a depository whose name is entered as such in the register of the issuer.

# AGREEMENT BETWEEN DEPOSITORY AND PARTICIPANT

- Services of depository
- Surrender of certificate of security
- Registration of transfer of securities with depository
- Options to receive security certificate or hold securities with depository
- Securities in depositories to be in fungible form
- Rights of depositories and beneficial owner
- Furnishing of information and records by depository and issuer
- Pledge or hypothecation of securities held in a depository
- Option to opt out in respect of any security
- Depository to indemnify loss in certain cases

# SECURITIES NOT LIABLE TO STAMP DUTY

- As per Section 8-A of Indian Stamp Act, 1899:
- a) an issuer, by the issue of securities to one or more depositories shall, in respect of such issue, be chargeable with duty on the total amount of security issued by it and such securities need not be stamped;
- b) where an issuer issues certificate of security under sub-section (3) of Section 14 of the Depositories Act, 1996, on such certificate duty shall be payable as is payable on the issue of duplicate certificate under the Indian Stamp Act, 1899;
- c) transfer of registered ownership of securities from a person to a depository or from a depository to a beneficial owner shall not be liable to any stamp duty;
- d) transfer of beneficial ownership of shares, such securities dealt with by a depository shall not be liable to duty under Article 62 of Schedule I of the Indian Stamp Act, 1899;
- e) transfer of beneficial ownership of units, such units being units of mutual fund including units of the Unit Trust of India, dealt with by a depository shall not be liable to duty under Article 62 of Schedule I of the Indian Stamp Act, 1899;