

# Forward Contracts (Regulation) Act, 1952

UNION OF INDIA

India

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### Act 74 of 1952

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Forward Contracts (Regulation) Act, 1952.(Act No. 74 of 1952)An act to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

## Chapter I Preliminary

### 1. Short title, extent and commencement.

(1)This Act may be called the Forward Contracts (Regulation) Act, 1952.(2)It extends to the whole of India.(3)It shall come into force at once, and the remaining provisions shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, for different States or areas, and for different goods or classes of goods.

### 2. Definitions

In this Act, unless the context otherwise requires, -(a)“association” means any body of individuals whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;(b)“commission” means the Forward Markets Commission established under sec. 3;(c)“forward contract” means a contract for the delivery of goods and which is not a ready delivery contract;(d)“goods” means every kind of movable property other than actionable claims, money and securities;(e)“Government security” means a Government security as defined in the Public Debt Act, 1944 (XVIII OF 1944);(f)“non-transferable specific delivery contract” means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other documents of title relating thereto are

not transferable;(g)“option in goods” means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future and includes a teji, a mandi, a teji-mandi, a galli, a put, a call or a put, and call in goods;(h)“prescribed” means prescribed by rules made under this Act;(i)“ready delivery contract” means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise; Provided that where any such contract is performed either wholly or in part:-(1)by tendering of the documents of title to the goods covered by the contract by any party thereto (not being a commission agent or a bank) who has acquired ownership of the said documents by purchase, exchange or otherwise, to any other person (including a commission agent but not including a bank); or(2)by the realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract: or(3)by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full-price therefor is dispensed with then such contract shall not be deemed to be a ready delivery contract.Explanation. - For the purpose of this clause. -(i)“bank” includes any banking company as defined in the Banking Regulation Act, 1949 (110 of 1949), a co-operative bank as defined in the Reserve Bank of India Act, 1934 (2 of 1934), the State Bank of India and any of its subsidiaries and any corresponding new bank constituted under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);(ii)“commission agent” means a person who, in the ordinary course of business, makes contract for the sale or purchase of goods for others for a remuneration (whether known as commission or otherwise) which is determined in the contract itself or determinable from the terms of the contract in either case, only with reference to the quantity of goods or to the price therefor as stipulated in the contract;(j)“recognised association” means an association to which recognition for the time being has been granted by the Central Government under Sec. 6 in respect of goods or classes of goods specified in such recognition;(jj)“registered association” means an association to which for the time being a certificate of registration has been granted by the Commission under Sec. 14-B;(k)“rules” with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association, its memorandum and articles of association;(l)“securities” includes shares, scripts, stocks, bonds, debentures, debenturestocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also government securities:(m)“specific delivery contract” means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned:(n)“transferable specific delivery contract” means specific delivery contract which is not a non-transferable specific delivery contract and which is subject to such conditions relating to its transferability as the Central Government may by notification in the official Gazette, specify in this behalf.

## **Chapter II**

### **Forward Markets Commission**

#### **3. Establishment and constitution of the Forward Markets Commission.--**

(1)The Central Government may, by notification in the official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act.(2)The Commission shall consist of not less than two, but not exceeding four members appointed by the Central Government one of them being nominated by the Central Government to be the Chairman thereof; and the Chairman and the other member or members shall be either whole-time or part-time as the Central Government may direct: Provided that the members to be so appointed shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commerce or commodity markets, or in administration or who have special knowledge or practical experience in any matter which renders them suitable for appointment on the Commission.(3)No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has, directly or indirectly, any such financial or other interest as is likely to affect prejudicially his functions as a member of the Commission, and every member shall, whenever required by the Central Government so to do, furnish to it such information as it may require for the purpose of securing compliance with the provisions of this sub-section.(4)No member of the Commission shall hold office for a period of more than three years from the date of his appointment, and a member relinquishing his office on the expiry of his term shall be eligible for re-appointment.(5)The other terms and conditions of service of members of the Commission shall be such as may be prescribed.

#### **4. Functions of the Commission.-**

The functions of the Commission shall be(a)to advise the Central Government in respect of the recognition of or the withdrawal of recognition from any association or in respect of any other matter arising out of the administration of this Act;(b)to keep forward markets under observation and to take such action in relation to them as it may consider necessary, in exercise of the powers assigned to it by or under this Act;(c)to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods;(d)to make recommendations generally with a view to improving the organisation and working of forward markets;(e)to undertake the inspection of the accounts and other documents of any recognised association or registered association or any member of such association whenever it considers it necessary; and(f)to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.

#### **4A. Powers of the Commission. -**

(1)The Commission shall, in the performance of its functions, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:(a)Summoning and enforcing the attendance of any person and examining him on oath;(b)requiring the discovery and production of any document;(c)receiving evidence on affidavits;(d)requisitioning any public record or copy thereof from any office;(e)any other matters which may be prescribed.(2)The Commission shall have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the Commission may be useful for, or relevant to any matter under the consideration of the Commission and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Sec. 176 of the Indian Penal code, 1860 (45 of 1860).(3)The Commission shall be deemed to be a civil court and when any offence described in Sections. 175, 178, 179, 180 or Sec. 228 of the Indian Penal Code, 1860 (45 of 1860), is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (5 of 1898) forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under Section 482 of the said Code.(4)Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections. 193 and 228 of the Indian Penal Code, 1860 (45 of 1860).Explanation.- For the purpose of enforcing the attendance of witnesses, the local limits of the Commission's jurisdiction shall be the limits of the territory of India.

### **Chapter III**

## **Recognised Associations**

#### **5. Application for recognition of associations.**

(1)Any association concerned with the regulation and control of forward contracts which is desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government.(2)Every application made under sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by a copy of the bye-laws for the regulation and control of forward contracts and also a copy of the rules relating in general to the constitution of the association, and, in particular to--(a)the governing body of such association, its constitution and powers of management and the manner in which its business is to be transacted;(b)the powers and duties of the office-bearers of the association;(c)the admission into the association of various class of members, the qualifications of members, and the exclusion, suspension, expulsion and readmission of members therefrom or therein to;(d)the procedure for registration of partnerships as members of the association and the nomination and appointment of authorised representatives and clerks. 6 Grant of recognition to association.-(1)If the Central Government, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, is satisfied that it would be in the interest of the trade

and also in the public interest to grant recognition to the association which has made an application under Sec. 5, it may grant recognition to the association in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member.(2)Before granting recognition under sub-section (1), the Central Government may, by order, direct,- (a) that there shall be no limitation on the number of members of the association or that there shall be such limitation on the number of members as may be specified;(b)that the association shall provide for the appointment by the Central Government of a person, whether a member of the association or not as representative on, and of not more than three persons representing interests not directly represented through membership of the association as member or members of the governing body of such association and may require the association to incorporate in its rules any such direction and the conditions, if any, accompanying it.(3)No rules of a recognised association shall be amended except with the approval of the Central Government.(4)Every grant of recognition under this section shall be published in the Gazette of India and also in the Gazette of the State in which the principal office of the recognised association is situated, and such recognition shall have effect as from the date of its publication in the Gazette of India.

## **7. Withdrawal of recognition. –**

If the Central Government is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification in the official Gazette, the recognition granted to the said association:Provided that no such withdrawal shall effect the validity of any contract entered into or made before the date of the notification, and the Central Government may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contract outstanding on that date.

## **8. Power of Central Government to call for periodical returns or direct inquiries to be made. --**

(1)Every recognised association and every member thereof shall furnish to the Central Government such periodical returns relating to its affairs of its members, or his affairs, as the case may be, as may be prescribed.(2)Without prejudice to the provisions contained in sub-section (1) where the Central Government considers it expedient so to do, it may by order in writing, ---(a)call upon a recognised association to or a member thereof furnish in writing such information or explanation relating to its affairs or the affairs of any of its members or his affairs, as the case may be as the Central Government may require, or(b)appoint one or more persons to make an enquiry in relation to the affairs of such association or the affairs or any of its members and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the alternative, direct the inquiry to be made, and the report to be submitted, by the governing body of such association acting jointly with one or more representative of the Central Government; and(c)direct the Commission to inspect the accounts and other documents of any recognised

association or of any of its members and submit its report thereon to the Central Government.(3)Where an inquiry in relation to the affairs of a recognised association or the affairs of any of its members has been undertaken under sub-section (2) -(a)every director, manager, secretary or other officer of such association;(b)every member of such association;(c)if the member of the association is a firm, every partner, manager, secretary or other officer of the firm; and(d)every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clause (a), (b) and (c), shall be bound to produce before the authority making the inquiry, all such books, accounts, correspondence and other documents in his custody or power relating to, or having a bearing on the subject matter of, such inquiry and also to furnish the authority with any such statement or information relating thereto as may be required of him, within such time as may be specified.(4)Every recognised association and every member thereof shall maintain such books of accounts and other documents as the Commission may specify and the books of account and other documents so specified shall be preserved for a period not exceeding three years as the Commission may specify and shall be subject to inspection at all reasonable times by the Commission.

## **9. Furnishing of annual reports to the Commission by recognised association. --**

(1)Every recognised association shall furnish to the Commission three copies of its annual report.(2)Such annual report shall contain such particulars as may be prescribed. 9 A Power of recognised association to make rules respecting grouping of members, restricting voting rights, etc in special cases. --(1)A recognised association may make rules or amend any rules made by it to provide for all or any of the following matters, namely:(a)The admission of a firm or a Hindu undivided family as a member:(b)the grouping of the members of the association according to functional or local interests, reservation of seats on its governing body for members belonging to each group and appointment of members to such reserved seats---(i)by election exclusively by the members of the association from among persons chosen by the members belonging to the group concerned,(ii)by election by all the members of the association,(iii)by election by all the members of the association from among person chosen by the members belonging to the group concerned for the purposes;(c)the restriction of voting rights in respect of any matter placed before the association at any meeting to those members only who, by reason of their functional or local interests, are actually interested in such matter;(d)the regulation of voting rights in respect of any matter placed before the association at any meeting so that each member may, be entitled to have one vote only, irrespective of his share of the paid up equity capital of the association;(e)the restriction on the rights of a member to appoint another person as his proxy to attend and vote at a meeting of the association;(f)the retirement at every annual general meeting of all directors or such number or proportion of their total number as may be specified in the rules;(g)such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in Clauses (a) to (f).(2)No rules of a recognised association made or amended in relation to any matter referred to in Clause (a) to (g) of sub-section (1) shall have effect until they have been approved by the Commission and published by that Government in the official Gazette and, in approving the rules so made or amended, the Commission may make such modification therein as it thinks fit, and on such publication, the rules approved by the Commission shall be deemed to have been validly

made, notwithstanding anything to the contrary contained in the Companies Act, 1956.(3)Where, before the commencement of the Forward Contracts (Regulation) Amendment Act, 1957 (32 of 1957), any rules have been made or amended in relation to any matter referred to in clauses (b) to (e) and (g) of sub-section (1), the rules so made or amended shall not be deemed to be invalid or ever to have been invalid merely by reason of the fact that the rules so made or amended are repugnant to any of the provisions of the Companies Act, 1956.

## **10. Power of Central Government to direct rules to be made or to make rules.**

(1)Whenever the Central Government considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.(2)If any recognised association, against whom an order is issued by the Central Government under sub-section (1), fails or neglects to comply with such order within the specified period, the Central Government may make the rules or amend the rules made by the recognised association, as the case may be, either in the form specified in the order or with such modification thereof as the Central Government may think fit.(3)Where, in pursuance of sub-section (2), any rules have been made or amended, the rule so made or amended shall be published in the Gazette of India, and shall, thereupon, have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or any other law for the time being in force, as if they had been made or amended by the recognised association concerned.

## **11. Power of recognised association to make bye-laws. –**

(1)Any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts.(2)In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for ----(a)the opening and closing of markets and the regulation of the hours of trade;(b)a clearing-house for the periodical settlement of contracts and differences thereunder, the delivery of, and payment for, goods, the passing on of delivery orders and for the regulation and maintainance of such clearing house;(c)the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;(d)fixing, altering or postponing days for settlement;(e)determining and declaring market rates; including opening, closing, highest and lowest rates for goods;(f)the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contract in writing;(g)regulating the entering into, making performances, rescission and termination of contracts, including contracts between members or between a commission agent and his constituent, or between a broker and his constituent, or between a member of the recognised association and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents and brokers who are not parties to such contracts;(h)the admission and prohibition of specific classes or types of goods or of dealings in goods by a member of the recognised association;(i)the method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration;(j)the levy and recovery of fees, fines and penalties;(k)the

regulation of the course of business between parties to contracts in any capacity;(l)the fixing of scale of brokerage and other charges;(m)the making, comparing, settling and closing of bargains;(n)the regulation of fluctuations in rates and prices;(o)the emergencies in trade which may arise and the exercise of powers in such emergencies including the power to fix maximum and minimum prices;(p)the regulation of dealings by members for their own account;(q)the limitations on the volume of trade done by any individual member;(r)the obligation of members to supply such information or explanation and to produce such books relating to their business as the governing body may require.(3)The bye-laws made under this section may -(a)specify the bye-laws the contravention of any of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (2) of Section 15;(aa)specify the bye-laws the contravention of any of which shall make a forward contract entered into otherwise than in accordance with bye-laws illegal under sub-section (3 A) of Section 15;(b)provide that the contravention of any of the bye-laws shall --(i)render the member concerned liable to fine; or(ii)render the member concerned liable to expulsion or suspension from the recognised association or to any penalty of a like nature not involving the payment of money.(4)Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed and when approved by the Central Government, shall be published in the Gazette of India;Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication in any case.

## **12. Power of Central Government to make, or amend bye-laws of recognised association.**

(1)The Central Government may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in Section 11 or amend any bye-laws made by such association under that section.(2)Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India, and shall thereupon have effect as if they had been made or amended by the recognised association.(3)Notwithstanding anything contained in this section where the governing body of a recognised association objects to any bye-law made or amended under this section by the Central Government on its own motion, it may, within six months of the publication thereof under sub-section(2), apply to the Central Government for a revision thereof, and the Central Government may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section the byelaws so revised shall be published and shall become effective as provided in subsection (2).(4)The making or the amendment or revision of any bye-laws under this section shall in cases be subject to such conditions in regard to previous publication as may be prescribed: Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing dispense with the condition of previous publication.



## **12A. Application of amendment of bye-laws to existing forward contract.—**

Any amendment of a bye-law under Sec. 11 other than an amendment made in pursuance of clause (a) or clause (aa) of sub-section (3) of that section or under Section 12 shall also apply to all forward contracts entered into before the date of its approval by the Central Government or before the date of its publication in the Gazette of India, as the case may be, and remaining to be performed on or after the said date.

## **12B. Power of Commission to suspend member of recognised association or to prohibit him from trading.--**

(1) If, in the interest of trade or in the public interest, the Commission considers it necessary to suspend a member from his membership of any recognised association or to prohibit such members from entering into any forward contract for the sale or purchase in his own name or through another member of a recognised association of any goods or class of goods, then, notwithstanding anything contained in any law for time being in force or in the rules or bye-laws of a recognised association, the Commission may after giving an opportunity to the member concerned of being heard, by order, suspend his membership of any association or prohibit him from entering into any such contract. (2) An order made under sub-section (1) shall specify the period for which the suspension or prohibition is to have effect and such period may be extended from time to time but so as not to exceed three years in the aggregate. (3) No order made under sub-section (1) in respect of any member of a recognised association shall affect the validity of any forward contract entered into or made by with or through such member on or before the date of such order and remaining to be performed on or after the said date; but the Commission may make such provision as it deems fit in such order or in any subsequent order for the closing out of any such forward contract.

## **13. Power of Central Government to supercede governing body of recognised association.--**

(1) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised association should be superseded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Central Government may, after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by notification in the official Gazette, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed may appoint one of such persons to be Chairman and another of such person to be the Vice-Chairman. (2) On the publication of a notification in the official Gazette under sub-section (1), the following consequences shall ensue, namely: (a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members; (b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has

been superseded;(c)all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purpose of this Act, shall vest in such person or persons.(3)Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under subsection (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that subsection, and the Central Government may, from time to time by like notification, vary such period.(4)On the determination of the period of office of any person or persons appointed under this section the recognised association shall forthwith reconstitute a governing body in accordance with its rules:Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1) shall notwithstanding anything contained in subsection (1) continue to exercise and perform their powers and duties.(5)On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section(1)shall vest or re-vest, as the case may be, in the governing body so reconstituted.

#### **14. Power to suspend business of recognised associations.---**

If in the interest of the trade or in the public interest the Central Government considers it expedient so to do, it may by notification in the official Gazette, direct a recognised association to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and may if, in the opinion of the Central Government, the interest of the trade or the public interest so requires by like notification extend the said period from time to time.Provided that where the period of suspension is likely to exceed one month, no notification extending the suspension beyond such period shall be issued, unless the governing body of the recognised association has been given an opportunity of being heard in the matter.

### **Chapter IIIA**

## **Registered Associations**

#### **14A. Certificate of registration to be obtained by all associations.---**

(1)No association concerned with the regulation and control of business relating to forward contracts shall after the commencement of the Forward Contracts (Regulation) Amendment Act, 1960 (62 of 1960) (hereinafter referred to as such commencement), carry on such business except under, and in accordance with, the conditions of a certificate of registration granted under this Act by the Commission.(2)Every association referred to in sub-section (1) which is in existence at such commencement, before the expiry of six months from such commencement, and every association referred to in sub-section (1) which is not in existence at such commencement, before commencing such business, shall make an application for a certificate of registration to the Commission in such form and containing such particulars as may be prescribed:Provided that the Commission may in its discretion extend from time to time the period of six months aforesaid up to one year in the aggregate.(3)Nothing in this section shall be deemed ---(a)to prohibit an association in existence at

such commencement from carrying on its business until the disposal of the application made by it under subsection (2); or (b) to require a recognised association in existence at such commencement to make an application under sub-section (2); and every such association shall, as soon as may be after such commencement, be granted free of cost by the Commission a certificate of registration.

#### **14B. Grant or refusal of certificate of registration. ---**

On receipt of an application under Section 14-A the Commission, after making such enquiry as it considers necessary in this behalf, may by order in writing grant a certificate of registration or refuse to grant it: Provided that before refusing to grant such certificate, the association shall be given an opportunity of being heard in the matter.

#### **14C. Application of Sections 8 and 12-B to registered associations.—**

The provisions of Sections 8 and 12 B shall apply in relation to a registered association as they apply in relation to a recognised association with the substitution of --- (i) references to the registered association, for references to the recognised association; and (ii) the words “two years”, for the words “three years” in sub-section (2) of Section 12-B.

### **Chapter IV**

## **Forward contracts & Options in Goods**

### **15. Forward contracts in notified goods illegal or void in certain circumstances.--**

(1) The Central Government may, by notification in the official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in Section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal. (2) Any forward contract in goods entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of Section 11 shall be void— (i) as respects the rights of any member of the recognised association who has entered into such contract in contravention of any such bye-law and also, (ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention. (3) Nothing in sub-section (2) shall effect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract: Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section (3) of Section 11. (3A) Any forward contract in goods entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (aa) of sub-section 3 of Section 11 shall be illegal. (4) No member of a recognised association shall, in respect

of any goods specified in the notification under sub-section (1), enter into any contract on his own account with any person other than a member of the recognised association unless he has secured the consent or authority of such person and disclose in the note, memorandum or agreement of sale or purchase that he has bought or sold the goods, as the case may be, on his own account: Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract: Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws for outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, as the case may be, on his own account.

## **16. Consequences of notification under Sec. 15.-**

Where a notification has been issued under Section 15, then notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract--(a) every forward contract for the sale or purchase of any goods specified in the notification, entered into on or before the date of the notification and remaining to be performed after the said date and which is not in conformity with the provisions of Section 15, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf and different rates may be fixed for different classes of such contracts: (b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

## **17. Power to prohibit forward contracts in certain cases.---**

(1) The Central Government may, by notification in the official Gazette, declare that no person shall save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification and to which provisions of Section 15 have not been made applicable, except to the extent and in the manner, if any, as may be specified in the notification. (2) All forward contracts in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal. (3) Where a notification has been issued under sub-section (1), the provisions of Section 16 shall in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification entered into on or before the date of notification and remaining to be performed after the said date as they apply to all forward contract for the sale or purchase of any goods specified in the notification under Section 15.

## **18. Special provisions respecting certain kinds of forward contract.--**

(1) Nothing contained in Chapter III or Chapter IV shall apply to nontransferrable specific delivery contracts for the sale or purchase of any goods: Provided that no person shall organise or assist in

organising or be a member of any association in any area to which the provisions of Sec. 15 have been made applicable (other than a recognised association) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.(2)Where in respect of any area the provisions of Section 15 have been made applicable in relation to forward contracts for the sale or purchase of any goods or class of goods, the Central Government may, by a like notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of Chapter III or Chapter IV shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.(3)Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of nontransferable specific delivery contracts in such area in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply. 19 Prohibition of options in goods.--(1)Notwithstanding anything contained in this Act or in any other law for the time being in force, all options in goods entered into after the date on which this section comes into force shall be illegal.(2)Any option in goods which has been entered into before the date on which this section comes into force and which remains to be performed, whether wholly or in part, after the said date shall, to that extent become void.

## Chapter V

### Penalties and Procedures

#### 20. Penalty for contravention of certain provisions of Chapter IV. ----

Any person who --(a)(i)in any return, statement or other document required by or under this Act, makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement; or(ii)without reasonable excuse (the burden of proving which shall be on him) fails to furnish any return, statement or other document or any information or to answer any question or to comply with any requisition made under this Act or any rules made thereunder; or(iii)enters into any forward contract during the period of suspension of business of a recognised association in pursuance of a notification under Section 14; or(b)is a member of any association, other than a recognised association, to which a certificate of registration has not been granted under this Act; or(c)publishes or circulates information relating to the rate at which any forward contract has been entered into in contravention of any of the bye-laws of a recognised organisation, or(d)organises or assists in organising, or is a member of any association in contravention of the provisions contained in the proviso to sub-section (1) of Section 18; or(e)enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (1) or sub-section (3-A) or sub- section (4) of Section 15, Section 17 or Section 19; shall on conviction be punishable ---(i)for a first offence, with imprisonment which may extend to one year or with a

fine of not less than one thousand rupees, or with both;(ii)for a second or subsequent offence under clause (d), or under clause (e) other than an offence in respect of contravention of the provisions of sub-section (4) of Section 15 with imprisonment which may extend to one year and also with fine; provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, the imprisonment shall be not less than one month and the fine shall not be less than one thousand rupees.

## **21. Penalty for owning or keeping place used for entering into forward contracts in goods.—**

Any person who --(a)owns or keeps a place other than of a recognised association which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or(b)without the permission of the Central Government organises, or assists in organising, or becomes a member of any association, other than a recognised association, for the purpose of assisting in entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or(c)manages, controls or assists in keeping any place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contract in contravention of any of the provisions of this Act or at which such contracts are recorded or adjusted, or rights or liabilities arising out of such forward contracts are adjusted, regulated or enforced in any manner whatsoever, or(d)not being a member of a recognised association, wilfully represents to, or induces, any person to believe that he is a member of a recognised association or that forward contracts can be entered into or made or performed, whether wholly or in part, under this Act through him,(e)not being a member of a recognised association or his agent authorised as such under the rules or bye-laws of such association, canvasses, advertises or touts in any manner, either for himself or on behalf of any other person, for any business connected with forward contracts in contravention of any of the provisions of this Act, or(f)joins, gathers, or assists in gathering at any place, other than the place of business specified in the bye-laws of a recognised association, any person or persons for making bids or offers or for entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or(g)makes, publishes or circulates any statement or information which is false and which he either knows or believes to be false, affecting or tending to affect the course of business in forward contracts in respect of goods to which the provisions of Section 15 have been made applicable, or(h)manipulates or attempts to manipulate prices in respect of forward contracts for the sale or purchase of any goods specified in any notification under Section 15, in any area specified in that notification, shall on conviction be punishable --(i)for a first offence, with imprisonment which may extend to two years or with a fine of not less than one thousand rupees, or with both;(ii)for a second or subsequent offence, with imprisonment which may extend to two years and also with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the imprisonment shall not be less than one month and the fine shall not be less than one thousand rupees. 21A Power of Court to order forfeiture of property.-- Any court trying an offence punishable under Section 20 or Section 21 may, if it thinks fit and in addition to any sentence which it may impose for such offence, direct that any money, goods or

other property in respect of which the offence has been committed, shall be forfeited to the Central Government. Explanation. -- For the purpose of this section property in respect of which an offence has been committed, shall include deposits in a bank where the said property is converted into such deposits.

## **22. Offences by companies.--**

(1) Where an offence has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation. - For the purpose of this Section - (a) "company" means any body corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm.

## **22A. Power to search and seize books of account or other documents.---**

(1) Any presidency Magistrate or a Magistrate of the first class may, by warrant, authorise any police officer not below the rank of sub-inspector to enter upon and search any place where books of account or other documents relating to forward contracts or options in goods entered into in contravention of the provisions of this Act, may be reasonably suspected to be, and such police officer may seize any such books or documents, if in his opinion, it relates to any such forward contract or option in goods. (2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall so far as may be, apply to search or seizure made under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said Code.

## **22B. Presumption to be drawn in certain cases.-**

(1) Where any books of account or documents are seized from any place and there are entries therein making reference to quantity, quotations, rates, months of delivery, receipt or payment of differences or sale or purchase of goods or options in goods, such books of accounts or other documents shall be admitted in evidence without witnesses having to appear to prove the same; and such entries shall be prima-facie evidence of matters, transactions and accounts purported to be therein recorded. (2) In any trial for an offence punishable under Section 21, it shall be presumed, until the contrary is proved that the place in which the books of account or other documents referred to in sub-section (1) were seized, was used, and that the persons found therein were present, for the purpose of the said offence.

### **23. Certain offences to be cognizable.---**

Notwithstanding anything contained in the Code of Criminal Procedure, the following offences shall be deemed to be cognizable within the meaning of that Code, namely:(a)an offence falling under sub-clause (ii) of clause (a) of Section 20 in so far as it relates to the failure to comply with any requisition made under sub-section (3) of Section 8;(b)an offence falling under clause (d) of Section 20;(c)an offence falling under clause (e) of Section 20 other than a contravention of the provisions of sub-section (3-A) or sub-section (4) of Section 15;(d)an offence falling under Section 21.

### **24. Jurisdiction to try offence under this Act.—**

No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall take cognizance of or try any offence punishable under this Act.

## **Chapter VI**

### **Miscellaneous**

### **25. Advisory Committee.—**

For the purpose of advising the Central Government in relation to any matter concerning the operation of this Act, the Central Government may establish an advisory committee consisting of such number of persons as may be prescribed.

### **26. Power to delegate.—**

The Central Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act may, in such circumstances and subject to such conditions, if any, as may be specified be exercised by such officers or authority, including any State Government or officers or authorities thereof as may be specified in the direction.

### **27. Power to exempt.—**

The Central Government may, by notification in the official Gazette, exempt, subject to such conditions and in such circumstances and in such areas as may be specified in the notification any contract or class of contracts from the operation of all or any of the provisions of this Act. 27 A Protection of action taken in good faith.-(1)No suit or other legal proceeding shall lie in any Court against the Central Government or any member, officer or servant of the Commission for anything which is in good faith done or intended to be done under this Act, or any rule or bye-law made thereunder.(2)No suit or other legal proceeding shall lie in any Court against the governing body or any member, office-bearer or servant of any recognised association or against any person appointed under sub-section (1) of Section 13 for anything which is in good faith done or intended to be done with the approval, at the instance, of the Commission and in pursuance of this Act, or of any rule or



bye-law made thereunder.

## **28. Power to make rules.--**

(1)The Central Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the objects of this Act.(2)In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,--(a)the terms and conditions of service of members of the Commission;(b)the manner in which applications for recognition may be made under Section 5 and levy of fees in respect thereof;(c)the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognition shall be granted;(cc)the manner in which the application for certificates of registration may be made under Section 14A and the levy of fees in respect of such application;(d)the particulars to be contained in the annual reports of recognised associations;(e)the manner in which bye-laws to be made, amended or revised under this Act shall, before being so made, amended or revised, be published for criticism;(f)the constitution of the advisory committee established under Section 25, the terms of office of and the manner of filling vacancies among members of the committee; the interval within which meetings of the advisory committee may be held and the procedure to be followed at such meetings; and the matters which may be referred by the Central Government to the advisory committee for advice;(g)any other matter which is to be or may be prescribed.(3)Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## **28A. Savings of recognised associations.--**

(1)All recognised associations under the Forward Contracts Regulation Act, shall be deemed to be recognised stock exchanges under the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (herein referred to as the Securities Contracts Act):"Provided that such deemed recognized stock exchanges shall not carry out any activity other than the activities of assisting, regulating or controlling the business of buying, selling or dealing in commodity derivatives till the said deemed recognized stock exchanges are specifically permitted by the Securities and Exchange Board of India:Provided further that a person buying or selling or otherwise dealing in commodity derivatives as a commodity derivatives broker, or such other intermediary who may be associated with the commodity derivatives market, immediately before the transfer and vesting of rights and assets to the Securities and Exchange Board of India for which no registration certificate was necessary prior to such transfer, may continue to do so for a period of three months from such transfer or, if he has made an application for such registration within the said period of three months, till the disposal of such application.".(2)The Securities and Exchange Board of India (herein referred to as the Security Board) may provide such deemed exchanges, adequate time to comply with the Securities Contracts Act and any regulations, rules, guidelines or like instruments made under the said Act.(3)The

bye-laws, circulars, or any like instrument made by a recognised association under the Forward Contracts Act shall continue to be applicable for a period of one year from the date on which that Act is repealed, or till such time as notified by the Security Board, as if the Forward Contracts Act had not been repealed, whichever is earlier.(4)All rules, directions, guidelines, instructions, circulars, or any like instruments, made by the Commission or the Central Government applicable to recognised associations under the Forward Contracts Act shall continue to remain in force for a period of one year from the date on which that Act is repealed, or till such time as notified by the Security Board, whichever is earlier, as if the Forward Contracts Act had not been repealed.(5)In addition to the powers under the Securities Contracts Regulation Act, the Security Board and the Central Government shall exercise all powers of the Commission and the Central Government with respect to recognised associations, respectively, on such deemed exchanges, for a period of one year as if the Forward Contracts Act had not been repealed.

## **29. Repeal and savings.---**

If immediately before the date on which this Act or any provision contained therein is made applicable to any goods or classes of goods in any State, there is in force in that State, any law corresponding to this Act or, as the case may be, to any provision contained therein which is applicable to those goods or classes of goods, that law shall stand repealed on the said date. Provided that the repeal shall not affect--(a)the previous operation of any law so repealed or anything duly done or suffered thereunder; or(b)any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or(c)any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or(d)any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed. Provided further that, subject to the preceding proviso, anything done or any action taken (including any appointment made, notification or order issued, rule, regulation, form or bye-law framed, or recognition granted) under any such law shall be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

## **29A. Repeal and savings.--**

(1)The Forward Contracts (Regulation) Act, 1952 (74 of 1952) is hereby repealed. (2) On and from the date of repeal of Forward Contracts Act-(a)the rules and regulations framed by the Central Government and the Commission under the Forward Contracts Act, shall stand repealed;(b)all authorities and entities established by the Central Government under the Forward Contracts Act, including the Commission and the Advisory Council established under section 25 of that Act, shall stand dissolved;(c)anything done or any action taken or purported to have been done or taken including any inspection, order, penalty, proceeding or notice made, initiated or issued or any confirmation or declaration made or any licence, permission, authorisation or exemption granted, modified or revoked, or any document or instrument executed, or any direction given under the Act repealed in sub-section (1), shall be continued or enforced by the Security Board, as if that Act had

not been repealed;(d)all offences committed, and existing proceedings with respect to offences which may have been committed under the Forward Contracts Act, shall continue to be governed by the provisions of that Act, as if that Act had not been repealed;(e)a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed;(f)no court shall take cognizance of any offence under the Forward Contracts Act from the date on which that Act is repealed, except as provided in clauses (d) and (e);(g)clauses (d), (e) and (f) shall not be held to or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal to matters not covered under these sub-sections.

## **29B. Transfer and vesting of undertaking of Commission.--**

(1)On the date on which the Forward Contracts Act is repealed, the undertaking shall be transferred, and vest with the Securities and Exchange Board of India.(2)If there is any existing proceeding or cause of action against the Commission in relation to the undertaking on the date on which the Forward Contracts Act is repealed, such proceeding or cause of action may be continued and enforced by or against the Security Board.(3)The concessions, privileges, benefits and exemptions including any benefits and exemptions with regard to the payment of any tax, duty and cess granted to the Commission with respect to its undertaking shall be transferred to the Security Board on the date on which the Forward Contracts Act is repealed.(4)Every employee holding any office (excluding members of the Commission) under the Commission immediately before the date on which the Forward Contracts Act is repealed, will hold office in the Central Government or the Security Board, as the Central Government may notify in the Official Gazette, for the same tenure and on the same terms and conditions of service as such employee would have held such office if the Commission had not been dissolved:Provided that where the Central Government notifies that an employee of the Commission shall continue as an employee of the Central Government under the foregoing provision, the Central Government may, at the request of the Security Board, depute such employee to the Security Board, for a period not exceeding two years from the date on which the Forward Contracts Act is repealed.(5)Within six months from the date on which the Forward Contracts Act is repealed, an employee of the Commission opting not to be an employee of the Central Government or the Security Board, as the case may be, shall communicate such decision to the Central Government or Security Board, as applicable.(6)Nothing contained in any other law in force shall entitle any employee to any compensation for the loss of office due to the repeal of the Forward Contracts Act and the consequent dissolution of the Commission, and no such claim shall be entertained by any court, tribunal or other authority.(7)The members of the Commission appointed by the Central Government under section 3 of the Forward Contracts Act, shall cease to hold office from the date the Forward Contracts Act is repealed.(8)The members of the Commission shall not be entitled to any compensation for the loss of office due to the repeal of the Forward Contracts Act and the consequent dissolution of the Commission or for the premature termination of any contract of management entered into by such member with the Commission, and no such claim shall be entertained by any court, tribunal or other authority.(9)The transfer and vesting of the undertaking shall not be liable to the payment of any stamp duty under the Indian Stamp Act, 1899 (2 of 1899) or any applicable stamp duties under state laws.