

1997

CONTENTS

No. of Act	Short title	Page
1.	The Indian Contract (Amendment) Acts, 1996.	1
2.	The Maulana Azad National Urdu University Act, 1996.	2
3.	The Mahatama Gandhi Antarrashtriya Hindi Vishwavidyalaya Act, 1996. ...	30
4.	The Apprentices (Amendment) Act, 1996.	59
5.	The Companies (Amendment) Act, 1996.	61
6.	The Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1997.	64
7.	The Industrial Reconstruction Bank (Transfer of Undertakings and Repeal) Act, 1997.	65
8.	The Depositories Related Laws (Amendment) Act, 1997.	69
9.	The Appropriation (Railways) Vote on Account Act, 1997.	74
10.	The Appropriation (Railways) Act, 1997.	76
11.	The Appropriation (Railways) No. 2 Act, 1997.	78
12.	The Uttar Pradesh Appropriation (Vote on Account) Act, 1997.	80
13.	The Uttar Pradesh Appropriation Act, 1997.	86
14.	The Income-Tax (Amendment) Act, 1997.	92
15.	The Port Laws (Amendment) Act, 1997.	97
16.	The National Highways Laws (Amendment) Act, 1997.	105
17.	The Lalit Kala Akadami (Taking over of Management) Act, 1997.	110
18.	The National Commission for Safai Karamcharis (Amendment) Act, 1997.	116
19.	The Appropriation Act, 1997.	117
20.	The Appropriation (No. 2) Act, 1997.	119
21.	The Appropriation (Vote on Account) Act, 1997.	123

No. of Act	Short title	Page
22.	The National Environment Appellate Authority Act, 1997.	128
23.	The Reserve Bank of India (Amendment) Act, 1997.	133
24.	The Telecom Regulatory Authority of India Act, 1997.	145
25.	The Appropriation (Railways) No. 3 Act, 1997.....	158
26.	The Finance Act, 1997.	160
27.	The Appropriation (No. 3) Act, 1997.	233
28.	The Rice-Milling Industry (Regulation) Repeal Act, 1997.....	239
29.	The Seamen's Provident Fund (Amendment) Act, 1997.	240
30.	The Vice-President's Pension Act, 1997.	242
31.	The Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997.....	244
32.	The Indira Gandhi National Open University (Amendment) Act, 1997.....	246
33.	The Appropriation (Railways) No. 4 Act, 1997.....	247
34.	The Appropriation (No. 4) Act, 1997.	249
35.	The Presidential and Vice-Presidential Elections (Amendment) Act, 1997. ...	252
	INDEX	253

TABLE SHOWING EFFECT OF PARLIAMENTARY LEGISLATION OF 1997
PART I.—CENTRAL ACTS AMENDED, REPEALED OF OTHERWISE AFFECTED

Year of Act	No. of Act	Short title of Act	How affected	No. and section of 1997 Act by which affected
1	2	3	4	5
1872	9	Indian Contract Act, 1872	S. 28 amended	1, s. 2.
1898	6	Indian Post Office Act, 1898	First Schedule substituted	26, s. 89.
1899	2	Indian Stamp Act, 1899	S.8-A amended (w.e.f. 15-1-1997)	8, s. 2.
1908	15	Indian Ports Act, 1908	Ss. 3, 6, 33, 35, 46, 47 and First Schedule amended (w.e.f. 9-1-1997)	15, ss. 2, 3, 4, 6, 7, 8 and 9.
			S. 34 substituted (w.e.f. 9-1-1997)	<i>Ibid.</i> , s. 5.
1934	2	Reserve Bank of India Act, 1934	Ss. 45-I, 45-MA, 58-B, First Schedule amended (w.e.f. 9-1-1997)	23, ss. 2, 5, 10 and 12.
			Ss. 45-IA, 45-IB, 45-IC, 45-JA, 45-MB, 45-MC, 45-NB, 45-NC, 45-QA, 45-QB and 58-G inserted (w.e.f. 9-1-1997)	<i>Ibid.</i> , s. 3, 4, 6, 7, 8 and 11.
			S. 45-S (w.e.f. 1-4-1997) substituted	<i>Ibid.</i> , s. 9.
1944	1	Central Excise Act, 1944	S. 38 amended	26, s. 84.
			Ss. 3-A, 4-A and 14-AA, inserted	<i>Ibid.</i> , ss. 81, 82 and 83.
1952	31	Presidential and Vice-Presidential Elections Act, 1952	S. 5-B, amended (w.e.f. 5-6-1997)	35, s. 2.
1955	23	State Bank of India Act, 1955	Ss. 13 and 15 amended (w.e.f. 15-1-1997)	8, ss. 3 and 5.
			S.13-A inserted (w.e.f. 15-1-1997)	<i>Ibid.</i> , s. 4.
1956	1	Companies Act, 1956	Ss. 17, 18, 58-A, 80, 153-B, 370, 372 and 530 amended (w.e.f. 610-A inserted w.e.f.)	5, ss. 2, 3, 4, 5, 6, 7, 8 and 9.
			S. 83 inserted (w.e.f. 15-1-1997)	<i>Ibid.</i> , s. 10.
			Ss. 111-A, 150 and 152 amended (w.e.f. 15-1-1997)	8, s. 9.
				<i>Ibid.</i> , ss. 10, 11 and 12.
1956	48	National Highways Act, 1956	Ss. 2 and 9 amended (w.e.f. 24-1-1997)	16, ss. 2 and 5.
			S. 3 substituted (w.e.f. 24-1-1997)	<i>Ibid.</i> , s. 3.
			S. 8 omitted (w.e.f. 24-1-1997)	<i>Ibid.</i> , s. 4.
1957	58	Additional Duties of Excise (Goods of Special Importance) Act, 1957	Fourth Schedule amended	26, s. 86.
1958	21	The Rice-Milling Industry (Regulation) Act, 1958	Repealed	28, s. 2.

THE RESERVE BANK OF INDIA (AMENDMENT) ACT, 1997

No. 23 OF 1997

[28th March, 1997]

An Act further to amend the Reserve Bank of India Act, 1934.

BE it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Reserve Bank of India (Amendment) Act, 1997.

Short title and
commencement.

(2) The provisions of this Act, other than section 9, shall be deemed to have come into force on the 9th day of January, 1997, and section 9 shall come into force on the 1st day of April, 1997.

2 of 1934.

2. In section 45-I of the Reserve Bank of India Act, 1934 (hereinafter referred to as the principal Act),—

Amendment of
section 45-I.

(1) clause (a) shall be renumbered as clause (aa) and before clause (aa) as so renumbered, the following clause shall be inserted, namely:—

“(a) “business of a non-banking financial institution” means carrying on of the business of a financial institution referred to in clause (c) and includes business of a non-banking financial company referred to in clause (f);”

(2) in clause (c),—

(i) for the portion beginning with the words “but does not include any institution, which,—” and ending with the brackets, letter and words “(a) agricultural operations; or”, the following shall be substituted, namely:—

“but does not include any institution, which carries on as its principal business,—

(a) agricultural operations; or

(aa) industrial activity; or”;

(ii) the following *Explanation* shall be inserted at the end, namely:—

Explanation.—For the purposes of this clause, “industrial activity” means any activity specified in sub-clauses (i) to (xviii) of clause (c) of section 2 of the Industrial Development Bank of India Act, 1964;’;

18 of 1964.

(3) after clause (e), the following clause shall be inserted, namely:—

‘(f) “non-banking financial company” means—

(i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.’

Insertion of
new sections
45-IA, 45-IB
and 45-IC.

3. After section 45-I of the principal Act, the following sections shall be inserted, namely:—

Requirement of
registration and
net owned fund.

“45-IA. (1) Notwithstanding anything contained in this Chapter or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without—

(a) obtaining a certificate of registration issued under this Chapter; and

(b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding two hundred lakh rupees, as the Bank may, by notification in the Official Gazette, specify.

(2) Every non-banking financial company shall make an application for registration to the Bank in such form as the Bank may specify:

Provided that a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 shall make an application for registration to the Bank before the expiry of six months from such commencement and notwithstanding anything contained in sub-section (1) may continue to carry on the business of a non-banking financial institution until a certificate of registration is issued to it or rejection of application for registration is communicated to it.

(3) Notwithstanding anything contained in sub-section (1), a non-banking financial company in existence on the commencement of the Reserve Bank of India (Amendment) Act, 1997 and having a net owned fund of less than twenty-five lakh rupees may, for the purpose of enabling such company to fulfil the requirement of the net owned fund, continue to carry on the business of a non-banking financial institution—

(i) for a period of three years from such commencement; or

(ii) for such further period as the Bank may, after recording the reasons in writing for so doing, extend,

subject to the condition that such company shall, within three months of fulfilling the requirement of the net owned fund, inform the Bank about such fulfilment:

Provided that the period allowed to continue business under this sub-section shall in no case exceed six years in the aggregate.

(4) The Bank may, for the purpose of considering the application for registration, require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled:—

(a) that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interest of its depositors;

(d) that the non-banking financial company has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business in India;

(f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, economic growth and considering such other relevant factors which the Bank may, by notification in the Official Gazette, specify; and

(g) any other condition, fulfilment of which in the opinion of the Bank, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interest of the depositors.

(5) The Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

(6) The Bank may cancel a certificate of registration granted to a non-banking financial company under this section if such company—

(i) ceases to carry on the business of a non-banking financial institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (4); or

(iv) fails—

(a) to comply with any direction issued by the Bank under the provisions of this Chapter; or

(b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or

(c) to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or

(v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such terms as the Bank may specify for taking necessary steps to comply with such provision or fulfilment of such condition:

Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.

(7) A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final:

Provided that before making any order of rejection of appeal, such company shall be given a reasonable opportunity of being heard.

Explanation.—For the purposes of this section,—

(I) “net owned fund” means—

(a) the aggregate of the paid-up equity capital and free reserves as disclosed in the latest balance-sheet of the company after deducting therefrom—

(i) accumulated balance of loss;

(ii) deferred revenue expenditure; and

(iii) other intangible assets; and

(b) further reduced by the amounts representing—

(I) investments of such company in shares of—

(i) its subsidiaries;

(ii) companies in the same group;

(iii) all other non-banking financial companies; and

(2) the book value of debentures, bonds, outstanding loans and advances (including hire-purchase and lease finance) made to, and deposits with,—

(i) subsidiaries of such company; and

(ii) companies in the same group,

to the extent such amount exceeds ten per cent. of (a) above.

(II) “subsidiaries” and “companies in the same group” shall have the same meanings assigned to them in the Companies Act, 1956. 1 of 1956.

45-IB. (1) Every non-banking financial company shall invest and continue to invest in India in unencumbered approved securities, valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than five per cent. or such higher percentage not exceeding twenty-five per cent. as the Bank may, from time to time and by notification in the Official Gazette, specify, of the deposits outstanding at the close of business on the last working day of the second preceding quarter:

Maintenance of percentage of assets.

Provided that the Bank may specify different percentages of investment in respect of different classes of non-banking financial companies.

(2) For the purpose of ensuring compliance with the provisions of this section, the Bank may require every non-banking financial company to furnish a return to it in such form, in such manner and for such period as may be specified by the Bank.

(3) If the amount invested by a non-banking financial company at the close of business on any day falls below the rate specified under sub-section (1), such company shall be liable to pay to the Bank, in respect of such shortfall, a penal interest at a rate of three per cent. per annum above the bank rate on such amount by which the amount actually invested falls short of the specified percentage, and where the shortfall continues in the subsequent quarters, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent quarter.

(4) (a) The penal interest payable under sub-section (3) shall be payable within a period of fourteen days from the date on which a notice issued by the Bank demanding payment of the same is served on the non-banking financial company and; in the event of a failure of the non-banking financial company to pay the same within such period, penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting non-banking financial company is situated and such direction shall be made only upon an application made in this behalf to the court by the Bank; and

(b) When the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the non-banking financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a suit.

(5) Notwithstanding anything contained in this section, if the Bank is satisfied that the defaulting non-banking financial company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.

Explanation.—For the purposes of this section,—

(i) "approved securities" means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government;

(ii) "unencumbered approved securities" includes the approved securities lodged by the non-banking financial company with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner;

(iii) "quarter" means the period of three months ending on the last day of March, June, September or December.

45-IC. (1) Every non-banking financial company shall create a reserve fund and transfer therein a sum not less than twenty per cent. of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

Reserve fund.

(2) No appropriation of any sum from the reserve fund shall be made by the non-banking financial company except for the purpose as may be specified by the Bank from time to time and every such appropriation shall be reported to the Bank within twenty-one days from the date of such withdrawal:

Provided that the Bank may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.

(3) Notwithstanding anything contained in sub-section (1), the Central Government may, on the recommendation of the Bank and having regard to the adequacy of the paid-up capital and reserves of a non-banking financial company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not be applicable to the non-banking financial company for such period as may be specified in the order:

Provided that no such order shall be made unless the amount in the reserve fund under sub-section (1) together with the amount in the share premium account is not less than the paid-up capital of the non-banking financial company.

Insertion of
new section
45JA.

4. After section 45J of the principal Act, the following section shall be inserted, namely:—

Power of Bank
to determine
policy and issue
directions.

“45JA. (1) If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or non-banking financial companies generally, as the case may be, and such non-banking financial companies shall be bound to follow the policy so determined and the directions so issued.

(2) Without prejudice to the generality of the powers vested under sub-section (1), the Bank may give directions to non-banking financial companies generally or to a class of non-banking financial companies or to any non-banking financial company in particular as to—

(a) the purpose for which advances or other fund based or non-fund based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the non-banking financial company and other relevant considerations, may be made by that non-banking financial company to any person or a company or to a group of companies.”

Amendment of
section 45MA.

5. In section 45MA of the principal Act,—

(i) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interest of the depositors or for the purpose of proper assessment of the books of account, issue directions to any non-banking financial company or any class of non-banking financial companies or non-banking financial companies generally or to the auditors of such non-banking

financial company or companies relating to balance-sheet, profit and loss account, disclosure of liabilities in the books of account or any matter relating thereto.”;

(ii) in sub-section (2), for the words “a non-banking institution, being a company”, the words “a non-banking financial company” shall be substituted;

(iii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) Where the Bank is of the opinion that it is necessary so to do in the public interest or in the interest of the non-banking financial company or in the interest of the depositors of such company, it may at any time by order direct that a special audit of the accounts of the non-banking financial company in relation to any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and the Bank may appoint an auditor or auditors to conduct such special audit and direct the auditor or the auditors to submit the report to it.

(4) The remuneration of the auditors as may be fixed by the Bank, having regard to the nature and volume of work involved in the audit and the expenses of or incidental to the audit, shall be borne by the non-banking financial company so audited.”.

6. After section 45MA of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 45MB and 45MC.

“45MB. (1) If any non-banking financial company violates the provisions of any section or fails to comply with any direction or order given by the Bank under any of the provisions of this Chapter, the Bank may prohibit the non-banking financial company from accepting any deposit.

Power of Bank to prohibit acceptance of deposit and alienation of assets.

(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the Bank, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the non-banking financial company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the Bank for such period not exceeding six months from the date of the order.

45MC. (1) The Bank, on being satisfied that a non-banking financial company,—

Power of Bank to file winding up petition.

(a) is unable to pay its debt; or

(b) has by virtue of the provisions of section 45-IA become disqualified to carry on the business of a non-banking financial institution; or

(c) has been prohibited by the Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or

(d) the continuance of the non-banking financial company is detrimental to the public interest or to the interest of the depositors of the company,

may file an application for winding up of such non-banking financial company under the Companies Act, 1956.

1 of 1956.

(2) A non-banking financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the Bank certifies in writing that such company is unable to pay its debt.

(3) A copy of every application made by the Bank under sub-section (1) shall be sent to the Registrar of Companies.

(4) All the provisions of the Companies Act, 1956 relating to winding up of a company shall apply to a winding up proceeding initiated on the application made by the Bank under this provision." 1 of 1956.

Insertion of new sections 45NB and 45NC.

Disclosure of information.

7. After section 45NA of the principal Act, the following sections shall be inserted, namely:—

"45NB. (1) Any information relating to a non-banking financial company,—

(i) contained in any statement or return submitted by such company under the provisions of this Chapter; or

(ii) obtained through audit or inspection or otherwise by the Bank,

shall be treated as confidential and shall not, except otherwise provided in this section, be disclosed.

(2) Nothing in this section shall apply to—

(a) the disclosure by any non-banking financial company, with the previous permission of the Bank, of any information furnished to the Bank under sub-section (1);

(b) the publication by the Bank, if it considers necessary in the public interest so to do, of any information collected by it under sub-section (1) in such consolidated form as it may think fit without disclosing the name of any non-banking financial company or its borrowers;

(c) the disclosure or publication by the non-banking financial company or by the Bank of any such information to any other non-banking financial company or in accordance with the practice and usage customary amongst such companies or as permitted or required under any other law;

Provided that any such information received by a non-banking financial company under this clause shall not be published except in accordance with the practice and usage customary amongst companies or as permitted or required under any other law.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, the Bank, if it is satisfied that, in the public interest or in the interest of the depositors or the non-banking financial company or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors, it is expedient so to do, may, either on its own motion or on being requested, furnish or communicate any information relating to the conduct of business by any non-banking financial company to any authority constituted under any law.

(4) Notwithstanding anything contained in any law for the time being in force, no court or tribunal or other authority shall compel the Bank to produce or to give inspection of any statement or other material obtained by the Bank under any provisions of this Chapter.

Power of Bank to exempt.

45NC. The Bank, on being satisfied that it is necessary so to do, may declare by notification in the Official Gazette that any or all of the provisions of this Chapter shall not apply to a non-banking institution or a class of non-banking institutions or a non-banking financial company or to any class or non-banking financial companies either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose."

8. After section 45Q of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 45QA and 45QB:

“45QA. (1) Every deposit accepted by a non-banking financial company, unless renewed, shall be repaid in accordance with the terms and conditions of such deposit.

Power of Company Law Board to order repayment of deposit.

(2) Where a non-banking financial company has failed to repay any deposit or part thereof in accordance with the terms and conditions of such deposit, the Company Law Board constituted under section 10E of the Companies Act, 1956 may, if it is satisfied, either on its own motion or on an application of the depositor, that it is necessary so to do to safeguard the interests of the company, the depositors or in the public interest, direct, by order, the non-banking financial company to make repayment of such deposit or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

1 of 1956.

Provided that the Company Law Board may, before making any order under this sub-section, give a reasonable opportunity of being heard to the non-banking financial company and the other persons interested in the matter.

45QB. (1) Where a deposit is held by a non-banking institution to the credit of one or more persons, the depositor or, as the case may be, all the depositors together may nominate, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the non-banking institution.

Nomination by depositors.

10 of 1949.

(2) Notwithstanding anything contained in any other law for the time being in force, or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made purports to confer on any person the right to receive the amount of deposit from the non-banking institution, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949.

10 of 1949.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint, in the manner prescribed by rules made by the Central Government under section 45ZA of the Banking Regulation Act, 1949, any person to receive the amount of deposit in the event of his death during the minority of the nominee.

10 of 1949.

(4) Payment by a non-banking institution in accordance with the provisions of this section shall constitute a full discharge to the non-banking institution of its liability in respect of the deposit:

Provided that nothing contained in this sub-section shall affect the right or claim which any person may have against the person to whom any payment is made under this section.

(5) No notice of the claim of any person, other than the person or persons in whose name a deposit is held by a non-banking institution, shall be receivable by the non-banking institution, nor shall the non-banking institution be bound by any such notice even though expressly given to it:

Provided that where any decree, order, certificate or other authority from a court of competent jurisdiction relating to such deposit is produced before a non-banking institution, the non-banking institution shall take due note of such decree, order, certificate or other authority.”

Substitution
of new section
for section 45S.

9. For section 45S of the principal Act, the following section shall be substituted, namely:—

Deposits not
to be accepted
in certain cases.

“45S. (1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit—

(i) if his or its business wholly or partly includes any of the activities specified in clause (c) of section 45-I; or

(ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner, or lending in any manner:

Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.

(2) Where any person referred to in sub-section (1) holds any deposit on the 1st day of April, 1997 which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within three years from the date of such commencement, whichever is earlier:

Provided that if the Bank is satisfied on an application made by any person to the Bank that such person is unable to repay a part of the deposits for reasons beyond his control or such repayment shall cause extreme hardship to him, it may, by an order in writing, extend such period by a period not exceeding one year subject to such conditions as may be specified in the order.

(3) On and from the 1st day of April, 1997, no person referred to in sub-section (1) shall issue or cause to be issued any advertisement in any form for soliciting deposit.

Explanation.—For the purposes of this section, a person shall be deemed to be a relative of another if, and only if,—

(i) they are members of a Hindu undivided family; or

(ii) they are husband and wife; or

(iii) the one is related to the other in the manner indicated in the List of Relatives below:—

List of Relatives

1. Father, 2. Mother (including step-mother), 3. Son (including step-son), 4. Son's wife, 5. Daughter (including step-daughter), 6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10. Son's son, 11. Son's son's wife, 12. Son's daughter, 13. Son's daughter's husband, 14. Daughter's husband, 15. Daughter's son, 16. Daughter's son's wife, 17. Daughter's daughter, 18. Daughter's daughter's husband, 19. Brother (including step-brother), 20. Brother's wife, 21. Sister (including step-sister), 22. Sister's husband.”

Amendment of
section 58B.

10. In section 58B of the principal Act,—

(a) after sub-section (4), the following sub-sections shall be inserted, namely:—

“(4A) If any person contravenes the provisions of sub-section (1) of section 45-IA, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(4AA) If any auditor fails to comply with any direction given or order made by the Bank under section 45MA, he shall be punishable with fine which may extend to five thousand rupees.

(4AAA) Whoever fails to comply with any order made by the Company Law Board under sub-section (2) of section 45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues.”;

(b) in sub-section (5),—

(i) after the words “If any person”, the expression “other than an auditor” shall be inserted;

(ii) after clause (a), the following clause shall be inserted, namely:—

“(aa) fails to comply with any direction given or order made by the Bank under any of the provisions of Chapter III-B; or”.

11. After section 58F of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 58G.

“58G. (1) Notwithstanding anything contained in section 58B, if the contravention or default of the nature referred to in section 58B is committed by a non-banking financial company, the Bank may impose on such non-banking financial company—

Power of Bank to impose fine.

(a) a penalty not exceeding five thousand rupees; or

(b) where the contravention or default is under sub-section (4A) or clause (a) or clause (aa) of sub-section (5) of section 58B, a penalty not exceeding five lakh rupees or twice the amount involved in such contravention or default, where the amount is quantifiable, whichever is more; and where such contravention or default is a continuing one, further penalty which may extend to twenty-five thousand rupees for every day, after the first, during which the contravention or default continues.

(2) For the purpose of imposing penalty under sub-section (1), the Bank shall serve a notice on the non-banking financial company requiring it to show cause why the amount specified in the notice should not be imposed as a penalty and a reasonable opportunity of being heard shall also be given to such non-banking financial company.

(3) Any penalty imposed by the Bank under this section shall be payable within a period of thirty days from the date on which notice issued by the Bank demanding payment of the sum is served on the non-banking financial company and, in the event of failure of the non-banking financial company to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where the registered office or the head office of the non-banking financial company is situated:

Provided that no such direction shall be made, except on an application made by an officer of the Bank authorised in this behalf, to by the principal civil court.

(4) The court which makes a direction under sub-section (3), shall issue a certificate specifying the sum payable by the non-banking financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.

(5) No complaint shall be filed against any non-banking financial company in any court of law pertaining to any contravention or default in respect of which any penalty has been imposed by the Bank under this section.

(6) Where any complaint has been filed against a non-banking financial company in a court in respect of contravention or default of the nature referred to in section 58B, no proceedings for imposition of penalty against that non-banking financial company shall be taken under this section.”

Amendment of
the First
Schedule.

12. In the First Schedule to the principal Act, for items 1 and 2, the following items shall be substituted, namely:—

“1. The Western Area shall consist of the States of Goa, Gujarat, Madhya Pradesh and Maharashtra and the Union territories of Dadra and Nagar Haveli and Daman and Diu.

2. The Eastern Area shall consist of the States of Arunachal Pradesh, Assam, Bihar, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura and West Bengal and the Union Territories of Andaman and Nicobar Islands.”

Repeal and
saving.

13. (1) The Reserve Bank of India (Amendment) Ordinance, 1997 is hereby repealed. Ord. 2 of 1997.

(2) Notwithstanding the repeal of the Reserve Bank of India (Amendment) Ordinance, 1997, anything done or any action taken under the principal Act as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act as amended by this Act. Ord. 2 of 1997.