

Laws and Regulations Related to Cyber Security and Data Privacy

Information Technology Act, 2000

The Information Technology Act, 2000 is an Act of the Indian Parliament on 17 October 2000. It is the primary law in India dealing with cybercrime and electronic commerce.

Objects of the IT Act

- ✓ legal recognition to electronic transactions by recognizing digital signatures either by general public or Govt. official or agency, including publication of rules, regulations or any other matter including gazette notification.
- ✓ facilitate electronic filing of documents and retention thereof in govt. records (public cannot insist for use of electronic mode only)
- ✓ consequential amendments to other acts
- ✓ to set up licensing, monitoring and certifying authority

The Act is divided into different Chapters.

Chapter IV deals with Attribution, Acknowledgment and Despatch of Electronic Records

"electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form.	
"originator" means a person who sends, generates, stores or transmits any electronic message	
computer resource" means computer, computer system, computer network, data, computer data base or software	
Time and place of Dispatch and Receipt of Records [Section 13]	<ul style="list-style-type: none"> ✓ sent by originator, his agent, system programmed by the originator which operates automatically ✓ dispatch would occur when it enters a resource outside the control of the originator ✓ unless otherwise agreed by the parties receipt would occur when it enters the designated computer resource and in case not designated computer resource, when it is retrieved by the addressee ✓ unless otherwise agreed by the parties place of dispatch shall be deemed to be place of business. same in case of receipt.

Chapter VI deals with Regulation of Certifying Authorities

"Certifying Authority" means a person who has been granted a licence to issue a Digital Signature Certificate	
"Controller" means the Controller of Certifying Authorities	
Functions of CCA	The Controller of Certifying Authority (CCA) is to be appointed by Central govt. to recognize, license, regulate, standardize, supervise the certifying authorities. Central Govt. Controller may intercept any information in any

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	computer for security purpose, declare any system as protected system and therefore prevent general or specific access.	
Functions of Certifying Authorities	Certifying authorities, who are licensed by CCA shall issue digital signature certificate and perform other acts as specified by the Controller and perform other functions as decided by Controller.	

Chapter XI deals with Offences under the Act

The offences under this Act is applicable to any offence/contravention in any country/national if it involves a computer, system or network located in India. The same are enumerated later as well with section Numbers.

Offences can be:

- a) tampering with computer source documents.
- b) hacking: destruction, deletion, alteration of nay data in any computer with an intention of damage/injury
- c) misrepresentation to controller or certifying authorities
- d) breach of confidentiality and privacy
- e) publishing false digital signature certificates

Adjudication

- ✓ Central Govt. has appointed adjudicating authorities having it and legal knowledge.
- ✓ Cyber Regulations Appellate Tribunal has also been constituted.
- ✓ Any person not satisfied with the order of controller or adjudicating authorities may appeal within 45 days.
- ✓ Decision of appellate tribunal can be appealed to High Court within 60 days.
- ✓ Civil court does not have jurisdiction

Data Protection

What is Data Protection

Data Protection refers to the set of privacy laws, policies and procedures that aim to minimise intrusion into one's privacy caused by the collection, storage and dissemination of personal data. Personal data generally refers to the information or data which relate to a person who can be identified from that information or data whether collected by any Government or any private organization or an agency.

Data Protection Law in India

India currently is not having a separate data protection law and when the Information Technology Act, 2000 (hereinafter referred to as the "IT Act") first came into force, it lacked provisions for protection and the procedure to be followed to ensure the safety and security of sensitive personal information of an individual.

Section 43A was inserted in the IT Act by Information Technology (Amendment) Act, 2008 on 27 Oct, 2009 and the Central Government, notified the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.

The right to privacy in India was declared a fundamental right by the Hon'ble Supreme Court of India on August 24, 2017.

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Section 43A	Whenever a corporate body possesses or deals with any sensitive personal data or information, and is negligent in maintaining a reasonable security to protect such data or information, which thereby causes wrongful loss or wrongful gain to any person, then such body corporate shall be liable to pay damages to the person(s) so affected.	
Section 72A	Any person may be punished with imprisonment for a term not exceeding three years, or with a fine not exceeding up to five lakh rupees, or with both in case disclosure of information is made in breach of lawful contract.	

Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

- i) The Rules 2011 only apply to bodies corporate and persons located in India.
- ii) Rule 3 of the 2011 Rules provides a list of items that are to be treated as “sensitive personal data”, and includes inter alia information relating to passwords, credit/debit cards information, biometric information (such as DNA, fingerprints, voice patterns, etc. that are used for authentication purposes), physical, physiological and mental health condition, etc. It is further clarified that any information is freely available or accessible in the public domain is not considered to be sensitive personal data.
- iii) Rule 4 imposes a duty on Body Corporates seeking sensitive personal data to draft a privacy policy and make it easily accessible for people who are providing the information. This should be clearly published on the website of the body corporate and should contain details on the type of information that is being collected, the purpose for which it has been collected and the reasonable security practices that have been undertaken to maintain the confidentiality of such information.
- iv) Rule 5 provides the guidelines that need to be followed by a Body Corporate while collecting information and imposes the following duties on the Body Corporate:

Obtain consent from the person(s) providing information.

 - a) Information shall not be collected unless it is for lawful purpose, and is considered necessary for the purpose. The information collected shall be used only for the purpose for which it is collected and shall not be retained for a period longer than which is required;
 - b) Ensure that the person(s) providing information are aware about the fact that the information is being collected, its purposes & recipients, name and addresses of the agencies retaining and collecting the information;
 - c) Offer the person(s) providing information an opportunity to review the information provided and make corrections, if required;
 - d) Maintain the security of the information provided; and
 - e) Designate a Grievance Officer, whose name and contact details should be on the website who shall be responsible to address grievances of information providers expeditiously.
- v) prior permission of the information provider before disclosing such information to a third party.
- vi) Rule 8 provides the reasonable security processes and procedures that may be implemented by Body Corporates. International Standards (IS/ISO/IEC 27001) is one such standard which can be implemented by a body corporate to maintain data security. It is pertinent to note that an audit of reasonable security practices and procedures shall be carried out by an auditor at least once a year or as and when the body corporate or a person on its behalf undertake significant upgradation of its process and computer resource.

Basic Principles of Data Privacy and Business Intelligence

Meaning	A technology-driven process for analyzing data and delivering actionable information that helps executives, managers and workers make informed business decisions
Objective	drive better business decisions that enable organizations to increase revenue, improve operational efficiency and gain competitive advantages over business rivals

How the Business Intelligence Process works?

A business intelligence architecture includes more than just BI software. Business intelligence data is typically stored in a data warehouse built for an entire organization or in smaller data marts that hold subsets of business information for individual departments and business units, often with ties to an enterprise data warehouse. BI data can include historical information and real-time data gathered from source systems as it's generated, enabling BI tools to support both strategic and tactical decision-making processes. Before it's used in BI applications, raw data from different source systems generally must be integrated, consolidated and cleansed using data integration and data quality management tools to ensure that BI teams and business users are analyzing accurate and consistent information.

Organizations collect data from internal IT systems and external sources, prepare it for analysis, run queries against the data and create data visualizations, BI dashboards and reports to make the analytics results available to business users for operational decision-making and strategic planning.

Steps in BI can be:

- a) data preparation, in which data sets are organized and modelled for analysis;
- b) analytical querying of the prepared data;
- c) distribution of key performance indicators (KPIs) and other findings to business users; and
- d) use of the information to help influence and drive business decisions.

Initially, BI tools were primarily used by BI and IT professionals. However, now, business analysts, executives and workers are using business intelligence platforms themselves, thanks to the development of self-service BI and data discovery tools. Self-service business intelligence environments enable business users to query BI data, create data visualizations and design dashboards on their own.

BI programs often incorporate forms of advanced analytics, such as data mining, predictive analytics, text mining, statistical analysis and big data analytics. A common example is predictive modelling that enables what-if analysis of different business scenarios.

In most cases, though, advanced analytics projects are conducted by separate teams of data scientists, statisticians, predictive modelers and other skilled analytics professionals, while BI teams oversee more straightforward querying and analysis of business data.

Importance and Benefits of Business Intelligence

A successful BI program produces a variety of business benefits in an organization.

Without BI, organizations can't readily take advantage of data-driven decision-making. Instead, executives and workers are primarily left to base important business decisions on other factors, such as accumulated knowledge, previous experiences, intuition and gut feelings. While those methods can result in good decisions, they're also fraught with the potential for errors and missteps because of the lack of data underpinning them.

Example,

- ✓ BI enables C-suite executives and department managers to monitor business performance on an ongoing basis so they can act quickly when issues or opportunities arise.
- ✓ Analyzing customer data helps make marketing, sales and customer service efforts more effective.
- ✓ Supply chain, manufacturing and distribution bottlenecks can be detected before they cause financial harm.
- ✓ HR managers are better able to monitor employee productivity, labor costs and other workforce data.

The key benefits that businesses can get from BI applications include the ability to:

- i) speed up and improve decision-making;
- ii) optimize internal business processes;
- iii) increase operational efficiency and productivity;
- iv) spot business problems that need to be addressed;
- v) identify emerging business and market trends;
- vi) develop stronger business strategies;
- vii) drive higher sales and new revenues; and
- viii) gain a competitive edge over rival companies.

Types of Business Intelligence Tools and Applications

The list of BI technologies that are available to organizations includes the following:

Ad hoc analysis	It's the process of writing and running queries to analyze specific business issues on casual or temporary basis.
Online analytical processing (OLAP)	OLAP tools enable users to analyze data along multiple dimensions, which is particularly suited to complex queries and calculations.
Mobile BI	Here, BI applications and dashboards available on smartphones and tablets. This may only display two or three data visualizations and KPIs so they can easily be viewed on a device's screen.
Real-time BI	In real-time BI applications, data is analyzed as it's created, collected and processed to give users an up-to-date view of business operations, customer behavior, financial markets and other areas of interest. The real-time analytics process often involves streaming data and supports decision analytics uses, such as credit scoring, stock trading and targeted promotional offers.
Operational intelligence (OI)	Also called operational BI, this is a form of real-time analytics that delivers information to managers and frontline workers in business operations
Open source BI (OSBI)	Business intelligence software that is open source typically includes two versions: a community edition that can be used free of charge and a subscription-based commercial release with technical support by the vendor.
Embedded BI	Embedded business intelligence tools put BI and data visualization functionality directly into business applications. That enables business users to analyze data within the applications they use to do their job. Embedded analytics features are most commonly incorporated by application software vendors, but corporate software developers can also include them in home grown applications.
Collaborative BI	This is more of a process than a specific technology. It involves the combination of BI applications and collaboration tools to enable different users to work together on data analysis and share information with one

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	another. For example, users can annotate BI data and analytics results with comments, questions and highlighting via the use of online chat and discussion tools.	
Location intelligence (LI)	This is a specialized form of BI that enables users to analyze location and geospatial data, with map-based data visualization functionality incorporated. Location intelligence offers insights on geographic elements in business data and operations. Potential uses include site selection for retail stores and corporate facilities, location-based marketing and logistics management.	

Business Intelligence Platforms

Modern BI platforms typically include:

- i) data visualization software for designing charts and other infographics to show data in an easy-to-grasp way;
- ii) tools for building BI dashboards, reports and performance scorecards that display visualized data on KPIs and other business metrics;
- iii) data storytelling features for combining visualizations and text in presentations for business users; and
- iv) usage monitoring, performance optimization, security controls and other functions for managing BI deployments.

In general terms, enterprise BI use cases include:

- i) monitoring business performance or other types of metrics;
- ii) supporting decision-making and strategic planning;
- iii) evaluating and improving business processes;
- iv) giving operational workers useful information about customers, equipment, supply chains and other elements of business operations; and
- v) detecting trends, patterns and relationships in data.

Examples of BI Usage

Financial services firms and insurers use BI for risk analysis during the loan and policy approval processes and to identify additional products to offer to existing customers based on their current portfolios.

BI helps retailers with marketing campaign management, promotional planning and inventory management

Manufacturers rely on BI for both historical and real-time analysis of plant operations and to help them manage production planning, procurement and distribution.

Airlines and hotel chains are big users of BI for things such as tracking flight capacity and room occupancy rates, setting and adjusting prices, and scheduling workers.

In healthcare organizations, BI and analytics aid in the diagnosis of diseases and other medical conditions and in efforts to improve patient care and outcomes.

Universities and school systems tap BI to monitor overall student performance metrics and identify individuals who might need assistance, among other applications.

Business Intelligence Trends

In addition to BI managers, business intelligence teams generally include a mix of BI architects, BI developers, BI analysts and BI specialists who work closely with data architects, data engineers and other data management professionals. Business analysts and other end users are also often included in the BI development process to represent the business side and make sure its needs are met.

To help with that, a growing number of organizations are replacing traditional waterfall development with Agile BI and data warehousing approaches that use Agile software development techniques to break up BI projects into small chunks and deliver new functionality on an incremental and iterative basis. Doing so enables companies to put BI features into use more quickly and to refine or modify development plans as business needs change or new requirements emerge.

Cybercrime/Cyber Fraud

What is Cyber Crime?

Cybercrime is a broad term that is used to define criminal activity in which computers or computer networks are a tool, a target, or a place of criminal activity and include everything from electronic wracking to denial of service attacks.

- ✓ It is a general term that covers crimes like phishing, Credit card frauds, bank robbery, illegal downloading, industrial espionage, child pornography, kidnapping children via chat rooms, scams, cyber terrorism, creation of viruses.
- ✓ It also covers that traditional crimes in which computers or networks are used to enable the illicit activity.

With the increasing use of computers in society, cybercrime has become a major issue. The cyber crime is different from any other crime happening in the society. The reason being, it has no geographical boundaries and the cyber criminals are unknown. It is affecting all the stakeholders from government, business to citizens alike. In India cybercrime is increasing with the increased use of Information and Communication Technology (ICT).

Types of Cyber Crimes

Cyber crimes can be basically divided into three major categories:

Cyber Crimes against Persons:

like harassment occur in cyberspace or through the use of cyberspace. Harassment can be sexual, racial, religious, or other.

Cyber-Stalking:	It means to create physical threat that creates fear to use the computer technology such as internet, e-mail, phones, text messages, webcam, websites or videos.
Obscenity	It includes Indecent exposure/ Pornography (basically child pornography), hosting of web site containing these prohibited materials.
Defamation	It is an act of imputing any person to lower down the dignity of the person by hacking his mail account and sending some mails with using vulgar language to unknown persons.
Hacking	unauthorized control/access over computer system and act of hacking completely destroys the whole data as well as computer programmes.
Cracking	Cracking means that a stranger has broken into your computer systems without your knowledge and consent and has tampered with precious confidential data and information.
Spoofing	A spoofed e-mail may be said to be one, which misrepresents its origin. It shows its origin to be different from which actually it originates. Spoofing is a blocking through spam which means the unwanted uninvited messages. Wrongdoer steals mobile phone number of any person and sending SMS via internet and receiver gets the SMS from the mobile phone number of the

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	victim.	
Carding	It means false ATM cards i.e. Debit and Credit cards used by criminals for their monetary benefits through withdrawing money from the bank account mala-fidely.	
Fraud	It means the person who is doing the act of cyber crime i.e. stealing password and data storage has done it with having guilty mind which leads to fraud and cheating.	
Threat	refers to threatening a person with fear for their lives or lives of their families through the use of a computer network i.e. E-mail, videos or phones.	

Cyber Crimes against Property

There are certain offences which affects person or properties which are as follows:

Any unlawful act by which the owner is deprived completely or partially of his rights is an offence. The common form of IPR violation may be said to be software piracy, infringement of copyright, trademark, patents, designs and service mark violation etc.

Squatting	It means where two persons claim for the same Domain Name either by claiming that they had registered the name first on by right of using it before the other or using something similar to that previously.
Vandalism	Vandalism means deliberately destroying or damaging property of another. Thus cyber vandalism means destroying or damaging the data when a network service is stopped or disrupted. It may include within its purview any kind of physical harm done to the computer of any person.
Hacking	Hactivism attacks those included Famous Twitter, blogging platform by unauthorized access/ control over the computer. Due to the hacking activity there will be loss of data as well as computer.
Virus	Viruses are programs that attach themselves to a computer or a file and then circulate themselves to other files and to other computers on a network. They usually affect the data on a computer, either by altering or deleting it. Worm attacks plays major role in affecting the computerize system of the individuals.
Trespass	It means to access someone's computer without the right authorization of the owner and does not disturb, alter, misuse, or damage data or system by using wireless internet connection.

Cyber Crimes against Government

There are certain offences done by group of persons intending to threaten the international governments by using internet facilities. It includes:

Terrorism	Cyber terrorism is a major burning issue in the domestic as well as global concern. The common form of these terrorist attacks on the Internet is by distributed denial of service attacks, hate websites and hate e-mails, attacks on sensitive computer networks etc. Cyber terrorism activities endanger the sovereignty and integrity of the nation.
Warfare	It refers to politically motivated hacking to damage and spying. It is a form of information warfare sometimes seen as analogous to conventional warfare although this analogy is controversial for both its accuracy and its political motivation.
Piracy	It means distributing pirated software from one computer to another intending to destroy the data and official records of the government.
Unauthorized Information	It is very easy to access any information by the terrorists with the aid of internet and to possess that information for political, religious, social, ideological objectives.

Cyber Laws to protect cyber crime

To combat the crimes related to internet The Information Technology Act, 2000 was enacted with prime objective to create an enabling environment for commercial use of I.T. The IT Act specifies the acts which have been made punishable. The Indian Penal Code, 1860 has also been amended to take into its purview cyber crimes.

Cyber Crimes under the IT Act:

- i) Tampering with Computer source documents - Sec.65
- ii) Hacking with Computer systems, Data alteration - Sec.66
- iii) Publishing obscene information - Sec.67
- iv) Un-authorised access to protected system Sec.70
- v) Breach of Confidentiality and Privacy - Sec.72
- vi) Publishing false digital signature certificates - Sec.73

Cyber Crimes under IPC:

- i) Sending threatening messages by email - Sec 503 IPC
- ii) Sending defamatory messages by email - Sec 499 IPC
- iii) Forgery of electronic records - Sec 463 IPC
- iv) Bogus websites, cyber frauds - Sec 420 IPC
- v) Email spoofing - Sec 463 IPC
- vi) Web-Jacking - Sec. 383 IPC
- vii) E-Mail Abuse - Sec.500 IPC

Cyber Crimes under Special Acts:

- i) Online sale of Drugs under Narcotic Drugs and Psychotropic Substances Act
- ii) Online sale of Arms Act

State True or False

1. Tampering with source documents which will entered in a system is not a cyber offence.
2. Controller of Certifying authority is empowered to issue digital signature certificates.
3. In case of any dispute under the Act, the aggrieved party can to go to Cyber Appellate Tribunal as appeal
4. Access to someone's computer system without authority is called trespass, which is an offence.
5. Business Intelligence process facilitates analytical querying of the prepared data.

Solution to True or False

1	F	2	F	3	T	4	T	5	T
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Fill in the blanks

1. CCA stands for
2. If someone is aggrieved with the decision of adjudicating authority, he can appeal to.....
3. Set of rules which aims to preserve privacy of information is called.....

4. Business Intelligence modules distributes KPIs. KPI stands for
5. OLAP stands for
6. The act of imputing any person to lower down the dignity of the person by hacking his mail account and sending some mails with using vulgar language to unknown persons is called
7. Business intelligence tools which put BI and data visualization functionality directly into business applications is called as
8. Digital certificates re issued by
9. The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules were notified in
10. The right to privacy in India was declared a fundamental right by the Hon'ble Supreme Court of India in the year

Solution to Fill in the blanks

1. Controller of Certifying authority
2. Cyber Appellate Tribunal
3. Data protection
4. Key performance indicators
5. Online analytical processing
6. Defamation
7. Embedded BI
8. Certifying Authority
9. 2011
10. 2017

Specific Legal Provisions related to MSME Sector

Section Numbers in this chapter have been given for better understanding and presentation only and are not required to be learnt for examination purpose.

Introduction to MSME

What is MSME?	Any enterprise which meets the criteria given under MSMED Act .	
Contribution of MSME	Highly dynamic sector providing large employment thereby, reducing regional imbalances, assuring more equitable distribution	
	With 3.6 cr. units, 8 cr. employees, MSME sector is the Second largest employer in India, after agriculture. It contributes to 45% of industrial production, 40% of exports, and constitutes of 37% of GDP and 31% services.	
	Most of our textile and handicraft sector is run by artisans, small traders, daily wage earners. They form the basics of rural industrialisation. Khadi and Village Industries (KVI) are two national heritages of India.	
Responsibility for development of MSME	The primary responsibility of the promotion and development of MSMEs is of the State Governments. However, the Central Government supplements the efforts of State Governments through various initiatives.	
Ministry governing MSME	The Ministry of Micro, Small and Medium Enterprises, a branch of the Government of India, is the highest executive body for the formulation of policies and administration of rules, regulations and laws relating to micro, small and medium enterprises in India.	
	Evolution of Ministry	<ul style="list-style-type: none"> ✓ The Ministry of Small Scale Industries and Agro and Rural Industries was created in October 1999 ✓ In September 2001, the ministry was split into the Ministry of Small Scale Industries and the Ministry of Agro and Rural Industries ✓ In May 2000 they were merged into a single ministry
	Role of Ministry	The role of the Ministry of MSME and its organizations is to assist the States in their efforts to encourage entrepreneurship, employment, and livelihood opportunities and enhance the competitiveness of MSMEs in the changed economic scenario. Thus Ministry designs policies and promotes/ facilitates programmes, projects and schemes and monitors their implementation with a view to assisting MSMEs and help them to scale up.

Introduction to Micro, Small and Medium Enterprises Development Act, 2006

This Act was notified in 2006 to address policy issues affecting MSMEs as well as the coverage and investment ceiling of the sector. It provides for facilitating the promotion and development

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Specific Legal Provisions Related to MSME Sector**2.2**

and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

Definition of MSME

Revised Classification applicable w.e.f 1st July 2020

Composite Criteria: Investment in Plant & Machinery/equipment and Annual Turnover

Classification [Section 7]	Micro	Small	Medium
Manufacturing Enterprises and Enterprises rendering Services	Investment in Plant and Machinery or Equipment: Not more than Rs. 1 crore and Annual Turnover; not more than Rs. 5 crores	Investment in Plant and Machinery or Equipment: Not more than Rs. 10 crores and Annual Turnover; not more than Rs. 50 crores	Investment in Plant and Machinery or Equipment: Not more than Rs. 50 crores and Annual Turnover; not more than Rs. 250 crores

Notes: Calculation of investment in plant and machinery or equipment will be linked to ITR of the previous year, otherwise through self-declaration. Here asset of tangible nature shall be a part of plant and machinery, other than land and furniture and fittings.

While calculation of turnover, exports shall be excluded and information shall be linked to Income Tax and GST returns.

In course of doing business, if a MSME unit goes to next category or is out of preview, it shall continue to avail non-tax benefit which it was originally entitled to for the next 3 years of coming to the next category (notification by MSME Dept.-1/11/2013)

Other Important Definitions

Advisory Committee [Sec 2(a)]	means the committee constituted by the Central Government under section 7
Appointed day [Sec 2(b)]	<p>means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.</p> <p>Explanation: “the day of acceptance” means,- (i) the day of the actual delivery of goods or the rendering of services; or (ii) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;</p> <p>“the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within 15 days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;</p>
Board [Sec 2(c)]	means the National Board for Micro, Small and Medium Enterprises established under section 3
Buyer [Sec 2(d)]	means whoever buys any goods or receives any services from a supplier for consideration
Enterprise [Sec 2(e)]	means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or

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	production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services	
Supplier [Sec 2(n)]	means a micro or small enterprise, which has filed a memorandum with the authority referred to in section 8	

Rights available to MSME, Measures for Promotion of MSME under MSMED Act, 2006

Section 9

Section 9 of the Act empowers to CG issue notification, guideline, formulate schemes for promotion and development of MSME units with regard to following issues:

- Enhancing Competitiveness
- Development of employee skill
- Management issues
- Technical upgradation
- Marketing assistance
- Infrastructure facility
- Cluster development
- Strengthening backward and forward linkage

Section 10 further ensures that smooth credit facility shall be available to MSMEs.

Establishment of Board

Section 3

The Central Government has established, a Board known as the National Board for Micro, Small and Medium Enterprises with head office at Delhi.

Composition	<ul style="list-style-type: none"> ✓ the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be the ex-officio Chairperson of the Board; ✓ the Minister of State or a Deputy Minister, if any, in the Ministry having administrative control of the micro, small and medium enterprises who shall be ex officio Vice-Chairperson of the Board; ✓ six Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, micro, small and medium enterprises, to be appointed by the Central Government to represent such regions of the country as may be notified by the Central Government in this behalf, ex officio; ✓ three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States; ✓ the Administrator of a Union territory to be appointed by the Central Government, ex officio; ✓ the Secretary to the Government of India in charge of the Ministry or Department of The Central Government having administrative control of the micro, small and medium enterprises, ex officio; ✓ four Secretaries to the Government of India, to represent the Ministries of the Central Government dealing with commerce and industry, finance, food processing industries, labour and planning to be appointed by the Central Government, ex officio; ✓ the Chairman of the Board of Directors of the National Bank, ex-officio; ✓ the Chairman and managing director of the Board of Directors of the Small Industries Bank, ex-officio;
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	<ul style="list-style-type: none"> ✓ the Chairman, Indian Banks Association, ex officio; ✓ one officer of the Reserve Bank, not below the rank of an Executive Director, to be appointed by the Central Government to represent the Reserve Bank; ✓ twenty persons to represent the associations of micro, small and medium enterprises, including not less than 3 persons representing associations of women's enterprises and not less than three persons representing associations of micro enterprises, to be appointed by the Central Government; ✓ three persons of eminence, one each from the fields of economics, industry and science and technology, not less than one of whom shall be a woman, to be appointed by the Central Government; ✓ two representatives of Central Trade Union Organisations, to be appointed by the Central Government; and ✓ one officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises to be appointed by the Central Government, who shall be the Member-Secretary of the Board, ex officio. 	
Term of Office	<p>The term of office of the members of the Board, other than ex officio members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of their functions by the members of the Board, shall be such as may be prescribed</p> <div style="border: 1px solid black; padding: 5px;"> <p>Provided that the term of office of an ex officio member of the Board shall continue so long as he holds the office by virtue of which he is such a member.</p> </div>	
Meeting of Board	The Board shall meet at least once in every three months in a year.	
Assistance	The Board may associate with itself, any person or persons whose assistance or advice.	

Functions of the Board

Section 5

The Board shall, subject to the general directions of the Central Government, perform all or any of the following functions, namely:--	
Examine Factors	examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises and the impact thereof on such enterprises
Make recommendation	make recommendations on matters referred above or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises
Advise CG	advise the Central Government on the use of the Fund

Memorandum of Micro, Small and Medium Enterprise

Section 8

Filing of Memorandum with Authority	Any person who intends to establish,-- ✓ a micro or small enterprise, may, at his discretion; or ✓ a medium enterprise engaged in providing or rendering of services may, at his discretion; or ✓ a medium enterprise engaged in the manufacture or production of goods pertaining to any industry shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government.
Process	✓ The new entrepreneurs that wish to register themselves need to check the eligibility criteria first and then apply on the 'UDYAM registration portal' or on the Governments's 'Single Window Systems' to register their MSME. ✓ The champions control room under the ministry and development institute/ DICs shall facilitate single point registration. ✓ Registration Process is totally free.
Establishment before commencement of Act	any person who, before the commencement of this Act, established-- ✓ a small scale industry and obtained a registration certificate, may, at his discretion; and ✓ an industry engaged in the manufacture or production of goods pertaining to any industry having investment in plant and machinery of more than Rs. 1 crore but not exceeding Rs. 10 crore filed an Industrial Entrepreneur's Memorandum, shall within 180 days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.

Advisory Committee

Section 7

The Central Government shall, by notification, constitute an Advisory Committee	
Composition	✓ the Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises who shall be the Chairperson, ex-officio; ✓ not more than five officers of the Central Government possessing necessary expertise in matters relating to micro, small and medium enterprises, members, ex-officio; ✓ not more than three representatives of the State Governments, members, ex officio; and ✓ one representative each of the associations of micro, small and medium enterprises, members, ex officio. ✓ The Member-Secretary of the Board shall also be the ex officio Member-Secretary of the Advisory Committee.
Functions	✓ The Central Government shall, prior to classifying any class or classes of enterprises obtain the recommendations of the Advisory Committee. ✓ The Advisory Committee shall examine the matters referred to it by the Board in connection with any subject referred to in section 5 and furnish its recommendations to the Board.

Establishment of Fund

The CG has under the powers used in section 12 have established a fund called MSME Fund to be utilised exclusively for means specified in Act. to micro and small enterprises	
Constitution of fund	There shall be constituted, by notification, one or more Funds to be called by such name as may be specified in the notification and there shall be credited thereto any grants made by the Central Government under section
Credit	The Central Government may, credit to the Fund or Funds by way of grants for the purposes of this Act, such sums of money as that Government may consider necessary to provide.
Administration	The Central Government shall administer Funds in such manner as may be prescribed
Utilisation	The Fund or Funds shall be utilised exclusively for the MSME sector. The Central Government shall be responsible for the coordination and ensuring timely utilisation and release of sums in accordance with such criteria as may be prescribed.

Guidelines for delayed Payments to Micro and Small Enterprises

Liability of Buyer to make Payment (Sec 15)	The buyer is to make payment on or before the date agreed on between him and the supplier in writing or, in case of no agreement, before the appointed day.
	The agreement between seller and buyer shall not exceed more than 45 days.
Date and Rate of Interest (Sec 16)	If the buyer fails to make payment of the amount to the supplier, he shall be liable to pay compound interest with monthly rests to the supplier on the amount from the appointed day or, on the date agreed on, at three times of the Bank Rate notified by Reserve Bank.
Disallowance	Interest not to be allowed as deduction from income.
Information to be included in Accounts (Sec 22)	Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:- <ul style="list-style-type: none"> ✓ the principal amount and ✓ the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year
Delay in Payment	<ul style="list-style-type: none"> ✓ The MSME – Samadhan (Delayed Payment Monitoring System) is a portal created by the Office of DC (MSME), Ministry of Micro, Small and Medium Enterprises (MSME) where Micro and Small Enterprises (MSEs) can file their applications online regarding delayed payments. ✓ The portal also has a dashboard giving information about the pending amount of MSEs with individual CPSEs/ Central Ministries, State Governments, etc. ✓ The CEO of PSEs and the Secretary of the concerned Ministries will be able to monitor the cases of delayed payment and issue necessary instructions to resolve such issues. ✓ The Ministry of MSME has taken the initiative for filing online applications by the supplier MSME unit against the buyer of goods/services before the concerned MSEFC of his/her State/UT. ✓ These will be viewed by the MSEFC Council for their actions. ✓ These will also be visible to Concerned Central Ministries, Departments, CPSEs, State Government, etc for pro-active actions . ✓ This scheme and the portal are helpful for MSMEs to register an online
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Specific Legal Provisions Related to MSME Sector		2.7
	<p>complaint if payment is not received from the buyer or supplier.</p> <ul style="list-style-type: none"> ✓ All companies who get supplies of goods or services and the payment is due for 45 days or more from the date of acceptance of goods/services shall submit a half-yearly to MCA 	

Reference to Micro and Small Enterprises Facilitation Council

Establishment Council (Sec 20)	The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction.
Composition (Sec 21)	<p>It shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:-</p> <ul style="list-style-type: none"> ✓ Director of Industries, or any other officer not below the rank of such Director. ✓ One or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and ✓ One or more representatives of banks and financial institutions lending to micro or small enterprises; or ✓ one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.
Reference to Council (Section 18)	
Reference in case of dispute	Any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.
Conduct conciliation	On receipt of a reference the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation
Arbitration in case dispute not settled	Where the conciliation initiated as above is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration.
Jurisdiction	The Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.
Time limit	Every reference made under this section shall be decided within a period of 90 days from the date of making such a reference.

Role of National Small Industries Corporation Limited (NSIC)

Establishment	NSIC, established in 1955,
Functions	Main function of the Corporation is to promote, aid and foster the growth of micro and small enterprises in the country, generally on commercial basis. It provides a variety of support services to micro and small enterprises in different areas like raw material procurement; product marketing; credit rating; acquisition of technologies; adoption of modern management practices, etc.
Offices	NSIC implements its various programmes and projects throughout the country through its <ul style="list-style-type: none"> ✓ 9 Zonal Offices,
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Specific Legal Provisions Related to MSME Sector		2.8
	<ul style="list-style-type: none"> ✓ 39 Branch Offices, ✓ 12 Sub Offices, ✓ 5 Technical Services Centres, ✓ 3 Technical Services Extension Centres, ✓ 2 Software Technology Parks, ✓ 23 NSIC-Business Development Extension Offices and ✓ 1 Foreign Office. 	

Designated Officers in Central/State Governments

- ✓ The Central Government or the State Government may appoint such officers with such designations and such other employees as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.
- ✓ The Central Government may, by notification, make rules to carry out the provisions of this Act.
- ✓ The State Government may, by notification, make rules to carry out the provisions of this Act.

Various Schemes for benefit of MSMEs

Objectives	<p>The schemes/ programmes undertaken by the Ministry and its organizations seek to facilitate/provide:</p> <ul style="list-style-type: none"> i) flow of credit from financial institutions/banks; ii) technology upgradation and modernization; iii) infrastructural facilities; iv) modern testing facilities and quality certification; v) access to modern management practices; vi) entrepreneurship development and skill upgradation ; vii) support for product development, design intervention and packaging; viii) welfare of artisans and workers; ix) assistance for better access to domestic and export markets etc.
Benefits	<ul style="list-style-type: none"> i) The Government schemes provide a sense of security to the entrepreneurs ii) Some schemes provide financial security to businesses and individuals iii) Certain schemes provide technological support and guidance to individuals iv) Overall, Government schemes help individuals and entrepreneurs improve their livelihood
Lack of awareness	MSME business owners are not aware of these schemes and thus lose out on benefiting from them.
Schemes/Benefits Available	
Revival and Rehabilitation of MSME	Banks which have extended loan to MSME may revive the re-payment schedule of loan based on certain criteria. Banks shall form Committee which will look into each such MSME and suggest corrective action. The Restructuring shall be monitoring by the debt restructuring cell of the particular bank (notified on 27/5/2015 by MSME Dept.)
Procurement Preference	Central Govt./State Govt. shall issue preference policy notification for preference to be given to MSME in public procurement. Detailed notification

Specific Legal Provisions Related to MSME Sector		2.9	
Policy (Sec 11)	was issued on 23/3/2012 by MSME Dept. The notification details the extent and method of processing from MSME units. The policy provides for reservation of certain items to be from MSME only, price preference, preference to women entrepreneurs, on programmes to MSMEs, special renter development etc.		
Digital MSME	<p>This scheme for MSME that was launched for promoting Information and Communication Technology (ICT) in the MSME Sector by adopting ICT tools and applications in the production and business process of MSMEs. The services that will be available for MSMEs through various service providers include-</p> <ul style="list-style-type: none">• ERP• Accounting• Manufacturing Design• Regulatory compliance including GST <p>The Digital MSME Scheme is aimed at creating awareness, supporting developments and e-platforms, thereby creating literacy, training and promoting digital marketing in MSME sectors.</p>		
ECLGS or the Emergency Credit Line Guarantee Scheme	<p>Launched by the Government of India as a special scheme, considering the COVID-19 crisis. The Scheme aims to provide 100% guarantee coverage to banks and NBFCs to enable them to extend emergency credit facilities to business enterprises / MSMEs in view of COVID-19 to meet their additional term loan or additional working capital requirements.</p> <p>Recently, the Government extended the ECLGS to 31st March 2022 with the purpose to provide relief to MSMEs.</p> <p>100% guarantee coverage for the additional funds sanctioned under the Emergency Credit Line Scheme. The interest rate charged is capped at 9.25% for banks and 14% for NBFCs. A maximum tenure of 4 years from the date of disbursement is stipulated under the Scheme. The moratorium period on the principal amount is 12 months.</p>		
Secured Business Loan for MSME – SIDBI	<p>This was developed to provide faster dispensation of credit to MSMEs, especially those in the manufacturing segment and service sector. The maximum quantum of open term loan under the SBL Scheme will be up to Rs.10 crore for the eligible MSME units. With maximum repayment tenure is 10 years, which includes the moratorium period. The Scheme also provides foreign currency assistance for the creation of tangible assets subject to natural hedges and other terms and conditions.</p> <table><tr><td>SIDBI- Small Industries Development Bank of India</td></tr></table>		SIDBI- Small Industries Development Bank of India
SIDBI- Small Industries Development Bank of India			
PMEGP	<p>The Prime Minister Employment Generation Programme is a credit-linked subsidy scheme introduced by the Government of India. The aim of introducing the Scheme is to promote the generation of employment opportunities through the establishment of micro-enterprises in rural as well as urban areas.</p>		
Reservation Policies for the Manufacturing and Production Sector	<p>According to the Industries (Development and Regulation) Act, 1951, the items manufactured in the SSI (Small scale industry) sector have been given statutory reservation in government procurement. The Policy has two objectives</p> <ul style="list-style-type: none">i) To assure production of consumer goods is increased in the small scale sector.ii) To enhance employment opportunities through setting up small-scale industries in remote areas.iii) Easy licensing and approvals. <p>Those enterprises which produce the Certificate of MSME Registration while making applications for licenses, approvals, and registrations on any field</p>		
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Specific Legal Provisions Related to MSME Sector		2.10
	for their business from the respective authorities then, they are given priority and the process has been more simplified for them.	
Special Consideration on International Trade Fairs	Under the International Cooperation Scheme, to provide financial assistance by reimbursement to the State/Central Government organizations, industries/enterprises Associations and registered societies/trusts and organizations associated with MSME for commissioning of MSME business delegations to other countries.	
Training	The National Institute for Entrepreneurship and Small Business Development is the premier organization of the Ministry of Skill Development and Entrepreneurship, engaged in training, consultancy, research, etc. in order to promote entrepreneurship and Skill Development. The major activities of the Institute include Training of Trainers, Management Development Programmes, Entrepreneurship-cum-Skill Development Programmes, Entrepreneurship Development Programmes and Cluster Intervention.	
Recent Announcements	<ul style="list-style-type: none"> ✓ Three lakh crore Emergency Working Capital Facility for Businesses, including MSMEs: ✓ With an objective to provide relief to the business, additional working capital finance of 20% of the outstanding credit (as on February 29, 2020), in the form of a Term Loan at a concessional rate of interest. ✓ Rs. 20,000 crores Subordinate Debt for Stressed MSMEs: Provision made for Rs. 20,000 crores subordinated debt for 2,00,000 MSMEs which are NPA or are stressed. The government will support them with Rs. 4,000 crores to Credit Guarantee Trust for Micro and Small Enterprises (CGTMSE). ✓ Banks are expected to provide the subordinate-debt to promoters of such MSMEs equal to 15% of his existing stake in the unit subject to a maximum of Rs. 75 lakhs; Rs. 50,000 crores equity infusion through MSME Fund of Funds (FoF): Govt will set up an FoF with a corpus of Rs. 10,000 crores that will provide equity funding support for MSMEs. 	

State True or False

1. The apex policymaking body for MSME is Ministry of Industry and Commerce.
2. The basis of categorization of MSME is investment in plant and machinery and turnover.
3. An entrepreneur shall require a license from The Central Govt. to start an MSME.
4. Delayed payments to MSME unit by any company is supposed to be reported in the annual report of the companies.
5. Banks are expected to provide subordinate loans to MSME 15% more than the existing loan limits.

Solution to True or False

1	F	2	T	3	F	4	T	5	T
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Fill in the blanks

1. The threshold limit of micro enterprise isof plant and machinery.
2. If payment to any MSME unit is delayed bydays, the buyer has to pay interest.
3. NSIC stands for.....
4. Govt. has recently earmarkedfor subordinate debt for stressed MSMEs.
5. SIDBI stands for.....

6. Under the new policy of the Govt., banks are expected to provide the subordinate-debt to promoters of such MSMEs equal to% of his existing stake in the unit.
7. PMEGP scheme relates to.....
8. The ECLGS stands for
9. Under the Secured Business Loan Scheme the maximum quantum of open term loan will be up to Rs.

Solution to Fill in the blanks

1. Rs. 1 crore
2. 45
3. National Small Industries Corporation
4. Rs. 20,000 crores
5. Small Industries Development bank.
6. 15
7. Employment
8. Emergency Credit Line Guarantee Scheme
9. Rs. 10 crore

Competition Act, 2002

Meaning of Competition

- ✓ Competition can be defined as a process of economic rivalry between market players to attract customers.
- ✓ In pursuit to outdo rival enterprises market players either adopt fair means or indulge in unfair measures.
- ✓ However, in the interest of consumers and the economy as a whole it is necessary to promote an environment that facilitates fair competitive outcomes in the market, curb anti-competitive behaviour and discourage market players from adopting unfair means.

Benefit and Need of Competition

- ✓ Competition is now universally acknowledged as the best means of ensuring that consumers have access to the broadest range of services at the most competitive prices.
- ✓ Competition is beneficial as it provides to consumers wider choice and provides sellers with stronger incentives to minimize costs, so eliminating waste.
- ✓ Competition thus promotes allocative and productive efficiency.
- ✓ But all this requires healthy market conditions and governments across the globe are increasingly trying to remove market imperfections through appropriate regulations to promote competition.

What Constitutes Competition Law and Policy?

Competition law and policy is defined as those Government measures that affect the behaviour of enterprises and structure of the industry with a view to promote efficiency and maximize welfare.

The two elements of such Government measures are:

- ✓ Competition Policy: Set of policies, such as liberalized trade policy, relaxed FDI policy, de-regulation, etc., that enhances competition in the markets.
- ✓ Competition Law: To prevent anti-competitive practices with minimal intervention such as Competition Act. Other legislations dealing with competition include Consumer Protection Act, 2019, the Patents Act 1970 etc.

Background to the MRTP Act and Its scheme-

The Monopolistic and Restrictive Trade Practices Act, 1969, was enacted-

- ✓ To ensure that the operation of the economic system does not result in the concentration of economic power in hands of few,
- ✓ To provide for the control of monopolies, and
- ✓ To prohibit monopolistic and restrictive trade practices.

The Monopolies and Restrictive Trade Practices Act, 1969 was not only found to be inadequate but also obsolete in certain respects, particularly, in the light of international economic developments relating to competition law.

MRTTP Act repealed and is replaced by the Competition Act, 2002 w.e.f. sept. 1, 2009.

Though MRTTP Act underwent amendments in 1974, 1980, 1982, 1984, 1986 and 1991 still the provisions of MRTTP Act were rigid and turned obsolete in the dynamic environment and a shift was necessary.

Restrictive Trade Practice

A restrictive trade practice is a trade practice which prevents, distorts or restricts competition in any manner or obstructs the flow of capital or resources into the stream of production or which tends to bring about manipulation of prices or conditions of delivery or effected the flow of supplies in the market of any goods or services, imposing on the consumers unjustified cost or restrictions.

Monopolistic Trade Practice

The word monopoly has not been defined in the MRTTP Act. A single undertaking is the only supplier or atleast has to its credit a very large portion of the market as compared to its competitors. Such an undertaking has the power to dictate the price of the commodity or services it supplies and to regulate its volume of production in such a manner as to maximize its profits. This power is generally understood by the words 'monopoly power'

Unfair Trade Practice

An unfair trade practice means a trade practice, which, for the purpose of promoting any sale, use or supply of any goods or services, adopts unfair method, or unfair or deceptive practice. Eg.-Creating impression that something is being offered free alongwith the goods, when in fact the price is wholly or partly covered by the price of the article sold or Falsely suggesting that the services are of a particular standard, quantity or grade.

Sachar Committee

- ✓ The Government of India appointed a Committee in August, 1977 under the Chairmanship of Justice Rajinder Sachar to look into the simplification of the working of the companies and the MRTTP Act.
- ✓ An obligation is to be cast on the seller to speak the truth when he advertises and also to avoid half truths, the purpose being preventing false or misleading advertisements.
- ✓ The Committee also noted that fictitious bargain was another common form of deception
- ✓ The Committee observed: Prices may be advertised as greatly reduced and cut when in reality the goods may be sold at sellers regular prices.
- ✓ Committee specified certain unfair trade practices which were notorious and suggested prohibition of such practices.
- ✓ Eg. misleading advertisements and false representations (b) bargain sale, bait and switch selling; (c) offering gifts or prizes with the intention of not providing them and conducting promotional contests; (d) supplying goods not conforming to safety standards; and (e) hoarding and destruction of goods.

Raghavan Committee

The then Finance Minister (Shri.Yashwant Sinha) in the budget speech in 1999 had announced: "The Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. Government has decided to appoint a Committee to examine this range of issues and propose a modern Competition Law suitable for our conditions."

Accordingly, a High Level Committee on Competition Policy and Law was constituted under Chairmanship of Mr. S.V.S Raghavan.

The Committee in its report recommended replacement of the MRTP Act with a modern competition law.

Scheme of Competition Act

Chapter I	Preliminary provisions
Chapter II	Substantive laws i.e. Anti Competitive Agreements, Abuse of Dominance and Regulation of Combinations
Chapter III	Establishment of Commission, Composition of Commission, Selection of Committee for Chairperson and other Members, Term of Office of Chairperson etc.
Chapter IV	Duties, Powers and Functions of the Commission
Chapter V	Duties of Director General
Chapter VI	Penalties for Contravention of Orders of Commission, Failure to Comply with Directions of Commission and Director-General, Making False Statement or Omission to Furnish Material Information etc
Chapter VII	Competition Advocacy
Chapter VIII	Finance, Accounts and Audit
Chapter VIII A	"Appellate Tribunal"
Chapter IX	Miscellaneous provisions

Object of Competition Act

An Act enacted to

- ✓ Prevent practices having adverse effect on competition
- ✓ to promote and sustain competition in markets
- ✓ to protect the interest of consumers and
- ✓ to ensure freedom to trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

Short title, extent and commencement.

- ✓ This Act may be called the Competition Act, 2002.
- ✓ It extends to the whole of India.
- ✓ It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions**Section 2****“Acquisition”**

It means, directly or indirectly, acquiring or agreeing to acquire-

- ✓ Shares, voting rights or assets of any enterprise, or
- ✓ Control over management or control over assets of any enterprise:

“Agreement”

It includes any arrangement or understanding or action in concert,-

- ✓ Whether or not, such arrangement, understanding or action is formal or in writing” or
- ✓ Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

Agreements may be horizontal and vertical agreements.

- ✓ Horizontal agreements are arrangements between enterprises at the same stage of production.
- ✓ Vertical agreements are those agreements which are entered into between two or more enterprises operating at different levels of production. Eg. between suppliers and dealers

“Cartel”

It Includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of or trade in goods or provision of services

Eg. An association formed to control the production of oranges is within the definition of Cartel.

“Chairperson”

It means the Chairperson of the Commission appointed under the act.

“Commission”

It means the Competition Commission of India established under the act.

“Consumer”

It means any person who-

- ✓ buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and
 - includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or under any system of deferred payment when such use is made with the approval of such person,
 - whether such purchase of goods is for resale or for any commercial purpose or for personal use;
- ✓ Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and
 - includes any beneficiary of such services other than the person who hires or avails

of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment,

- when such services are availed of with the approval of the first mentioned person
- whether such hiring or availing of services is for any commercial purpose or for personal use;

“Director General”

It means the Director General appointed under sub-section (1) of section 16 and includes any Additional, joint, Deputy or Assistant Director General appointed under that section;

“Enterprise”

It means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the department of the Central Government dealing with atomic energy, currency, defence and space.

Explanation. – For the purposes of this clause,

- ✓ “activity” includes profession or occupation;
- ✓ “article” includes a new article and “service” includes a new service;
- ✓ “unit” or “division”, in relation to an enterprise, includes
- ✓ A plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
- ✓ Any branch or office established for the provision of any service;

“Goods”

It means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes –

- ✓ Products manufactured, processed or mined;
- ✓ Debentures, stocks and shares after allotment;
- ✓ In relation to goods supplied, distributed or controlled in India, goods imported into India;

“Member”

It means a Member of the Commission appointed under sub-section (1) of section 9 and includes the Chairperson;

“Notification”

It means a notification published in the Official Gazette;

“Person”

It Includes

- ✓ an individual;
- ✓ a Hindu undivided family;
- ✓ a company;
- ✓ a firm;
- ✓ an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

Relevant Market [Section 2(r)]

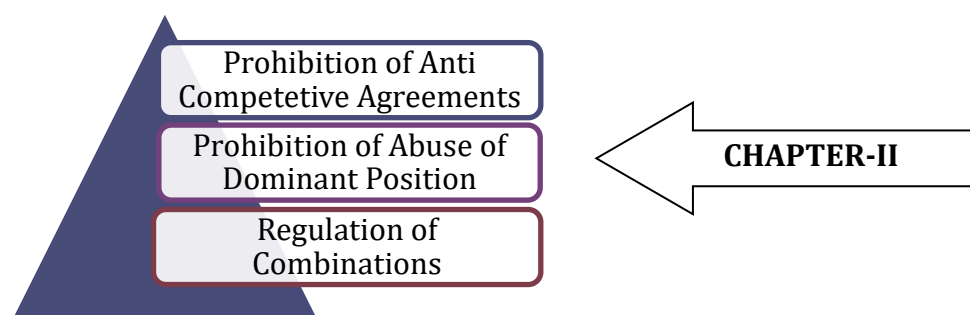
It means the market which may be determined by the commission with reference to the relevant product market or relevant geographic market of both.

Relevant Geographic Market [Section 2(s)]

It means a market comprising the area in which the conditions of competition for supply of goods or provision of services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas

Relevant Product Market [Section 2(t)]

It means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer by reason of characteristics of the products or services, their prices and intended use.



Anti-competitive agreements

Section 3

- ✓ No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.
- ✓ Any agreement entered into in contravention of the provisions contained above shall be void.
- ✓ the whole agreement is construed as void if it contains anti-competitive clauses having appreciable adverse effect on competition.

An anti-competitive agreement is an agreement having appreciable adverse effect on competition. Anti-competitive agreements include, but are not limited to:-

- ✓ agreement to limit production and/or supply

- ✓ agreement to allocate markets
- ✓ agreement to fix price
- ✓ bid rigging or collusive bidding
- ✓ conditional purchase/ sale (tie-in arrangement)
- ✓ exclusive supply / distribution arrangement
- ✓ resale price maintenance; and
- ✓ refusal to deal.



Thus, Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including Tie-in arrangement, Exclusive supply agreement, Exclusive distribution agreement, Refusal to deal, Resale price maintenance, shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

- ✓ “tie-in arrangements” includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- ✓ “exclusive supply agreement” includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
- ✓ “resale price maintenance” includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the price stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;
- ✓ Refusal to deal – includes any agreement which restricts or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought.

Factors to Determine Whether Anti-Competitive or Not?

- ✓ Barriers to New entrants
- ✓ Driving out existing competitors
- ✓ Foreclosure of competition by hindering entry into market
- ✓ Benefit to consumers
- ✓ Improvement in Production
- ✓ Promotion of Scientific technical and economic development.

Presumed/Perse anticompetitive

Section 3(3)

Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-

- ✓ Directly or indirectly determines purchase or sale prices;
- ✓ limits or controls production, supply, markets, technical development, investment or provision of services;

- ✓ shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way
- ✓ Directly or indirectly results in bid rigging or collusive bidding.

shall be presumed to have an appreciable adverse effect on the competition and onus to prove otherwise lies on the defendant.

Meaning of Bid Rigging– Manipulating the Process of Bidding.

- ✓ Agreement between persons engaged in similar goods which has effect of eliminating or reducing competition for bids.
- ✓ Bid rigging shall be presumed to have an appreciable adverse effect on competition.

Some of the most commonly adopted ways in which collusive bidding or bid rigging may occur are:

- ✓ agreements to submit identical bids
- ✓ agreements as to who shall submit the lowest bid, agreements for the submission of cover bids (voluntarily inflated bids)
- ✓ agreements not to bid against each other,
- ✓ agreements on common norms to calculate prices or terms of bids
- ✓ agreements to squeeze out outside bidders
- ✓ agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis

No Restriction for Protecting Rights

Section 3 does not restrict the right of any person to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under –

- ✓ the Copyright Act, 1957;
- ✓ the Patents Act, 1970;
- ✓ the Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999;
- ✓ the Geographical Indications of Goods (Registration and Protection) Act, 1999;
- ✓ the Designs Act, 2000;
- ✓ the Semi-conductor Integrated Circuits Layout-Design Act, 2000.

Case Laws:

Tie in Arrangement

[Chanakaya and Siddharth Gas company, In-re RTP 11/1985 decided by (MRTP Commission on 27.1.1985

Where a gas distributor requires a consumer to buy a gas stove as a pre condition to obtain connection of domestic cooking gas.

Exclusive Supply Agreement

Bhartia Curtec Hammer Ltd. In-re (1997) 24 CLA

Where a manufacturer asks a dealer not to deal in similar products of its competitor directly or indirectly and discontinues the supply on the ground that dealer also deals in product of suppliers' competitor's goods is an illustration of exclusive dealing agreement.

Exclusive Distribution Agreement

Vadilal Enterprise Ltd. In-re (1998 (91) COMP CAS

Requiring a distributor not to sell the goods of the manufacturer beyond the prescribed territory is a good example of exclusive distribution agreement.

Refusal to deal**DGIR v. Titan industries**

An agreement which provides that the franchisees will not deal in products or goods of similar nature for a period of three years from the date of determination of agreement within a radius of five kms from showroom amounts to exclusive dealing agreement.

Resale Price Maintenance**Re-India Cement Ltd. RTP Inquiry**

Any stipulation that the cement dealer should not sell below the stipulated price is a 'resale price maintenance' practice and is an anti competitive practice.

Prohibition on Abuse of Dominant Position**Section 4**

Dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to –

- ✓ Operate independently of competitive forces prevailing in the relevant market; or
- ✓ Affect its competitors or consumers or the relevant market in its favour;

What Constitutes Abuse of Dominance?

Abuse includes

- ✓ Directly/Indirectly imposing unfair conditions or discriminatory price,
- ✓ predatory pricing,
- ✓ limiting production/market or technical development,
- ✓ creating barriers to entry applying dissimilar conditions to similar transactions,
- ✓ denying market access, and
- ✓ using dominant position in one market to gain advantages in another market. etc.

Predatory Pricing means the sale of goods or provision of services at a price which is below the cost with a view to reduce competition or eliminate the competitors.

Competition Act does not prohibit dominant position. It prohibits abuse of dominant position.

Factors To Determine Whether Abuse Of Dominant Position Or Not?

- ✓ Market share of the enterprise
- ✓ Size and resources of the enterprise
- ✓ Size and importance of the competitors
- ✓ Dependence of consumers on the enterprise
- ✓ Market structure and size of market

The Competition Commission of India has been empowered under Section 19(4) of the Act to determine whether any enterprise or group enjoys a dominant position or not, in the 'relevant market' and also to decide whether or not there has been an abuse of dominant position.

Combination**Section 5**

The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises. If after acquisition, the joint assets/ turnover increases the following limits, it will be a combination:-

Types of Combinations-

- ✓ Acquisition by acquirer dealing in different goods or services
- ✓ Acquisition by acquirer dealing in similar goods
- ✓ Mergers and amalgamation

The acquisition of one or more enterprises by one or more persons or merger or

- ✓ amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if

a) any acquisition where—

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

- either, in India, the assets of the value of more than rupees two thousand crores or turnover more than rupees six thousand crores; or
- in India or outside India, in aggregate, the assets of the value of more than one thousand million US dollars, including at least rupees one thousand crores in India, or turnover more than three thousand million US dollars, including at least rupees three thousand crores in India; or

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,—

- either in India, the assets of the value of more than rupees eight thousand crores or turnover more than rupees twenty four thousand crores; or
- in India or outside India, in aggregate, the assets of the value of more than four billion US dollars, including at least rupees one thousand crores in India, or turnover more than 12 billion US dollars, including atleast three thousand crores in India; or

b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

- either in India, the assets of the value of more than rupees two thousand crores or turnover more than rupees six thousand crores; or
- in India or outside India, in aggregate, the assets of the value of more than one thousand million US dollars, including at least rupees one thousand crores in India, or turnover more than three thousand million US dollars, including at least rupees three thousand crores in India; or

(ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,

- either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

- in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India or
- c) any merger or amalgamation in which—
- (i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—
- either in India, the assets of the value of more than rupees two thousand crores or turnover more than rupees six thousand crores; or
 - in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or
- (ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—
- either in India, the assets of the value of more than rupees eight thousand crores or turnover more than rupees twenty four thousand crores;
 - or in India or outside India, in aggregate, the assets of the value of more than four billion US dollars, including at least rupees one thousand crores in India, or turnover more than twelve billion US dollars, including at least rupees three thousand crores in India.

Threshold Limit Summary

	Acquisition by Single Acquirer	Acquisition by Group
Assets in India OR Turnover in India	2000 Crore Rs. 6000 Crore	8000 Crore 24000 Crore
Assets in & Out India OR Turnover in & Out India	1 Billion \$ including atleast 1000 Crores in India 3 Billion \$ including Rs. 3000 crores in India	4 Billion \$ including atleast 1000 crores in India \$ 12 Billion including Rs. 3000 crores in India

- ✓ Where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets of the said portion or division or business and or attributable to it, shall be the relevant assets and turnover to be taken into account for the purpose of calculating the thresholds under section 5 of the Act.
- ✓ The value of the said portion or division or business shall be determined by taking the book value of the assets as shown, in the audited books of accounts of the enterprise

Regulation of Combinations

Section 6

No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

Any person or enterprise, who or which proposes to enter into a combination, shall give notice to the commission, in the form as may be specified, and the fee which may be determined, by regulation, disclosing the details of the proposed combination, within 30 days of –

- ✓ Approval of the proposal relating to merger or amalgamation by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;
- ✓ Execution of any agreement or other document for acquisition or acquiring of control.

No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders under section 31, whichever is earlier.

How to Deal with Notice?

The Competition Commission of India (CCI) has been empowered to deal with such notice in accordance with provisions of Sections 29, 30 and 31 of the Act.

- ✓ Section 29 prescribes procedure for investigation of combinations.
- ✓ Section 30 empowers the Commission to determine whether the disclosure made to it under Section 6(2) is correct and whether the combination has, or is likely to have, an appreciable adverse effect on the competition.
- ✓ Section 31 provides that the Commission may allow the combination if it will not have any appreciable adverse effect on competition or pass an order that the combination shall not take effect, if in its opinion, such a combination has or is likely to have an appreciable adverse effect on competition.

Non-Applicability of Section 6

- ✓ The provisions of Section 6 do not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.
- ✓ Under Section 6(5), the public financial institution, foreign institutional investor, bank or venture capital fund, are required to file in prescribed form, details of the control, the circumstances for exercise of such control and the consequences of default arising out of loan agreement or investment agreement, within seven days from the date of such acquisition or entering into such agreement, as the case may be.

- ✓ “foreign institutional investor” has the same meaning as assigned to it in clause (a) of the Explanation to Section 115AD of the Income-tax Act, 1961
- ✓ “venture capital fund” has the same meaning as assigned to it in clause (b) of the Explanation to clause (23 FB) of Section 10 of the Income-tax Act, 1961.

The combinations are only regulated whereas anti-competitive agreements and abuse of dominance are prohibited.

Further, under the MRTP Act prior to 27.9.91, undertakings of certain size were required to be registered and such undertakings were required to seek prior approval of the Central Government before embarking upon expansion plans. In the present Act, there is no requirement of registration of an undertaking and further, there is no need to have prior approval of the Central Government but CCI will only examine as to whether or not combination is or is likely to have an appreciable adverse effect on competition.

Competition Commission of India

Establishment of Commission [Section 7]

- ✓ Section 7 provides for the establishment of the Competition Commission of India. The Commission shall be a body corporate by the aforesaid name having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall sue or be sued.
- ✓ The place of head office of the Commission shall be decided by the Central Government. Further, the Commission may establish offices at other places in India.

Composition of Commission [Section 8]

- ✓ The Commission shall consist of the Chairperson and not less than two and not more than six other Members, to be appointed by the Central Government.
- ✓ The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accounting, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.
- ✓ The Chairperson and other members shall be whole time members.

Selection Committee for Chairperson and Other Members of the Commission [Section 9]

The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of –

- ✓ the Chief Justice of India or his nominee ---- Chairperson;
- ✓ the Secretary in the Ministry of Corporate Affairs ---- Member;
- ✓ the Secretary in the Ministry of Law and Justice ---- Member;
- ✓ two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy.

The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Term of Office of Chairperson and Other Members [Section 10]

- ✓ The Chairperson and every other Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment. However, no Chairperson or other Member shall hold office as such after he has attained the age of sixty-five years.
- ✓ As per sub-section 2, any vacancy caused by the resignation or removal of the Chairperson or any other Member under section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of sections 9.
- ✓ The Chairperson and every other Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed. [sub-section 3]

- ✓ In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office. [Sub-section 4]
- ✓ When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions. [Sub-section 5]

Resignation, Removal and Suspension of Chairperson and Other Members [Section 11]

- ✓ The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office.
- ✓ However, the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

As per Sub-section 2, the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,—

- a) is, or at any time has been, adjudged as an insolvent; or
- b) has engaged at any time, during his term of office, in any paid employment, or
- c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
- e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- f) has become physically or mentally incapable of acting as a Member.

According to Sub-section 3, no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of sub-section 2, unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

Restriction on Employment of Chairperson and Other Members in Certain Cases [Section 12]

- ✓ The Chairperson and other Members shall not for a period of two years from the date on which they cease to hold office, accept any employment in, or be connected with the management or administration of, any enterprise which has been a party to proceeding before the Commission.
- ✓ However, nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

Administrative Powers of Chairperson [Section 13]

The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission. The Chairperson may also delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.

Salary and Allowances and Other Terms and Conditions of Service of Chairperson and Other Members [Section 14]

The salary, and the other terms and conditions of service, of the Chairperson and other Members, including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance (expenses of living) and medical facilities shall be such as may be prescribed and the same shall not be varied to their disadvantage after their appointment.

Vacancy, Etc. Not to Invalidate Proceedings of Commission [Section 15]

Any act or proceeding of the Commission shall not be invalidated merely on the ground of:

- ✓ any vacancy in, or any defect in the constitution of, the Commission; or
- ✓ any defect in the appointment of a person acting as a Chairperson or as a Member; or
- ✓ any irregularity in the procedure of the Commission not affecting the merits of the case.

Appointment of Director General, etc. [Section 16]

- ✓ The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.
- ✓ The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.
- ✓ Every Additional, Joint, Deputy and Assistant Directors General or such officers or other employees, shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.
- ✓ The salary, allowances and other terms and conditions of service of the Director General and Additional, Joint, Deputy and Assistant Directors General or, such officers or other employees, shall be such as may be prescribed.
- ✓ The Director General and Additional, Joint, Deputy and Assistant Directors General or such officers or other employees, shall be appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

Secretary and Officers and Other Employees of Commission [Section 17]

- ✓ The Commission may appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act. The salaries and allowances payable to, and other terms and conditions of service of the Secretary and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.

- ✓ The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.

Duties of Commission [Section 18]

- ✓ Duty of the Commission
- ✓ to eliminate practices having adverse effect on competition,
- ✓ to promote and sustain competition in markets in India,
- ✓ to protect the interests of consumers and
- ✓ to ensure freedom of trade carried on by other participants in markets in India.

The Commission may for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement, with the prior approval of the Central Government, with any agency of any foreign country.

Meetings of Commission [Section 22]

- ✓ The Commission shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations.
- ✓ The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.
- ✓ All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or/casting vote
- ✓ Provided that the quorum for such meeting shall be three Members.

Inquiry into Certain Agreements and Dominant Position of Enterprise

Section 19

The Commission is empowered to inquire into any alleged contravention of the provisions contained in section 3(1) or section 4(1) either on its own motion or on:—

- ✓ receipt of any information in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
- ✓ a reference made to it by the Central Government or a State Government or a statutory authority.

Appreciable Adverse effect: The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition, have due regard to all or any of the following factors, namely:—

- ✓ creation of barriers to new entrants in the market;
- ✓ driving existing competitors out of the market;
- ✓ foreclosure of competition by hindering entry into the market;
- ✓ accrual of benefits to consumers;
- ✓ improvements in production or distribution of goods or provision of services;
- ✓ promotion of technical, scientific and economic development by means of

- ✓ production or distribution of goods or provision of services.

Dominant position of enterprise: The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not, have due regard to all or any of the following factors, namely:—

- ✓ market share of the enterprise;
- ✓ size and resources of the enterprise;
- ✓ size and importance of the competitors;
- ✓ economic power of the enterprise including commercial advantages over competitors;
- ✓ vertical integration of the enterprises or sale or service network of such enterprises;
- ✓ dependence of consumers on the enterprise;
- ✓ monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- ✓ entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers
- ✓ countervailing buying power;
- ✓ market structure and size of market;
- ✓ social obligations and social costs;
- ✓ relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
- ✓ any other factor which the Commission may consider relevant for the inquiry.

Relevant Market: For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market" and "relevant product market".

Relevant Geographic Market: The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:—

- ✓ regulatory trade barriers;
- ✓ local specification requirements;
- ✓ national procurement policies;
- ✓ adequate distribution facilities;
- ✓ transport costs;
- ✓ language;
- ✓ consumer preferences;
- ✓ need for secure or regular supplies or rapid after-sales services.

Relevant Product Market: While determining the "relevant product market", the Commission shall have due regard to all or any of the following factors, namely:—

- ✓ physical characteristics or end-use of goods;
- ✓ price of goods or service;
- ✓ consumer preferences;
- ✓ exclusion of in-house production;
- ✓ existence of specialised producers;
- ✓ classification of industrial products.

Procedure for inquiry under Section 19

Section 26

This section lays down the detailed procedure for any inquiry initiated suo motu by the

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Commission and various complaints and references referred to in section 19 of the Act.

The detailed procedure is as follows:

- ✓ On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter. If the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.
- ✓ Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.
- ✓ The Director General shall, on receipt of direction submit a report on his findings within such period as may be specified by the Commission.
- ✓ The Commission may forward a copy of the report to the parties concerned. In case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report to the Central Government or the State Government or the statutory authority, as the case may be.
- ✓ If the report of the Director General recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.
- ✓ If, after consideration of the objections and suggestions if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.
- ✓ If, after consideration of the objections or suggestions if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.
- ✓ If the report of the Director General recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

Orders by Commission after Inquiry Into Agreements or Abuse Of Dominant Position

Section 27

Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—

- ✓ direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to

- discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- ✓ impose such penalty, as it may deem fit which shall be not more than ten per cent. Of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse. In case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.
 - ✓ direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission
 - ✓ direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any
 - ✓ pass such other order or issue such directions as it may deem fit.

Division of Enterprise Enjoying Dominant Position

The Commission may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise or group does not abuse its dominant position.

The order of the Commission referred to above may provide for all or any of the following matters, namely –

- ✓ the transfer or vesting of property, rights, liabilities or obligations;
- ✓ the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
- ✓ the creation, allotment, surrender or cancellation of any shares, stocks or securities;
- ✓ the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise
- ✓ the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
- ✓ any other matter which may be necessary to give effect to the division of the enterprise or group.

Inquiry into combination by Commission

Section 20

The Commission may,

- ✓ upon its own knowledge or
- ✓ information relating to acquisition referred to in Section 5(a)
- ✓ or acquiring of control referred to in Section 5(b)
- ✓ or merger or amalgamation referred to in Section 5(c),

inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India.

Upon receipt of such notice, the Commission shall examine such notice and form its prima facie opinion as to whether the combination has, or is likely to have, an appreciable adverse effect on the competition in the relevant market in India.

Further, the Commission shall not initiate any inquiry after the expiry of one year from the date on which such combination has taken effect.

The Commission shall, on receipt of a notice under Section 6(2) inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.

For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:

- ✓ actual and potential level of competition through imports in the market.
- ✓ extent of barriers to entry into the market.
- ✓ level of combination in the market.
- ✓ degree of countervailing power in the market.
- ✓ likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins.
- ✓ extent of effective competition likely to sustain in a market.
- ✓ extent to which substitutes are available or are likely to be available in the market.
- ✓ market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination.
- ✓ likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market.
- ✓ nature and extent of vertical integration in the market.
- ✓ possibility of a failing business.
- ✓ nature and extent of innovation.
- ✓ relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition.
- ✓ whether the benefits of the combination outweigh the adverse impact of the combination, if any

Reference by Statutory Authority [Section 21]

It provides that in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission. Also any statutory authority may suo motu make such a reference to the Commission. On receipt of a reference the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.

Reference by Commission [Section 21 A]

- ✓ Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority.
- ✓ The Commission may, suo motu, make such a reference to the statutory authority.

On receipt of a reference the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefore on the issues referred to in the said opinion.

Procedure for investigation of combination**Section 29****Notice to Parties**

Where the Commission is of the prima-facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted. After receipt of the response of the parties to the combination under subSection (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

Directions to Parties to Publish Details

The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, or the receipt of the report from the Director General whichever is later direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination (Sub-Section 2).

Invitation to Affected Party

The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published.

Additional Information

The Commission may, within fifteen working days from the expiry of the period specified before, call for such additional or other information as it may deem fit from the parties to the said combination. The additional or other information called for by the Commission shall be furnished by the parties to the combination within fifteen days from the expiry of the above specified period. After receipt of all information and within a period of forty-five working days from the expiry of the period for additional information, the Commission shall proceed to deal with the case of accordance within the provisions contained in Section 31.

Procedure in case of notice under Section 6(2)**Section 30**

Where any person or enterprise has given a notice under 6(2), the Commission shall examine such notice and form its prima facie opinion and proceed as per provisions contained in Section 29.

Orders of Commission on certain combinations**Section 31**

The Commission can issue orders on certain combinations.

Approval of Combination

Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given of Section 6(2)

Direction

Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

Modification

- ✓ Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination
- ✓ The parties, who accept the modification proposed by the Commission shall carry out such modification within the period specified by the Commission.
- ✓ If the parties to the combination, who have accepted the modification, fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act

Amendment to Modification

- ✓ If the parties to the combination do not accept the modification proposed by the Commission, such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission.
- ✓ If the Commission agrees with the amendment submitted by the parties, it shall, by order, approve the combination.
- ✓ If the Commission does not accept the amendment submitted, then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission.

Consequence of Non-Acceptance Of The Modification

If the parties fail to accept the modification proposed by the Commission within thirty working days as referred above or within a further period of thirty working days referred to in sub-Section (8) the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act (Sub-Section 9). As per Sub-Section 10 where the Commission has directed under sub-Section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-Section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that (1) the acquisition referred to in clause (a) of Section 5. or (2) the acquiring of control referred to in clause (b) of Section 5. or (3) the merger or amalgamation referred to in clause (c) of Section 5, shall not be given effect to. The Commission may however, if it considers appropriate, frame a scheme to implement its order.

Deemed Approval by Commission

If the Commission does not, on the expiry of a period of 210 days from the date of notice given to the Commission referred to in Section 29(2), pass an order or issue direction in accordance with the provisions of sub -Section (1) or (2) or (7), the combination shall be deemed to have been approved by the Commission. For the purpose of determining the period of 210 days specified in this sub-Section, the period of thirty working days specified in sub-Section (6) and a further period of thirty working days specified in sub-Section (8) shall be excluded. Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties (Sub-Section 12).

Consequence of a Combination Declared Void by Commission

Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in Section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly (Sub-Section 13). As per Sub-Section 14, nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

Acts taking place outside India but having an effect on competition in India**Section 32**

The Commission shall, notwithstanding that:

- ✓ an agreement referred to in Section 3 has been entered into outside India. or
- ✓ any party to such agreement is outside India. or
- ✓ any enterprise abusing the dominant position is outside India. or
- ✓ a combination has taken place outside India. or
- ✓ any party to combination is outside India. or
- ✓ any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

have power to inquire in accordance with the provisions contained in Sections 19, 20, 26, 29 and 30 of the Act into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act.

Power to issue interim orders**Section 33**

Where during an inquiry, the Commission is satisfied that an act in contravention of sub-Section (1) of Section 3 or sub-Section (1) of Section 4 or Section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.

Appearance before Commission**Section 35**

A person or an enterprise or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

Power of Commission to regulate its own procedure**Section 36**

In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure. The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

- ✓ summoning and enforcing the attendance of any person and examining him on oath.
- ✓ requiring the discovery and production of documents.
- ✓ receiving evidence on affidavit.
- ✓ issuing commissions for the examination of witnesses or documents.
- ✓ requisitioning, subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such of record or document from any office.

Expert

The Commission may call upon such experts, from the field of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary to assist the Commission in the conduct of any inquiry by it.

Rectification of orders**Section 38**

With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.

Subject to the other provisions of this Act, the Commission may make:

- ✓ an amendment under sub-Section (1) of its own motion.
- ✓ an amendment for rectifying any such mistake which has been brought to its notice by any party to the order. However, the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

Execution of orders of Commission imposing monetary penalty**Section 39**

If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations. Commission may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.

Where a reference has been made by the Commission for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income Tax Act, 1961 (43 of 1961) and the provisions contained in Sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made there under shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine, and interest under the Income-tax Act, 1961 (43 of 1961) and to the Commission instead of the Assessing Officer.

Director General to Investigate Contravention

Section 41

- ✓ The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made there under.
- ✓ The Director General shall have all the powers as are conferred upon the Commission under Section 36(2).
- ✓ Without prejudice to this power, the provisions of Sections 240 and 240A of the Companies Act, 1956 (1 of 1956), so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

Penalties

The Competition Act prescribes penalties for contravention of orders of the Commission. As per Section 42 (1) the Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorised by it.

Section 43	Penalty for failure to comply with directions of Commission and Director General	if any person fails to comply, without reasonable cause, with a direction given by the Commission under Sub-sections (2) and (4) of section 36; or the Director General while exercising powers referred to in sub-section (2) of section 41	punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission
Section 43A	Power to impose penalty for non-furnishing of information on combination	if any person or enterprise who fails to give notice to the Commission under sub-section(2) of section 6	a penalty which may extend to one per cent of the total turnover or the assets, whichever is higher, of such a combination.
Section 44	Penalty for Making False Statement	If any person, being a party to a combination, makes a	penalty which shall not be less than rupees fifty

Competition Act, 2002			3.26
		statement which is false in any material particular, or knowing it to be false; or omits to state any material particular knowing it to be material	lakhs but which may extend to rupees one crore, as may be determined by the Commission.
Section 42(3)		if any person does not comply with the orders or directions issued, or fails to pay the fine imposed under 42(2)	punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit.
Section 42(2)		if any person, without reasonable clause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act	he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

Compensation In Case of Contravention of Orders of Commission

Section 42A provides that without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.

Power to impose lesser penalty

Section 46

If any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated Section 3, has made a full and true disclosure in respect of alleged violations and such a disclosure is vital, the Commission may impose upon him a lesser penalty than as prescribed under the Act or rules or regulations.

However, the lesser penalty shall not be imposed where before making such disclosure, the report of Director General under Section 26 has been received in the Commission. Further, the lesser penalty shall be imposed only in respect of the producer, seller, distributor, trader or service provider included in the cartel, who has made a full, true and vital disclosures under this Section. Any producer, seller, trader or service provider included in the cartel shall also be liable to imposition of penalty, if in the course of proceedings, had, –

- ✓ not complied with the condition on which the lesser penalty was imposed by the Commission; or
- ✓ given false evidence; or
- ✓ the disclosure made is not vital.

The lesser penalty is for a member of a ring who breaks the rank. There is no provision to provide any protection or incentive to a whistle blower, which is conferred upon Authorities in contemporary legislations abroad.

Contravention by Companies

Section 48

- ✓ A company means a body corporate and includes a firm or other association of individuals; director, in relation to a firm, means a partner in the firm for the purposes of penalties in connection with contravention of the provisions of the Act by companies.
- ✓ Where any rule, regulation, order made by the Commission or any direction issued thereunder is contravened by a company, every person who, at the time the contravention was committed, was in charge, and was responsible to the company for conducting business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished. However it will be a good defence by a person liable to any punishment if he proves that the contravention was committed without his knowledge or that he has exercised all due diligence to prevent the commission of an offence.
- ✓ Where a contravention of any of the provisions of this Act or any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that contravention has taken place with the consent or connivance of, or it is attributable to any neglect 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 the contravention and shall be liable to be proceeded against and punished accordingly.
- ✓ The word company in this Section, has been used in a wider sense and also includes a 'firm' or an 'association of persons'. Though the word 'director' is normally used in a company, in the light of the wider definition, the term director is interpreted to include a partner of the firm. The company being a legal person, its affairs are conducted by a board of directors, manager, secretary or other officer, therefore, according to Section 48 (2) such director, manager, secretary or other officer, in addition to the company itself shall be deemed to be liable to be proceeded against for contravention of any provisions of this Act or any rule, regulation, order made or direction issued thereunder by the Commission or the Director General of Investigation.

Competition Advocacy

Section 49

Under Section 49 the Central Government/State Government may seek the opinion of the CCI on the possible effects of the policy on competition or any other matter. In this context, Section 49 envisages that while formulating a policy on the competition, the Government may make a reference to the Commission for its opinion on possible effect of such a policy on the competition, or any other matter.

On receipt of such a reference, the Commission shall, give its opinion on it to the Central Government/State Government, within sixty days of making such a reference and the latter may formulate the policy as it deems fit. The role of the Commission is advisory and the opinion

given by the Commission shall not be binding upon the Central Government/State Government in formulating such a policy. The Commission is also empowered to take suitable measures for the

- ✓ promotion of competition advocacy;
- ✓ creating awareness about the competition; and
- ✓ imparting training about competition issues.

The creating awareness about benefits of competition and imparting training in competition issues is expected to generate conducive environment to promote and foster competition, which is sine-qua non for accelerating economic growth.

Finance, Accounts and Audit

Grants by Central Government

Section 50

The Central Government may make to the Commission grants of such sums of money as it may think fit for being utilised for the purposes of the Act. Such grant is to be made after due appropriation made by the Parliament.

Constitution of Fund

Section 51

The Act provides for the constitution of a fund called the “Competition Fund” for meeting the establishment and other expenses of the Competition Commission in connection with the discharge of its functions and for the purposes of this Act. The following shall be credited to the “Competition Fund”, -

- ✓ all government grants received by the commission;
- ✓ the fees received under the Act;
- ✓ the interest on the amounts accrued on the monies referred under clauses (a) to (c).

Fee realized alongwith notice disclosing combination shall form part of ‘Competition Fund’.

The Fund shall be administered by a Committee of such Members of the Commission, as may be determined by the Chairperson and the Committee so appointed, shall spend monies out of the Fund only for the objects for which the Fund has been constituted.

Accounts and Audit

Section 52

- ✓ Proper accounts and other relevant records shall be maintained by the Commission and an annual statement of accounts shall be prepared by it in prescribed form in consultation with the Comptroller and Auditor General of India (CAG).The CAG shall specify the intervals within which the accounts of the Commission shall be audited by him.
- ✓ Explanation to Section 52(2) clarifies that the orders passed by the Commission, being matters appealable to the Supreme Court, shall not be subject to audit by the CAG. The expenses, if any, incurred in connection with such audit shall be payable by the Commission to the CAG.

The CAG or any person appointed by him in connection with the audit of the accounts of the Commission shall have same rights, privileges and authority in connection with such audit as

CAG has in connection with the audit of Government accounts and, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

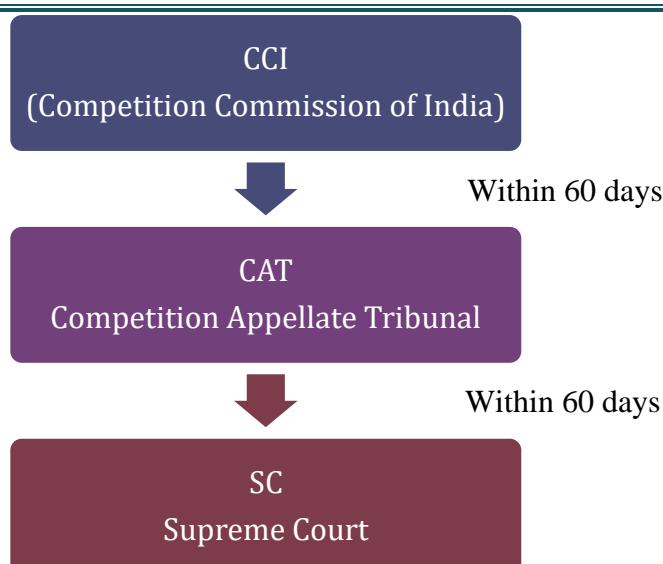
Only accounts as certified by the CAG and any other person authorised by him in this behalf together with the audit report thereon shall be forwarded to the Central Government and the Government shall cause it to be laid before each House of Parliament.

Furnishing of Returns, etc., to Central Government

Section 53

- ✓ The Commission shall furnish to the Central Government such returns and statements and such particulars in regard to any proposed or existing measures for promotion of competition advocacy, creating awareness and imparting training about competition issues, in such form and such manner as the Central Government may prescribe. An annual report giving a true and full account of activities of the Commission during the previous year shall be prepared once in every year by the Commission and submitted to the Central Government.
- ✓ A copy of the annual report of the Commission received by the Government shall cause to be laid by the Central Government before each House of Parliament.

Appeal



Appellate Tribunal

- ✓ The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order may prefer an appeal to the Appellate Tribunal.
- ✓ Every appeal shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed

- ✓ Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filling it within that period
- ✓ On receipt of an appeal The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying setting aside the direction, decision or order appealed against.
- ✓ The applicable Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

Composition of Appellate Tribunal

The appellate Tribunal shall consist of a Chairperson and not more than two other Member to be appointed by the Central Government.

Qualifications for Appointment Of Chairperson And Members Of Appellate Tribunal.

- ✓ The Chairperson of the Appellate Tribunal shall be a person, who is, or has been a judge of the Supreme Court or the Chief Justice of a High Court.
- ✓ A member of the Appellate Tribunal shall be a person of ability, Integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in competition matters, including competition law and policy, International trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.

Resignation Of Chairperson And Members Of Appellate Tribunal.

- ✓ The Chairperson or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:
- ✓ Provided that the Chairperson or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of this term of office, whichever is the earliest.

Appeal to Supreme Court

Section 53T

- ✓ The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of the communication of the decision or order of the Appellate Tribunal to them
- ✓ Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

Miscellaneous

Power to exempt

Section 54

The Central Government may, by notification exempt from the application of the Act, or any provision thereof—

- ✓ any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;
- ✓ any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;
- ✓ any enterprise, which performs a sovereign function on behalf of the Central Government or a State Government.
- ✓ Thus, the power to grant exemption can be invoked by the Central Government in specified circumstances and conditions.
- ✓ Where any enterprise is engaged in activities, which includes any activity relatable to the sovereign functions of the Government, exemption may be granted by the Central Government only in respect of the activity relatable to the sovereign functions.

Power of Central Government to issue directions

Section 55

- ✓ The Central Government may give in writing to the Commission such directions on questions of policy, other than those relating to technical and administrative matters and the Commission shall be bound by such directions.
- ✓ The Commission shall be given an opportunity to express its views to the Central Government before any direction is given by the Government to the Commission.
- ✓ The decision of the Central Government as to whether the question is of one of policy or not, shall be final.

Power of Central Government to supersede Commission

Section 56

It is stipulated under section 56 of the Act that if at any time the Central Government is of the opinion, -

- ✓ that the Commission, on account of circumstances beyond its control is unable to discharge the functions or perform the duties imposed on it by or under the provisions of the Act; or
- ✓ that the commission has persistently made default in complying with any direction given by the Central Government under this Act or in discharge of functions or performance of duties imposed on it by or under the provisions of the Act and as a result of such default the financial position or the administration of the Commission has suffered; or
- ✓ that the circumstances exist which render it necessary in the public interest to do so, the Central Government may, by notification and for the reasons stated therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification.

Thus, power to supersede CCI vests in the Central Government. However before issuing any such notification, the Central Government shall give to the Commission a reasonable opportunity to make representations against the proposed supersession for its consideration.

Upon publication of a notification superseding the Commission –

- ✓ the Chairperson and other members shall vacate the office from the date of supersession;
- ✓ until Commission is reconstituted, all powers functions and duties of the Commission shall be discharged by the Central Government or by an authority specified by the Central Government in this behalf;
- ✓ until the Commission is reconstituted all of its properties shall vest in the Central Government.

The Central Government shall reconstitute the Commission by a fresh appointment of its Chairman and other Members on or before the expiration of six months from the date of order of the Central Government superseding the Commission.

Any Chairperson or Member who vacates the office because the Commission is unable to discharge its functions or perform duties imposed on it by or under the provisions of this Act on account of circumstance beyond its control shall not be deemed to be disqualified for re-appointment upon re-constitution of the Commission by the Government.

The Central Government shall cause a notification superseding the Commission and a full report of any action taken under this Section and circumstances leading to such action, be laid before each House of the Parliament at the earliest.

Restriction on Disclosure of Information

- ✓ The Commission from time to time may require any enterprise to submit information for the purposes of the Act.
- ✓ The information may relate to sensitive business secrets and patents of such an enterprise. In order to ensure complete secrecy of such information,
- ✓ Section 57 provides that no information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission or the Appellate Tribunal for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

Exclusion of Jurisdiction Of Civil Courts

A civil court is precluded to exercise jurisdiction in respect of any matter, which the Commission is empowered by or under the Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.

Application of Other Laws Not Barred

The provisions of the Act are in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Power to Make Rules**Section 63**

The Central Government may, by notification, make rules to carry out provisions of this Act. In particular, the Central Government may make rules to provide for all or any of the following matters; namely-

- ✓ the term of the Selection Committee and the manner of selection of panel of names under sub section (2) of Section 9
- ✓ the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed to under Sub-section (3) of Section 10
- ✓ the salary and the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under Sub-section (1) of Section 14
- ✓ the number of Additional, Joint, Deputy or Assistant Director General or such officers or other employees in the office of DG and the manner in which such Additional, Joint, Deputy or Assistant Director Generals or such officers or other employees may be appointed under sub-section (1A) of Section 16.
- ✓ the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or such officers or other employees under Sub-section (3) of Section 16
- ✓ the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or such officers or other employees under Sub-section (4) of Section 16
- ✓ the salaries and allowances and other terms and conditions of service of the Secretary and officers and other employees payable, and the number of such officers and employees under Sub-section (2) of Section 17
- ✓ the form in which the annual statement of accounts shall be prepared under Sub-section (1) of Section 52
- ✓ the time within which and the form and manner in which the Commission may furnish returns, statements & such particulars as the Central Government may require under Sub-section (1) of Section 53
- ✓ the form in which and the time within which the annual report shall be prepared under Sub-section (2) of Section 53
- ✓ the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal
- ✓ the term of the Selection Committee and the manner of selection of panel of names under sub-section(2) of section 53E
- ✓ the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 53G
- ✓ the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M
- ✓ the fee which shall be accompanied with every application made under sub-section (2) of section 53N
- ✓ the other matters under clause (i) of sub-section(2) of section 53O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit
- ✓ the manner in which the monies transferred to the Central Government shall be dealt with by that Government under the fourth proviso to Sub-section (2) of Section 66
- ✓ any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

Every notification for making such rules shall be laid 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. If both Houses agree that notification is not to be issued or rule should not be made, then rule shall not be made or if the House decides that notification or rules should have effect in such modified form then the rule or notification shall be enforced in modified form. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under the notification or rule, as the case may be.

Power to Make Regulations

Section 64

The Commission may, by notification, make regulations, which are consistent with the Act. Without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely, -

- ✓ the cost of production to be determined under clause (b) of the Explanation to Section 4;
- ✓ the form of notice as may be specified and the fee which may be determined under Sub-section (2) of Section 6
- ✓ the form in which details of acquisition shall be filed under Sub-section (5) of Section 6;
- ✓ the procedure to be followed for engaging the experts and the professionals under sub-section (3) of Section 17;
- ✓ the fee which may be determined under clause (a) of Sub-section (1) of Section 19;
- ✓ the rules of procedure in regard to transaction of business at the meetings of the Commission under sub-section (1) of Section 22;
- ✓ the manner in which penalty shall be recovered under sub-section (1) of Section 39;
- ✓ any other matter in respect of which provision is to be, or may be made by regulations.

Every regulation shall be laid before both the Houses 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 regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

The Insurance Act, 1938

Introduction

Prior to 1912, there was no insurance law in India. The Insurance companies were governed by the provisions of the Indian Companies Act 1882. In the beginning of the twentieth century, many companies sprang up but many of them were unsound. So these demanded a legislation to control the insurance companies. In 1912, the Indian Life Insurance Companies Act and the Provident Insurance Societies Act were passed to control life insurance only. The Indian Life Insurance Companies Act 1912, was based on the model of the English Insurance Companies Act of 1909. The Indian legislation dealt with only life insurance while the English Act governed life insurance as well as non-life insurance. The Indian Life Insurance Companies Act, 1912 had some defects.

Mr. Sushil Chandra Sen, a well-known Calcutta solicitor was assigned a special duty to report on the amendments necessary to modernize insurance legislation in India. An Advisory Committee was also appointed by the Government of India to consider the report of Mr. Sen. The Committee made several changes and the Government of India introduced the Bill in the Legislative Assembly in 1937 which emerged as the Insurance Act of 1938. It was enforced since July 1, 1939. A comprehensive amendment was made in 1950. The life insurance business was nationalized in 1956 and therefore the Life Insurance Corporation of India Act, 1956 was passed. The Life Insurance Corporation of India came into existence from September 1, 1956. This Act is effective and comprehensive to govern the life insurance business in India. The marine Insurance Act of 1963 was enacted to govern and regulate marine insurance in India. The general insurance business has been nationalized in 1972 and an Act to that effect has been passed in 1972 known as The General Insurance Business (Nationalisation) Act, 1972.

Principles of Insurance Law

Section 14

Good Faith

A contract of insurance is a contract 'uberrime fidei' i.e., a contract of utmost good faith. This is a fundamental principle of insurance law. Both the parties to the contract are required to observe utmost good faith and should disclose every material fact known to them.

- ✓ There is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of utmost good faith [**General Assurance Society Ltd. v. Chandumull Jain.**]
- ✓ The burden of proof to show non-disclosure or misrepresentation is on the insurance company [**Life Insurance Corporation of India v. Smt. G.M.Channabasamma.**]
- ✓ The onus is a heavy one [**Life Insurance Corporation of India v. Parvathavardhini Ammal.**]
- ✓ The duty of good faith is of a continuing nature in as much no material alteration can be made to the terms of the contract without the mutual consent of the parties [**United India Insurance co. Ltd v. M.K.J Corpn.**]

- ✓ Just as the assured has a duty to disclose all the material facts, the insurer is also under an obligation to do the same. The insurer cannot subsequently demand additional premium [**Hanil Era Textiles Ltd. v. Oriental Insurance Co. Ltd.**]
- ✓ nor can he escape liability by contending that the situation does not warrant the insurance cover [**United India Insurance Co Ltd. v. M.K.J. Corporation**].

Misrepresentation

Representations are statements, made by one party to the other, either prior to or while entering into an insurance contract, of some matter or circumstances relating to it and which is not an integral part of the contract [Behn v. Burness].

A mere recital of representations made at the time of entering into the contract will not make them warranties. [Wheelton v. Haristy].

However, if representations are made an integral part of the contract they become warranties, and, in case of their being untrue, the policy can be avoided, even if the loss does not arise from the fact concealed or misrepresented.

A policy of life insurance cannot be called in question on the ground of misrepresentation after a period of two years from the commencement of the policy.

In dealing with representations as circumstances invalidating a contract, consideration should be paid as to whether such representations are wilful or innocent and whether they are preliminary or for part of the contract.

Conditions of Misrepresentation

The Insurance Act lays down three conditions to establish that the misrepresentation was wilful

- ✓ the statement must be on a material matter or must suppress facts which it was material to disclose
- ✓ the suppression must be fraudulently made by the policy holder; and
- ✓ the policy- holder must have known at the time of making the statement that it was false or that it suppressed facts which it was material to disclose.

Warranties

A warranty may be distinguished from a representation in as much a representation may be equitably and substantially answered but a warranty must be strictly complied with. A breach of warranty will avoid the policy, although it may not relate to a matter material to the risk insured. Warranties may be express or implied, if it is condition implied by law.

The statements must be true in fact without any qualification of judgment, opinion or belief [New Castle Fire Insurance Company v. Mac Morram and Co]

The warranty should be in the policy or must be incorporated by reference. If any of the statements or representations made by the assured in the proposal have been made the “basis” of the contract and they are found to be untrue, the contract of insurance would be void and unenforceable in law, irrespective of the question whether the statement, concerned is of a

material nature or not. However, non-compliance of a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law or when such a warranty has not been mentioned in the policy.

Conditions

Conditions are terms which prescribe the limitations under which an insurance policy is granted and which specify the duties of the assured. They can be either conditions precedent or subsequent. Conditions precedent are those, which are essential for the creation of a valid contract, the non-satisfaction of which makes the contract void ab initio. Conditions subsequent relate to the continuance of a valid contract, the non-fulfilment of which leads to the avoidance of the contract from the date of the breach. They can be further classified into express conditions and implied conditions. Implied conditions are those, which are implied by law to apply to every contract of insurance irrespective of any specific inclusion or reference to them such as insurable interest, good faith etc. A condition, which seeks to reduce or curtail the period of limitation and prescribes a shorter period than that prescribed by law is void. However, the insured is absolved once it is shown that he has done everything in his power to keep, honour and fulfil the promise and he himself is not guilty of a deliberate breach.

Indemnity and Subrogation

Most kinds of insurance policies other than life and personal accident insurance are contracts of indemnity whereby the insurer undertakes to indemnify the insured for the actual loss suffered by him as a result of the occurring of the event insured against.

A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the insured to the extent agreed upon.

Although the insured is to be placed in the same position as if the loss has not occurred, the amount of indemnity may be limited by certain conditions:

- ✓ Injury or loss sustained by the insured has to be proved.
- ✓ The indemnity is limited to the amount specified in the policy.
- ✓ The insured is indemnified only for the proximate causes.
- ✓ The market value of the property determines the amount of indemnity.

Even within the maximum limit, the insured cannot recover more than what he establishes to be his actual loss [Vania Silk Mills (P) Ltd. v. CIT (1991) 4 SCC 22].

Proximate Cause

The doctrine of proximate cause is expressed in the maxim 'Causa Proxima non remota spectator', which means that the proximate and not the remote cause, shall be taken as the cause of loss.

The burden of proof that the loss occurred on account of the proximate cause, lies on the insured.

The insurer is thus has to make good the loss of the insured that clearly and proximately results, whether directly or indirectly, from the event insured against in the policy [Stanley V. Western Insurance company (1868) L.R. 371].

Insurance and Consumer Protection

The Consumer Protection Act, 1986 (“Consumer Protection Act”) is one of the most important socio-economic legislation for the protection of consumers in India. The provisions of this Act are compensatory in nature, unlike other laws, which are either punitive or preventive. Insurance services fall within the purview of the Consumer Protection Act, in as much, any deficiency in service of the insurance company would enable the aggrieved to make a complaint. Disputes between policyholders and insurers generally pertain to repudiation of the insurance claim or the matters connected with admission of the claim or computation of the amount of claim. In the case of assignment of all rights by the insured to the insurer, the consumer forum and the courts generally refuse to accept the ‘locus standi’ of the insured. The courts have held that insurance companies do not fall under the definition of “consumer” under the Consumer Protection Act, as no service is rendered to them directly.

Neither the subrogation nor the transfer of the right of action would confer the legal status of a ‘consumer’ on the insurer, nor can the insurer be regarded as any beneficiary of any service [New India Assurance Company Ltd. v. B. N. Sainani (1997) 6 SCC 383].

Therefore, the remedy available to the insurer is to file a suit in a civil court for recovery of the loss. However, if a company/individual taken insurance to hedge his risk, he will be considered to be a consumer under the Consumer Protection Act, even when he is doing business (commercial purpose).

Insurable Interest

To constitute insurable interest, it must be an interest such that the risk would by its proximate effect cause damage to the assured, that is to say, cause him to lose a benefit or incur a liability. The validity of an insurance contract, in India, is dependent on the existence of an insurable interest in the subject matter.

The test for determining if there is an insurable interest is whether the insured will in case of damage to the life or property being insured, suffer pecuniary loss [New India Insurance Company Ltd. v. G.N. Sainani, (1997) 6 SCC 383].

A person having a limited interest can also insure such interest. Insurable interest varies depending on the nature of the insurance. The controversy as to the existence of an insurable interest between spouses was settled by the court, which held that such an interest could exist as neither was likely to indulge in any ‘mischievous game’. The same analogy may be extended to parents and children. Further, the courts have also held that such an insurable interest would exist for a creditor (in a debtor) and for an employee (in an employer) to the extent of the debt incurred and the remuneration due, respectively.

The existence of insurable interest at the time of happening of the event is another important consideration. In case of life and personal accident insurance it is sufficient if the insurable interest is present at the time of taking the policy. However, in the case of fire and motor accident insurance the insurable interest has to be present both at the time of taking the policy and at the time of the accident. The case is completely different with marine insurance wherein there need not be any insurable interest at the time of taking the policy.

Commencement of Policy

The general rule on the formation of a contract, as per the Indian Contract Act, is that the party to whom the offer has been made should accept it unconditionally and communicate his acceptance to the person making the offer. Whether the final acceptance is to be made by the insured or insurer really depends on the negotiations of the policy. Acceptance should be signified by some act as agreed upon by the parties or from which the law raises a presumption of acceptance. The mere receipt or retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptance. Nonetheless, acceptance may be presumed upon the retention of the premium. However, mere delay in giving an answer cannot be construed as acceptance. Also, silence does not denote consent and no binding contract arises until the person to whom an offer is made says or does something to signify his acceptance.

When the policy is of a particular date, it would cover the liability of the insurer from the previous midnight preceding the same date [New India Assurance Company. Limited. vs. Ram Dayal & Others, (1990) 2 SCC 680.].

However, where there is a special contract to the contrary in the policy, the terms of the contract would prevail [National Insurance Company Limited. vs. Jikubhai Nathuji Dabhi (Smt) and Others, 1997(1) SCC 66].

Hence where the time of the issue of the insurance policy is mentioned, then the liability would be covered only from the time when it was issued.

Important Definitions

Actuary [Section 2(1)]

Actuary" means an actuary as defined in clause (a) of sub-section (1) of section 2 of the Actuaries Act, 2006.

Authority [Section 2(1A)]

Authority means the Insurance Regulatory and Development Authority of India established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999.

Policy Holder [Section 2 (2)]

"Policy holder" includes a person to whom the whole of the interest of policy holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition.

Banking Company [Section 2 (4A)]

"Banking Company" and "Company" shall have the meanings respectively assigned to them in clauses (c) and (d) of subsection (1) of section of the Banking Companies Act, 1949 (10 of 1949).

Controller of Insurance [Section 2 (5B)]

“Controller of Insurance”, means the officer appointed by the Central Government under section 2B to exercise all the powers, discharge the functions and perform the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act 1972 (57 of 1972) or the Insurance Regulatory and Development Authority Act 1999.

Court [Section 2 (6)]

“Court” means the Principal Civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction.

General Insurance Business [Section 2 (6b)]

“General insurance business” means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them.

Health Insurance Business [Section 2 (6c)]

“Health Insurance Business” means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover.

Government Security [Section 2 (7)]

“Government Security” means a Government Security as defined in the Public Debt Act 1944 (18 of 1944).

Indian Insurance Company [Section 2 (7a)]

“Indian insurance company” means any insurer, being a company which is limited by shares, and;

- ✓ which is formed and registered under the Companies Act, 2013 as a public company or is converted into such a company within one year of the commencement of the Insurance Laws (Amendment) Act, 2015.
- ✓ in which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed.

Insurer [Section 2 (9)]

“Insurer” means:

- ✓ an Indian Insurance Company, or
- ✓ a statutory body established by an Act of Parliament to carry on insurance business, or
- ✓ an insurance co-operative society, or
- ✓ a foreign company engaged in re-insurance business through a branch established in India.

Insurance Agent [Section 2(10)]

“insurance agent” means an insurance agent who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance.

Investment Company [Section 2 (10a)]

“Investment Company” means a company whose principal business is the acquisition of shares, stocks, debentures or other securities.

Life Insurance Business [Section 2(11)]

“life insurance business” means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include:

- ✓ the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance.
- ✓ the granting of annuities upon human life, and
- ✓ the granting of superannuation allowances and benefits payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons.

Re-Insurance [Section 2(16b)]

“Re-insurance” means the insurance of part of one insurer’s risk by another insurer who accepts the risk for a mutually acceptable premium.

Indian properties not to be insured with foreign insurers (section 2CB) without the permission of the IRDAI, no person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an insurer whose principal place of business is outside India.

Requirements as to Capital**Section 6**

No insurer [not being an insurer as defined in sub-clause (d) of clause (9) of section 2] carrying on the business of life insurance, general insurance, health insurance or re-insurance in India or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be registered unless he has minimum paid up capital as prescribed below:

Minimum Paid-up equity capital required (with a provision for further enhancement & Paidup equity excludes preliminary expenses incurred during formation and registration) for each type of Insurance is as under-

Life Insurance/ General Insurance	Health Insurance	Re-insurer
•100 crore	•100 crore	•200 crore (besides no registration unless he has net owned funds of not less than Rs. 5,000 Crore)

Provided that the insurer, may enhance the paid-up equity capital, as provided in this section in accordance with the provisions of the Companies Act, 2013, the Securities and Exchange Board of India Act, 1992 and the rules, regulations or directions issued there under or any other law for the time being in force.

Further Conditions

Section 6A

To carry on the business of life or general or health or re-insurance the following further requirements are to be satisfied by such companies:

- ✓ that the capital of the company shall consist of equity shares each having a single face value and such other form of capital, as may be specified by the regulations.
- ✓ that the voting rights of shareholders are restricted to equity shares.
- ✓ that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new.

Audit of Accounts of Insurance Companies & Submission of Returns (Section 15)

Section 12 & 15

Unless subject to audit under the Companies Act, 2013, the balance sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in respect of all insurance business transacted by him, shall be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 147 of the Companies Act, 2013.

The audited accounts and statements and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer. Of the four copies so furnished, one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

Actuarial Valuation/Report

Section 13

At least once a year, every insurer carrying on life insurance business shall cause an investigation of the life insurance business carried on by him including a valuation of his

liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations.

The Authority may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than two years from the date as at which the previous investigation was made.

If the investigation is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years.

Record of Policies and Claims

Section 14

Every insurer, in respect of all business transacted by him, shall maintain:

- a) a record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policyholder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice.
- b) a record of claims, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds thereof.
- c) a record of policies and claims may be maintained in any such form, including electronic mode, as may be specified by the regulations made under this Act.
- d) Every insurer shall, in respect of all business transacted by him, endeavour to issue policies above a specified threshold in terms of sum assured and premium in electronic form, in the manner and form to be specified by the regulations made under this Act.

Investment of Assets

Section 27

Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the following manner namely:

- (a) 25% of the said sum in Government securities, a further sum equal to not less than twenty-five per cent of the said sum in Government securities or other approved securities, and
- (b) the balance in any of the approved investments as may be specified by the regulations subject to the limitations, conditions and restrictions specified therein.

In the case of an insurer carrying on general insurance business, 25% of the assets in Government Securities, a further sum equal to not less than ten per cent of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

Prohibition of Loans

Section 29

No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner.

This shall not apply to such loans made by an insurer to a banking company, as may be specified by the Authority. Further this shall not be applicable from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company if the previous approval of the Authority is obtained for such loan or advance.

Liability of Directors for Contravention

Section 30

If by reason of a contravention of any of the provisions of section 27, 27A, 27B, 27C, 27D or section 29, any loss is sustained by the insurer or by the policyholders, every director, manager or officer who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.

Power of Investigation and Inspection by Authority

Section 33

The Authority may, at any time, if it considers expedient to do so by order in writing, direct any person ("Investigating Officer") specified in the order to investigate the affairs of any insurer or intermediary or insurance intermediary, as the case may be, and to report to the Authority on any investigation made by such Investigating Officer

The Investigating Officer may, wherever necessary, employ any auditor or actuary or both for the purpose of assisting him in any investigation under this section.

Notwithstanding anything to the contrary contained in section 210 of the Companies Act, 2013, the Investigating Officer may, at any time, and shall, on being directed so to do by the Authority, cause an inspection to be made by one or more of his officers of the books of account of any insurer or intermediary or insurance intermediary, as the case may be, and the Investigating Officer shall supply to the insurer or intermediary or insurance intermediary, as the case may be, a copy of the report on such inspection.

It shall be the duty of every manager, managing director or other officer of the insurer including a service provider, contractor of an insurer where services are outsourced by the insurer, or intermediary or insurance intermediary, as the case may be, to produce before the Investigating Officer directed to make the investigation or inspection, all such books of account, registers, other documents and the database in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer or intermediary or insurance intermediary, as the case may be, as the Investigating Officer may require of him within such time as the said Investigating Officer may specify.

The Investigating officer shall make a report to the Authority on such inspection and the Authority may after giving such opportunity to the insurer or intermediary to make a representation.

All expenses incidental to any investigation shall be defrayed by the insurer or intermediary or insurance intermediary and shall have priority over the debts due from the insurer and shall be recoverable as an arrear of land revenue.

Prohibition of Payment by Way of Commission or Otherwise For Procuring Business

Section 40

No person shall, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by the regulations.

No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard.

Appointment of Insurance Agents

Section 42

- ✓ An insurer may appoint any person to act as insurance agent for the purpose of soliciting and procuring insurance business.
- ✓ Such person should not suffer from any of the disqualifications.
- ✓ Further no person shall act as an insurance agent for more than one life insurer, one general insurer, one health insurer and one of each of the other mono-line insurers
- ✓ The Authority shall, while framing regulations, ensure that no conflict of interest is allowed to arise for any agent in representing two or more insurers for whom he may be an agent.

Prohibition of Insurance Business through Principal Agent, Special Agent and Multilevel Marketing

Section 42A

- ✓ No insurer shall, on or after the commencement of the Insurance Laws (Amendment) Act, 2015, appoint any principal agent, chief agent, and special agent and transact any insurance business in India through them.
- ✓ No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance policy through multilevel marketing scheme.
- ✓ The Authority may, through an officer authorised in this behalf, make a complaint to the appropriate police authorities against the entity or persons involved in the multilevel marketing scheme.

“multilevel marketing scheme” means any scheme or programme or arrangement or plan (by whatever name called) for the purpose of soliciting and procuring insurance business through

persons not authorised for the said purpose with or without consideration of whole or part of commission or remuneration earned through such solicitation and procurement and includes enrolment of persons into a multilevel chain for the said purpose either directly or indirectly.

Policy not to be called in Question after Three Years

Section 45

No policy of life insurance shall be called in question on any ground whatsoever after the expiry of three years from the date of the policy, i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.

A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground of fraud.

The insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision are based.

A policy of life insurance may be called in question at any time within three years from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later, on the ground that any statement of or suppression of a fact material to the expectancy of the life of the insured was incorrectly made in the proposal or other document on the basis of which the policy was issued or revived or rider issued

Provided that the insurer shall have to communicate in writing to the insured or the legal representatives or nominees or assignees of the insured the grounds and materials on which such decision to repudiate the policy of life insurance is based

Provided further that in case of repudiation of the policy on the ground of misstatement or suppression of a material fact, and not on the ground of fraud, the premiums collected on the policy till the date of repudiation shall be paid to the insured or the legal representatives or nominees or assignees of the insured within a period of ninety days from the date of such repudiation.

Agent/Intermediary Not to be a Director

Section 48A

No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company. Any director holding office at the commencement of the Insurance Laws (Amendment) Act, 2015 shall not become ineligible to remain a director by reason of this section until the expiry of six months from the date of commencement of the said Act. The Authority may permit an agent or intermediary or insurance intermediary to be on the Board of an insurance company subject to such conditions or restrictions as it may impose to protect the interest of policyholders or to avoid conflict of interest.

Prohibition of Business on Dividing Business

Section 52

No insurer shall commence any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the result of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policyholder depend wholly or partly on the number of policies becoming claims within certain time-limits

This does not deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise.

Councils of Life and General Insurance

Section 64C

On and from the date of commencement of this Act, the existing Life Insurance Council, a representative body of the insurers, who carry on the life insurance business in India; and the existing General Insurance Council, a representative body of insurers, who carry on general, health insurance business and reinsurance in India, shall be deemed to have been constituted as the respective Councils under this Act.

Surveyors or Loss Assessors

Section 64UM

No person shall act as a surveyor or loss assessor in respect of general insurance business after the expiry of a period of one year from the commencement of the Insurance Laws (Amendment) Act, 2015, unless

- ✓ he possesses such academic qualifications as may be specified by the regulations made under this Act and
- ✓ is a member of a professional body of surveyors and loss assessors, namely, the Indian Institute of Insurance Surveyors and Loss Assessors.

In the case of a firm or company, all the partners or directors or other persons, who may be called upon to make a survey or assess a loss reported, as the case may be, shall fulfill the same requirements.

Every surveyor and loss assessor shall comply with the code of conduct in respect of his duties, responsibilities and other professional requirements, as may be specified by the regulations made under the Act.

Assets and Liabilities How to be Valued

Section 64V

- ✓ Assets shall be valued at value not exceeding their market or realisable value and certain assets may be excluded by the Authority in the manner as may be specified by the regulations made in this behalf.
- ✓ Every insurer shall furnish to the Authority along with the returns required to be filed under this Act, a statement, certified by an Auditor, approved by the Authority in respect of general insurance business or an actuary approved by the Authority in respect of life insurance business, as the case may be, of his assets and liabilities assessed in the manner required by this section as on the 31st day of March of each year within such time as may be specified by the regulations.

Sufficiency of Assets

Section 64V

- ✓ Every insurer and re-insurer shall at all times maintain an excess of value of assets over the amount of liabilities of, not less than fifty per cent of the amount of minimum capital as stated under section 6 and arrived at in the manner specified by the regulations.
- ✓ An insurer or re-insurer, as the case may be, who does not comply with shall be deemed to be insolvent and may be wound-up by the court on an application made by the Authority.
- ✓ The Authority shall by way of regulation made for the purpose, specify a level of solvency margin known as control level of solvency on the breach of which the Authority shall act in accordance with without prejudice to taking of any other remedial measures as deemed fit.

FDI in Insurance Sector: For Reading

Based on The report of Malhotra Committee, insurance market in India was opened up for private sector in 2000 with the enactment of Insurance Regulatory and Development Authority of India (IRDAI) Act, 1999. Before opening up of the sector for the private players, the industry consisted of only two state insurers: Life Insurers (Life Insurance Corporation of India, LIC) and General Insurers (General Insurance Corporation of India, GIC).

GIC had four subsidiary companies. Industry has seen a gradual growth over the last 15 years in terms of product innovation, vibrant distribution channels, penetration and density.

At the end of 2021, there are 57 insurance companies operating in India, of which 27 are in the life insurance business and 27 in general insurance and 5 are in standalone health business.

FDI is dealt in the chapter of FEMA.

- ✓ Up to 26% FDI is permitted through the automatic approval route.
- ✓ For FDI up to 49%, the approval of the Central Government is required.
- ✓ 100% FDI is permitted in insurance intermediaries.

The Insurance Regulatory And Development Authority Act, 1999

Objectives of IRDA

The Insurance Regulatory and Development Authority (IRDA) was established in the year 1999 by the Indian Government, for two significant reasons

- ✓ to safeguard the interest of the policy holders and
- ✓ for the up gradation of the entire insurance sector right from the approach adopted by the existing insurance companies towards their shareholders to the eradication of the shortcomings of the industry.

Other Basic Provisions

- ✓ IRDA has been authorized to register the new insurance companies in India.
- ✓ The insurance companies in India are required to approach the Insurance Regulatory and Development Authority for the purpose of renewal of the insurance registration.
- ✓ The Insurance Regulatory and Development Authority are allowed to withdraw registration of the companies and even cancel the registration of a company if required. It is also authorized to modify the registration procedure for a company.

Functions of IRDA

The Functions of Insurance Regulatory and Development Authority are as follows:

- ✓ Nomination by Policyholders.
- ✓ Settlement of insurance claim.
- ✓ Practical training for Insurance agents and other intermediaries.
- ✓ Insurable Interest.
- ✓ Surrender value of Policyholders.
- ✓ Code of conduct of Insurance intermediaries.
- ✓ Assistance in gaining correct information about policies.
- ✓ Creation of management information system.
- ✓ Promotion of self regulation within the insurance sector.

Important Definitions

Appointed Day [Sec. 2 (a)]

Appointed day means the date on which the Authority is established under sub -section (1) of Sec – 3. (b)

Authority [Sec. 2 (b)]

“Authority” means the Insurance Regulatory and Development Authority of India established under Sub-Section (1) of Sec. 3. (c)

Chairperson [Sec. 2 (c)]

“Chairperson” means the Chairperson of the Authority.

Fund [Sec. 2 (d)]

“Fund” means the Insurance Regulatory and Development Authority Fund constituted under Sub-Section (1) of Section 16.

Interim Insurance Regulatory Authority [Sec. 2 (e)]

“Interim Insurance Regulatory Authority” means that Insurance Regulatory Authority set up by the Central Government through Resolution No. 17 (2) /94 Ins – V, dated , the 23rd January, 1996.

Intermediary or Insurance Intermediary [Sec. 2 (f)]

“Intermediary or Insurance Intermediary” includes insurance brokers, reinsurance brokers, Insurance Consultants, corporate agents, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Authority from time to time.

Members [Sec. 2 (g)]

“Member” means a whole time or part-time member of the “Authority” and includes the Chairperson.

Authority

- ✓ The Central Government by notification appoint such Authority in the nature of body corporate enjoying all the characteristics of such entity along with contractual powers.
- ✓ The Head Office of such Authority is to be decided by the Central Government.
- ✓ The members of such Authority appointed by the Central Government depending upon their expertise and experience in the field of Insurance, Law, Economic Accountancy, etc.

Composition of Authority

The member consists of:

- ✓ Chairman.
- ✓ Five Whole Time members (maximum)
- ✓ Four Part – Time members (maximum)

One of these members should have knowledge in Life Insurance, General Insurance and Actuarial Science.

Term of Members

- ✓ The Chairperson shall hold office for a term of five years until he reaches sixty five years. And he is eligible for re- appointment.
- ✓ A whole time member however can hold office for up to sixty - two years.

Termination of Membership

- ✓ Moreover a member can relinquish his membership by giving three month prior notice to the Central Government or he can be removed from office.
- ✓ A member may be removed from office if he became insolvent or insane or convicted for offence involving moral turpitude or illegally established financial interest in the Authority or acting contrary to public interest.
- ✓ The remuneration for each member shall be as per prescribed Law.
- ✓ The chairperson and the Whole-time member shall within two years from the date of appointment, cannot hold office under Central Government or State Government or any Insurance Sector.

Other Points

- ✓ All decisions regarding administrative matters are taken by the Chairperson.
- ✓ The procedural aspect of the meetings of the Authority may be determined by regulations,
- ✓ Resolutions are passed by simple majority and chairperson may use casting vote in case of a tie.
- ✓ In case, chairperson unable to attend any meeting then members attending may appoint chairperson among themselves.
- ✓ Any act of the Authority cannot be invalidated simply because of any defect in appointing a member or procedural irregularity.
- ✓ From time to time, authority may appoint employees and officers for efficiency in their work.

Transfer of Assets, Liabilities, Etc. of Indian Insurance Regulatory Authority (IIRA) to Insurance Regulatory Development Authority (IRDA)

Section 13

- ✓ On any appointed day, all assets and liabilities shall stand transferred from IIRA to IRDA. Here, the assets may be movable or immovable.
- ✓ Along with it also includes attached rights and powers. Before this, books of accounts, documents and other papers are also included.
- ✓ All contractual obligations entered by IIRA with third parties till before the appointed day shall automatically transferred to IRDA.
- ✓ Similarly all debts owed to IIRA also stands transferred to IRDA.
- ✓ Also, legal proceedings including suits whether instituted by or against IIRA shall stand transferred to IRDA.
- ✓ The Authority shall have the duty to regulate, control, promote and ensure healthy development of insurance and re-insurance business.

Powers and Functions of The Authority

Section 14

The powers and functions of the Authority includes inter-alia:

- ✓ Issue, modify, cancel, etc, of Registration certificate to the applicant.
- ✓ Safeguarding the interests of the policyholders like insurable interests, settlement of claim, surrender value of the policy, etc.
- ✓ Specifying code of conduct of the Surveyors.
- ✓ Determining qualifications and training aspect of agents and intermediary.
- ✓ Levying fees and charges for their work.
- ✓ Conducting investigations and enquiries relating to issues concerning insurance business.
- ✓ Regulating and controlling business not controlled by Tariff Advisory committee under section 64 of Insurance Act 1938.
- ✓ Regulatory investment funds by the Insurance Companies.
- ✓ Regulating maintenance of margin of solvency.
- ✓ Adjudicating and settling disputes between intermediaries and insurers.
- ✓ Supervising the functioning of Tariff Advisory Committee.

Finance, Accounts & Audit

The Central Government grants funds necessary for such Authority. The fund shall be called as IRDA of India Fund". And it includes:

- (1) Governmental Grants, fees and charges.
- (2) Money received by the Authority from other sources specified by the Central Government.

Application of Funds

The above funds shall be applied for

- (1) meeting salaries and allowances of members, officers and employees of the authority.
- (2) meeting other legitimate expenses of the authority.

Accounts of Authority

- ✓ The 'Authority' has to maintain Books of Accounts and prepare Annual Financial Statements as per norms prescribed by Central Government in consultation with CAG.
- ✓ The accounts of the 'Authority' shall be audited by the CAG according to their schedule and the expenditure required for such audit has to be borne by the 'Authority'.
- ✓ Any other person appointed by CAG may enjoy same privileges and have access to books, documents and other relevant papers.
- ✓ The certified accounts of the 'Authority' whether audited by CAG or person appointed by CAG, to be put forward to the Central Government and the same be laid before the Parliament by such Union Government.

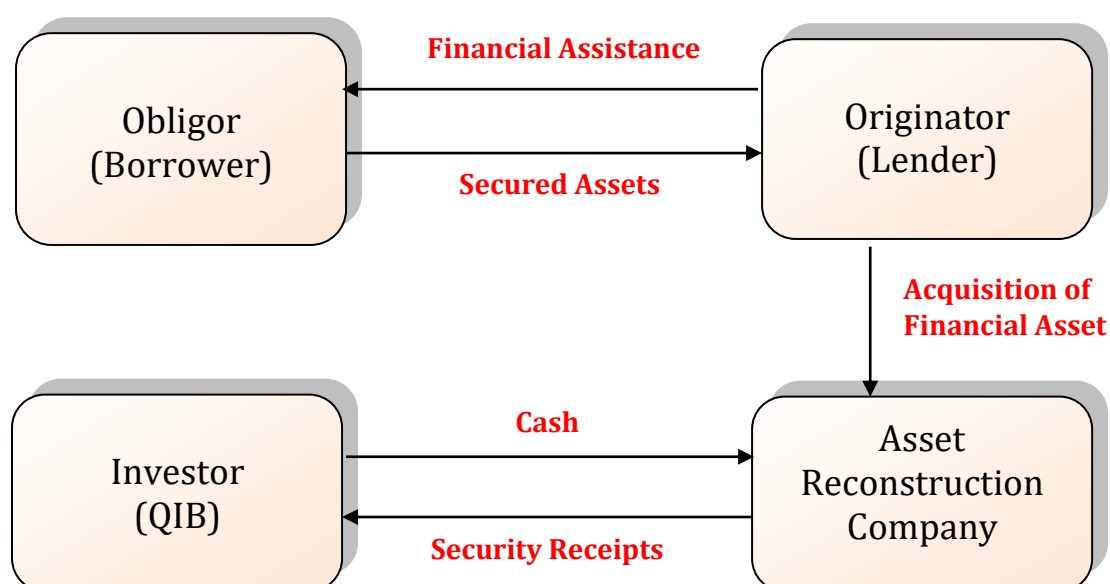
Other Matters

- ✓ The 'Authority' is bound by the action of the Central Government regarding policy matters. However, the Authority has the leverage of operating independently relating to technical and administrative matters.

- ✓ The Central Government may if situation warrants like, the Authority persistently defaulting directions of them or in public interest, may supersede the Authority for not more than six month duration, through notification and appointing a person as controller of Insurance under section 2B of the Insurance Act 1938. However, while prior to such notification, doctrine of Natural Justice has to be observed.
- ✓ From the date of publication of the notification, the chairperson and other members cease to hold office and all powers, functions and duties vests on the Central Government. And also all properties shall vest on the Central Government.
- ✓ The Central Government may then appoint fresh chairperson and other members before the expiration of the term of the super session. The notification and the Action Taken Report has to be placed before the Parliament at the earlier possible opportunity.
- ✓ From time to time the Authority has to furnish returns, statements and other particulars regarding to any existing or proposed programme, to the Central Government.
- ✓ The members and employees of the Authority shall be deemed to be public servants under section 21 of IPC while discharging their official duties. And their actions while performing their official duties are insulated from any legal proceedings, provided they have acted in good faith.
- ✓ The Authority may by prior notification, establish Insurance Advisory Committee. This Committee consists of twenty five members (maximum) excluding existing members.
- ✓ The chairperson shall be the ex-officio chairperson and other existing members shall be ex-officio members of Insurance Advisory Committee. The Committee advises the 'Authority' on various matters, including under Section 26.
- ✓ The 'Authority' may by general or special order delegate powers and functions to any of its members or officers or employees.
- ✓ The Central Government may by notification make rules relating to salary and allowances of the members, Annual Statements of Accounts, matters relating to furnishing of documents under Section 20 (1) and also matters relating to Insurance Advisory Committee under Section 25 (1).
- ✓ The 'Authority' may after consulting the committee by notification, make regulations particularly addressing the procedural aspect in conducting meetings, determining terms and conditions of the services of the officers and employees, delegating powers to the committee and other miscellaneous matters.
- ✓ Each rule and regulation made under this Act to be placed before Upper House and Lower House of Parliament for thirty days, while the Parliament is in session.
- ✓ Each rule or regulation shall be subjected to any modification or amendment within such period.
- ✓ This Act supplements all existing Acts made with relation to Insurance Business.
- ✓ The Central Government has right to remove any difficulties or impediments by making notification in the Official Gazette within two years from the appointed day.

The Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002

Basics of the Act



Objectives of the Act

- ✓ To regulate securitisation and reconstruction of financial assets and
- ✓ Enforcement of security interest and to provide for a central database of security interests created on property rights, and for matters connected therewith or incidental thereto.

It is an Act further to amend four laws:

- ✓ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI),
- ✓ Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI),
- ✓ Indian Stamp Act, 1899 and
- ✓ Depositories Act, 1996, and for matters connected therewith or incidental thereto.

Applicability of the Act

It extends to whole of India.

Important Definitions

Asset Reconstruction [Section 2(b)]

"Asset reconstruction" means acquisition by any securitisation company (SC) or reconstruction company (RC) of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance.

Financial Assistance [Section 2(k)]

The term "financial assistance" means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution

Asset Reconstruction Company [Section 2(ba)]

- ✓ Asset reconstruction company (ARC)" means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both.
- ✓ An ARC is not a banking company although it is regulated by RBI. Such company cannot carry out any other business other than securitisation or reconstruction.

Borrower [Section 2(f)]

Borrower" means any person

- ✓ who has been granted financial assistance by any bank or financial institution or
- ✓ who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and
- ✓ includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities

Default [Section 2(j)]

It means-

- a) non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as nonperforming asset in the books of account of the secured creditor or
- b) non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of such debt securities.

Debt [Section 2(ha)]

"Debt" shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and includes—

- (a) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract

(b) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset

Financial Asset [Section 2(l)]

"Financial asset" means debt or receivables and includes-

- (i) a claim to any debt or receivables or part thereof, whether secured or unsecured or
- (ii) any debt or receivables secured by, mortgage of, or charge on, immovable property or
- (iii) a mortgage, charge, hypothecation or pledge of movable property or
- (iv) any right or interest in the security, whether full or part underlying such debt or receivables or
- (v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent or
- (va) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset or
- (vb) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset
- (vi) any financial assistance

An asset which is not a financial asset cannot be securitised, acquired or transferred under this Act.

Example: Value of an unsecured land in the balance sheet of the borrower cannot be acquired by an ARC by way of issuing security receipts.

Non Performing Asset [Section 2(o)]

"Non-performing asset (NPA)" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,

- a) in case such bank or financial institution is administered or regulated by an authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body
- b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank.

Qualified Buyer [Section 2(u)]

"Qualified buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or asset reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3 or any asset management company making investment on behalf of mutual fund or pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made thereunder, any category of non-institutional investors as may be specified by the Reserve Bank under sub-section (1) of section 7 or any

other body corporate as may be specified by the Board.

An ARC cannot raise funds from investors which is not a qualified buyer (QB) as defined above.

For example, a manufacturing company looking to invest surplus cash by investing in the ARC, or a Public sector unit, or a strategic investor who wish to acquire the assets of the borrower company etc.

Securitisation [Section 2(z)]

- ✓ "Securitisation" means acquisition of financial assets by any asset reconstruction company from any originator, whether by raising of funds by such asset reconstruction company from qualified buyers by issue of security receipts representing undivided interest in such financial assets or otherwise.
- ✓ The process of securitisation helps the ARC to acquire financial assets like Loans from banks due to which the ARC shall be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

Secured Creditor [Section 2(zd)]

"Secured creditor" means-

- (a) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);
- (b) debenture trustee appointed by any bank or financial institution; or
- (c) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or
- (d) debenture trustee registered with the Board appointed by any company for secured debt securities; or
- (e) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created by any borrower for due repayment of any financial assistance

Security Interest [Section 2(zf)]

"Security interest" means right, title and interest of any kind, other than those specified in section 31, upon property created in favour of any secured creditor and includes—

- (a) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or
- (b) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset

A creditor shall not be called as secured creditor unless its interest over the assets of the debtor or borrower is covered under the above definition. Refer section 31 (Provisions of this Act not to apply in certain cases) for specific exclusions of rights that shall not be treated as security interest.

Registration of Asset Reconstruction Company

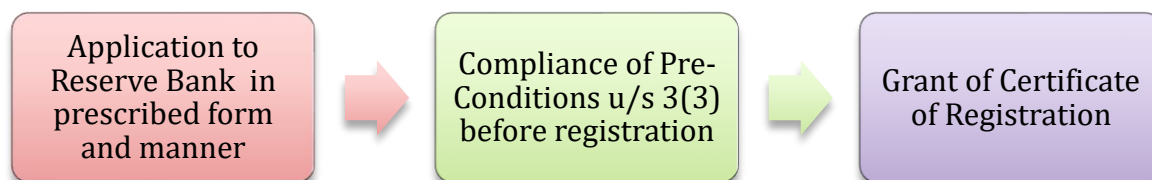
Section 3

A company can commence or carry on the business of **securitisation or asset reconstruction** only after-

- ✓ **obtaining** a **certificate** of registration granted under this section and
- ✓ **having** the **net owned fund of not less than one hundred crore rupees or such other higher amount** as the Reserve Bank, may, by notification, specify.

Amount specified by RBI: 100 Crores

Process of Obtaining Certificate of Registration



Conditions for Grant of Certificate [Section 3(3)]

The Reserve Bank may, **for the purpose of** considering to grant its **approval** for the application for registration of an ARC to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such ARC, or otherwise, that the following **conditions** are **fulfilled**, namely:-

- ✓ that the ARC has **not incurred losses** in any of the **three preceding financial years**;
- ✓ that such ARC has made **adequate arrangements for realisation** of the financial **assets** acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified buyers or other persons
- ✓ that the **directors** of ARC **have adequate professional experience** in matters related to finance, securitisation and reconstruction
- ✓ that any of its **directors** has **not** been **convicted of** any **offence** involving moral turpitude
- ✓ that a **sponsor** of an ARC is a **fit and proper person** in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such persons
- ✓ that **ARC** has **complied with** or is in a position to comply with **prudential norms** specified by the Reserve Bank.
- ✓ that ARC has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.

'Sponsor' means any person holding not less than 10% of the paid-up equity capital of an asset reconstruction company.

Grant of Certificate [Section 3(4)]

- ✓ Certificate of registration is granted to the ARC to commence or carry on business of securitisation or asset reconstruction.
- ✓ The Reserve Bank may also prescribe any other conditions, which it may consider, fit to impose.

Rejection of Application [Section 3(5)]

The Reserve Bank is of the opinion that the above conditions are not satisfied then it may reject the application, after the applicant is given a reasonable opportunity of being heard.

Prior Approval of RBI In Case Of Changes [Section 3(6)]

ARC must obtain prior approval of the Reserve Bank for the following purposes:-

- ✓ any **substantial change in its management**, including appointment of any director, managing director or chief executive officer
- ✓ **change of location** of its registered office
- ✓ **change in its name**

Substantial Change in Management: means the change in the management by way of transfer of shares or change affecting the sponsorship in the company by way of transfer of shares or amalgamation or transfer of the business of the company.

Decision of Reserve Bank in ascertaining the same shall be final and binding.

Cancellation of Certificate of Registration

Section 4

Cases Where Certificate may be cancelled [Section 4(1)]

The **Reserve Bank may cancel** a **certificate** of registration granted to an ARC, **if** such company-

- a) **ceases to carry on** the business of **securitisation or asset reconstruction**; or
- b) **ceases** to receive or hold any **investment from a qualified buyer**; or
- c) has **failed to comply with** any **conditions subject to which** the **certificate** of registration has been **granted** to it; or
- d) at any time **fails to fulfil** any of the **conditions** referred to in **Section 3(3)** or
- e) **fails to-**
 - ✓ **comply with** any **direction** issued by the **Reserve Bank** under the provisions of this Act or
 - ✓ **maintain accounts** in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act or
 - ✓ **submit** or offer **for inspection** its **books of account** or other relevant documents when so demanded by the Reserve Bank or
 - ✓ **obtain prior approval** of the Reserve Bank **required u/s 3(6)**

Opportunity to comply provisions: In case delay not prejudicial to public interest

Before cancelling a certificate of registration on the ground that-

- ✓ the ARC has failed to comply with the provisions subject to which certificate was granted or
- ✓ has failed to fulfil any of the conditions referred to in sec 3(3) or
- ✓ has failed to obtain prior approval of Reserve Bank in required cases

Reserve Bank shall give an opportunity to such company on such terms as the Reserve Bank may specify **for taking necessary steps to comply** with such provisions or fulfillment of such conditions.

No Opportunity in Case Delay is Prejudicial to Public Interest

If Reserve Bank is of the **opinion that the delay in cancelling** the certificate of registration **shall be prejudicial** to the public interest or the interests of the investors or the ARC, **it shall cancel** certificate of registration **without** giving an **opportunity** to Company to fulfill conditions.

Appeal against Cancellation Order [Section 4(2)]

- ✓ In case the **ARC is aggrieved** by the order of cancellation of certificate of registration by the Reserve Bank, **then it may prefer an appeal**,
 - **within a period of thirty days from the date on which** such order of cancellation **is communicated** to it,
 - **to the Central Government.**
- ✓ The **Central Government must** also **give** such company a reasonable **opportunity of being heard before rejecting** the appeal.

Consequences of Cancellation/Rejection [Section 4(3)]

- ✓ **ARC**, which is **holding investments** of qualified buyers and
- ✓ **whose** application for grant of certificate of registration has been rejected or certificate of **registration** has been **cancelled**
- ✓ **shall**, notwithstanding such rejection or cancellation **be deemed to be an ARC**
- ✓ **until it repays the entire investments** held by it (together with interest, if any)
- ✓ within such period as specified by the Reserve Bank.

Acquisition of Rights or Interest in Financial Assets

Section 5

Acquiring of Financial Assets of Any Bank or Financial Institution [Section 5(1)]

An **ARC may acquire financial assets** of any bank or financial institution-

- ✓ **by issuing a debenture or bond** or any other **security** in the nature of debenture, **for consideration agreed upon** between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them or
- ✓ **by entering into an agreement** with such bank or financial institution **for the transfer** of such financial assets to such company on such terms and conditions as may be agreed upon between them.

Exemption from Stamp Duty [Section 5(1a)]

- ✓ Any **document executed by** any **bank** or financial institution as mentioned above, **in favour of the ARC** acquiring financial assets **for the purposes of asset reconstruction or securitization shall be exempted from stamp duty** in accordance with the provisions of section 8F of the Indian Stamp Act, 1899
- ✓ Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitisation.

Arc Deemed to be the Lender

- ✓ In case **where bank** or financial institution **is a lender** in relation **to any financial assets acquired by the ARC**
- ✓ Then such **ARC** shall, **on such acquisition, be deemed to be the lender** and all the rights of such bank or financial institution shall vest in such company in relation to the subject financial assets.
- ✓ If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets.

Enforcement by Asset Reconstruction Company [Section 5(3)]

All **contracts**, deeds, bonds, agreements, powers-of-attorney, permissions, approvals, consents or no-objections and **other instruments** of whatever nature **which relate to the said financial asset shall have same effect against or in favour of such Company.**

Continuation of Proceedings [Section 5(4)]

If, on the date of acquisition of financial asset, any suit, **appeal** or other proceeding of whatever nature relating to the said financial asset is **pending** by or against the bank or financial institution, the **same shall not abate**, or be discontinued **but** may be **continued**, prosecuted **and enforced by or against the ARC.**

Substitution of ARC in Legal Proceedings [Section 5(5)]

- ✓ **On acquisition** of financial assets, the **ARC**, may **with the consent of the originator, file an application before** the Debts Recovery **Tribunal** or the Appellate Tribunal or any court **or other Authority for** the purpose of **substitution of its name in** any pending suit, appeal or other **Proceedings**
- ✓ On receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the ARC in such pending suit, appeal or other proceedings

Transfer of Pending Applications to anyone of Debts Recovery Tribunals in Certain Cases

Section 5A

Application before More than One DRT by Banks

If any financial asset, of a borrower acquired by an ARC, **comprise of secured debts or more than one bank** or financial institution **for recovery of which** such **banks** or financial institutions has **filed applications before two or more Debts Recovery Tribunals**, the **ARC may file an application to the Appellate Tribunal** having jurisdiction over any of such Tribunals in which such applications are pending **for transfer of all pending applications to any one of the Debts Recovery Tribunals** as it deems fit.

Transfer of Applications Pending

- ✓ On receipt of such application for transfer of all pending applications under sub-section (1), the **Appellate Tribunal** may, **after giving** the parties to the application an **opportunity of being heard, pass an order for transfer** of the pending applications to any one of the Debts Recovery Tribunals
- ✓ Any **order** passed by the Appellate Tribunal **shall be binding** on all the Debts Recovery Tribunals as if such order had been passed by the Appellate Tribunal having jurisdiction on each such Debts Recovery Tribunal.

Order Execution

Any **recovery certificate**, issued by the Debts Recovery Tribunal to which all the pending applications are transferred under sub-section (2), **shall be executed in accordance with** the provisions contained in sub-section (23) of section 19 and other provisions of the **Recovery of Debts Due to Banks and Financial Institutions Act, 1993** shall, accordingly, apply to such execution.

Notice to Obligor and Discharge of Obligation of such Obligor

Section 6

The **bank or financial institution** may give a **notice of acquisition** of financial assets by any ARC to

- ✓ the concerned **obligor** and
- ✓ any other **concerned person** and
- ✓ to the **concerned registering authority**.

Payment to ARC

On receipt of notice, the obligor shall make payment to the concerned ARC in discharge of any of the obligations in relation to the financial asset specified in the notice which will mean full discharge to borrower.

Issue of Security by Raising of Receipts or funds by ARC

Section 7

Offer to Qualified Buyers

Any **ARC, may, after acquisition** of any financial asset under section 5(1), **offer security receipts to qualified buyers** (or such other category of investors including non-institutional investors as may be specified by the Reserve Bank in consultation with the Board, from time to time) **for subscription** in accordance with the provisions of those Acts.

Raising of Funds

- ✓ An **ARC may raise funds from the qualified buyers by**
- ✓ **formulating schemes** for acquiring financial assets **and**
- ✓ shall keep and **maintain** separate and **distinct accounts**

- ✓ in respect of each such scheme for every financial asset acquired out of investments made by a qualified buyer **and**
- ✓ **ensure** that **realisations** of such financial asset
- ✓ **is held** and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme

Consequences of Non-Realisation

In the event of **non-realisation** of financial assets, **qualified buyers holding not less than 75% of total value of security receipts** issued under a scheme, shall **be entitled to call a meeting** of all qualified buyers. Resolution passed in such meeting shall be binding.

Exemption from Registration of Security Receipt

Section 8

Any security receipt issued by the ARC and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument, or any transfer of security receipts, shall not require compulsory registration under section 17 of the Registration Act, 1908.

Measures for Asset Reconstruction

Section 9

An ARC may, provide for any one or more of the following measures, for the purposes of asset reconstruction-

- (a) the proper management of the business of the borrower, by change in, or **takeover of the management of the business** of the borrower
- (b) the **sale or lease of** a part or whole of the **business** of the borrower
- (c) **rescheduling of** payment of **debts** payable by the borrower
- (d) **enforcement of security interest** in accordance with the provisions of this Act
- (e) **settlement of dues** payable by the borrower
- (f) **taking possession of secured assets** in accordance with the provisions of this Act
- (g) **conversion of** any portion of **debt into shares** of a borrower company

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

Power of RBI to Determine Policy

The Reserve Bank shall, for the purposes as given above, determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged.

Compliance with Directions by RBI

The asset reconstruction company shall take measures in accordance with policies and directions of the Reserve Bank

Other Functions of ARC

Section 10

Any **ARC** may-

- (a) **act as an agent for any bank** or financial institution **for** the purpose of **recovering** their **dues** from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties
- (b) **act as a manager** on such fee as may be mutually agreed upon between the parties
- (c) **act as receiver if appointed by any court or tribunal**

No Pecuniary Liability and Other Business

- ✓ No ARC shall act as a manager if acting as such gives rise to any pecuniary liability.
- ✓ **No ARC** which has been granted a certificate of registration **shall commence** or carry on, **without prior approval of the Reserve Bank**, any **business other than** that of **securitisation or asset reconstruction**.

Resolution of Disputes

Section 11

Where any **dispute** relating to securitisation or reconstruction or non-payment of any amount due including interest **arises amongst** any of the **parties**, namely,

- ✓ the bank, or
- ✓ financial institution, or
- ✓ ARC or
- ✓ qualified buyer,

Such **dispute shall be settled by conciliation or arbitration** as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

Power of Reserve Bank to Determine Policy and Issue Directions

Section 12

In the public interest, Reserve bank may determine the policy and give directions to any ARC in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the ARC to regulate financial system of the country and to prevent affairs in manner detrimental to interest of investors.

Directions by Reserve Bank

- ✓ the type of financial asset of a bank or Financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof
- ✓ the aggregate value of financial assets which may be acquired by any securitization company or reconstruction company.
- ✓ the fee and other charges which may be charged or incurred for management of financial assets acquired by any asset reconstruction company
- ✓ transfer of security receipts issued to qualified buyers

Power of Reserve Bank to Call for Statements and Information

Section 12A

The **Reserve Bank** may direct **ARC** to furnish it within such time as may be specified by the Reserve Bank, with **such statements and information** relating to the business or affairs of such securitisation company or reconstruction company (including any business or affairs with which such company is concerned) **as** the Reserve Bank may consider **necessary** or expedient to obtain for the purpose of this Act.

Power of Reserve Bank to Carry out Audit and Inspection

Section 12B

The **Reserve Bank** may, for the purposes of this Act, **carry out** or caused to be carried out audit and **inspection** of an asset reconstruction company from time to time.

Duty to Provide Assistance

It shall be the **duty of** an asset reconstruction **company** and its **officers to provide assistance** and cooperation to the Reserve Bank to carry out audit or inspection.

Order by Reserve Bank

Where **on audit** or inspection or otherwise, the **Reserve Bank** is **satisfied that business** of an asset reconstruction company is being conducted in a manner **detrimental to public interest** or to the interests of investors in security receipts issued by such asset reconstruction company, the Reserve Bank **may**, for securing proper management of an asset reconstruction company, **by an order**—

- a) **remove** the **Chairman** or any **director** or **appoint additional directors** on the board of directors of the asset reconstruction company or
- b) **appoint** any of its **officers** as an **observer** to observe the working of the board of directors of such asset reconstruction company

Provided that no order for removal of Chairman or director under clause (a) shall be made except after giving him an opportunity of being heard.

Duty to Produce Books of Accounts etc.

It shall be the **duty of every director or other officer or employee of the asset reconstruction company to produce** before the person, conducting an audit or inspection all such **books, accounts** and other **documents** in his custody or **control** and to provide him such statements and information relating to the affairs of the asset reconstruction company as may be required by such person within the stipulated time specified by him.

Enforcement of Security Interest

Section 13

No Intervention of Court [Section 13(1)]

Any **security interest created in favour of any secured creditor may be enforced, without the intervention of the court** or tribunal, by such creditor in accordance with the provisions of this Act.

Default in Payment of Debt: Notice to Pay [Section 13(2)]

- ✓ Where any **borrower makes any default in repayment** of secured debt or any instalment thereof, **and**
- ✓ his **account** in respect of such debt is **classified** by the secured creditor **as non-performing asset**,
- ✓ **then**, the secured **creditor may require** the **borrower**
- ✓ **by notice in writing to discharge** in full his **liabilities** to the secured creditor
- ✓ **within sixty days from the date of notice**
- ✓ failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13.

Notice Prescribing the Details of the Debt

This **notice shall give details-**

- ✓ **of the amount payable by the borrower and**
- ✓ the **secured assets intended to be enforced** by the secured creditor in the event of non-payment of secured debts by the borrower
- ✓ that **payment be made within 60 days failing which secured creditor** shall be **entitled to exercise all** or any of the **rights** under sub-section (4) of Section 13.

Objection or Rejection by the Borrower

- ✓ **If, on receipt of the notice**, the **borrower makes any representation or raises any objection**, the secured creditor shall consider such representation or objection **and**
- ✓ If the secured **creditor comes to the conclusion that** such representation or **objection** is **not acceptable** or tenable, **he shall communicate within 15 days of receipt of such representation** or objection the **reasons for non-acceptance** of the representation or objection to the borrower

No Right to Borrower to Prefer an Application

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts recovery Tribunal or the Court.

Consequences of Failure to Discharge Liability [Section 13(4)]

If the **borrower fails to discharge** his **liability in full** within the above specified period, the secured **creditor may take recourse to** one or more of the **following measures** to recover his secured debt:-

- a) **take possession of** the secured **assets** of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset
- b) **take over the management** of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset
- c) **appoint any person** (hereafter referred to as the manager), **to manage** the secured **assets** the possession of which has been taken over by the secured creditor
- d) **require** at any time **by notice in writing, any person who has acquired** any of the secured **assets from the borrower and from whom** any **money** is **due** or may become due to the borrower, **to pay** the secured **creditor**, so much of the **money** as is **sufficient to pay** the secured **debt**.

Discharge from Payment

Any **payment made** by any person **to** the secured **creditor shall give** such person **a valid discharge** as if he has made payment to the borrower.

Right With Respect to the Immovable Property [Section 13(5A)]

Where the **sale of an immovable property**, for which a reserve price has been specified, **has been postponed for want of a bid of an amount not less than** such **reserve price**, it shall be **lawful for** any **officer** of the secured creditor, if so authorised by the secured creditor in this behalf, **to bid** for the immovable property **on behalf of the secured creditor** at any subsequent sale.

Adjustment of Purchase Price [Section 13(5B)]

Where the **secured creditor**, referred to in sub-section (5A), is **declared to be** the **purchaser of the immovable property at any subsequent sale**, the **amount** of the purchase price shall be **adjusted towards** the amount of the **claim** of the secured creditor for which the auction of enforcement of security interest is taken.

Applicability of Banking Regulation Act [Section 13(5C)]

The provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to the immovable property acquired by secured creditor.

Right Related to Transfer of Secured Assets [Section 13(6)]

Any **transfer** of secured asset after taking possession **shall vest in the transferee all rights** in relation **to secured asset**.

Recovery of Expenses [Section 13(7)]

- (a) The **secured creditor shall be entitled to determine** the **costs** which have been properly **incurred** by him.
- (b) Such costs shall **be recoverable** by the secured creditor **from the borrower**.
- (c) Any **money** which is received by the secured creditor shall be **applied, firstly, in** payment of such **costs and secondly, in discharge of the dues** of the secured creditor, **and if any amount remains** after such payments, such amount shall **be paid to the borrower**.

No Sale of Secured Asset if all Dues Paid to Secured Creditor before the Date Fixed for Sale [Section 13(8)]

If the amount of dues of the secured creditor **together with all costs**, charges and expenses incurred by him **is tendered to the secured creditor** at any time **before** the date of **publication of notice for public auction** or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets.-

- (i) the **secured assets** shall **not be transferred by way of lease**, assignment or sale of the secured creditor; **and**
- (ii) in case, **any step** has been **taken by the secured creditor for transfer** by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, **no further step shall be taken** by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

Right of Action in Case of Joint Financing of a Financial Asset [Section 13(9)]

In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any right conferred on him under section 13(4), unless such right is agreed upon by the secured creditors representing not less than 60% in value of the amount outstanding, and such action shall be binding on all the secured creditors.

Distribution Of Amount Realised In Case Of A Company In Liquidation [Proviso To Section 13(9)]

In the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956.

Recovery of Unsatisfied Dues Of Secured Creditor [Section 13(10)]

Where dues of the secured creditors are **not fully satisfied** with the sale proceeds of the secured assets, the secured **creditor may file an application to** the Debts Recovery **Tribunal or** a competent **court, for recovery** of the balance amount from the borrower.

Right of Action against the Guarantors or Pledged Assets [Section 13(11)]

The **secured creditor shall be entitled to proceed against** the **guarantors** or sell the pledged assets without first taking any of the measures specified in section 13(4).

Exercise of Rights of Secured Creditor by Authorised officers [Section 13(12)]

The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf.

Illustration:

Popular Limited defaulted in the repayment of term loan taken from a Bank against security created as a first charge on some of its assets. The bank issued notice pursuant to Section 13 of the SARFAESI Act, 2002 to the company to discharge its liabilities within a period of 60 days from the date of the notice. The company failed to discharge its liabilities within the time limit specified. Explain the measures to be taken by the Bank to enforce its security interest under the said Act.

Answer:

If the borrower fails to discharge his liability in full within the above specified period, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:

- a. Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for Realizing the secured asset
- b. Take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and Realize the secured asset.
- c. Appoint a manager, to manage the secured assets the possession of which has been taken over by the secured creditor
- d. Require at any time by notice in writing, any person who has acquired any of the secured

assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the given case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified.

Chief Metropolitan Magistrate or District Magistrate to Assist Secured Creditor in Taking Possession of Secured Asset

Section 14

The **secured creditor** may, for the purpose of **taking possession** or control of secured asset, **request, in writing**, the **Chief Metropolitan Magistrate or the District Magistrate** within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, **to take possession** thereof, **and** the Chief Metropolitan Magistrate or, as the case may be, the District **Magistrate** shall, **on such request** being made to him—

- ✓ **take possession** of such asset and documents relating thereto; **and**
- ✓ **forward** such **asset and documents** to the secured **creditor** **within a period of thirty days from the date of application**.

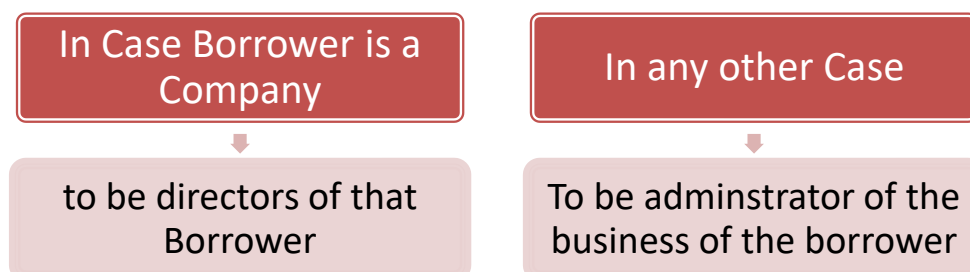
Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

Manner and Effect of Takeover of Management

Section 15

Appointment of Persons by Secured Creditors

When the **management** of business of a borrower is **taken over by** an **ARC**, the secured **creditor** may, **by publishing** a **notice in a newspaper** published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, **appoint** as many **persons as it thinks fit**.



Consequences of Publication of Notice

- ✓ All **persons holding office as directors** of the company (if the borrower is a company) and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the above notice, **shall be deemed to have vacated** their offices.

- ✓ Any **contract** of management between the borrower and any director or manager thereof holding office as such immediately before publication of the above notice, shall **be deemed to be terminated**.
- ✓ The **directors or the administrators appointed** under this section shall **take** such steps as may be necessary to take **into their custody** or under their control all the **property, effects and actionable claims** to which the business of the borrower is, or appears to be, entitled.
- ✓ All the **property and effects** of the business of the borrower shall **be deemed to be in the custody of the directors or administrators**, as the case may be, as from the date of the publication of the above notice.
- ✓ All **directors appointed** in accordance with the above notice **shall, for all purposes, be the directors of the company** of the borrower and such directors or the administrators appointed under section 15, shall only be entitled to exercise all the powers

Suspension of Rights during Takeover

Where the **management** of the business of a borrower, being a company as defined in the Companies Act is **taken over** by the secured creditor, then, notwithstanding anything contained, such borrower- in the said Act or in the memorandum or articles of association of such company-

- a) it shall **not be lawful for the shareholders** of such company or any other person to nominate or **appoint** any person to be a **director** of the company
- b) **no resolution** passed at any meeting of the shareholders of such company shall be given effect to **unless approved by the secured creditor**
- c) **no proceeding for the winding up** of such company or for the appointment of a receiver in respect thereof shall lie in any court, **except with the consent of the secured creditor**.

Obligation of Secured Creditor

The secured creditor is under an obligation to **restore** the **management** of the business of the borrower, **on realisation of his debt in full**, in case of takeover of the management of the business of a borrower by such secured creditor.

Illustration:

The management of Gangotri Ltd was taken over by LBV Bank Ltd. (secured creditor) by complying with the provisions of SARFAESI Act, 2002 and appointed two directors. The Board of directors of Gangotri Ltd. duly authorised by its articles, appointed two alternate directors and the majority of the directors made a declaration required for voluntary liquidation proceedings. A special resolution requiring the company to be liquidated voluntarily by appointing an insolvency professional to act as the liquidator was passed at the general meeting of the company. The Board of directors and the shareholders passed the resolutions without the approval/ consent of directors appointed by LBV Bank Ltd. Discuss the validity of the above resolutions under SARFAESI Act, 2002. Does an unsecured creditor have recourse to this Act?

Answer:

Where the management of the business of a borrower, being a company as defined in the Companies Act, 2013, is taken over by the secured creditor, then, notwithstanding anything contained, such borrower in the said Act or in the memorandum or articles of association of such company

- a. it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company.

- b. no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor,
- c. no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.

In the given situation, appointment of alternate directors is not valid, and the special resolution passed at general meeting shall not be given effect due to lack of consent of LBV Bank Ltd.

No Compensation to Directors for Loss of Office

Section 16

- ✓ Irrespective of anything contained in any contract or in any other law for the time being in force, **no managing director or any other director or a manager or any person in charge of management** of the business of the borrower shall **be entitled to any compensation for the loss of office** or for the premature termination under this Act.
- ✓ However any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Illustration:

Rockfort Limited failed to repay the loan borrowed from Nest Bank which is holding a charge on all the assets of the company. The bank took over management of the company in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by appointing four persons as directors. The company is managed by managing director, Mr. Pawn, who has been now removed. Referring to the provisions of the said Act, examine whether Mr. Pawn is entitled to compensation for loss of office.

Answer:

According to section 16 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, irrespective of anything contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act. However, any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Right to Appeal

Section 17

Filing of an Application

Any **person** (including borrower), **aggrieved by** any of the **measures** given in section 13(4) **taken** by the secured creditor or his authorised officer under this Chapter, **may make an application** along with such fee, as may be prescribed **to the Debts Recovery Tribunal** having jurisdiction in the matter **within 45 days from the date of which such measure had been taken**.

Jurisdiction of Filing Application

An **application** under sub-section (1) **shall be filed** before the Debts Recovery Tribunal **within** the local **limits of whose jurisdiction—**

- (a) the **cause of action**, wholly or in part, **arises**;
- (b) where the **secured asset** is **located**; or
- (c) the **branch** or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

Different fees may be prescribed for making the application by the borrower and the person other than the borrower.

The communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

Orders Where Recourse not in Accordance with Act

The Debts Recovery Tribunal shall consider whether any of the measures referred to in section 13(4) taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made there under.

If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in section 13(4), taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

- a) **declare** the **recourse** to any one or more measures referred to in section 13(4) taken by the secured creditor **as invalid**; and
- b) **restore** the **possession of secured assets or management** of secured assets to the borrower or such other aggrieved person, who has made an application under subsection (1), as the case may be; and
- c) **pass** such **other direction as** it may **consider appropriate** and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

Disposal of Application

- ✓ Any **application** made under sub-section (1) **shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application.**
- ✓ Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing
- ✓ However, **Total period of pendency of the application shall not exceed four months from the date of making of such application**
- ✓ If the application is not disposed of by the Debts Recovery Tribunal within the period of four months, any party to the application may make an application to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

- ✓ The Debts Recovery Tribunal shall dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.

Appeal to Appellate Tribunal

Section 18

Any **person aggrieved**, by any order made by the Debts Recovery Tribunal under section 17, **may prefer an appeal** along with such fee, as may be prescribed **to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.**

Deposit of Amount

- ✓ **No appeal shall be entertained unless** the **borrower** has **deposited** with the Appellate Tribunal **50% of the amount of debt due from him**, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less.
- ✓ Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than 25% of debt referred above.

Right of Borrower to Receive Compensation and Costs in Certain Cases

Section 19

If the Debts Recovery Tribunal or the Court of District Judge, on an application or the Appellate Tribunal or the High Court on an appeal preferred holds that

- ✓ the **possession** of secured assets by the secured creditor is **not in accordance with the provisions** of this Act and rules made there under, **and**
- ✓ **directs the secured creditors to return such** secured **assets** to concerned borrowers or any other aggrieved person, who has filed the application or appeal as the case may be
- ✓ the **borrower or such other person** shall **be entitled to the payment of such compensation and costs** as may **be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court** referred to in section 18B.

The Banking Regulation Act, 1949

History of Banking

- ✓ Banking in India in the modern sense originated in the last decades of the 18th century.
- ✓ Among the first banks were the Bank of Hindustan, which was established in 1770 and liquidated in 1829-32 and the General Bank of India, established in 1786 but failed in 1791.
- ✓ The largest bank, and the oldest still in existence, is the State Bank of India (S.B.I). It originated as the Bank of Calcutta in June 1806. In 1809, it was renamed as the Bank of Bengal. This was one of the three banks funded by a presidency government, the other two were the Bank of Bombay and the Bank of Madras.
- ✓ The three banks were merged in 1921 to form the Imperial Bank of India, which upon India's independence, became the State Bank of India in 1955.
- ✓ In 1969 the Indian government nationalised 14 major private banks.
- ✓ In 1980, 6 more private banks were nationalised.

Classification of Indian Banking

- ✓ The Indian banking sector is broadly classified into scheduled banks and non-scheduled banks. The scheduled banks are those which are included under the 2nd Schedule of the Reserve Bank of India Act, 1934.
- ✓ The scheduled banks are further classified into: Nationalised banks, State Bank of India and its associates, Regional Rural Banks (RRBs), foreign banks, and other Indian private sector banks. Private Sector Banks could also be categorized into older Private Sector Banks and the newer Private Sector Banks.
- ✓ The term commercial bank refers to both scheduled and non-scheduled commercial banks which are regulated under the Banking Regulation Act, 1949.

Business of Banks

The Banks in general accept the deposits from public by way of different categories –

- ✓ savings bank accounts,
- ✓ current accounts and
- ✓ fixed deposits as well as
- ✓ recurring deposits,
- ✓ cash certificates etc.

The deposits could be categorized in two broad groups i.e. savings bank and current account where withdrawals are based on demand by the account holders and fixed deposits which are time deposits for a specific period of time.

Since the banks are expected to be ready with cash or honour cheques drawn on them by savings bank customers as well as current account customers, the rate of interest payable on such categories (CASA) is lower than the interest paid on fixed deposits.

Ratios Maintained by Banks

- ✓ Banks are required to maintain the reserves in accordance with the stipulations in Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR) and after meeting the reserve requirements and also for the day to day liability for payments to customers in the form of cash balances, the remainder is generally lent by way of advances to various borrowers.
- ✓ The banks are required to earn a minimum interest spread on the advances which should provide for the administrative overheads and meet the cost of deposits too.
- ✓ The Cash Reserve Ratio (CRR) at present is 4% and the Statutory Liquidity Ratio (SLR) is 21% as per the Reserve Bank of India website (August 2016).
- ✓ As of now, the commercial banks have been facing the persistent problem of increasing non-performing assets for which they are forced to make provisions in accordance with the regulations of the Reserve Bank of India and declare losses.
- ✓ In order to tackle the problem of growing Non Performing Assets, a new step worth mention is the passing of the Insolvency and Bankruptcy Code, 2016 by both the houses of the Parliament. The first step in the implementation of the Act by notifying the sections of the Act dealing with the establishment of the Insolvency and Bankruptcy Board of India has been recently taken by the Ministry of Corporate Affairs.

Basic Provisions of Act

- ✓ The Banking Regulation Act, 1949 is a central legislation that regulates all banking firms in India. Initially, the law was applicable only to banking companies.
- ✓ Primary Agricultural Credit Society and cooperative land mortgage banks are excluded from the Act.
- ✓ The Act gives the Reserve Bank of India (RBI) to power to license banks, have regulation over shareholding and voting rights of shareholders, supervise the appointment of the boards and management, regulate the operations of banks, lay down instructions for audits, impose moratorium, mergers and liquidation, issue directives in the interests of public good and on banking policy and impose penalties.
- ✓ In 1965, the Act was amended to include cooperative banks under its purview by adding the Section 56.
- ✓ Cooperative banks, which operate only in one state, are formed and run by the state government. But, RBI controls the licensing and regulates the business operations.

Forms of Business in Which Banking Companies may engage**Section 6**

'Banking' means the accepting, for the purpose of lending and investment of deposit of money from the parties, repayable of demand.

This section provides that a Banking Company may engage in addition to the business of banking, a list of activities as detailed below:

- ✓ Agent for any government or local authority or persons but not as a managing agent or secretary and treasurer of a company.
- ✓ May effect, insure/ guarantee/underwrite, participate in managing or carrying out of any issue of loans or any other securities made by state, local body, company, corporation, association and may also lend for the purpose.
- ✓ May carry on or transact every kind of guarantee or indemnity business.

- ✓ May manage, sell and realize any property which may come its possession in satisfaction of its claims.
- ✓ May acquire, hold and deal with any property or any right, title or interest therein which forms the security for any loans or advances sanctioned.
- ✓ May undertake and execute trusts.
- ✓ May undertake the administration of estates as executor, trustee or otherwise.
- ✓ May establish and support or aid in the establishment of associations, institutions, funds, trusts and conveniences for the benefit of its present or past employees and their dependents and may grant or guarantee moneys for charitable purposes.
- ✓ May acquire, construct, maintain and alter any building or works necessary for its purposes.
- ✓ May sell, improve, manage, develop, exchange, lease, mortgage dispose off or otherwise deal with any of its properties and rights.
- ✓ May take over and undertake the whole or any part of the business of any person or company when such business is of a nature described above.
- ✓ May do all such other things as are incidental or conducive to the promotion or advancement of its business.
- ✓ May engage in any other form of business which the Central Govt. specifies to be lawful. The above list of activities is exhaustive but not comprehensive. Of the several kinds of services listed above both under main business as well as ancillary business, some are 'agency services' and some are general utility services.

Board of Directors to Include Persons with Professional and Other Experience

Section 10A

Every company is required to ensure that the composition of the Board of Directors complies with this section.

Not less than 51% of the total number of the Board of Directors shall consist of persons who shall have specialized knowledge or practical experience in accountancy, agriculture and rural economy, banking, co-operation, finance, law, small scale industry or any other field which in the opinion of the Reserve Bank of India would be useful to the Banking company. Of these, there shall be minimum two persons with special knowledge or experience in agriculture and rural economy, co-operation and small scale industry.

Persons in the categories herein stated shall not have substantial interest or be connected with corporate / companies (not being section 8 Companies or companies engaged in small scale industry) or with trading, commercial or industrial concerns as employees, manager or managing agents. They could however, be connected with small industrial concern firms. The intention behind this provision is that the Board should be perfectly balanced with specialists drawn from various streams should form part of the Board and can provide a broad spectrum of experience.

The directors of a banking company other than Chairman and Whole time director shall hold office for a period of 8 years.

Banking Company to be managed by Whole Time Chairman

Section 10B

Every banking company in existence on the commencement of the Banking Regulation (Amendment) Act, 1994 or which comes into existence thereafter shall have one of its Directors, who may be appointed on a whole-time or a part-time basis,

as Chairman of its board of Directors, and where he is appointed on a whole-time basis, as Chairman of its board of Directors, he shall be entrusted with the management of the whole of the affairs of the banking company.

Provided that the Chairman shall exercise his powers subject to the superintendence, control and direction of the board of Directors.

Power of Reserve Bank to Appoint Chairman of the Board of Directors Appointed on a Whole-Time Basis or a Managing Director of a Banking Company

Section 10BB

Where the office, of the Chairman of the board of Directors appointed on a whole-time basis or a Managing Director of a banking company is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interests of the banking company, appoint a person eligible to be so appointed, to be the Chairman of the board of Directors appointed on a whole time basis or a Managing Director of the banking company and where the person so appointed is not a Director of such banking company, he shall, so long as he holds the office of the Chairman of the board of Directors appointed on a whole-time basis or a Managing Director, be deemed to be Director of the banking company.

The Chairman of the Board of Directors of a Banking Company shall hold office for a period of five years.

Requirements Regarding Minimum Paid Up Capital and Reserves

Section 11

Section 11 of the Banking Companies Act lays down the requirements regarding the minimum standard of paid up capital and reserves as a condition for the commencement of business.

Under the provisions of Section 12, the subscribed capital of the company is not less than half of its authorized capital and the paid up capital is not less than half of its subscribed capital, provided when the capital is increased this proportion may be permitted to be secured within a period to be determined by the Reserve Bank not exceeding two years from the date of increase.

While the concept of minimum capital as above is a statutory prescription, in the current context, Capital adequacy ratio is very much relevant to be understood as the banks have now been forced to provide for the non performing assets (NPAs) in their books of account while announcing the results. The banks are now compared on an international rating and no banks can today operate without having sufficient capital as banks are required to engage with other banks for their business relationship and the erosion of capital in one bank could impact the other banks with which it has relationship. The subject matter of capital adequacy in commercial banks has been discussed and recommended by the Basel Committee guidelines. As of now, Indian commercial banks are required to be compliant with the Basel

Laws Related to Banking Sector III Recommendations.

The major features of Basel III are as under: No person can exercise voting rights of more than 10% regardless of his holding which may be increased to 20% in phased manner.

- (i) The three pillars upon which the edifice of capital structure stands are : Minimum Regulatory Capital requirements based on risk weighted assets (RWAs) maintaining capital worked out through credit, market and operational risk areas Supervisory

Review Process – regulating tools and frameworks for dealing with peripheral risks that bank face

Market discipline specifying the disclosures that banks need to make to increase the transparency of banks

- (ii) The banks are expected to have better capital quality and buffers (capital conservation and counter cyclical) and specifications for Minimum common Equity tier I and Tier II.
- (iii) The banks are required to be compliant with Basel III norms on January 1, 2019 and a minimum total capital of 9% of total risk weighted assets is to be ensured.

Restriction on Commission, Brokerage, Discount, Etc. on Sale of Shares

Section 13

No banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any shares issued by it, any amount exceeding in the aggregate two and one-half per cent of the price at which the said shares are issued.

Prohibition of Charge on Unpaid Capital

Section 14

According to Section 14, no banking company shall create any charge upon its unpaid capital, and any such charge if created, shall be invalid.

Limiting the Payment of Dividends

Section 15

Section 15 prohibits every banking company from paying any dividend on its shares unless it has completely written off the capitalized expenses specified therein.

However, as per the Banking Companies (Amendment) Act 1959, Banking Company may pay dividend on its shares without writing off the following:

- ✓ The depreciation in the value of investments in the approved securities provided such depreciation has not been actually capitalized or accounted for a loss.
- ✓ The depreciation in the value of its investments in shares, debentures, bonds, etc., (other than approved securities) where adequate provision has been made for such depreciation. The auditor of the banking company should approve such provision.
- ✓ The bad debts where the adequate provision has been made in this behalf and the auditor of the banking company should approve such provision.
- ✓ Banks pay dividends after taking specific approval of the Reserve Bank of India

Transfer to Reserve Fund

Section 17

Under Section 17, Banking companies incorporated in India are obligated to transfer to the reserve fund a sum equivalent to not less than 20% of the profit each year, unless the amount in such fund together with the amount in the share premium account is more than or equal to its paid-up capital.

However, vide its notification dated 20.09.2006, RBI has notified the following:

All scheduled commercial banks operating in India (including foreign banks) should transfer not less than 25 per cent of the 'net profit' (before appropriations) to the Reserve Fund.

Maintenance of Cash Reserve by Non-Scheduled Banks

Section 18

According to Section 18, every banking company not being a scheduled bank (i.e., a non-scheduled bank) has to maintain in India on daily basis by way of cash reserve with itself or in current account opened with the Reserve Bank or the State Bank of India or any notified Bank or partly in cash with itself and partly in such account or accounts a sum equivalent to at least 3% of its total time and demand liabilities. The requirement for maintenance of Cash Reserve Ratio (CRR) by Scheduled Banks is specified in the Section 42 of the Reserve Bank of India Act, 1934.

Restrictions on Holding of Shares in Other Companies

Section 19

- ✓ Section 19 of the Act restricts the scope of formation of subsidiary companies by a banking company, as well as the holding of shares in other companies.
- ✓ That is, this section prevents banking companies from carrying on trading activities by acquiring a controlling interest in non-banking companies.
- ✓ This section restricts the scope of formation of subsidiary companies by a banking company, as well as the holding of shares in other companies.
- ✓ A banking company may form a subsidiary company for the purposes referred to in the section, as well as for other purposes as are incidental to the business of banking, subject to the previous permission in writing of the RBI.

Restrictions on Loans and Advances

Section 21 & 22

Section 20 lays down the restrictions on banking companies on granting any loan to any of its director or to any firm in which a director is interested or to any individual or whom a director stands as a guarantor. Further the banking companies are prohibited from granting loans or advances on the security of its own shares. RBI is also empowered to control advances by any bank, on public interest.

Under Section 21, the RBI has been empowered to determine the policy to be followed by the banks in relation to advances. Thus, RBI gives directions to banking companies on the following matters:

- ✓ The purposes for which an advance may or may not be granted.
- ✓ The margins to be maintained in case of secured advances.
- ✓ The rate of interest charged on advances, other financial accommodation and commission on guarantees.
- ✓ The maximum amount of advance or other financial accommodation that a bank may make to or guarantee that it may issue for, a single party, having regard to the paid-up capital, reserves and deposits of the concerned bank.
- ✓

Licensing of Banking Companies

Section 22

(a) According to this section, no banking company can commence or carry on banking business in Laws Related to Banking Sector India unless it holds a licence granted to it by the Reserve Bank for the purpose.

This section states the following requirements for granting licence:

- (1) Necessity of licensing and mode of applying for it.
- (2) Conditions for granting of licenses.
- (3) Cancellation of licenses and appeals from such orders.

(b) Before granting any license under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company that the following conditions are satisfied:

- (1) that the company is in a position to pay its present or future depositors in full as their claims accrue.
- (2) that the affairs of the company are not likely to be conducted in a manner detrimental to the interests of its present or future depositors.
- (3) in the case of the carrying on of banking business by such company in India will be in the public interest and that the government or laws of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act, applicable to banking companies incorporated outside India. However, RRBs have been established under a separate Act of Parliament, viz., RRBs Act 1976 and not under Banking Regulation Act.

(c) The Reserve Bank may cancel a license granted to a banking company under this section:

- (1) If the company ceases to carry on banking business in India, or
- (2) If the company at any time fails to comply with any of the conditions imposed upon it, or
- (3) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government. The decision of the Central Government shall be final.

Thus, every banking company which likes to start banking business in India must obtain licence from RBI. While on this section, it would be relevant to take note of the guidelines announced by the Reserve Bank of India during 2016 for licensing of new Banks.

It is stated that the licences from Reserve Bank of India would now be available on tap, meaning that there is no specific period when the applications could be made.

Control on the Opening of new Business

Section 23

- ✓ According to this section, the RBI has been empowered to control the opening of new and transfer of existing places of business of banking companies. As such, no banking company shall open a new place of business in India or outside India and change the place without obtaining the prior permission of the RBI.
- ✓ No permission is required for opening a branch within the same city, town or village and for opening a temporary place of business for a maximum period of one month within a city, where the banking company already has a place of business for the purpose of providing banking facilities to the public on the occasion of an exhibition, a conference, a mela, etc.

Maintenance of a Percentage of Liquid Assets (SLR)

Section 24

Under this section, every banking company shall maintain in India in liquid assets for an amount not less than 25% of the total of its time and demand liabilities at the close of business on any day. The liquid assets include cash, gold or unencumbered approved securities and they are valued at a price not exceeding the current market price.

Maintenance of Assets in India

Section 25

Section 25 requires for the maintenance of assets equivalent to at least 75% of its demand and time liabilities in India, at the close of business of the last Friday of every quarter.

Submission of Returns of Unclaimed Deposits

Section 26

According to this section, every banking company shall submit a return in the prescribed form and manner to the RBI, giving particulars, regarding un-operated accounts in India for 10 years. This return is to be submitted within 30 days after the close of each calendar year. In the case of fixed deposits, the 10 years period is counted from the date of expiry of such fixed period. RRBs are however required to forward such returns to National Bank for Agriculture and Rural Development (NABARD).

Submission of Return, Forms, Etc., to RBI

Section 27

Under this section, every banking company shall submit to be RBI a return in the prescribed form and manner showing its assets and liabilities in India on the last Friday of every month, (if that Friday is a public holiday under the negotiable instruments Act, 1881, on the preceding working day.)

Besides, the RBI may at any time direct a banking company to furnish the statements and information relating to the business or affairs of the banking company within the specified period mentioned therein. Such directions may be issued when the RBI considers it is necessary or expedient to obtain for the purpose of the Act. And the RBI may call for information every half year, regarding the investments of banking company and the classifications of advance given in respect of industry, commerce and agriculture.

Powers to Publish Information

Section 28

Under this section, the RBI is authorized to publish in the public interest any information obtained under the Banking Regulation Act. The information is published in the consolidated form as the RBI may think fit.

Maintenance of Accounts and Balance Sheets

Section 29

- ✓ This section provides for the preparation of Balance Sheet and Profit & Loss Account as on the last working day of the year in respect of all business transacted by a banking company incorporated in India and in respect of all business transacted through its branches in India by a banking company incorporated outside India.
- ✓ It is prepared in the forms set out in the Third Schedule.
- ✓ The Central Government after giving not less than three months notice of its intention so to do by a notification in the official gazette, may from time to time by a like notification amend the forms set out in the Third Schedule.

Audit of the Balance Sheet and Profit & Loss Account

Section 30

As per this section, the balance sheet and Profit & Loss Account prepared in accordance with Section 29 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies. The auditor is required to state in his report in the case of a banking company incorporated in India,

- ✓ Whether or not the information and explanation required by him have been found to be satisfactory.
- ✓ Whether or not the transactions of the company which have come to his notice have been within the powers of the company.
- ✓ Whether or not the returns received from branch offices of the company "have been found adequate for the purposes of this audit.
- ✓ Whether the Profit & Loss Account shows a true balance of profit or loss for the period covered by such account.
- ✓ Any other matter which he considers should be brought to the notice of shareholders of the company.

Submission of Returns to RBI

Section 31

This section provides for publication of the Profit & Loss Account, Balance Sheet and the Auditor's report in the prescribed manner as well as for the submission of three copies thereof as returns to the Reserve Bank within a period of three months which may be extended up to six months.

Inspection

Section 35

This Section was incorporated with a view to safeguard the interest of shareholders and depositors of banking companies, as a result of which bank directors and managers are likely to be cautious in employing the funds of their institutions. Under this section RBI is entrusted with wide powers to cause an inspection of any banking company and its books and accounts.

Giving Directions to Banking Companies

Section 35A

Under Section on 35A, the Reserve Bank may caution or prohibit banking companies generally or any banking company in particular against entering into certain types of operations, where the Reserve Bank is satisfied that

(a) in the public interest or

(b) in the interest of banking policy. or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company. or to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

Power of Central Government to Authorise RBI for Issuing Direction to Bank for Initiating Resolution Process

Section 35AA

Central Government may authorise RBI to issue direction to banking company to initiate insolvency process, in respect of default, under IBC Code, 2016.

Power of RBI to Issue Direction in Respect of Stressed Assets

Section 35AB

RBI may issue direction to bank for resolution of stressed assets and may from authorities/committees for the same.

Prior Approval from RBI for Appointment of Managing Director, Etc.

Section 35B

According to this section, prior approval of RBI should be obtained for the appointment, re-appointment, remuneration and removal of the chairman or a director of a banking company. And for the amendments of provisions in the Memorandum or Articles or Resolutions of a General Meeting or Board of Directors, the prior approval of RBI is necessary.

Removal of Managerial and any Other Persons from Office

Section 36AA & 36AB

Under these sections, the RBI has power to remove managerial and other persons from office and to appoint additional directors.

Suspension of Board of Directors in Certain Cases.

RBI/Central Government may in consultation of RBI on satisfaction what affairs of the banks conducted in a manner detrimental to the depositors and is against public interest.

U/s 36(E), Central Government has the power to acquire the undertaking of the banking company, under above situation.

Suspension of Business

Section 37

- ✓ According to this section when a banking company is temporarily unable to meet its obligations it may apply to the High Court requesting an order for staying the commencement or continuance of all legal actions and proceedings against it for a period of not exceeding 6 months. Such stay is generally called a moratorium.
- ✓ For such requisition, the banking company should submit an application along with a report of the RBI in this regard. In that report the RBI indicates that the banking company is able to pay its debts if the application is granted. If such report is not obtained from the RBI, the banking company cannot get the grant of moratorium.

Winding Up of Banking Companies

Sections 38-44

The RBI may apply for the winding up of a banking company if.

- ✓ It fails to comply with the requirements as to minimum Paid-up capital and reserves as laid down in Section 11, or
- ✓ Is disentitled to carry on the banking business for want of license under Section 22, or
- ✓ It has been prohibited from receiving fresh deposits by the Central Government or the Reserve Bank, or
- ✓ It has failed to comply with any requirement of the Act, and continues to do so even after the Reserve Bank calls upon it to do so, or
- ✓ The Reserve Bank thinks that a compromise or arrangement sanctioned by the court cannot be worked satisfactorily, or
- ✓ The Reserve Bank thinks that according to the returns furnished by the company it is unable to pay its debts or its continuance is prejudicial to the interests of the depositors.
- ✓ The banking company cannot be voluntarily wound up unless the Reserve Bank certifies that it is able to pay its debts in full.

Amalgamation of Banking Companies

Section 44A

- ✓ As per this section the scheme of amalgamation (i.e., the terms and conditions of amalgamation) is to be approved by 2/3 majority of the total voting ratios of the shareholders in a general meeting.
- ✓ The unwilling shareholders are entitled to receive the value of their shares as may be determined by the RBI.
- ✓ The RBI has to sanction the scheme of amalgamation after the shareholders' approval.
- ✓ The assets and liabilities are transferred to the acquiring bank according to the directions of RBI mentioned in the sanction order.
- ✓ The RBI issues order for the dissolution of the first bank on a specified date.
- ✓ During preparation of scheme of amalgamations RBI may suspend business with approval with Central Government.

Role of Reserve Bank of India

Reserve Bank has been playing key role in the formulation of monetary, banking and financial policies. To facilitate the transition process and in order to effectively perform its varying roles in the changing banking scenario, from 'regulator' to 'facilitator' over the period.

Functions of RBI

Inspection of banks	Reserve Bank of India has been empowered under Banking Regulation Act, 1949 to conduct the inspection of banks and regulate them in the interest of banking system, banking policy and depositors/public.
Regulatory role of commercial banks	Department of Banking Operations and Development exercises regulatory powers in respect of commercial banks and Local Area Banks (LABs). The Department of Banking Operations and Development is entrusted with the responsibility of regulation of commercial banks and LABs under the regulatory provisions contained in the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934 and other related statutes besides enunciation of banking policies. Its functions broadly relate to prescription of regulations for compliance with various provisions of Banking Regulation Act on establishment of banks such as licensing and branch expansion, maintenance of statutory liquidity reserves, management and operations, amalgamation, reconstruction and liquidation of banking companies.
Anti - money laundering under PMLA	RBI has a role in PMLA by creating an anti money laundering Cell (AML Cell) for combating Financing of Terrorism (CFT) and tracking domestic and global developments in AML and CFT.
Approval/ monitoring of Board level appointments of commercial banks.	<p>The key activity of the section, appropriately named as Appointments Section, relate-</p> <ul style="list-style-type: none"> ✓ Approval of proposals from the domestic private sector banks for appointment/ removal of part-time Chairman/Managing Director/ whole-time Chairman and Chief Executive Officers. Ensuring compliance with the provisions of the Banking Regulation Act, 1949 with regard to the composition of the Board of Directors of commercial banks in the private sector. ✓ Making recommendations to Government regarding appointment of Executive Directors/Chairmen & Managing Directors of public sector banks, fixation of their salaries, payment of superannuation benefits and other allied matters. ✓ Making recommendations to Government regarding appointment of non-official directors, non-workmen directors and RBI Nominee Directors on the Boards of Nationalised banks.
Licensing of Branches	<ul style="list-style-type: none"> ✓ issue of authorisations to Indian commercial banks including Local Area Banks for opening of branches in pursuance to regulatory powers vested with Reserve Bank under the provisions of Banking Regulation Act, 1949. ✓ To consider representations/complaints from institutions/VIPs and members of public for opening /shifting/closure of bank offices. ✓ Review of branch licensing policy periodically ✓ Maintenance and updation of database opening/substitution/closure/shifting of branches, Extension Counters, ATMs, etc.
Banking policy	It undertakes various new policy initiatives and reviews existing guidelines

	<p>for progressive upgradation of prudential norms to move towards best practices. The major activities of the Section are as follows:</p> <ul style="list-style-type: none"> ✓ Formulation of policy and issue of prudential guidelines pertaining to Capital adequacy; Income recognition; asset classification and provisioning pertaining to advances portfolio; Classification, valuation and operation of investment portfolio; and Credit exposure limits ✓ Formulation of policy and issues regarding capital structure of public sector banks, including raising of fresh equity, return of capital, recapitalisation. ✓ Formulation of policy and issuance of regulatory guidelines for implementation of the Basel II framework. ✓ Policy guidelines / clarifications on integrated risk management systems including Asset Liability Management and issue of guidance notes on various aspects. ✓ Policy issues/ guidelines pertaining to compromise settlement of NPAs of banks. ✓ Matters regarding Foreign Contributions Regulations Act – donations received by organizations from abroad.
Issue of directives to banks	<p>Various directions are issued by RBI from time to time, on payment of Interest rates on various types of deposit accounts (including NRI deposit), maintenance of deposit accounts, prohibitions in respect of S.B. Accounts, matters relating to payment of additional interest and brokerage on deposits, appointment of agents for soliciting deposits, giving gifts/incentives to depositors/staff members, freezing of accounts, Resurgent India Bonds, Development Bonds, etc. RBI may also direct Capital Market Exposure of banks.</p>
Collection and dissemination of information	<p>Collection and dissemination of information from/to banks and notified All-India financial institutions (FIs) regarding defaulting borrowers with outstanding aggregating Rs. 1 crore and above, which have been classified by them as 'doubtful' or 'loss' (non-suit filed accounts) on half-yearly basis viz., as on March 31 and September 30.</p>
Overseeing/ monitoring Indian banks operations abroad	<p>Policy formulation and issue of guidelines regarding overseas operations of Indian banks, examination of proposals and grant of approvals for opening their Joint Ventures / Representative Offices / branches and review of their overseas operations including closure of branches / joint ventures / representative offices.</p> <p>Approval of Indian banks' proposals for entering into Management Agreements and correspondent banking arrangements with foreign entities.</p> <p>Preparation of proposals for submission before IDC of GOI regarding opening of branches / representatives offices of Indian banks abroad.</p>
Authorisation for dealing in precious metals	<p>Policy matters relating to Gold Deposit and Gold Import Schemes and dealing with references received from banks in this regard, issue and renewal of authorization for banks for import of gold / silver / platinum and acceptance of gold under Gold Deposit Scheme and collection of data relating to import of gold and Gold Deposit Scheme and collection of data relating to import of gold and gold deposits by banks in India.</p>
Overseeing and monitoring offshore banking units	<p>Approvals for setting up of Offshore Banking Units (OBUs) and issue of policy guidelines for the operation of OBUs in Special Economic Zones (SEZs).</p> <p>Correspondence with Government and other agencies relating to setting up of Special Economic Zones, International Financial Services Centres.</p>

Monitoring and policy making industrial and export credit	The industrial credit segment has been considerably liberalized / deregulated over the period. At present, various items of work currently undertaken by IECS are distributed amongst three desks viz. (i) Policy Desk (ii) Export Credit Desk and (iii) Industrial Rehabilitation Desk.
Interpretation of regulations	RBI is involved in interpretation of the various provisions of the Banking Regulation Act, 1949, Reserve Bank of India Act, 1934, etc. Examining and framing of rules/regulations and amendments thereto.
Granting exemptions	Dealing with applications received from banks for exemptions from the various provisions of the Banking Regulation Act, 1949, and Rules framed thereunder.
Role in management of foreign exchange	<ul style="list-style-type: none"> a) Controlling dealings in foreign exchange by giving general or special permission for dealing in foreign exchange, excluding those cases where specific provisions have been made in Act, Rules or Regulations. b) RBI cannot impose any restrictions on current account transactions. These can be imposed only by Central Government in consultation with RB. In certain cases, prior approval of RBI is required for current account transactions as provided in Foreign Exchange Management (Current Account Transactions) Rules, 2000. c) Specifying conditions for payment in respect of capital account transaction – Section 6(2). d) Regulate/prohibit/restrict the following, by issuing Regulations: <ul style="list-style-type: none"> ✓ Transfer or issue of foreign security to resident and Indian security to non-resident; ✓ Borrowing and lending in foreign exchange or to a foreign person; ✓ Export/import of currency or currency notes; ✓ Transfer of immovable property outside India; ✓ Giving guarantee or surety where foreign exchange transaction is involved – Section 6(3) e) Specify (by regulation) period and manner in which foreign exchange due from export of goods and services should be received – Section 8. f) To grant exemption from realisation and repatriation in cases specified under Section 9. g) Granting authorisation to 'Authorised Person' to deal in foreign exchange, to give directions to them and to inspect the authorised person – Sections 10, 11 & 12.
Banker's Bank	It extends loans and advances to commercial banks.
Bankers to Central Govt./State Govt.	RBI is the banker to Central/ State Govt. where it also extends loan and keeps account. It also issues bonds on behalf of the Govt.
Oversee payment and settlement system	RBI oversees payment and settlement system of commercial banks.

SEBI Regulations

The chapter comprises of regulations relating to-

- ✓ **Raising finance from capital markets –IPO** [SEBI(ICDR) Regulations]
- ✓ **Insider Trading** [SEBI(Prohibition of Insider Trading) Regulations]
- ✓ **Takeover Code** [SEBI(Substantial Acquisition of Shares and Takeovers) Regulations]

General Conditions for Public Issues and Rights Issues

An issuer cannot make a public issue or rights issue of equity shares and convertible securities under the following conditions:

- ✓ If the issuer, any of its promoters, promoter group or directors or selling shareholders are debarred from accessing the capital market by SEBI, or
- ✓ If any of the promoters, director of the issuer was or also is a promoter, director of any other company which is debarred from accessing the capital market under the order or directions made by SEBI.
- ✓ Unless an application is made to one or more recognised stock exchanges for in principles approval of listing of equity shares and convertible securities on such stock exchanges and has chosen one of them as a designated stock exchange. However, in case of an initial public offer, the issuer should make an application for listing of the equity shares and convertible securities in at least one recognised stock exchange having nationwide trading terminals.
- ✓ If any of its promoters/directors is a fugitive offender the above restriction shall not apply to persons who were debarred in the past and the period is over on the date of filing of prospectus.
- ✓ Unless it has entered into an agreement with a depository for dematerialisation of equity shares and convertible securities already issued or proposed to be issued.
- ✓ Unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited.
- ✓ Unless firm arrangements of finance through verifiable means towards 75% of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or through existing identifiable internal accruals, have been made.
- ✓ Promoter's holding is in dematerialised form prior to filing of offer document.
- ✓ The amount for general corporate purposes as mentioned in the objects of the issue in the draft offer document shall not exceeds 25% of the amount raised by the issuer.
- ✓ At least one year holding of equity shares by the sellers.
- ✓ a public issue of equity securities, if the issuer or any of its promoters or directors is a wilful defaulter; or

Appointment of Merchant Banker and Other Intermediaries

The issuer should appoint one or more merchant bankers, at least one of whom should be a lead merchant banker. The issuer should also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue. The issuer should in

consultation with the lead merchant banker, appoint only those intermediaries which are registered with SEBI.

Conditions for Initial Public Offer

- (a) An issuer may make an initial public offer (an offer of equity shares and convertible debentures by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by an existing holder of such securities in an unlisted issuer) if:
- ✓ The issuer has net tangible assets of at least Rs. 3 crores in each of the preceding 3 years (of 12 months each) of which not more than 50% are held in monetary assets. If more than 50% of the net tangible assets are held in monetary assets, then the issuer has to make firm commitment to utilize such excess monetary assets in its business or project.
 - ✓ It has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years.
 - ✓ The issuer company has a net worth of at least Rs. 1 crores in each of the preceding 3 full years (of 12 months each).
 - ✓ In case of change of name by the issuer company within last one year, at least 50% of the revenue for the preceding one year should have been earned by the company from the activity indicated by the new name.
- (b) Any issuer not satisfying any of the conditions stipulated above may make an initial public offer if
- ✓ Proposed IPO and Previous issues in the same financial year is less than five times the pre-issue net worth
 - ✓ The issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers.
- (c) An issuer may make an initial public offer of convertible debt instruments without making a prior public issue of its equity shares and listing, provided company has not defaulted payment of principal/ interest for a period of 6 months.
- (d) An issuer cannot make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.
- (e) No issuer can make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person any option to receive equity shares after the initial public offer.

Conditions for Further Public Offer

- ✓ An issuer may make a further public offer (an offer of equity shares and convertible securities) if it satisfies the following conditions:
if it has changed its name within the last one year, at least 50% of the revenue for the

preceding one full year has been earned by it from the activity indicated by the new name.

- ✓ If the issuer does not satisfy the above conditions, it may make a further public offer if it satisfies the following conditions: a) the issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer to public to qualified institutional buyers and to refund full subscription monies if it fails to make allotment to the qualified institutional buyers.

Pricing in Public Issues

The issuer determines the price of the equity shares and convertible securities in consultation with the lead merchant banker or through the book building process. In case of debt instruments, the issuer determines the coupon rate and conversion price of the convertible debt instruments in consultation with the lead merchant banker or through the book building process.

Differential Pricing

An issuer may offer equity shares and convertible securities at different prices, subject to the following condition:

- ✓ the retail individual investors/shareholders or employees entitled for reservation making an application for equity shares and convertible securities of value not more than Rs. 2 lakh, may be offered equity shares and convertible securities at a price lower than the price at which net offer is made to other categories of applicants provided that such difference is not more than 10% of the price at which equity shares and convertible securities are offered to other categories of applicants.
- ✓ in case of a book built issue, the price of the equity shares and convertible securities offered to an anchor investor cannot be lower than the price offered to other applicants.
- ✓ in case the issuer opts for the alternate method of book building, the issuer may offer specified securities to its employees at a price lower than the floor price. However, the difference between the floor price and the price at which equity shares and convertible securities are offered to employees should not be more than 10% of the floor price.
- ✓ Face value may be less than 10 but not less than Re. 1 if the issue price is Rs. 500 or more per share. If issue price is less than Rs. 500 the face value shall be Rs. 10 /- per share

Promoters' Contribution

The promoters' minimum contribution varies from case to case. The promoters of the issuer are required to contribute in the public issue as follows:

- ✓ In case of an initial public offer, the minimum contribution should not be less than 20% of the post issue capital.
- ✓ In case of further public offer, it should be either to the extent of 20 % of the proposed issue size or to the extent of 20% of the post-issue capital.

Lock-In of Specified Securities Held by Promoters.

In a public issue, the equity shares and convertible debentures held by promoters are locked-in for the period stipulated below:

- ✓ minimum promoters' contribution is locked-in for a period of 3 years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later.
- ✓ promoters' holding in excess of minimum promoters' contribution is locked-in for a period of 1 year. However, excess promoters' contribution in a further public offer are not subject to lock-in.

Book Building

Schedule XI Book Building means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be in accordance with the SEBI (ICDR) Regulations 2018.

In an issue made through the book building process, the allocation in the net offer to public category is made as follows:

- ✓ Not less than 35 % to retail individual investors.
- ✓ Not less than 15 % to non institutional investors i.e. investors other than retail individual investors and qualified institutional buyers.
- ✓ Not more than 50% to Qualified Institutional Buyers; 5 % of which would be allocated to mutual funds. Provided that in addition to five per cent allocation available in terms of clause (3), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

In an issue made through the book building process under sub-regulation (2) of regulation 6, the allocation in the net offer to public category shall be as follows:

- ✓ not more than ten per cent to retail individual investors;
- ✓ not more than fifteen per cent to non-institutional investors;
- ✓ not less than seventy five per cent to qualified institutional buyers, five per cent of which shall be allocated to mutual funds

In an issue made through the book building process, the issuer may allocate up to 60% of the portion available for allocation to qualified institutional buyers to an anchor investor in accordance with the conditions specified.

In an issue made other than through the book building process, allocation in the net offer to public category will be made as follows

- ✓ minimum 30% to retail individual investors, and
- ✓ remaining to individual applicants other than retail individual investors and other investors including corporate bodies or institutions, irrespective of the number of equity shares and convertible securities applied for.
- ✓ the unsubscribed portion in either of the categories specified above may be allocated to applicants in the other category. If the retail individual investor category is entitled to

more than 50% on proportionate basis, the retail individual investors will be allocated that higher percentage.

What is Insider Trading?

Insider trading is trading in the securities of a company by persons who are in the management of the company or those who are connected to them on the basis of knowledge of an Unpublished Price Sensitive Information (UPSI) which is not available to the general public.

Introduction of Regulations

These are effective from 15th January, 2015. These regulations have enjoined a role upon the “Compliance Officer” of the company to ensure compliance with the requirements.

Definitions

Insider	Means any person who is: A connected person; or (ii) in possession of or having access to unpublished price sensitive information
Connected Person	means any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or being in any relationship allows such person, directly or indirectly, access to unpublished price sensitive information Deemed Connected Person: a. an immediate relative of connected persons specified in clause (i); or b. a holding company or associate company or subsidiary company; or c. an intermediary as specified in section 12 of the Act or an employee or director thereof; or d. an investment company, trustee company, asset management company or an employee or director thereof; or e. an official of a stock exchange or of clearing house or corporation; or f. a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or g. a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or h. an official or an employee of a self-regulatory organization recognised or authorized by the Board; or i. a banker of the company; or j. a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. Of the holding or interest;
Unpublished price sensitive information	“unpublished price sensitive information” means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:

	(i) financial results; (ii) dividends; (iii) change in capital structure; (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions; (v) changes in key managerial personnel; and (vi) material events in accordance with the listing agreement.
Compliance Officer	“Compliance Officer” referred above, means any senior officer, designated so and reporting to Board of Director, who is financially literate and capable of appreciating the legal provisions and compliance thereof.

Restrictions on Communication and Trading by Insiders

- i. No insider shall communicate, procure, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except where such communication is in furtherance of legitimate purposes. The board of directors of a listed company shall make a policy for determination of “legitimate purposes” as a part of “Codes of Fair Disclosure and Conduct”.
- ii. Due notice shall be given to “insiders” to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.
- iii. An unpublished price sensitive information may be communicated, procured provided, allowed access to or procured, in connection with a transaction that would:-
 - ✓ entail an obligation to make an open offer;
 - ✓ The board of directors of the that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least 2 trading days prior to the proposed transaction being effected in such form as the board of directors may determine. The parties may be to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.
- iv. The organization shall ensure that a structured digital database containing the nature of unpublished price sensitive information to be maintained internally with adequate internal controls and preserved for a period of not less than eight years (more in case of nay investigation)
- v. No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information. The insider may prove his innocence by few defenses.
- vi. In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board. The Board may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

Trading Plans

An insider shall formulate a trading plan and present it to the compliance officer for approval and public disclosure. Such trading plan shall not entail commencement of trading on behalf of the insider earlier than 6 months from the public disclosure of the plan. Which cannot be

deviated. Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.

Disclosures of Trading by Insiders

The disclosures to be made by any insider including those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions. These regulations are to prevent abuse by trading when in possession of unpublished price sensitive information.

Obligation to Disclose	a key managerial personnel or a director of the company
Initial Disclosure	shall disclose his holding of securities of the company as on the date of appointment
Continual Disclosure	within two trading days of such transaction if the value of the securities traded, over any calendar quarter, aggregates to a traded value in excess of Rs. 10 lakhs.

Code of Fair Disclosure

The board of directors of every listed company, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow the principles set out in Schedule A and shall be promptly intimated to the stock exchanges. Schedule A to the Rules provides for Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information, which are as follows.

- ✓ Prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available. Dissemination of unpublished price sensitive unpublished price sensitive information to avoid selective disclosure.
- ✓ Designation of a senior officer as a chief investor relations officer to deal with dissemination of information.
- ✓ Appropriate and fair response to queries on news reports and requests for verification of market rumors by regulatory authorities.
- ✓ Ensuring that information shared with analysts and research personnel is not unpublished price sensitive information.
- ✓ Developing best practices to make transcripts or records of proceedings of meetings with analysts and other investor relations conferences on the official website to ensure official confirmation and documentation of disclosures made.

Code of Conduct

The chief executive officer or managing director shall formulate a code of conduct to regulate, monitor and report trading by its designated persons and their immediate relatives of designated persons towards achieving compliance with these regulations. A senior officer with the responsibility to administer the code of conduct and monitor compliance with these regulations.

The board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organization and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation. Schedule B contains the minimum Standards for Code of Conduct for

Listed Companies to Regulate, Monitor and Report Trading by Designated Persons, some of which are reproduced below.

- ✓ The compliance officer shall report to the board of directors and in particular, shall provide reports to the the Audit Committee, if any, or to the board of directors.
- ✓ Designated Persons and immediate relatives shall be governed by an internal code of conduct governing dealing in securities.
- ✓ Transactions which are undertaken in accordance with respective regulations made by the Board may be specified by the Board.
- ✓ The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty eight hours after the information becomes generally available.
- ✓ When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate.
- ✓ Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any unpublished price sensitive information.
- ✓ The code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.
- ✓ The code of conduct shall stipulate such formats as the board of directors deems necessary for making applications for pre-clearance, reporting of trades executed. The code of conduct shall stipulate the sanctions and disciplinary actions.

Designated persons shall be required to disclose names and Permanent Account Number or any other identifier authorized by law of the following persons to the company on an annual basis and as and when the information changes.

Listed entities shall have a process for how and when people are brought 'inside' on sensitive transactions. Individuals should be made aware of the duties and responsibilities attached to the receipt of Inside Information, and the liability that attaches to misuse or unwarranted use of such information.

Institutional Mechanism for Prevention of Insider Trading

- ✓ The Chief Executive Officer shall put in place adequate and effective system of internal controls for compliance
- ✓ The Audit Committee shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.
- ✓ Every listed company shall formulate policies and procedures for inquiry in case of leak or suspected leak of unpublished price sensitive information, which shall be approved by board of directors of the company and accordingly initiate appropriate inquiries on time and inform the Board promptly of the status.
- ✓ he listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.
- ✓ If an inquiry has been initiated by a listed company in case of leak of unpublished price sensitive information or suspected leak of unpublished price sensitive information, the

relevant intermediaries and fiduciaries shall co-operate with the listed company in connection with such inquiry conducted by listed company.

Takeover Code

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 is commonly called as takeover regulation or takeover code. It applies to direct and indirect acquisition of shares or voting rights in, or control over target company. these regulations shall not apply to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue, on the Innovators Growth Platform of a recognised stock exchange.

Relevant Terms

Takeover	When an “Acquirer” takes over the control of the “Target Company”, it is termed as Takeover.
Substantial acquisition of shares	When an acquirer acquires “substantial quantity of shares or voting rights” of the Target Company, it results into substantial acquisition of shares.
Acquirer	means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.
Control	the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.
Frequently traded shares	shares of a target company, in which the traded turnover on any stock exchange during the 12 calendar months preceding the calendar month in which the public announcement is made is at least 10% of the total number of shares of such class of the target company.
Tendering period	means 10 working days period to take within the offer period
Offer Price	Price at which the acquirer announce to acquire the share from the public revision can be made upto 3 days prior to opening of the offer. It may be noted that the promoter shall not be entitled for any share.
Identified date	means 10 working days after closer of the offer, the acquiree shall make payment to the shareholder for offer shares have been acquired.
Offer period	the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be.
Persons Acting in Concert(PAC)	persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.
Deemed Persons Acting in Concert	i. a company, its holding company, subsidiary company and any company under the same management or control;

	<ul style="list-style-type: none"> ii. a company, its directors, and any person entrusted with the management of the company; iii. promoters and members of the promoter group; iv. immediate relatives; v. a mutual fund, its sponsor, trustees, trustee company, and asset management company; vi. a collective investment scheme and its collective investment management company, trustees and trustee company ; vii. a venture capital fund and its sponsor, trustees, trustee company and asset management Company; viii. an alternate investment fund and its sponsor, trustees, trustee company and manager; ix. a merchant banker and its client, who is an acquirer; x. a portfolio manager and its client, who is an acquirer;
Target Company	a company and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, whose shares are listed on a stock exchange.
Tendering period	the period within which shareholders may tender their shares in acceptance of an open offer to acquire shares made under these regulations.
Volume weighted average market price	the product of the number of equity shares traded on a stock exchange and the price of each equity share divided by the total number of equity shares traded on the stock exchange.
Volume weighted average price	the product of the number of equity shares bought and price of each such equity share divided by the total number of equity shares bought.

Kinds of Takeover

Friendly Takeover	Promoter of the target company voluntarily sell off shares to the acquirer at an attractive price offered by acquirer.
Hostile Takeover	Promoter of the target company don't want to give away the ownership /control of their company and fight back to defend their ownership/control.
Horizontal Takeover	Takeover of one company by another in same industry.
Vertical Takeover	Takeover of one Co. of its suppliers or customers i.e. Backward or Forward integration.
Conglomerate Takeover	Takeover of one company by another company operating in totally different industries.

Exemptions

The following types of acquisition shall not come under the purview of this regulation

- a) acquisition in the ordinary course of business by
 - ✓ Underwriter registered with SEBI
 - ✓ Stock Broker registered with SEBI on behalf of client in exercise of lien over the shares purchased on behalf of the client
 - ✓ merchant banker registered with the Board or a nominated investor in the process of market making
- b) any person acquiring shares pursuant to a scheme of safety net
- c) a merchant banker registered with the Board acting as a stabilizing agent.

- d) acquiring shares pursuant to an agreement of disinvestment to Reconstruction / Merger / Amalgamation / Demerger under order of Court to provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to provisions of Delisting of shares Upon Share Forfeiture of Equity Shares by a Company.

Disclosure Norms under the Regulation

Obligation to disclose	No obligation on the target company to give any disclosure; Obligation is only on acquirer, promoter & their PACs
Event based disclosure	<ul style="list-style-type: none"> ✓ Acquisition includes shares acquired by way of encumbrance (not applicable on Scheduled Commercial Banks or PFI acquiring shares by way of pledge). ✓ Disposal includes shares given upon release of encumbrance(not applicable on Scheduled Commercial Banks or PFI acquiring shares by way of pledge).
Continual disclosures	As given under-
Encumbrance disclosure	<p>A claim against a property by another party; Encumbrance usually impacts the transferability of the property and can restrict its free use until the encumbrance is removed. For takeover regulation, it includes a pledge, lien, or any transaction which creates a risk on the ownership of shares of the promoters.</p> <p>As given under-</p>

The disclosures mandated under Regulation 29, 30 and 31 of the Takeover Regulations are briefly indicated in the table below-

Regulation No.	Disclosure of-	Disclosure by-	Timeline
30(1): Continual Disclosure	The aggregate shareholding and voting rights as of the thirty-first day of March in the target company if entitlement is 25% or more of the voting rights in such target company	Every person, who together with persons acting in concert with him	Within seven working days from the end of each financial year to the Stock Exchanges and the Target Company.
30(2): Continual Disclosure	The aggregate shareholding and voting rights as of the thirty first day of March, in such target company	Promoter along with persons acting in concert with him	Within seven working days from the end of each financial year to the Stock Exchanges and the Target Company.
31: Encumbrance Disclosure	Details of creation/invocation of encumbrance	Promoter along with persons acting in concert with him	Within seven working days from creation/invocation of encumbrance to the Stock Exchanges and the Target Company.

Requirement of Open Offer Process & Compliance

- ✓ Any acquirer, along with PAC, if any, while acquiring shares of the Target Company, where by pursuant to such acquisition their post acquisition holding in the Target company reaches or exceeds 25% of the voting rights in such target company then initial trigger is said to be touched by such acquirer. It casts an obligation on the acquirer to make public announcement of an open offer for acquisition of additional 26% shares of target company, entitling him to exercise 25% or more voting rights in such Target Company).
- ✓ An acquirer can, who has reached at a level of 25% but less than maximum permissible non public shareholding or more and wants to acquire five percent or more share within the financial year, has to again make public offer to receive 26% (or) more shares subject to delisting level.
- ✓ As per Reg. 3(2): any acquirer, along with PAC (if any).who has already acquired 25% or more shares of the Target Company, shall not acquire more than 5% shares of such Target company within any financial year (starting April 1st) without making prior public announcement of an open offer for acquiring additional 26% shares of Target Company.

Provided that:

Post acquisition holding of such acquirer together with its PAC must not exceed the maximum permissible non – public shareholding, thus maintaining the minimum public float of 25% in such Target company

Pre Conditions to Voluntary Open Offer

- ✓ Prior holding of at least 25% or more of voting rights in the Target Company
- ✓ No acquisition was made in the preceding 52 weeks without attracting the obligation to make an public announcement to make an open offer i.e. no creeping acquisition.
- ✓ No acquisition of shares during the offer period except under the open offer
- ✓ No further acquisition of shares for a period of 6 months after the completion of open offer except by way of another voluntary open offer or competing offer.
- ✓ An acquirer may make on offer conditional by prescribing minimum level of acceptance

Withdrawal of Offer (Reg.23)

Withdrawal allowed only under certain conditions:	<ul style="list-style-type: none"> ✓ Statutory approvals required have been refused, ✓ Acquirer being a natural person has died. ✓ Any condition stipulated in the agreement for acquisition, ✓ Any such circumstances as in the opinion SEBI merits withdrawal.
Requirements by acquirer in case of withdrawal	<ul style="list-style-type: none"> ✓ Within 2 working days merchant banker (manager to open offer) make an announcement in Newspapers Providing reasons & grounds for withdrawal of offer ✓ simultaneously inform – <ul style="list-style-type: none"> i) SEBI ii) Stock Exchanges iii) Registered Office of the Target Company.

Open Offer Process

The following process has to be taken by the acquirer.

- ✓ submission of draft letter of offer: The acquirer shall submit a draft letter of offer to SEBI within 5 working days from the date of detailed public announcement along with a non-

refundable fee as applicable. simultaneously, a copy of the draft letter of offer shall be send to the target company at its registered office and to all the stock exchanges where the shares of the company are listed.

- ✓ dispatch of letter of offer: Within maximum 7 working days from the date of receipt of communication of comments from SEBI or where no comments are offered, within 7 working days from the expiry of 15 working days from the date of receipt of draft letter of offer by SEBI.
- ✓ opening of the offer: the tendering period shall start within maximum 12 working days from date of receipt of comments from sebi and shall remain open for 10 working days.
- ✓ completion of requirements: within 10 working days from the last date of the tendering period.

Mode of Payment

The payment of shareholders can be made by the acquirer by:

- ✓ cash issue, exchange or transfer of listed shares in the equity share capital of the acquirer or of any PAC;
- ✓ issue, exchange or transfer of listed secured debt instruments issued by the acquirer or any person acting in concert with a rating not inferior to investment grade as rated by a credit rating agency registered with the SEBI.
- ✓ issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquire listed shares in the equity share capital of the acquirer or of any pac

Escrow Account

An escrow account has to be opened at least 2 working days prior to detailed Public Statement with an object of payment and security against Performance of his obligations under Takeover Regulations which may be in any of the following forms.

- a) cash deposited with Scheduled Commercial Bank
- b) bank Guarantee issued in favour of the manager of the Open Offer
- c) Deposit of Frequently Traded & Free transferable equity shares or other freely transferable securities with appropriate margin.
- d) Bank Guarantee / Deposit of Securities

The manager to the open offer shall not release the escrow account until the expiry of 30 days from the completion of payment of consideration to shareholders or on fulfilling other compliances under the regulations.

Obligations of the Target Company

- (i) the board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.
- (ii) the target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.
- (iii) furnish to the acquirer within two working days from the identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any for registration of transfer of shares are pending with the target company during the offer period:

(a) unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not —

(b) alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business.

Independent Directors' Recommendation

Such recommendations shall be published in such form as may be specified, at least two working days before the commencement of the tendering period, in the same newspapers where the public announcement of the open offer was published, and simultaneously, a copy of the same shall be sent to —

- ✓ SEBI
- ✓ all stock exchanges;
- ✓ merchant banker (manager to open offer)

Obligations of the Acquirer

The acquirer has the following obligations.

- ✓ To ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer.
- ✓ to ensure able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.
- ✓ acquirer shall not alienate any material assets of the target company or of any of its subsidiaries ,whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, unless the acquirer the acquirer has not declared an intention in the detailed public statement and the letter of offer .If such intention wasn't declared then for alienation - special resolution via postal ballot is required and notice must mention the reasons for such alienation.
- ✓ the acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.
- ✓ the acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under takeover code.

Foreign Exchange Management Act, 1999

Chapter and Section Summary

The Act consists of 7 Chapters dealing with following areas:

Chapter I: Preliminary (Sections 1-2)	
Section 1	Extent and Application
Section 2	Definitions
Chapter II: Regulation and Management of Foreign Exchange (Sections 3-9)	
Section 3	Dealing in foreign exchange, etc.
Section 4	Holding of foreign exchange
Section 5	Current account transactions
Section 6	Capital account transactions
Section 7	Export of goods and services
Section 8	Realisation and repatriation of foreign exchange
Section 9	Exemption from realisation and repatriation in certain cases
Chapter III: Authorised Person (Sections 10-12)	
Section 10	Authorised Person
Section 11	Reserve Bank's powers to issue directions to authorised person
Section 12	Power of Reserve Bank to inspect authorised person
Chapter IV: Contravention and Penalties (Sections 13-15)	
Chapter V: Adjudication and Appeal (Sections 16-35)	
Chapter VI: Directorate of Enforcement (Sections 36-38)	
Chapter VII: Miscellaneous (Sections 39-49)	

Other Legislations

- ✓ Rules made by Ministry under section 46 of FEMA
- ✓ Regulations made by RBI under section 47 of FEMA
- ✓ Master Circular/Directions issued by Reserve Bank of India every year
- ✓ Notifications and Circulars issued by Reserve Bank of India

Basics to be known before reading the Chapter

Activities such as payments made to any person outside India or receipts from them, along with the deals in foreign exchange and foreign security is restricted. It is FEMA that gives the central government the power to impose the restrictions.

CA. SHIVANGI AGRAWAL

What is Foreign Currency? [Also defined u/s 2]	Money from a country that is not your own. i.e Currency other than Indian Currency Examples: USD -U.S. dollar EUR -Euro GBP -British pound JPY- Japanese yen
Is Foreign currency same as Foreign Exchange?	No, Foreign Exchange is a broader term.
Who regulates Foreign Exchange?	The Reserve Bank of India, is the custodian of the country's foreign exchange reserves and is vested with the responsibility of managing their investment. However, Enforcement Directorate is entrusted the responsibility of enforcement of the Act.
Any Law before FEMA?	Yes, FERA
Powers to make Law	<ul style="list-style-type: none"> ✓ Under Article 246 of the Constitution of India, the Parliament has exclusive power to make laws with respect to any of the matters enumerated in the Union List in the Seventh Schedule. ✓ Entry 16 of the Union List deals with Foreign jurisdiction; ✓ Entry 36 deals with Currency, coinage and legal tender, foreign exchange; ✓ Entry 37 deals with Foreign loans and Entry 41 deals with Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.

Basic Provisions of the Act

Commencement	FEMA has been brought into force from 1st June, 2000.
Applicability	<p>FEMA, 1999 extends to the whole of India.</p> <p>It also applies to:-</p> <ul style="list-style-type: none"> ✓ All branches, offices and agencies outside India owned or controlled by a person resident in India; and ✓ Any contravention committed outside India by any person to whom this Act applies.
Objectives	<p>This Act aims to consolidate and amend the law relating to foreign exchange with the objective of —</p> <ul style="list-style-type: none"> ✓ facilitating external trade and payments and ✓ for promoting the orderly development and maintenance of foreign exchange market in India.

Difference between FERA and FEMA

FERA	FEMA
Object of FERA was to conserve and control foreign exchange resources preventing its misuse	Object of FEMA is to promote and develop foreign exchange management of the country.
Citizenship was criterion to determine residential status	Citizenship is irrelevant in determining residential status

It prohibited almost all foreign exchange transactions unless permission was issued.	All current account transactions are permissible except some controlled through Rules
Presumption of guilty mind exists	Prosecution has to prove that person has committed an offence
FERA was harsh compared to FEMA as it involved criminal punishments also	Offences under FEMA are civil wrongs
Compounding was not permissible	Compounding is permissible
One appellate authority	Two appellate authorities
Legal assistance was wide	Legal assistance narrowed to legal practitioner and chartered accountant

Definitions under the Act

Adjudicating Authority [Section 2(a)]	It means an officer authorised under sub-section (1) of section 16
Appellate Tribunal [Section 2(b)]	It means the Appellate Tribunal for Foreign Exchange established under section 18
Currency [Section 2(h)]	“Currency” includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank
Currency Notes [Section 2(i)]	“Currency Notes” means and includes cash in the form of coins and bank notes
Export [Section 2(l)]	“Export”, with its grammatical variations and cognate expressions means; (i) the taking out of India to a place outside India any goods. (ii) provision of services from India to any person outside India;
Foreign Currency [Section 2(m)]	“Foreign Currency” means any currency other than Indian currency;
Foreign Exchange [Section 2(n)]	“Foreign Exchange” means foreign currency and includes: ✓ deposits, credits and balances payable in any foreign currency, ✓ drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, ✓ drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;
Foreign Security [Section 2(o)]	“Foreign Security” means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;
Import [Section 2(p)]	with its grammatical variations and cognate expressions, means bringing into India any goods or services;
Indian Currency [Section 2(q)]	“Indian Currency” means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934

Security Section 2(z)]	<p>“Security” means</p> <ul style="list-style-type: none"> ✓ shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944 , ✓ savings certificates to which the Government Saving Certificates Act, 1959 applies, ✓ deposit receipts in respect of deposit of securities and ✓ units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 or of any mutual fund and ✓ includes certificates of title to securities, <p>but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act</p>
Service	<p>“Service” means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;</p>

Residential Status under FEMA

<p>“Person” as defined u/s 2(u) includes:</p> <ul style="list-style-type: none"> ✓ an individual, ✓ a Hindu undivided family, ✓ a company, ✓ a firm, ✓ an association of persons or a body of individuals, whether incorporated or not, ✓ every artificial juridical person, not falling within any of the preceding sub-clauses, and; ✓ any agency, office or branch owned or controlled by such person
Agencies, offices and branches do not have independent status separate from their owners. Yet these have been considered as persons.
Definitions of Person Resident in India and Person Resident outside India are quite relevant for determining the applicability of the Act on an entity.
Citizenship is not the criteria for determining whether or not a person is resident in India.
Residential status is not for a year. It is from a particular date.
<p>Person comes to India for employment, and if his status can be known only when the year is completed, how will he and other people enter into commercial transactions with each other? If he is considered as a PROI till the year is over, then people will not be able to enter into transactions with him. This is the reason why the residential status is not for a year but from particular date.</p>

Person Resident in India

Section 2(v)

“Person resident in India” means:	
For Individuals	(i) a person residing in India for more than 182 days during the course of the preceding financial year but does not include—

The following are not person resident in India even though they may have resided in India for more than 182 days.	<p>(A) a person who has gone out of India or who stays outside India, in either case—</p> <ul style="list-style-type: none"> ✓ for or on taking up employment outside India, or ✓ for carrying on outside India a business or vocation outside India, or ✓ for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period; <p>(B) a person who has come to or stays in India, in either case, otherwise than:</p> <ul style="list-style-type: none"> ✓ for or on taking up employment in India, or ✓ for carrying on in India a business or vocation in India, or ✓ for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
For Person other than Individuals	<p>(ii) any person or body corporate registered or incorporated in India,</p> <p>(iii) an office, branch or agency in India owned or controlled by a person resident outside India,</p> <p>(iv) an office, branch or agency outside India owned or controlled by a person resident in India</p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>This is relevant as Indian residents can deal with such branch in India without considering FEMA. If such branch is considered as a PROI then it will be difficult to undertake several transactions.</p> </div>
RBI Circular	RBI has however clarified in its AP circular no. 45 dated 8 th December 2003, that students will be considered as non-residents

Person Resident outside India

Section 2(w)

Person resident outside India means a person who is not resident in India.

Example:

Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.

If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

Example:

Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarters in Mumbai and has a branch in Singapore. The Headquarters at Mumbai controls the Singapore branch of the robotic unit. What would be the residential status of the robotic unit in Mumbai and that of the Singapore branch?

Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office

or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi).

Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'.

Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'.

The robotic unit headquartered in Mumbai, which is a person resident in India as discussed above, controls the Singapore branch, Hence, the Singapore branch is a 'person resident in India'.

Example:

Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021-2022?

Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of, or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020-2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.

For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

Example:

If a person comes to India on 1st June 2019 for visiting his parents. However, his parents fall sick and he stays till 31st March 2020. Thereafter he continues to stay in India. Comment on his Residential Status.

It is however certain that he will leave India in next 6 months when his parents recover. His stay in India is neither for employment, nor for business, nor for circumstances which show that he will stay in India for an uncertain period. In such a case, even if he has resided in India for more than 182 days in FY 2019-20, he will continue to be a non-resident from 1st April 2020 also. In FY 2019-20, he is of course a PROI as he did not reside in India for more than 182 in FY 2018-19.

If a person comes to India on 1st June 2019 for employment, business or circumstances which indicate his intention to stay in India for an uncertain period, he will be a PRII from 1st June 2019.

Restrictions on Foreign Exchange

Section 3

The purpose of this section is to regulate inflow and outflow of Foreign Exchange through Authorised dealers and in a permitted manner.

All restrictions mentioned may be relaxed by making provisions in Act, Rules, Regulations and by permission of the Reserve Bank.

No person shall—	(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person A PROI comes to India and would like to sell US\$ 1,000 to his friend who is resident in India. The friend offers him a rate better than the banks. This cannot be done as it would amount to dealing in foreign exchange.
	(b) make any payment to or for the credit of any person resident outside India in any manner A PROI has an insurance policy in India. He requests his brother in India to pay the insurance premium. This will amount to payment for the credit of non-resident. This is not permitted.
	(c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner A foreign tourist comes to India and he takes food at a restaurant. He would like to pay US\$ 20 in cash to the restaurant. The restaurant cannot accept cash as it will be a receipt otherwise than through Authorised Person. The restaurant will have to take a money changers license to accept foreign currency.
	(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person. “ financial transaction ” means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.
	Transactions covered by this sub-section are known as Hawala transactions. An Indian resident gives Rs` 70,000 in cash to an Indian dealer. For this transaction, the brother in Dubai will get US\$ 1,000 from a Dubai dealer. The two dealers may settle the transactions later. However, transaction is not permitted.

Restriction on Holding of Foreign Exchange

Section 4

Restriction	No person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.
Example	If an Indian resident receives bank balance of US\$ 10,000 from his uncle in London, the Indian resident cannot hold on to the foreign funds. He is supposed to bring back the funds as provided in section 8.

Current Account Transactions

Section 5

Definition [Section 2(j)]	“Current Account Transaction” means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes, (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary
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	<p>course of business.</p> <p>(ii) payments due as interest on loans and as net income from investments.</p> <p>(iii) remittances for living expenses of parents, spouse and children residing abroad, and</p> <p>(iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children</p>	
No Restriction on Current Account Transactions [Section 5]	<p>Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction.</p> <div><p>Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions. Hence, such transactions are freely available if</p><ul style="list-style-type: none">✓ it is not prohibited and✓ it is within limit or✓ permission obtained.</div>	
<p>As per rules, drawal of foreign exchange for certain current account transactions is prohibited, a few need permission of appropriate Govt. of India authority and some other transactions would require RBI permission if they exceed a certain ceiling.</p> <p>The three categories are:</p>		
Foreign Exchange Management (Current Account Transactions) Rules, 2000	Transactions which are prohibited	Rule 3 read with Schedule I
	Transactions for which foreign exchange can be drawn subject to prior approval of CG	Rule 4 read with Schedule II
	Transactions for which foreign exchange can be drawn subject to prior approval of Reserve Bank of India	Rule 5 read with Schedule III

Rule 3 read with Schedule I

Transactions for which drawal of foreign exchange is prohibited:

- ✓ Payment for travel to Nepal/Bhutan
- ✓ Transaction with resident of Nepal/Bhutan
- ✓ Remittance out of lottery winnings.
- ✓ Remittance of income from racing/riding, etc., or any other hobby.
- ✓ Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
- ✓ Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- ✓ Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
- ✓ Payment of commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of exports of tea and tobacco.
- ✓ Payment related to "Call Back Services" of telephones.
- ✓ Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

Rule 4 Read with Schedule II

Prior approval of the Government of India for drawal of foreign exchange is required for following transactions:

- ✓ Cultural Tours

- ✓ Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US\$ 10,000) by a State Government and its Public Sector Undertakings.
- ✓ Remittance of freight of vessel chartered by a PSU
- ✓ Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis
- ✓ Multi-modal transport operators making remittance to their agents abroad
- ✓ Remittance of hiring charges of transponders by TV Channels & Internet service providers
- ✓ Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping
- ✓ Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State Level sports bodies, if the amount involved exceeds US \$ 100,000
- ✓ Remittance for membership of P & I Club

Rule 5 Read with Schedule III

Part A: Facilities for individuals

- This is also known as Liberalised Remittance Scheme. LRS applies to all resident individuals in India.
- Under the Liberalised Remittance Scheme (LRS), all resident individuals, including minors, are allowed to freely remit upto amount specified for any permissible current or capital account transaction (Discussed later) or a combination of both.

The Liberalised Remittance Scheme applies to only Indian residents living in the country. While an NRI can hold a bank account in India, the remittance rules will differ.

An NRI can hold any of the following types of bank accounts in India:

- ✓ NRE (Non-resident external)
- ✓ NRO (Non- Resident Ordinary)
- ✓ FCNR (B) (Foreign Currency Non-Resident Bank Account)

Moreover,

A resident usually has bank accounts in Indian Rupee. However, in certain cases following Foreign currency accounts may also be opened:

- ✓ Resident Foreign Currency Accounts- for NRIs who have returned to India and hold funds in foreign currency.
- ✓ Exchange Earners' Foreign Currency Account- A type of current account opened by foreign exchange earners where no interest is payable.

- ✓ Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only per financial Year.

Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India.

- | | |
|---|---|
| <ul style="list-style-type: none"> ✓ Private visits to any country (except Nepal and Bhutan) ✓ Gift or donation. ✓ Going abroad for employment ✓ *Emigration ✓ Maintenance of close relatives abroad ✓ Travel for business, or attending a conference or specialised training or for meeting expenses for | <p>For the following purposes from the list-</p> <ul style="list-style-type: none"> ✓ Emigration ✓ Medical treatment ✓ Studies abroad <p>the individual may avail of exchange facility for an amount in excess of the limit prescribed</p> |
|---|---|

<p>meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.</p> <p>✓ *Expenses in connection with medical treatment abroad →</p> <p>✓ *Studies abroad →</p> <p>✓ Any other current account transaction</p>	<p>under the Liberalised Remittance Scheme, if it is so required by a country of emigration, medical institute offering treatment or the university, respectively.</p>
<p>Further, if an individual remits any amount under the said Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 (US Dollars Two Hundred and Fifty Thousand Only) by the amount so remitted.</p>	
<p>Allowed Remittance upto Net Salary in certain cases</p> <p>A person who is resident but not permanently resident in India and-</p> <p>(a) is a citizen of a foreign State other than Pakistan; or</p> <p>(b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).</p>	
<p>Meaning of Person Resident but not Permanently Resident</p> <p>A person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident.</p>	
<p>In case of remitter being a minor</p>	<p>the LRS declaration form must be countersigned by the minor's natural guardian. The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.</p>

Part B: Facilities for Persons Other than Individual

The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India.

- ✓ Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less,
 - creation of Chairs in reputed educational institutes,
 - contribution to funds (not being an investment fund) promoted by educational institutes; and
 - contribution to a technical institution or body or association in the field of activity of the donor Company.
- ✓ Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
- ✓ Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
- ✓ Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Procedure of Withdrawal

The procedure for drawal or remittance of any foreign exchange under this schedule shall be the same as applicable for remitting any amount under the said Liberalised Remittance Scheme. (by submitting applicable form)

If the transaction is not listed in any of the above three schedules, it can be freely undertaken.

Exemptions	<p>No approval is required where any remittance has to be made for the transactions listed in Schedule II and Schedule III above from an RFC account.</p> <p>If any remittance has to be made for the transactions listed in Schedule II and Schedule III above from EEFC account, then also no approval is required. However, if payment has to be made for the following transactions, approval is required even if payment is from EEFC account:</p> <ul style="list-style-type: none"> ✓ Remittance for membership of P & I Club. ✓ Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more. ✓ Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses. <p>If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.</p>
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Capital Account Transactions

Section 6

Definition [Section 2(e)]	<p>Capital Account Transaction” means a transaction, which alters</p> <ul style="list-style-type: none"> ✓ the assets or liabilities, including contingent liabilities, outside India of persons resident in India ✓ or assets or liability in India of persons resident outside India
Are Capital Account Transactions freely permissible? [Sec 6(1)]	Any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction but subject to Sec 6(2) and Sec 6(2A)
Power of RBI to impose Restrictions [Sec 6(2)]	<p>The Reserve Bank may, in consultation with the Central Government, specify</p> <ul style="list-style-type: none"> ✓ any class or classes of capital account transactions involving debt instruments, which are permissible ✓ the limit up to which foreign exchange shall be admissible for such transactions ✓ Conditions which may be placed on such transactions.
Power of CG to impose restrictions [Sec 6(2A)]	<p>The Central Government may, in consultation with the Reserve Bank, prescribe—</p> <ul style="list-style-type: none"> ✓ any class or classes of capital account transactions, not involving debt instruments, which are permissible ✓ the limit up to which foreign exchange shall be admissible for such transactions; and ✓ any conditions which may be placed on such transactions
Categories of Capital Account Transactions	<p>Capital account transaction is basically split into the following categories:</p> <ul style="list-style-type: none"> ✓ transaction, which are permissible in respect of persons resident in India and outside India.

	<ul style="list-style-type: none"> ✓ transaction on which restrictions cannot be imposed; and ✓ transactions, which are prohibited. <p>Unlike Current Account Transactions, a capital account transaction is permitted only if it is specifically permitted under the regulations. If the transaction is not stated as generally permitted, a prior specific approval is required.</p>
Transactions on which restrictions shall not be imposed	
<p>The following content w.r.t Capital Account Transactions is not required to be learnt for exams. It is meant for clarity and understanding.</p>	
Restriction not allowed for these 2 cases	<p>Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of-</p> <ul style="list-style-type: none"> ✓ amortisation of loans or ✓ for depreciation of direct investments in the ordinary course of business.
Other Type of Transactions on which no restriction is imposed [Sec. 6(4) & (5)]	<p>A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.</p> <p>Clarification: RBI Circular Section 6(4) of the Act covers the following transactions:</p> <ul style="list-style-type: none"> ✓ Foreign currency accounts opened and maintained by such a person when he was resident outside India. ✓ Income earned through employment or business or vocation outside India taken up or commenced which such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India; ✓ Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India. ✓ A person resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions is not in contravention to extant FEMA provisions. <p>A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by a such person when he was resident in India or inherited from a person who was resident in India.</p>
Power of RBI to regulate Branch [Sec 6(6)]	the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to

	such branch, office or other place of business
Meaning of Debt Instruments [Sec 6(7)]	"debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank
Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.	
Regulation 3 specify the list of transaction, ✓ which are permissible in respect of persons resident in India in Schedule-I and ✓ the classes of capital account transactions of persons resident outside India in Schedule-II.	
Schedule I	
The list of permissible classes of transactions made by persons resident in India is:	a) Investment by a person resident in India in foreign securities. b) Foreign currency loans raised in India and abroad by a person resident in India. c) Transfer of immovable property outside India by a person resident in India. d) Guarantees issued by a person resident in India in favour of a person resident outside India. e) Export, import and holding of currency/currency notes. f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India. g) Maintenance of foreign currency accounts in India and outside India by a person resident in India. h) Taking out of insurance policy by a person resident in India from an insurance company outside India. i) Loans and overdrafts by a person resident in India to a person resident outside India. j) Remittance outside India of capital assets of a person resident in India. k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.
Schedule II	
The list of permissible classes of transactions made by persons resident outside India is:	a) Investment in India by a person resident outside India, that is to say, ✓ issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and ✓ investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of a person in India. b) Acquisition and transfer of immovable property in India by a person resident outside India. c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India. d) Import and export of currency/currency notes into/from India by a person resident outside India. e) Deposits between a person resident in India and a person resident outside India. f) Foreign currency accounts in India of a person resident outside India. g) Remittance outside India of capital assets in India of a person resident outside India.

Prohibited Transactions [Regulation 4]

On certain transactions, the Reserve Bank of India imposes prohibition:

(a) no person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction,

Provided that-

- ✓ subject to the provisions of the Act or the rules or regulations or directions or orders made or issued thereunder, a resident individual may, draw from an authorized person foreign exchange not exceeding USD 250,000 per financial year or such amount as decided by Reserve Bank from time to time for a capital account transaction specified in Schedule I.
- ✓ Where the drawal of foreign exchange by a resident individual for any capital account transaction specified in Schedule I exceeds USD 250,000 per financial year, or as decided by Reserve Bank from time to time as the case may be, the limit specified in the regulations relevant to the transaction shall apply with respect to such drawal.

(b) The person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage:

In the business of chit fund

- ✓ As Nidhi company;
- ✓ In agricultural or plantation activities;
- ✓ In real estate business, or construction of farm houses or
- ✓ In trading in Transferable Development Rights (TDRs).

"real estate business" the term shall not include shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014

'Transferable Development Rights' means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole

(c) No person resident in India shall undertake any capital account transaction which is not permissible in terms of Order of the Government of India, Ministry of External Affairs, with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea, until further orders, unless there is specific approval from the Central Government to carry on any transaction.

(d) The existing investment transactions, with any person who is, a citizen of or resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise in Democratic People's Republic of Korea, or any existing representative office or other assets possessed in Democratic People's Republic of Korea, by a person resident in India, which is not permissible in terms of Order as amended from time to time, of the Government of India, Ministry of External Affairs shall be closed/ liquidated/disposed/settled within a period of 180 days from the date of issue of this Notification, unless there is specific approval from the Central Government to continue beyond that period.

Realisation and Repatriation of Foreign Exchange

Section 8

Repatriate to India [Section 2(y)]

“Repatriate to India” means bringing into India the realised foreign exchange and

- ✓ the selling of such foreign exchange to an authorised person in India in exchange for rupees, or
- ✓ the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank. It includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression “repatriation” shall be construed accordingly

Duty to Repatriate	Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.
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Exemption from Repatriation

Section 9

No Repatriation required in these cases:	<p>The provisions of sections 4 and 8 shall not apply to the following, namely:</p> <ol style="list-style-type: none"> a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify; c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing there on which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank; d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from; e) foreign exchange acquired from employment, business, trade, vocation, service, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and f) such other receipts in foreign exchange as the Reserve Bank may specify.
Possession and Retention of Foreign Exchange	<p>The Reserve Bank of India has specified the following persons with the limits for possession and retention of foreign currency by a person resident in India:</p> <ul style="list-style-type: none"> ✓ Authorised Persons in accordance with the limits advised by the Reserve Bank. ✓ Any person may possess foreign coins without no restriction. ✓ Any person resident in India is permitted to retain in aggregate foreign currency not exceeding USD 2,000 or its equivalent in the form of currency notes/bank notes or travellers cheques acquired by him. ✓ A person resident in India but not permanently resident therein is permitted without limit, if the foreign currency was acquired when he was resident outside India and was brought into India and declared to the Customs Authorities.

Some Other Definitions

'Depository Receipt' (DR)	means a negotiable security issued outside India by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company held as deposit by a Custodian bank in India. In other words, it is a foreign currency denominated instrument, issued by foreign depository on the books of securities transferred to it by the company. DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc. <ul style="list-style-type: none"> ✓ DRs listed and traded in the US markets are known as American Depository Receipts (ADRs) and ✓ those listed and traded anywhere/elsewhere are known as Global Depository Receipts (GDRs). DRs are governed by Notification issued by Reserve bank of India.
Foreign Currency Convertible Bond' (FCCB)	means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme, 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.
'FIPB'	means the Foreign Investment Promotion Board constituted by the Government of India which stand abolished from May, 2017.
Foreign Institutional Investor (FII)	means an entity established or incorporated outside India which proposes to make investment in India and which is registered as a FII in accordance with the Securities and Exchange Board of India (SEBI) (Foreign Institutional Investor) Regulations 1995.
Foreign Portfolio Investor(FPI)	means a person registered in accordance with the provisions of Securities and Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, as amended from time to time.
Foreign Venture Capital Investor (FVCI)	means an investor incorporated and established outside India, which is registered under the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations

Foreign Investments in India

Foreign Direct Investment (FDI) is a category of cross border investment made by a resident in one economy (the direct investor) with the objective of establishing a lasting interest in an enterprise (the direct investment enterprise) i.e., resident in an economy other than that of the direct investor. The motivation of the direct investor is a strategic long term relationship with the direct investment enterprise to ensure the significant degree of influence by the direct investor in the management of the direct investment enterprise. The objectives of direct investment are different from those of portfolio investment whereby investors do not generally expect to influence the management of the enterprise.

Foreign Direct Investment (FDI) in India is undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India issues a Consolidated FDI Policy on an yearly basis elaborating the policy and the process in respect of FDI in India. The latest Consolidated FDI Policy is governed by the provisions of the Foreign Exchange Management Act (FEMA), 1999. FEMA Regulations which prescribe amongst other things the

mode of investments i.e. issue or acquisition of shares / convertible debentures and preference shares, manner of receipt of funds, pricing guidelines and reporting of the investments to the Reserve Bank.

Entry Routes for Investment

Investments in India have to be in accordance with any one of the schedules to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. There are nine schedules to the Regulations.

Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route which is also alternatively referred to as the approval route. Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment. Under the Government Route, prior approval of the Government of India is required. Proposals for foreign investment under Government route, are considered by respective administrative ministry of central government. Various filing are required to be made to RBI in automatic route.

Eligible Investee Entities

- ✓ FDI in an Indian Company.
- ✓ FDI in Partnership Firm/Proprietary Concern.
- ✓ FDI in Trusts which are Venture Capital Trusts regulated by the Securities and Exchange Board of India and Investment vehicles as detailed in the next paragraph.
- ✓ FDI in Limited Liability Partnerships (LLPs).

FDI in resident entities other than those mentioned above is not permitted.

Investment Vehicle

An entity being 'investment vehicle' registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose including Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014, Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012 and notified under Schedule 11 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 is permitted to receive foreign investment from a person resident outside India (other than an individual who is citizen of or any other entity which is registered / incorporated in Pakistan or Bangladesh), including an Registered Foreign Portfolio Investor (RFPI) or a nonresident Indian (NRI).

Caps on Investments

Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as specified in the FDI policy. Those are secretarial caps, i.e., upper limit of investment in each of the business/industry sector.

Procedure for Receiving Foreign Direct Investment (FDI) in an Indian Company

An essential requirement for receiving foreign direct investment is the compliance with the KYC (Know your customer) requirement specified by the Reserve Bank of India. As and when the

negotiations take place for foreign investment, the overseas investor should be apprised of the need to receive the KYC certification through the Banking channels.

An Indian company may receive Foreign Direct Investment (FDI) under the two routes as given under:

(a) Automatic Route

FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in all activities / sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.

(b) Government Route

FDI in activities not covered under the automatic route requires prior approval of the Government which is considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance. Application can be made in the prescribed Form. Plain paper applications carrying all relevant details are also accepted. No fee is payable. The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank of India.

Instruments for Receiving Foreign Direct Investment in an Indian Company

Foreign investment is reckoned as FDI only if the investment is made in equity shares, fully and mandatorily convertible preference shares and fully and mandatorily convertible debentures with the pricing being decided upfront as a figure or based on the formula that is decided upfront. Partly paid equity shares and warrants issued by an Indian company in accordance with the provision of the Companies Act, 2013 and the SEBI guidelines, as applicable, shall be treated as eligible FDI instruments w.e.f. July 8, 2014 subject to compliance with FDI scheme. The pricing and receipt of balance consideration shall be as stipulated in terms of A.P. (DIR Series) Circular No.3 dated July 14, 2014 as modified from time to time.

Any foreign investment into an instrument issued by an Indian company which:

- (a) gives an option to the investor to convert or not to convert it into equity or
- (b) does not involve upfront pricing of the instrument as a date would be reckoned as ECB and would have to comply with the ECB guidelines.

The FDI policy provides that the price / conversion formula of convertible capital instruments should be determined upfront at the time of issue of the instruments. The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA regulations [valuation as per any internationally accepted pricing methodology on arm's length basis for the unlisted companies and valuation in terms of SEBI (ICDR) Regulations, for the listed companies] without any assured return.

Modes of Payment Allowed for Receiving Foreign Direct Investment in an Indian Company

An Indian company issuing shares / convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares / convertible debentures by:

- ✓ inward remittance through normal banking channels.
- ✓ debit to NRE / FCNR account of a person concerned maintained with an AD Category-I bank.
- ✓ conversion of royalty/lump sum/technical know-how fee due for payment or conversion of ECB, shall be treated as consideration for issue of shares.

- ✓ conversion of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB.
- ✓ debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category-I bank and is maintained with the AD Category-I bank on behalf of residents and non-residents towards payment of share purchase consideration.

If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE / FCNR (B)/Escrow account, the amount shall be refunded. Further, Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund / allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.

Issue of ADRs/GDRs by Indian Companies

In terms of Schedule 10 to Notification No. FEMA.20/2000-RB dated May 3, 2000, a person will be eligible to issue or transfer eligible securities to a foreign depository, for the purpose of converting the securities so purchased into depository receipts in terms of Depository Receipts Scheme, 2014 and guidelines issued by the Government of India there under from time to time.

Issue Foreign Currency Convertible Bonds (FCCBs)

FCCBs can be issued by Indian companies in the overseas market in accordance with the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993. The FCCB being a debt security, the issue needs to conform to the External Commercial Borrowing guidelines, issued by RBI.

Issue of Shares Against Lumpsum Fee, Royalty, ECB, Import Of Capital Goods / Machineries Etc.

An Indian company eligible to issue shares under the FDI policy and subject to pricing guidelines as specified by the Reserve Bank from time to time, may issue shares to a person resident outside India.

Investment by NRI and RFPI in Indian Depository Receipts (IDRs)

NRI and Registered Foreign Portfolio Investors (RFPI) have been permitted to invest, purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market.

Regulations for Foreign Venture Capital Investment

A SEBI registered Foreign Venture Capital Investor has general permission from the Reserve Bank of India to invest in a Venture Capital Fund (VCF) or an Indian Venture Capital Undertaking (IVCU), in the manner and subject to the terms and conditions specified by the RBI.

Sector Specific Conditions on FDI

Prohibited Sectors

FDI is prohibited in:

- ✓ Lottery Business including Government / private lottery, online lotteries, etc.
- ✓ Gambling and Betting including casinos etc.

- ✓ Chit funds.
- ✓ Nidhi company.
- ✓ Trading in Transferable Development Rights (TDRs).
- ✓ Housing and Real Estate Business or Construction of Farm Houses 'Real estate business' shall not include development of townships, construction of residential / commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.
- ✓ Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
- ✓ Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway operations
- ✓ Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

Permitted Sectors

In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable laws/regulations; security and other conditionalities. In sectors/activities not listed below, FDI is permitted up to 100% on the automatic route, subject to applicable laws/regulations; security and other conditionalities.

- ✓ Wherever there is a requirement of minimum capitalization, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement.
- ✓ Sectoral cap i.e., the maximum amount which can be invested by foreign investors in an entity, unless provided otherwise, is composite and includes all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule 1 (FDI), 2 (FII), 2A (FPI), 3 (NRI), 6 (FVCI), 9 (LLPs), 10 (DRs) and 11 (Investment Vehicle) of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations. FCCBs and DRs having underlying of instruments which can be issued under Schedule 5, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment under the composite cap.
- ✓ Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval. Foreign investment in sectors under automatic route but with conditionalities, resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities, will be subject to compliance of such conditionalities.
- ✓ The sectors which are already under 100% automatic route and are without conditionalities would not be affected.
- ✓ Notwithstanding anything contained in paragraphs a) and c) above, portfolio investment, up to aggregate foreign investment level of 49% or sectoral/statutory cap, whichever is lower, will not be subject to either Government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities. Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the FDI policy.
- ✓ Total foreign investment, direct and indirect, in an entity will not exceed the sectoral/statutory cap.

- ✓ Any existing foreign investment already made in accordance with the policy in existence would not require any modification to conform to amendments introduced through Press Note 8 (2015 Series).
- ✓ The onus of compliance of above provisions will be on the investee company.
- ✓ FDI is a capital account transaction and thus any violation of FDI regulations are covered by the penal provisions of the FEMA. Reserve Bank of India administers the FEMA and Directorate of Enforcement under the Ministry of Finance is the authority for the enforcement of FEMA. The Directorate takes up investigation in any contravention of FEMA.

Remittance, Reporting and Violation

Both the above transactions entails either inward remittance to India or outward remittance from India. The FEMA, 1999 provides a detailed mechanism for remittance, reporting and consequent violations. Therefore, the Government has provided elaborated scheme for remittance, reporting and violation of FDI policy as detailed below:

(a) Remittance and Repatriation

- ✓ Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies.
- ✓ Repatriation of Dividend.
- ✓ Repatriation of Interest.

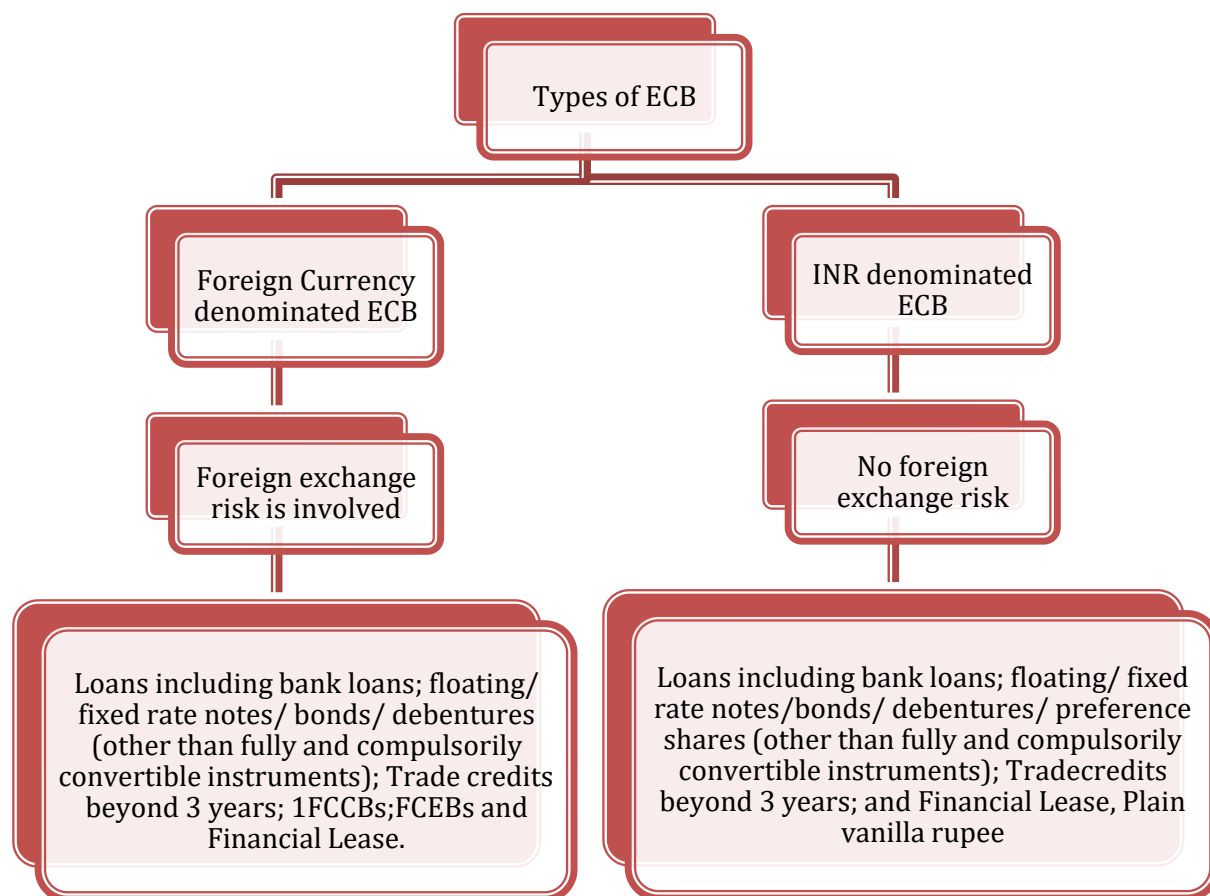
(b) Reporting of FDI

- ✓ Reporting of Inflow in form Advance Reporting Form as per Section I of the Government of India Circular (Section I of policy circular).
- ✓ Reporting of issue of shares in form FC GPR (Section II of Policy Circular)
- ✓ Reporting of transfer of shares in form FC TRS (Section 4 of Policy).
- ✓ Reporting of Non-Cash (applicable in cases where shares are issued in conversion of External Commercial Borrowings in ECB – 2 for whole/partial conversion as applicable as stated in the Policy).
- ✓ Reporting of FCCB/DR Issues in form DRR as per Section 5 of the Policy Circular.
- ✓ It may be stated that the KYC report about the overseas investing entity should be collected from overseas banker in the format (section II of Policy Circular) prescribed and submitted to the Reserve Bank.

(c) Adherence to Guidelines/Orders and Consequences of Violation.

External Commercial Borrowings

External Commercial Borrowings are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.



Eligible Borrowers

For FCY Denominated ECB

- ✓ All entities eligible to receive FDI. Further, the following entities are also eligible to raise ECB:
- ✓ Port Trusts;
- ✓ Units in SEZ;
- ✓ SIDBI; and
- ✓ EXIM Bank of India.

For INR Denominated ECB

- ✓ All entities eligible to raise FCY ECB; and
- ✓ Registered entities engaged in microfinance activities, viz.,
- ✓ registered Not for Profit companies,
- ✓ registered societies/trusts/ cooperatives and
- ✓ Non-Government Organisations.

Recognised Lenders

The lender should be resident of FATF or IOSCO compliant country, including on transfer of ECB.

However,

- ✓ Multilateral and Regional Financial Institutions where India is a member country will also be
- ✓ considered as recognised lenders;
- ✓ Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and
- ✓ Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for FCY ECB (except FCCBs and FCEBs).

Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.

Minimum Average Maturity Period

MAMP for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity. However, for the specific categories mentioned below, the MAMP will be as prescribed therein:

Category	MAMP
ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year
ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 years
ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes	10 Years
ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose	7 years
ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose	10 Years

All-in-cost ceiling per annum: Benchmark rate plus 450 bps spread.

Other Costs: Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.

End-Uses (Negative List)

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- a) Real estate activities.
- b) Investment in capital market.
- c) Equity investment.
- d) Working capital purposes, except in case of ECB mentioned above.
- e) General corporate purposes, except in case of ECB mentioned above.
- f) Repayment of Rupee loans, except in case of ECB mentioned above.
- g) On-lending to entities for the above activities, except in case of ECB raised by NBFCs as given at above.

Exchange Rate

- ✓ Change of currency of FCY ECB into INR ECB can be at the exchange rate prevailing on the date of the agreement for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender.
- ✓ For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.

Parking of ECB Proceeds

ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

Parking of ECB Proceeds Abroad

ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation.

Till utilisation, these funds can be invested in the following liquid assets

- ✓ deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's;
- ✓ Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and
- ✓ deposits with foreign branches/subsidiaries of Indian banks abroad.

Parking of ECB Proceeds Domestically

ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

Procedure of Raising ECB

Automatic Route	Approval Route
<ul style="list-style-type: none"> • All ECB can be raised if they conform to the parameters prescribed under this framework • Entities desirous to raise ECB under the automatic route may approach • an AD Category I bank with their proposal along with duly filled in Form ECB. 	<ul style="list-style-type: none"> • the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank • Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank • Reserve Bank will take a final decision

Reporting Requirements

Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

Loan Registration Number (LRN)

- ✓ Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank.
- ✓ To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank.
- ✓ In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division.
- ✓ Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

Changes in Terms and Conditions of ECB

Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the DSIM through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.

Monthly Reporting Of Actual Transactions

The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach DSIM within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.

Late Submission Fee for Delay in Reporting

Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of late submission fees as detailed in the following matrix

Sr. No.	Type of Return /Form	Period of delay	Applicable LSF
1	Form ECB 2	Up to 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Up to three years from due date of submission/date of drawdown	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond three years from due date of submission/date of drawdown	INR 100,000 per year

The borrower, through its AD bank, may pay the LSF by way of demand draft in favour of "Reserve Bank of India" or any other mode specified by the Reserve Bank. Such payment should be accompanied with the requisite return(s). Form ECB and Form ECB 2 returns reporting contraventions will be treated separately. Non-payment of LSF will be treated as contravention of reporting provision and shall be subject to compounding or adjudication as provided in FEMA 1999 or regulations/rules framed thereunder.

Standard Operating Procedure (SOP) for Untraceable Entities

The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

Definition

Any borrower who has raised ECB will be treated as 'untraceable entity', if

- ✓ entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:
- ✓ Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorized by the AD bank for the purpose;
- ✓ Entities have not submitted Statutory Auditor's Certificate for last two years or more;

Action

The followings actions are to be undertaken in respect of 'untraceable entities':

- ✓ File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;
- ✓ No fresh ECB application by the entity should be examined/processed by the AD bank;
- ✓ Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and
- ✓ No inward remittance or debt servicing will be permitted under auto route.

Powers Delegated To AD Category I Banks to Deal with ECB Cases

The designated AD Category I banks can approve any requests from the borrowers for changes in respect of ECB, except for FCCBs/FCEBs, duly ensuring that the changed conditions, including change in name of borrower/lender, transfer of ECB and any other parameters, comply with extant ECB norms and are with the consent of lender(s). Further, the following can also be undertaken under the automatic route.

Change of the AD Category I bank:

AD Category I bank can be changed subject to obtaining no objection certificate from the existing AD Category I bank.

Cancellation of LRN

The designated AD Category I banks may directly approach DSIM for cancellation of LRN for ECB contracted, subject to ensuring that no draw down against the said LRN has taken place and the monthly ECB- 2 returns till date in respect of the allotted LRN have been submitted to DSIM.

Refinancing of Existing ECB

Refinancing of existing ECB by fresh ECB provided the outstanding maturity of the original borrowing (weighted outstanding maturity in case of multiple borrowings) is not reduced and all -in cost of fresh ECB is lower than the all-in-cost (weighted average cost in case of multiple borrowings) of existing ECB. Further, refinancing of ECB raised under the previous ECB frameworks may also be permitted, subject to additionally ensuring that the borrower is eligible to raise ECB under the extant framework.

Raising of fresh ECB to part refinance the existing ECB is also permitted subject to same conditions.

Indian banks are permitted to participate in refinancing of existing ECB, only for highly rated corporates (AAA) and for Maharatna/Navratna public sector undertakings.

Conversion of ECB into Equity

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

- (i) The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received, wherever applicable, for foreign equity participation as per extant FDI policy.
- (ii) The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy
- (iii) Applicable pricing guidelines for shares are complied with
- (iv) In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under-
For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".
For full conversion, the entire portion is to be reported in Form FCGPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.
For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.
- (v) If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with
- (vi) Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.
- (vii) For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

Security for Raising ECB

AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:

- (i) the underlying ECB is in compliance with the extant ECB guidelines,
- (ii) there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and
- (iii) No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Trade Credits

Trade Credits (TC) refer to the credits extended by the overseas supplier, bank, financial institution and other permitted recognised lenders for maturity, as prescribed in this framework, for imports of capital/noncapital goods permissible under the Foreign Trade Policy of the Government of India. Depending on the source of finance, such TCs include suppliers' credit and buyers' credit from recognised lenders.

TC for imports into India can be raised in any freely convertible foreign currency (FCY denominated TC) or Indian Rupee (INR denominated TC), as per the framework given in the table below:

S No.	Parameters	FCY Denominated TC	INR Denominated TC
1	Forms of TC	Buyers' Credit and Suppliers' Credit.	
2	Eligible borrower	Person resident in India acting as an importer.	
3	Amount under automatic route	Up to USD 150 million or equivalent per import transaction for oil/gas refining & marketing, airline and shipping companies. For others, up to USD 50 million or equivalent per import transaction.	
4	Recognised Lenders	<ul style="list-style-type: none"> ✓ For suppliers' credit: Supplier of goods located outside India. ✓ For buyers' credit: Banks, financial institutions, foreign equity holder(s) located outside India and financial institutions in IFSCs located in India. <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>Note: Participation of Indian banks and non-banking financial companies (operating from IFSCs) as lenders will be subject to the prudential guidelines issued by the concerned regulatory departments of the Reserve Bank. Further, foreign branches/subsidiaries of Indian banks are permitted as recognised lenders only for FCY TC.</p> </div>	
5	Period of TC	The period of TC, reckoned from the date of shipment, shall be up to three years for import of capital goods. For non-capital goods, this period shall be up to one year or the operating cycle whichever is less. For shipyards/shipbuilders, the period of TC for import of non-capital goods can be up to three years.	
6	All-in-cost ceiling per annum	10 Benchmark Rate plus 350 bps spread: For existing TCs linked to LIBOR whose benchmarks are changed to ARR. Benchmark rate plus 300 bps spread: For new TCs.	Benchmark rate plus 250 bps spread.
7	Exchange rate	Change of currency of FCY TC into INR TC can be at the exchange rate prevailing on the date of the agreement between the parties concerned for such change or at an exchange rate, which is less than the rate prevailing on the date of agreement, if consented to by the TC lender.	For conversion to Rupee, exchange rate shall be the rate prevailing on the date of settlement.
8	Hedging provision	The entities raising TC are required to follow the guidelines for hedging, if any, issued by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Such entities shall have a board approved risk management policy.	The overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence

			on a back to back basis.
9	Change of currency of borrowing	Change of currency of TC from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.	Change of currency from INR to any freely convertible foreign currency is not permitted.

Trade Credits (TC) in SEZ/FTWZ/DTA:

- ✓ TC can be raised by a unit or a developer in a SEZ including FTWZ for purchase of non-capital and capital goods within an SEZ including FTWZ or from a different SEZ including FTWZ subject to compliance with parameters given above
- ✓ Further, an entity in DTA is also allowed to raise TC for purchase of capital / noncapital goods from a unit or a developer of a SEZ including FTWZ.
- ✓ TC transactions in respect of SEZs and DTAs as permitted above should also be in compliance with applicable provisions of SEZ Act, 2005 as amended from time to time. For TC transactions related to SEZ, date of transfer of ownership of goods will be treated as TC date. As there will be no bill of entry for sale transactions within SEZ, the inter unit receipt generated through NSDL can be treated as an import

Security for Trade Credit

The provisions regarding security for raising TC are as under:

Bank guarantees may be given by the ADs, on behalf of the importer, in favour of overseas lender of TC not exceeding the amount of TC. Period of such guarantee cannot be beyond the maximum permissible period for TC. TC may also be secured by overseas guarantee issued by foreign banks/overseas branches of Indian banks.

Issuance of such guarantees i.e. guarantees by Indian banks and their branches/subsidiaries located outside India. For the purpose of raising TC, the importer may also offer security of movable assets (including financial assets)/ immovable assets (excluding land in SEZs) / corporate or personal guarantee for raising trade credit. ADs may permit creation of charge on security offered / accept corporate or personal guarantee, duly ensuring that:

- ✓ there exists a security clause in the loan agreement requiring the importer to create charge, in favour of overseas lender / security trustee on immovable assets / movable assets / financial securities/ issuance of corporate and/ or personal guarantee;
- ✓ No objection certificate, wherever necessary, from the existing lenders in India has been obtained;
- ✓ such arrangement is co-terminus with underlying TC;
- ✓ In case of invocation, the total payments towards guarantee should not exceed the dues towards trade credit; and
- ✓ Creation/ enforcement / invocation of charge shall be as per the provisions contained in Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, as amended from time to time, or any other relative Regulations framed under the Foreign Exchange Management Act, 1999 and should also comply with applicable FDI/FII/SEZ policy/ rules/ guidelines.

Note: The directions on issuance of corporate or personal guarantee mentioned under this provision shall come into force from the date of publication, in the Official Gazette, of the relative Regulations issued under FEMA.

Reporting Requirements

Monthly reporting	AD Category I banks are required to furnish details of TCs like drawal, utilisation, and repayment of TC approved by all its branches, in a consolidated statement, during a month, in Form TC to the Director, Division of International Trade and Finance, Department of Economic Policy and Research, each month.
Quarterly reporting	AD Category I banks are also required to furnish data on issuance of bank guarantees for TCs by all its branches, in a consolidated statement, at quarterly intervals on the XBRL platform.
Role of ADs	ADs are also expected to ensure compliance with applicable parameters of the trade credit policy / provisions of Foreign Exchange Management Act, 1999 by their constituents. As the Reserve Bank has not prescribed any format or manner in which TC arrangements / loan agreements are to be documented, ADs may consider any document to satisfy themselves with the underlying TC arrangement. ADs should ensure that there is no double financing on account of these transactions between a unit or a developer in a SEZ including FTWZ for purchase of non-capital and capital goods within an SEZ including FTWZ or from a different SEZ including FTWZ. ADs should also ensure that for import of non-capital goods, the period of TC, as applicable, is lower of operating cycle or one year.

Non-Resident Guarantee for Domestic Fund Based and Non-Fund Based Facilities

Borrowing and lending in Indian Rupees between two residents does not attract any provisions of the Foreign Exchange Management Act, 1999. In cases where a Rupee facility which is either fund based or non-fund based (such as letter of credit/ guarantee / letter of undertaking / letter of comfort) or is in the form of derivative contract by residents that are subsidiaries of multinational companies, is guaranteed by a non-resident (non-resident group entity in case of derivative contracts), there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee.

Facility of Credit Enhancement

The facility of credit enhancement by eligible non- resident entities (viz. Multilateral financial institutions (such as, IFC, ADB, etc.) / regional financial institutions and Government owned (either wholly or partially) financial institutions, direct/ indirect equity holder) to domestic debt raised through issue of capital market instruments, such as Rupee denominated bonds and debentures, is available to all borrowers eligible to raise ECB under automatic route subject to the certain conditions.

Case Study

Amit, Rohit and Mahesh are three friends passed out engineers, They want to form start up company by contributing Rs. 10 lakhs each, Mahesh gets a job in USA and has left for USA. The company will be manufacturing a spare for computer which is very much in demand. Mahesh wants to be a shareholder and a director of the company, which others have agreed. Others also will be directors.

The proposed company will be a private company and the product in delicensed sector. The

holding Mahesh in the company will be around 35%. The team of the above entrepreneurs want to clarify the following. Please advise them.

1. Can Mahesh hold 35% shares in the company?
2. Can he attend the Board meetings in India?
3. Can they be allotted convertible note or any security other than equity shares?
4. Which route is to be taken and why?
5. Shall Mahesh get dividend on the shares if he is non resident.

1. Yes Mahesh can hold 355 shares in the company. Being a technological company, there is no bar on limit of foreign investment.

2. He can be director and attend Board meeting in India, whenever held.

3. Yes he can be allotted convertible note. A convertible note is an instrument issued by a start-up company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such start up company, within a period not exceeding five years from the date of issue of the convertible note, on occurrence of nay event.

The following capital instruments are permitted to be issued to a NRI: 'Capital Instruments' means equity shares, debentures, preference shares and share warrants issued by the Indian company.

Equity shares: Equity shares are those issued in accordance with the provisions of the Companies Act, 2013 and will include partly paid equity shares issued on or after July 8, 2014.

Share warrants: Share warrants issued on or after July 8, 2014 will be considered as capital instruments.

Debentures: 'Debentures' means fully, compulsorily and mandatorily convertible debentures.

Preference shares: 'Preference' shares means fully, compulsorily and mandatorily convertible preference shares.

Non-convertible/ optionally convertible/ partially convertible/ optionally convertible/ partially convertible debentures.

4. The routes under which foreign investment can be made is as under:

a) Automatic Route: Foreign Investment is allowed under the automatic route without prior approval of the Government or the Reserve Bank of India, in all activities/ sectors as specified in the Regulation 16 of FEMA 20 (R).

b) Government Route: Foreign investment in activities not covered under the automatic route requires prior approval of the Government. Procedure for applying for Government approval is given. Here, since the investment is permitted under Regulation, no Govt. approval would be required.

5. Mahesh will get dividend which will be repayable.

Prevention Money Laundering Act, 2002

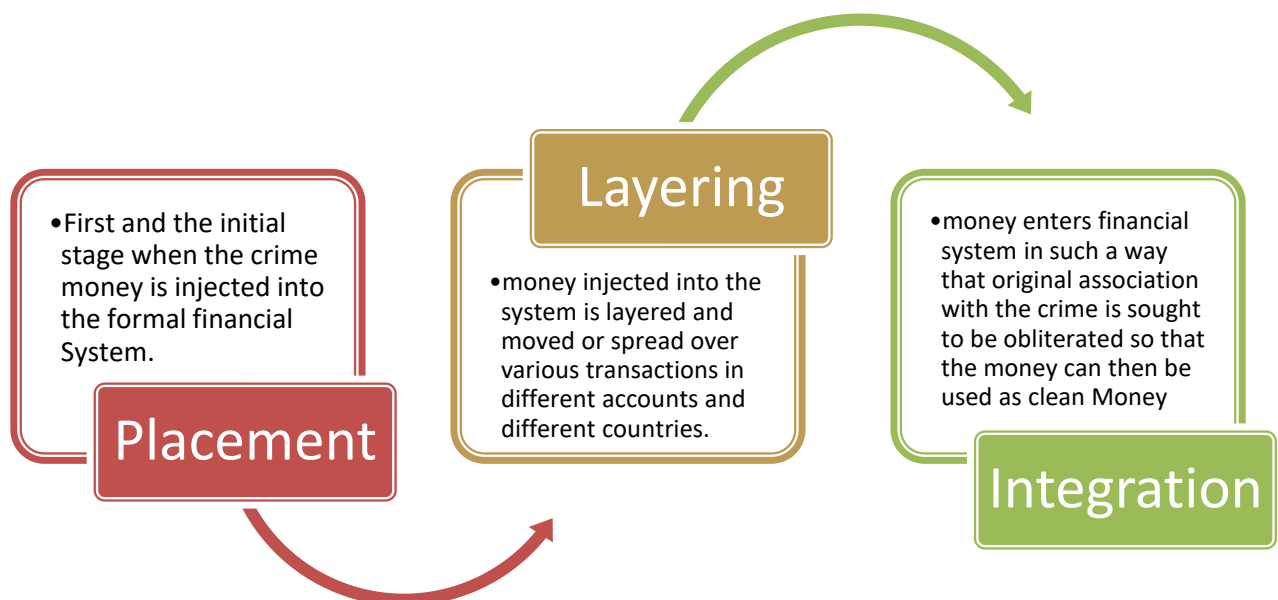
Meaning and Process of Money Laundering

It is the process by which illegal funds and assets are converted into legitimate funds and assets. It is the process used by criminals' to wash their "tainted" money to make it "clean."



Process of Money Laundering

Money laundering is a single process. However, its cycle can be broken down into three distinct stages:-



Methods of Money Laundering

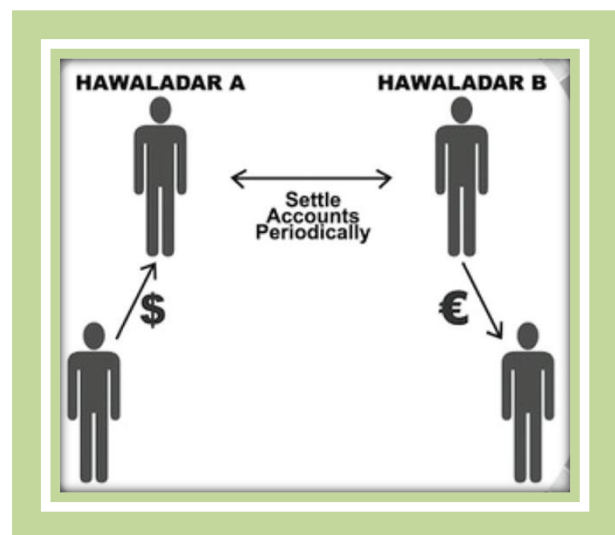
Money Laundering can erode a nation's economy by changing the demand for cash, making interest and exchange rates more volatile and by causing inflation in countries where criminal elements are operating.

It is done by following methods-

- ✓ Cash Smuggling
- ✓ Structuring
- ✓ Laundering via Real Estate
- ✓ Stock Markets scams
- ✓ By creating bogus companies

Hawala

- ✓ Hawala system works with a network of operators called Hawaladars or Hawala agents. For a Hawala transaction a customer contacts a Hawala agent at the source location.
- ✓ The Hawala agent at that end collects money from the person who wishes to make a transfer.
- ✓ The agent then calls up his counterpart in the country where the transfer has to be made.
- ✓ This counterpart then hands over the cash to the recipient after deducting a commission.
- ✓ The source agent promises to settle the debt to the destination agent through an informal settlement.



Basics of Act

- ✓ The Bill received the assent of the President and became the Prevention of Money Laundering Act, 2002 on 17th January 2003.
- ✓ The **Act has come into force with effect from 1st July 2005.**
- ✓ The objective of the Act is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected.
- ✓ It extends to whole of India
- ✓ The Prevention of Money Laundering Act, 2002 consists of ten chapters containing 75 sections and one Schedule divided into five parts. Chapter I containing section 1 and 2 deals with short title, extent and commencement and definitions. Chapter II containing sections 3 and 4 provides for offences and punishment for money laundering. Chapter III (Section 5-11) provides for attachment, adjudication and confiscation and Chapter IV (Sections 12-15) deals with obligations of banking companies, financial institutions and intermediaries. Chapter V (Sections 16-24) relates to Summons, Searches and Seizures etc.

Definition of Money Laundering

Section 2(1)(p)]

"Money-laundering" has the meaning assigned to it in section 3

Offence of Money Laundering

Section 3

Whosoever (directly or indirectly)

- ✓ **attempts** to indulge or
- ✓ **knowingly assists** or
- ✓ **knowingly** is a **party** or
- ✓ is actually **involved**
 - **in** any **process** or activity or **connected with** the **proceeds of crime**
 - **including** its **concealment**,
 - **possession**,
 - **acquisition** or use

and projecting or claiming it **as untainted property** shall be **guilty of offence of money laundering**

Other Definitions

Proceeds of Crime [Section 2(1)(u)]

Any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken/held outside the country, then the property equivalent in value held within the country.

Property [Section 2(1)(v)]

It means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

Scheduled Offence [Section 2(1)(y)]

It means –

- (a) the offences specified under Part A of the Schedule; or
- (b) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
- (c) The offences specified under Part C of the Schedule.

The Scheduled Offence is called Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money.

- ✓ In Part A, offences to the Schedule have been listed in 28 paragraphs and it comprises of offences under Indian Penal Code, offences under Narcotic Drugs and Psychotropic Substances, offences under Explosive Substances Act, 1908, offences under Unlawful Activities (Prevention) Act, 1967, offences under Arms Act, 1959, offences under Wild

Life (Protection) Act, 1972, offences under the Immoral Traffic (Prevention) Act, 1956, offences under the Prevention of Corruption Act, 1988, offences under the Explosives Act, 1884 and offences under Antiquities & Arts Treasures Act, 1972 etc.

- ✓ Part 'C' deals with trans-border crimes, and is a vital step in tackling Money Laundering across International boundaries.

Transfer

It includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

Reporting Entity

It means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

person carrying on designated business or profession" means,—

- (i) a person carrying on activities for playing games of chance for cash or kind, and includes casino
- (ii) Inspector-General of Registration appointed under Registration Act, 1908
- (iii) real estate agent
- (iv) dealer in precious metals, precious stones and other high value goods
- (v) person engaged in safekeeping and administration of cash as may be notified by CG
- (vi) person carrying on activities as the CG may notify

Banking Company

It means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that Act.

Financial Institution

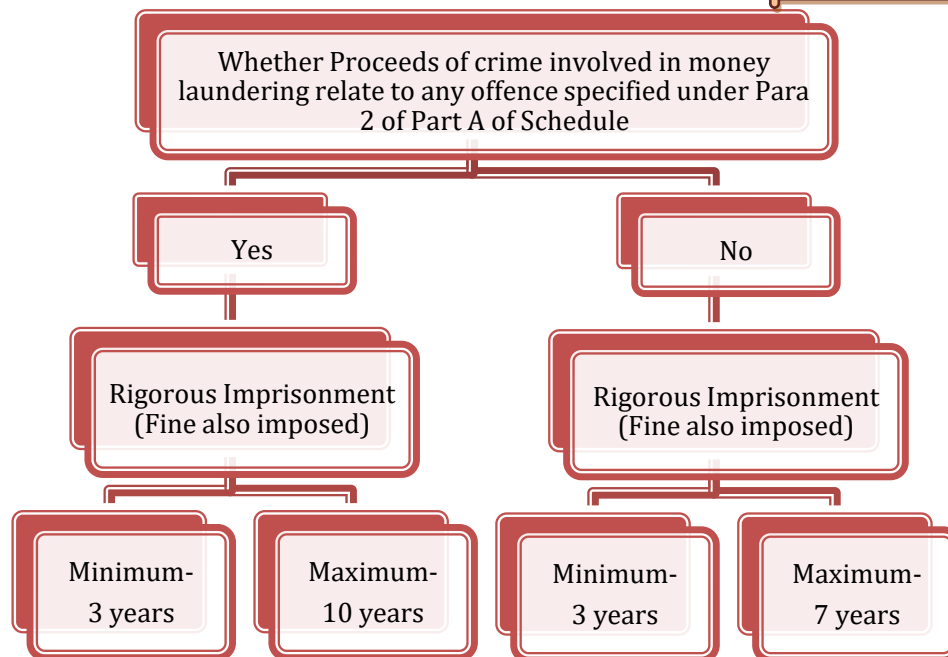
It means a financial institution as defined in clause (c) of section 45 I of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India.

Intermediary

- (i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992
- (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or
- (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or
- (iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956.

Punishment for Money Laundering

Section 4



Examine the following cases:

Case I. Z, a known smuggler, was caught in transfer of funds illegally exporting narcotic drugs from India to some counties in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

Case II. Sohan Lal, a farmer, was found involved in embezzlement of opium cultivated by him. State the punishment that can be awarded to him under the Prevention of Money Laundering Act, 2002.

Case III. Mr. Honest, a notorious, was caught in possession of Counterfeit Currency Notes, an offence specified under Part A - Paragraph 1 of Schedule of the Prevention of Money Laundering Act, 2002. State the punishment that can be awarded to him under the above act. Also identify the punishment for the offence specified under Part A- Paragraph 2 of the Schedule of the prevention of Money Laundering Act, 2002

Case IV. Mr. Raja was arrested for counterfeiting Two Thousand Rupees Notes. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.

Obligation of Banking Companies, Financial Institutions and Intermediaries

Section 12

Maintenance of Records

- a) **maintain a record of all transactions**, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions

- b) **furnish to the Director** within such time as may be prescribed, **information relating to such transactions**, whether **attempted or executed**, the nature and value of which may be **prescribed**
- c) ~~verify the identity of its clients in such manner and subject to such conditions, as may be prescribed~~
- d) ~~identify the beneficial owner, if any, of such of its clients, as may be prescribed~~
- e) **maintain record of documents evidencing identity** of its clients and beneficial owners as well as account files and business correspondence relating to its clients

Other Relevant Points

- ✓ Every **information maintained**, furnished or verified, save as otherwise provided under any law for the time being in force shall **be kept confidential**.
- ✓ The **records** referred above shall be **maintained for a period of five years from the date of transaction between a client** and the reporting entity or after the business relationship has ended as the case may be.
- ✓ The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this chapter

Procedure for Maintaining and Furnishing Information [Section 15]

Section 15 provides for prescribing the procedure and manner of furnishing information by reporting entities. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under subsection (1) of section 12 for the purpose of implementing the provisions of this Act.



'Manav Kalyan', a charitable organisation, opened a current account with M/s ABZ Bank on 1st July, 2012. This account was closed on 30th June, 2016. Referring to the obligations of banking companies under the Prevention of Money Laundering Act, 2002, specify the period upto which the said bank has to maintain records relating to the account of 'Manav Kalyan'.

Access to Information

Section 12A

- ✓ The **Director may call for from any reporting entity any** of the **records** referred to in subsection (1) of section 12 and any additional information **as he considers necessary** for the purposes of this Act.
- ✓ Every **reporting entity shall furnish** to the Director such information as may be required by him under sub-section (1) **within such time and in such manner** as he may **specify**.
- ✓ Save as otherwise provided under any law for the time being in force, every **information** sought by the Director under sub-section (1), shall **be kept confidential**.

Power of Director to Impose Fine

Section 13

Inquiry by Director

The **Director may**, either of his **own motion or on an application** made by any authority, officer or person, **may** make such **inquiry** or cause such inquiry to be made, **as he thinks** fit to be **necessary**, with regard to the obligations of the reporting entity, under this chapter.

Audit of Accounts

If at any stage of inquiry or any other proceedings before him, the **Director having regard** to the nature and complexity of the **case, is of the opinion that** it is **necessary to do so**, he **may direct** the concerned reporting **entity to get** its **records**, as may be specified, **audited** by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

Expenses by Central Government

The **expenses** of, and incidental to, any audit specified above shall be **borne by the Central Government**.

Consequences of Failure/Non Compliance

If the Director, in the course of any inquiry, **finds** that a reporting **entity** or its designated director on the Board or any of its employees has **failed to comply with the obligations** under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, **he may**

- ✓ **issue a warning** in writing; or
- ✓ **direct** such reporting **entity** or its designated director on the Board or any of its employees, **to comply with specific instructions**; or
- ✓ **direct** such reporting **entity** or its designated director on the Board or any of its employees, **to send reports** at such interval as may be prescribed on the measures it is taking; or
- ✓ **by an order, impose a monetary penalty** on such reporting entity or its designated director on the Board or any of its employees, **which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure**.

Forwarding Copy of Order

The **Director shall forward a copy of the order passed** under sub-section (2) **to every banking company, financial institution or intermediary** or person who is a party to the proceedings.

Immunity

Section 14

This **section gives immunity to reporting entity**, its directors and employees etc., **against civil or criminal proceedings for furnishing information** under clause (b) of sub-section (1) of section 12.

Authorities under the Act

Enforcement Directorate (ED)	The Directorate of Enforcement in the Department of Revenue, Ministry of Finance is responsible for investigating the cases of offence of money laundering under Prevention of Money Laundering Act, 2002 and is responsible for enforcement of the Foreign Exchange Management Act, 1999 (FEMA) and certain provisions under the Prevention of Money Laundering Act. Work relating to investigation and prosecution of cases under the PML has been entrusted to Enforcement Directorate. The Directorate is under the administrative control of Department of Revenue for operational purposes.
Financial Intelligence Unit - India (FIU-IND)	‘Financial Intelligence Unit – India was set by the Government of India during November 2004 as the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister
Adjudicating Authority	Central Govt shall appoint adjudicating authority to exercise jurisdiction and powers conferred under the Act.

Procedure of Investigation

Powers of investigation and prosecution for offences under the Act have been conferred on the Director, Enforcement Directorate.	
Establishment of Special Courts	PMLA envisages designation of one or more courts of sessions as Special Court or Special Courts to try the offences punishable under PMLA and offences with which the accused may, under the Code of Criminal Procedure 1973, be charged at the same trial. Special Courts have been set-up in a number of States / UTs by the Central Government to conduct the trial of the offences of money laundering. The authorities under the Act like the Director
Authorities	Adjudicating Authority in terms of section 6 of the Act and the Appellate Tribunal under section 25 of the Act have also been constituted and have become functional. They carry out the proceedings related to attachment and confiscation of any property derived from money laundering.
Reciprocal Arrangements	The Act provides for reciprocal arrangements for processes/assistance with regard to accused persons. In order to enlarge the scope of this Act. The Act provides for bilateral agreements between countries to cooperate with each other and curb the menace of money laundering. These agreements shall be for the purpose of either enforcing the provisions of this Act or for the exchange of information which shall help in the prevention in the commission of an offence under this Act or the corresponding laws in that foreign State.
FIU	The Government has constituted the Financial Intelligence Unit, India, in November, 2004, headed by Director in the rank of a Joint Secretary to the Government of India. The organization has become functional and has started receiving Cash Transaction Reports and Suspicious Transactions Reports from the banking companies etc. in terms of Section 12 of the PMLA.

Appellate Tribunal

Section 25

The Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act.

- ✓ Section 28(4) of the PMLA provides that the Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being the Chairperson or a member of that Tribunal, may be appointed as the Chairperson or a Member, as the case may be, of the Appellate Tribunal under this Act.
- ✓ The Tribunal consists of a Chairperson and two other Members. The Chairman and one Member of Appellate Tribunal for Forfeited Property (ATFP) holds additional charge of the post of Chairman and Member of Tribunal under PMLA.
- ✓ Appellate Tribunal has been constituted to hear appeals against the orders of the Adjudicating Authority and the authorities under the said Act.

Special Court

Section 43

- ✓ "Special Court" means a Court of Session designated as Special Court under sub-section (1) of section 43.
- ✓ This section empowers the Central Government in consultation with the Chief Justice of the High Court for trial of offence of money laundering (offence punishable under section 4), to designate one or more Courts of Sessions as Special Court or Special Courts for such area or areas or for such cases as may be prescribed in the notification to this effect.
- ✓ Special Court has also to try the offences, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.
- ✓ an offence of money laundering punishable under Section 4 of PMLA, 2002 and any scheduled offence connected to the offence of money laundering, shall be triable by the Special Court constituted for the area in which the offence has been committed.

Suspicious Transaction Reports

The Prevention of Money laundering Act, 2002 and the Rules made there under require every banking company to furnish details of suspicious transactions whether or not made in cash. Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith:

- ✓ Gives rise to a reasonable ground of suspicion that it may involve the proceeds or crime, or
- ✓ Appears to be made in circumstances of unusual or unjustified complexity. or
- ✓ Appears to have no economic rationale or bonafide purpose.

The Prevention of Money Laundering (Maintenance Of Record) Rules, 2005

The Rules were made in 2005 and last revised in December, 2020.

CA. SHIVANGI AGRAWAL

Maintenance of Records	<p>Every reporting entity shall maintain record of all transactions, including record of</p> <ul style="list-style-type: none">✓ Cash transaction of more than Rs. 10 lakhs.✓ All series of integrated transaction below Rs. 10 Lakh per month✓ All transaction of receipt of Rs. 10 lakhs and more on its equivalent foreign currency✓ All transactions with counterfeit currency✓ Any suspicious transaction made in cash or otherwise including transactions involving transfer of immovable property.
Procedure and Format	<ul style="list-style-type: none">✓ Reporting entities shall keep record uniformly in prescribed format. The entity shall make out a mechanism and system of disseminating and analysing of records and information available to them. Few records are to be taken and retained in hard copy only.✓ Every entity shall identify its clients and take required details to check the status and authenticity of the details furnished.
Reporting	<ul style="list-style-type: none">✓ Every entity shall designate a principal officer, who shall report to the Director of Financial intelligence Unit.✓ The reporting entity may have reasonable ground for believing on the statements of the clients/third party.✓ For each of the category of client the required document/information will vary. The entities may conduct client due diligence which is a matter of detail.

KYC

Central KYC records Registry	<ul style="list-style-type: none">✓ A central KYC registry has been constituted in 2015 to keep centralised data which would include analysis, dissemination transforming of data.✓ The registry will comply with the instructions issued the Regulation.✓ Reporting entities shall then, within 10 days' file electronic data to central KYC records Registry established under this rule.
Digital KYC Process	<ul style="list-style-type: none">✓ The Regulations have made detailed process of accepting, verifying, authenticating and certifying KYC records of the clients, which is on line and secured. Digital payments, electronic record, live transactions are some of the systems which will reduce illegal and immoral transactions of people.✓ The aadhar, telephone, bank account, income tax all are inter linked and hence all transactions now shall be transparent.

Corporate Governance, Social responsibility and Sustainability

Meaning of Corporate Governance

Corporate Governance (CG) refers to the set of policies that are created for directing a company on the principles of accountability, transparency's and ethical practices.

Definitions of Corporate Governance



Nobel laureate Milton Freidman	"CG is the conduct of business in accordance with shareholder desire, which generally means to make money as much as possible, while contributing to the basis rules of society embodied ion law and local customs"
Adrian Cadbury	"CG is a system by which companies are directed and controlled. It has to do with power and accountability, who exercises in whose behalf and how"
Narayan Murty Committee	"CG is the acceptance by the of the non alienable rights of the shareholders as true owners of the corporation and their own role as trustees. It is about commitment of values, ethical business conduct and differentiating between personal and corporate fund"

Is Corporate Governance similar to Ethics?

Ethics	Corporate Governance
The values and principles considered as foundation. It relates to the inner self of an individual which reflects at the workplace.	The method of governance should be with ethical values but is the methods which are important.
Applies at all levels. A manager has to be honest at every level.	Normally applies at top level, corporate policies and procedures are made at higher level only.
Emerges naturally	Needs to be studied and experienced. There are established guidelines on these issues which have emerged in course of time
Regulations are not important	Regulations are important as it needs strict compliance. In most of the countries, corporate governance is regulated.

Is Corporate Governance similar to Management?

Management	Corporate Governance
Objects and targets are considered as	The method of governance with ethical values

foundation	
Applies at all levels	Applies at top level
Emerges with situation. In every situation management strategies are to be decided and implemented	Need to study and experience
Regulations not important. Organisation can have its own rules. However, rules of law has to be followed.	Regulations are important
Results are more important than the methodology of achieving the result	Methodology of achieving results are more important than results

Objectives of Corporate Governance

Satisfaction of stakeholders	Company to justifiably satisfy the stakeholders by balancing conflict of interest amongst the stakeholder
Transparency	Company adopts transparent, logical and justifiable policies effecting the stakeholders in all areas of management
Board's Composition	Ideal composition of the board of directors: to justify independence if decision making; this is now regulated under LODR.
Optimum use of Resources	Optimum use of resources of the company the resources belong to shareholders and thereafter the employees. Customers, financiers are also effected if the resources available is not properly used.
Reducing Risk	To reduce risks by following risk management through due diligence process.
Developing Trust	Establishing strong relationship of trust between the company and the stakeholders which enhances the value of the company

Features of Corporate Governance

A proper tool for transparency	disclosing the status of the affairs company at every step to every stakeholders i.e. required to maintain transparency. The concept goes against the theory of suppression of material facts by the company to its stakeholders, may be or may not be, for the benefit of the shareholders only
Prudent and participative management	the management should use its full intelligence and knowledge for the benefit of the stakeholders. Hence, it may be taken that management is prudent and wise in its decision making.
Enhancing value of the enterprise	Any company should grow from year to year, if it wants to satisfy its stakeholders. Value may monetary or reputation, image, goodwill etc. Better governing companies will have better reputation, trust of the stakeholders and there will be enhancement of business, leading to more profit and better enterprise valuation
Accountability	Success and accountability has to go together. Successful companies will make themselves accountable to the stakeholders. There are many combination of relationships, i.e. with the customer, creditors, shareholders, employees. etc. The company cannot say it is accountable to one stakeholder only. It has to be accountable to all stakeholders.
Innovation	Doing something new or doing the same thing in a novel manner is the essence of growth and sustainability of an enterprise. The governance

	structure should encourage new things in the company for enhancing value of the company.
Professionalism and specialization	The basics of professionalism is that the job shall not be compromised at any level and there should not be conflict of interest of the directors and senior managers between his duty and personal gain. It also takes into account the competence of the person doing job having obviously adequate domain knowledge either by academic qualification or track record of experience
Stakeholder recognition	All stake holders should be recognized and respected. The Company should believe that all these stakeholders have contribution in making the company work and grow.

Benefits of Corporate Governance

✓ Better governed company is essential for growth and stabilization
✓ Reputation of the company will enhance one people know that you are a honest or good governed company
✓ Better use of funds of the company, which may be fines collected from public of the company by the managers.
✓ Better management of resources which are available to the company.
✓ Better governed ensures long term and steady growth.
✓ Establishing stakeholders' confidence
✓ Leverage of competitive advantages
✓ Alliances with other companies are easy as others are interested to be associated with your company

Emergence and Evolution of Corporate Governance

- ✓ Instances of corporate failures: last two decades have witnessed various corporate failures of some of the reputed and large companies which has resulted to mistrust by the stakeholders on companies in general.
- ✓ Some of the big failures are Xerox, Enron, Global Crossing, Worldcom, MS shoes, Harshad Mehta case, Satyam etc.
- ✓ Rise of institutional investors who are bothered about the company and investment;
- ✓ Increased number of retail investor want various information;
- ✓ Opening of company information in public domain;
- ✓ Regulatory requirements: many regulations apply on ethical and governance issues.
- ✓ Justifying values to wide range of stakeholders
- ✓ Non compliance of regulations becomes a vital disadvantage in assessment of governance level.
- ✓ Disconnect with stakeholders is considered to be a bad practice.
- ✓ Abnormal volatility in share prices gives rise to speculation about good and bad management practices and outsiders are interested to know about the happenings of company.

Theories Corporate Governance through Board Management

- ✓ Stewardship theory: Directors are regarded as stewards of the company's assets. They decide what is to be done and drive the people of the company

- ✓ Agency theory: directors are considered to be agents of the shareholders and are supposed to run the company for best interest of the shareholders
- ✓ Stakeholder theory: This theory considers wide inclusion of stakeholders, other than shareholders. Hence the directors need to keep a balance between the interests of various stakeholders.
- ✓ Trusteeship theory: The directors are the persons who are given the authority to run the business by the shareholders which may be a huge amount of money. The relationship of trust is very important for performance by directors who take major decisions of the company

Corporate Governance Practices/Codes in India

Many committees have been set up, out of which three committees have made important recommendation on desirable corporate governance

Cadbury Committee (USA)

The Adrian Cadbury Committee was set up by the Security and Exchange Commission (SEC) of USA to recommend desirable corporate disclosures.

Recommendations	<ul style="list-style-type: none"> ✓ Only listed company should constitute audit committees and such disclosure should be made in Annual Report. ✓ External auditor and finance director should attend the meeting of the audit committees. Other Board members may also have the right to attend. ✓ Audit Committee should discuss with the external auditor about the scope of audit, co-ordinate where more than one audit firm is engaged. It should be involved up to review audit, audit engagement letter, recommendations of the auditors etc. Audit Committee shall also review the half yearly and annual financial statements before submission to the Board. The committee should have authority to investigate any matter within its terms of reference and shall have full access to information and it should be free to obtain external professional advice. ✓ Chairman of the Audit Committee should be available to answer question about its working at the Annual General Meeting of the company.
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Rahul Bajaj Committee (INDIA)

Confederation of Indian Industry constituted a committee to recommend desirable corporate governance practices chaired by none other than Mr. Rahul Bajaj. It is not clear whether the inspiration was the Cadbury Committee. Whatever it may be, this committee made a breakthrough in India on the subject in the most formal way.

Recommendations	<ul style="list-style-type: none"> ✓ Only listed company with turnover of 100 crores and paid up capital of 20 crores whichever is less should set up audit committees within 2 years. (obviously from the date it reaches the threshold limit) ✓ Audit Committee should assist the Board for effective supervision of the financial report process. ✓ The Committee should interact with the Statutory Auditor and Internal Auditor to ascertain the quality of company accounts.
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K R Chandratre Committee (INDIA)

Though the Committee was not on Corporate Governance, it made provision for audit committees for proper corporate governance. Dr. K. R. Chandratre, one of the reputed expert on Company Law in the country was appointed chairman of the committee to draft a new Companies Act in the form of Companies Bill which would replace the existing Companies Act, 1956. The said Companies Bill, (1977) have been given to the Government. It has suggested many important changes, some of which have been accepted and incorporated in recent amendment in the Companies Act, 1956. Recommendation on desirable corporate governance through formation of audit committee mentioned below :

Recommendations	<ul style="list-style-type: none"> ✓ Companies with paid up capital of five crores should have audit committee and the constitution of such committee should be disclosed in annual report. ✓ Auditors, Chief Accounts Officer, Internal Auditor, if any, and director in charge of finance shall attend and participate at the meeting but shall not vote. ✓ Audit Committee should have discussions with auditors periodically about internal control systems; the scope of audit including the observations of the auditors and review of the half yearly and annual financial statements before submission to the Board. ✓ Audit Committee shall have authority to investigate any matter either on its own or on reference by Board and shall have full access to information contained in the records of the company. It can also seek external professional advice. ✓ Chairman of the Audit Committee shall be present in annual general meeting of the company to provide any clarification on matters relating to audit. ✓ Punishment have been provided for non compliance which includes imprisonment.
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Kumarmangalam Birla Committee (INDIA)

Kumarmangalam Committee was set up by SEBI and is different from the previous three. Alike previous committees, it has not taken audit committee only as basis of corporate governance. The Committee was also given a novel report differentiating mandatory and non-mandatory recommendations. Through the terms of reference to their committee is not known to the author it can be said that committee can only recommend.

Recommendations	<ul style="list-style-type: none"> ✓ Representative of financial institutions or investment institutions should not be part of Board of Directors, except in case of default or potential default. ✓ Investing institutions may raise their voice as shareholder only. ✓ Half of the director in a Board should be independent but where the chairman is non executive, the outside directors may comprise of 1/3rd of the directors. ✓ Companies with a capital of Rs. 10 crores and a net worth of `25 crores would have to adhere to these guidelines on corporate governance by April 2000. Companies where share capital of five shall comply with the norms by April 2001. ✓ An audit committee should be set up to enhance the credibility of the financial disclosures of the company and promote transparency. The audit committees should have a minimum of three non-executive directors, majority of them independent. At least one
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	<p>director should have financial and accounting knowledge. The committees should meet at least three times a year.</p> <ul style="list-style-type: none"> ✓ The audit committee will have to investigate the reasons for financial defaults by companies, such as defaults to depositors, debenture holders, share holders(non-payment of dividend) creditors. ✓ A remuneration committee should be set up to determine the remuneration packages, including performance linked incentives, stock options, etc, of executive directors. ✓ A committee should be formed to study investor complaints. ✓ The chairman of these committees should be present at the AGMs to answer shareholder queries. ✓ The directors of these committees cannot be members of more than 10 committees across companies and cannot chair more than five committees. ✓ The annual report should have a separate section on corporate governance regarding the status of compliance. ✓ Non-executive chairman should be provided office and reimbursed expenses so as to be effective. ✓ Annual report should have details of resume and qualifications of newly-appointed directors. ✓ The committee has made several recommendations which are voluntary. ✓ The other recommendations, which are non-mandatory, made by the committee are: Postal ballot should be used by companies.
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Principles of Good Governance

Policies to be made at top level for various functions of management, which should be based on fairness, honesty. Directors should know the requirements of the stakeholders. The practices should be strictly practised. The concept and practice would be different at different levels .For understanding we have divided the issues into Board and below

Board level	Board level good governance have been standardised with series of regulations and disclosures by the company to stakeholders and regulators. This is mentioned mostly under the Companies Act and LODR regulations.
Below Board level	<p>Below Board level, each company has its own mechanism for ethics, code of conduct, service rules, discipline etc. It is up to the company to decide to what extent it is serious about the issues. However, code of conduct for senior executives just below the Board level is a stipulation under LODR.</p> <p>Normally, governance practices are formulated and practiced at top level and percolate downwards.</p> <p>This is called “top down approach” to governance. Whistle blower policy, Audit Committee, standard operating procedures, departmental manuals are some of the common mechanisms used to keep ethics and governance in order, in a company. Companies Act, 2013 has added Schedule IV which defines the qualification, duties and code of ethics to be complied by independent directors This has been done with the thinking that adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the shareholders, regulators and general public.</p>

(b) An independent director shall:

- ✓ uphold ethical standards of integrity
- ✓ act objectively while exercising his duties;
- ✓ for the interest of the company;
- ✓ devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- ✓ not allow any extraneous considerations that will influence his exercise of objective independent judgment in the while concurring in or dissenting from the collective judgment of the Board in its decision making;
- ✓ not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- ✓ refrain from any activity that would lead to loss of his independence;
- ✓ where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- ✓ assist the company in implementing the best corporate governance practices. II. Role and functions:

The independent directors shall:

- ✓ bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- ✓ bring an objective view in the evaluation of the performance of board and management;
- ✓ scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- ✓ look into the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- ✓ be concerned about the interests of all stakeholders, particularly the minority shareholders;
- ✓ balance the conflicting interest of the stakeholders;
- ✓ determine remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- ✓ moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholders' interest.

Duties of Independent Directors:

The independent directors shall:

- ✓ regularly update and refresh their skills, knowledge and familiarity with the company; 278
- ✓ seek information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- ✓ attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- ✓ participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- ✓ attend the general meetings of the company;
- ✓ keep themselves well informed about the company and the external environment in which it operates;
- ✓ not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;

- ✓ report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- ✓ acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- ✓ not to disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans etc.
- ✓ not to share unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

Manner of Appointment

- ✓ while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
- ✓ The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.
- ✓ The explanatory statement attached to the notice ensures appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.
- ✓ The appointment of independent directors shall be formalised through a letter of appointment, which shall set out :
 - a) the term of appointment;
 - b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
 - c) the fiduciary duties that come with such an appointment along with accompanying liabilities;
 - d) provision for Directors and Officers (D and O) insurance, if any;
 - e) the Code of Business Ethics that the company expects its director

Corporate Governance Ratings

Corporate Governance Rating is defined as an opinion on a company's corporate governance system, its compliance with the various parameters deployed for assessment and the rating differentiates companies in accordance with their corporate governance quality.

The rating provides vital information to various stakeholders about the extent of corporate governance practices implemented.

The rating determines the relative standing of an entity vis-à-vis other entities in respect of the best practices followed on corporate governance principles.

CG Rating as an opinion on relative standing of an entity with regard to adoption of corporate governance practices.

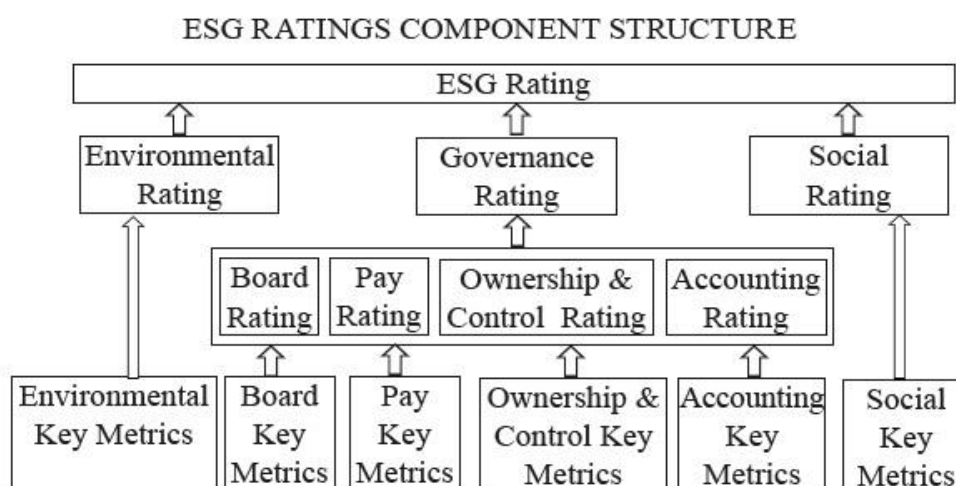
It may be justified using ratings on five parameters.

- ✓ Firstly it provides information to various stakeholders about the level of corporate governance practices of the organization.
- ✓ Secondly it enables corporates to obtain an independent and credible assessment of the quality and extent of their adherence to governance standards.
- ✓ Thirdly the rating process determines the relative standing of the organisation vis-à-vis the best practices followed in the domestic as well as international arena.
- ✓ Fourthly, organisations can deploy the CG ratings as reference and set benchmark for further improvements.
- ✓ Fifthly investors get benefited as they are able to differentiate companies based on the adherence to corporate governance principles.

Assessment Criteria

There are various methods of rating a company's governance parties. However, one has to keep the few of the following issues while assessing the Governing practices

- (i) Board Structure and balancing
- (ii) Share holder Rights and Compensation'
- (iii) Accounting
- (iv) Ownership and Control
- (v) Professionalism
- (vi) Disclosures
- (vii) Market price of shares
- (viii) Compliance of law
- (ix) Earnings Dividend pay-out
- (x) Dealing with conflict of interest
- (xi) Related party transactions
- (xii) Risk management
- (xiii) Investor grievances
- (xiv) Customer grievances
- (xv) Vendor grievances
- (xvi) CSR initiatives



Format of Compliance Report on Corporate Governance by Listed Entities

As per Regulation 27(2) of SEBI(LODR)	A listed entity is required to submit a quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognised Stock Exchange
Format for compliance report on Corporate Governance by listed entities	Annex - I - on quarterly basis; Annex - II - at the end of a financial year Annex - III - at the end of 6 months from the close of financial year. Annex - IV - on half yearly basis (w.e.f. first half year of the FY 21-22) [Mandatory to bring about transparency and to strengthen the disclosures around loans/ guarantees/comfort letters/ security provided by the listed entity, directly or indirectly to promoter/ promoter group entities or any other entity controlled by them]

Corporate Governance in Family Business

What is Family Business?	A family business refers to a company where the voting majority is in the hands of the controlling family including the founder(s) who intend to pass the business on to their descendants.
Examples	Salvatore Ferragamo, Benetton, and Fiat Group in Italy; L'Oreal, Carrefour Group, LVMH, and Michelin in France; Samsung, Hyundai Motor, and LG Group in South Korea; BMW, and Siemens in Germany; Kikkoman, and Ito-Yokado in Japan; and finally Ford Motors Co, and Wal-Mart Stores in the United States of America.
Document useful in understanding	<p>The Family Business Governance Handbook drafted by the International Finance Corporation, one of the institutions of the World Bank Group, is a useful document that gathers important facts and elements on how to develop a family business</p> <p>In many countries, family businesses represent more than 70 percent of the overall businesses and play a key role in the economy growth and workforce employment. In Spain, for example, about 75 percent of the businesses are family owned and contribute to 65 percent of the country's GNP on average. Similarly, family businesses contribute to about 60 percent of the aggregate GNP in Latin America.</p>

Features of Corporate Governance in a Family Owned Companies in India

- ✓ full time directors/other directors and senior management personnel are either from the family or related to the family members.
- ✓ Formation of coterie is common.
- ✓ Control and ownership is diluted with shareholding being diluted on passing of generation.
- ✓ Conflict of interest is very common where personal interest of the promoter conflicts with the company interest. However, proper procedures are followed as per the Act to avoid legal complication.
- ✓ Emotions are attached and therefore, some decision are taken which may not be managerially correct.
- ✓ Where the family members are united, the non family directors/managers are defunct in decision making process. Where family is divided, there are more problems like confusion in leadership, delay in decision making, distrust of outside stakeholders etc. The stability, reputation and performance is effected.
- ✓ Some families have clear cut roles of the family members in business with structured succession planning, allotment of each company to each member to avoid conflict.
- ✓ Personal image of the chairman/MD? Directors is very important which determines the reputation.
- ✓ Many hard-core professional avoid working in family business for obvious reasons.
- ✓ Death/disability of senior member in the family results to leadership management crisis.

CG in Listed Family Managed Companies.

There are many companies, few big, listed in stock exchange which are owner/promoter managed. However, CG, being highly regulated in India, do not effect such ownership issue as the compliances are codified and the company has to follow the same. Hence, CG in listed family managed company cannot be isolated from the CG in non family business.

Emerging Issues in CG in Family Managed Companies in India.

- ✓ Separation of ownership and management: In few companies in India, the main promoter or owner have chosen to be investor and not to a part of management even as part time chairman. The whole Board of directors are non owners and are hard core professionals.
- ✓ Family members acquiring professional courses from reputed institutes.
- ✓ Promoters are encouraging professionals in the organisation.
- ✓ Promoters are more focused on compliances to avoid loss of reputation which may result to price fall in the share market.
- ✓ Role and leadership clarity decided at board level
- ✓ Owners are accepting and honouring opinion of managers.
- ✓ Family's social and emotional issues are being satisfied by forming trusts/foundations which are separate from the business entity, without any conflict of interest.

Corporate Social Responsibility

CSR rests on the principle of Concern, Care and Share (CCS).

- ✓ Philip Kotler had said "we sell goods and services in the society in the market". This implies that unless society demands, there cannot be any production, sale or services.
- ✓ Production employs various factors or resources into economic value addition. Employment creates earning and earning creates demand and demand creates production, and the cycle continues.
- ✓ It is now universally accepted that corporate social responsibility is not a stand-alone, one time, ad hoc philanthropic activity. Rather, it is closely integrated and aligned with the business goals, strategies and operations of the companies.

International Scenario

The UN Human Rights Council established the UN Working Group (UNWG) and tasked it with facilitating the global dissemination and implementation of the UNGPs. The UNWG has strongly encouraged all States to develop a National Action Plan (NAP) as part of the States' responsibility to disseminate and implement the UNGPs.

- ✓ **UN Sustainable Development Goals (SDGs):**
In September 2015, the UN General Assembly adopted the 2030 Agenda for Sustainable Development which established seventeen Sustainable Development Goals (SDGs), comprising targets and indicators, as well as follow-up and review mechanisms. Significantly, the SDGs recognize the role of business as a major driver for economic growth and infrastructure, whilst explicitly calling for businesses to act in accordance with the UNGPs.
- ✓ **Paris Agreement on Climate Change (2015):**
This is an agreement under the United Nations Framework for Climate Change (UNFCCC) reached in December 2015, in which countries have committed to take steps to combat climate change and adapt to its effects. India ratified the agreement on 2nd October 2016, and its commitments are called the National Determined Contributions (NDCs).

CSR in India

The Ministry of Corporate Affairs (MCA), Government of India, released a set of guidelines in 2011 called the National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business (NVGs).

In order to align the NVGs with the Sustainable Development Goals (SDGs) and the United Nations Guiding Principles (UNGP) the process of revision of NVGs was started in 2015.

- ✓ The first version of the National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business (NVGs) were released during 2009 and thereafter refined and released during 2011 by the Ministry of Corporate Affairs.
- ✓ Further, the International Standards organizations (ISO) issued the International Standard ISO-26000, covering 'Guidance on Social Responsibility' in July 2011.
- ✓ Since that time, there have been significant international and national developments in the wider sustainable development and business responsibility
- ✓ However, recently the Government came up with The National Guidelines on Responsible Business Conduct, 2018 (NGRBC), which is an improvement over the existing National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business, 2011 (NVGs), are a means of nudging businesses to contribute towards wider development goals while seeking to maximize their profits.

Key drivers of the NGRBC are Given Below

The UN Guiding Principles for Business and Human Rights (UNGPs): Through its resolution 17/4 of 16 June 2011, the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights:

Implementing the United Nations 'Protect, Respect and Remedy' Framework. The UNGPs are grounded in recognition of,

- ✓ the State's existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- ✓ the requirement of business enterprises to respect human rights, and
- ✓ the need for access to effective remedy for those who are affected by adverse business related human rights impacts or abuse. Since their release, the UNGPs have become the authoritative global standard for Business and Human Rights.

In 2012, the Securities Exchange Board of India (SEBI) amended the Listing Agreement for companies listed in the stock exchanges in India, and mandated the submission of an ABBRs by the top 100 listed companies.

The ABRR is based on the Business Reporting Framework of the NVGs, and SEBI has since extended this requirement to the top 500 listed companies.

Requires companies to undertake Corporate Social Responsibility (CSR) initiatives in communities, and has since, provided additional rules and guidance on the areas and target groups of such interventions in consistency with national socio-economic priorities.

National Guidelines on Responsible Business Conduct [NGRBC]

The NGRBC consist of two chapters and an expanded set of annexures. The connected Core Elements enhance the operationalization of each Principle

Principle 1: Businesses Should Conduct and Govern themselves with Integrity, and in a manner that is Ethical, Transparent, and Accountable.

- ✓ Ethical conduct in all its functions and processes is the cornerstone of responsible business.
- ✓ Business decisions and actions, including those required to operationalize the principles in these Guidelines should be amenable to disclosure and be visible to relevant stakeholders.
- ✓ Businesses should inform all relevant stakeholders of the operating risks and address and redress the issues raised.

- ✓ Businesses are an integral part of society and will hold themselves accountable for the effective adoption, implementation, and the making of disclosures on their performance with respect to these Guidelines.

Core Elements

- ✓ develop and put in place structures, policies and procedures that promote this Principle
- ✓ ensure that the Principles of these Guidelines are understood, adopted and implemented
- ✓ promote the adoption of this Principle across the value chain of their business.
- ✓ disclose and communicate transparently and enable access to information about the policies
- ✓ take responsibility for meeting all its statutory obligations
- ✓ ensure that the business avoids complicity with the actions of any third party that violates any of the Principles
- ✓ put in place appropriate structures, policies and procedures to address conflicts of interest involving its members, employees and business partners.
- ✓ should put in place appropriate procedures to ensure that the business does not engage in illegal and abusive practices.
- ✓ ensure that the business contributes to public finances by timely payment of taxes

Principle 2: Businesses Should Provide Goods and Services in a manner that is sustainable and safe.

Sustainable production and consumption are interrelated, contribute to enhancing the quality of life and towards protecting and preserving earth's natural resources. The Principle further emphasizes that businesses should focus on safety and resource-efficiency in the design and manufacture of their products, and use their products in a manner that creates value while minimizing and mitigating its adverse impacts on the environment and society through all stages of its life cycle, from design to final disposal.

Core Elements

- ✓ In designing, producing and making available goods and services, endeavour to ensure that resource-efficient and low-carbon processes and technologies are deployed
- ✓ provide stakeholders across the value chain with adequate information about environmental and social issues and impacts across product life cycle from design to disposal through appropriate and relevant tools such as certifications, labels.
- ✓ take responsibility for the safe collection, reuse and recycling of their products at life

Principle 3: Businesses Should Promote the Well Being of all Employees including those in their value chains.

- ✓ The principle encompasses all policies and practices relating to the dignity and wellbeing and provision of decent work of employees engaged within a business or in its value chain.
- ✓ The principle recognizes that the well-being of an employee also includes the wellbeing of her/his family.

Core Elements

- ✓ Ensure compliance with all regulatory requirements pertaining to its employees
- ✓ ensure equal opportunities at the time of recruitment, during and after employment
- ✓ promote and respect the right to freedom of association, participation of workers, and collective bargaining and provide access to grievance redressal mechanisms.
- ✓ not use child labour, coercive or forced labour
- ✓ put systems and processes in place to support the work-life balance
- ✓ ensure fair, timely and transparent payment of statutory wages of all its employees

- ✓ aspire to pay fair living wages to meet basic needs and economic security
- ✓ provide a workplace “environment that is safe, hygienic, accessible
- ✓ ensure continuous upgradation of skill by providing access to learning opportunities
- ✓ create systems and practices to ensure a humane workplace free from, violence and harassment

Principle 4: Businesses Should Respect the Interests of and be Responsive to all its Stakeholders

- ✓ This Principle recognizes that businesses operate in an eco-system comprising a number of stakeholders, beyond shareholders and investors, and that their activities impact natural resources, habitats, communities and the environment.
- ✓ It is the responsibility of businesses to ensure that the interests of all stakeholders, especially those who may be vulnerable and marginalized, are protected.
- ✓ Businesses have a responsibility to maximize the positive impacts and minimize and mitigate the adverse impacts of its products, operations, and practices on all their stakeholders.

Core Elements

- ✓ ensure that the business acknowledges, assumes responsibility, and is transparent about the impact of their policies and operations on all stakeholders, and the natural environment.
- ✓ develop systems to identify its stakeholders, understand their expectations and concerns, define the purpose and scope of the engagement, consult with them in developing policies and processes that impact them, and commit to resolving any differences
- ✓ enable all stakeholders to benefit fairly from the value generated by the businesses

Principle 5: Businesses Should Respect and Promote Human Rights

- ✓ This Principle recognizes that human rights are rights inherent to all human beings, and that everyone, individually or collectively, is entitled to these rights, without discrimination.
- ✓ It further recognizes that human rights are inherent, inalienable, interrelated, interdependent and indivisible.
- ✓ The Principle is inspired, informed and guided by the Constitution of India and the International Bill of Rights and recognizes the primacy of the State’s duty to protect and fulfil human rights.
- ✓ The Principle is further informed and guided by the UN Guiding Principles on Business and Human Rights in its articulation of the responsibility of businesses to respect human rights.
- ✓ The Principle urges businesses to be especially responsive to such persons, individually or collectively, who are most vulnerable to, or at risk of, such adverse human rights impacts.

Core Elements

- ✓ ensure that the business undertakes to make its employees aware of the human rights content of the Constitution of India, relevant national laws and policies, and the International Bill of Human Rights and their application to businesses as outlined in the United Nations Guiding Principles for Business and Human Rights
- ✓ ensure that the business has in place such policies, structures and procedures that demonstrate respect for the human rights of all stakeholders impacted by its business
- ✓ ensure that their business, where it is causing, contributing or otherwise linked to adverse human rights impacts, takes corrective actions to address such impacts.

- ✓ promote the awareness and realization of human rights across its value chain.
- ✓ ensure that all individuals and groups whose human rights are impacted by them have access to effective grievance redressal mechanisms.

Principle 6: Business Should Respect and make efforts to restore the Environment

- ✓ The principle recognizes that environmental responsibility is a prerequisite for sustainable economic growth and for the well being of society.
- ✓ The principle emphasizes that environmental issues are interconnected at the local, regional and global levels which makes it imperative for businesses to address issues such as global warming, biodiversity conservation and climate change in a comprehensive and systematic manner.
- ✓ The Principle encourages businesses to assess environment impacts of its products and operations and take steps to minimize and mitigate its adverse impacts where these cannot be avoided.
- ✓ The Principle encourages businesses to adopt environmental practices and processes that minimize or eliminate the adverse impacts of its operations and across the value chain.
- ✓ The Principle encourages businesses to follow the Precautionary Principle in all its actions

Core Elements

- ✓ ensure that the business formulates appropriate policies, procedures and structures to assess, measure and address its adverse impacts on the environment at all its locations, at all stages of its life cycle from establishment to closure.
- ✓ develop appropriate strategies for sustainable and efficient use of natural resources and manufactured materials, giving due consideration to stakeholders
- ✓ define measurable key performance indicators and targets to monitor their performance on environmental aspects
- ✓ focus on addressing climate change through development of both mitigation and adaptation measures
- ✓ learn from industry best practices for promoting reduction, reuse, recycling and recovery of material and resources, and encourage and motivate its stakeholders, particularly consumers and business partners, to do the same.
- ✓ seek to improve their environmental performance by adopting innovative, resource-efficient and low-carbon technologies and solutions resulting in lower resource footprint, lesser material consumption and more positive impact on environment, economy and society.

Principle 7: Businesses, When Engaged in influencing Public and Regulatory Policy, should do so in a manner that is responsible and transparent.

- ✓ This Principle recognizes that businesses operate within specified national and international legislative and policy frameworks, which guide their growth and also provide for certain desirable restrictions and boundaries.
- ✓ The Principle recognizes the legitimacy of businesses to engage with governments for redressal of a grievance or for influencing public policy.
- ✓ The Principle emphasizes that public policy advocacy must expand public good.

Core Elements

- ✓ ensure that its advocacy positions are consistent with the Principles contained in these Guidelines

- ✓ undertake policy advocacy through trade and industry chambers and associations, and other similar collective platforms.
- ✓ ensure that its policy advocacy positions promote fair competition and respect for human rights.

Principle 8: Businesses should promote inclusive Growth and Equitable Development

- ✓ The principle recognizes the challenges of social and economic development faced by India and builds upon the development agenda that has been articulated in the government policies
- ✓ The principle recognizes the value of the energy and enterprise of businesses and encourages them to innovate and contribute to the overall development of the country, especially to that of the disadvantaged, vulnerable and marginalised sections of society.
- ✓ The principle also emphasizes the need for collaboration amongst businesses, government agencies and civil society in furthering this development agenda.
- ✓ The Principle reiterates that business success, inclusive growth and equitable development are interdependent.

Core Elements

- ✓ ensure that the business takes appropriate actions to minimize any adverse impacts that it has on social, cultural and economic aspects of society
- ✓ should assess, measure and understand their impact on social, and economic development, and respond through appropriate action to minimize and mitigate its negative impacts on society.
- ✓ should innovate and invest in products, technologies and processes that promote the well-being of all segments of society
- ✓ respond to national and local development priorities and understand the needs and concerns of local communities while designing their CSR programmes
- ✓ make efforts to minimize the negative impacts of displacement of people and disruption of livelihoods through their business operations
- ✓ respect all forms of intellectual property and traditional knowledge and make efforts to ensure that benefits derived from their knowledge are shared equitably.

Principle 9: Businesses Should Engage with and Provide value to their consumers in a Responsible Manner

- ✓ This principle is based on the fact that the basic aim of a business entity is to provide goods and services to its customers in a manner that creates value for both.
- ✓ The Principle recognizes that consumers have the freedom of choice in the selection and usage of goods and services, and that the enterprises will strive to make available products that are safe, competitively priced, easy to use and safe to dispose of, for the benefit of their consumers.
- ✓ The Principle also recognizes that businesses should play a key role, along with other relevant stakeholders, in mitigating the adverse impacts that excessive consumption of its products may have on the overall well-being of individuals, society and our planet

Core Elements

- ✓ Business minimizes and mitigates any adverse impact of its goods and services on consumers, the natural environment and society.
- ✓ Not restrict the freedom of choice and free competition in any manner while designing, promoting and selling their products
- ✓ disclose all information accurately, through labelling and other means
- ✓ manage consumer data in a way that does not infringe upon their right to privacy

- ✓ make consumers aware of, and provide information and guidance to them on, safe and responsible usage and disposal of their products
- ✓ promote and advertise their products in ways that do not mislead or confuse the consumers
- ✓ provide appropriate grievance redressal mechanisms

Guidance on Implementation of Principles and Core Elements

Successful implementation of the Principles and Core elements require that all of them need to be integrated and embedded in the core business processes of an enterprise. This requires, specifically that the following actions are taken:

- ✓ Leadership: The Chairman/CEO/Owner/Manager should play a proactive role in convincing the board/Top Management and staff within the business that adopting these principles is crucial for success. The board and senior management need to ensure that the principles are fully understood across the organization and comprehensively executed.
- ✓ Integration: These principles and core elements must be embedded in the Business policies and strategies emanating from the core business purpose of the organization. For this to happen, these must align with each business's internal values and/or must provide clear business benefits.
- ✓ Engagement: Building strong relationships and engaging with stakeholders on a consistent, continuous basis is crucial.
- ✓ Reporting: Implementation process includes disclosure by companies of their impact on society an environment to their stakeholders.

Business Responsibility Report - Suggested Framework

This report may be presented in three parts as detailed below:

It consists of three sections:

- (a) Section A – General Disclosures, covering operational, financial and ownership related information,
- (b) Section B – Management and Process Disclosures covering the structures, policies and processes to integrate the Guidelines, and
- (c) Section C – Principle-wise Performance Indicators covering how well businesses are performing in pursuit of these Guidelines.

Corporate Social Responsibility

- ✓ One of the most contemporary definitions is from the World Bank Group, stating, “Corporate social responsibility” is the commitment of businesses to contribute to sustainable economic development by working with employees, their families, the local community and society at large, to improve their lives in ways that are good for business and for development.
- ✓ Companies with effective Corporate Social Responsibility (CSR), have image of socially responsible companies, achieve sustainable growth in their operations in the long run and their products and services are preferred by the customers.

CSR in the global context

Although the roots of CSR lie in philanthropic activities (such as donations, charity, relief work, etc.) of corporations, globally, the concept of CSR has evolved and now encompasses all related concepts such as triple bottom line

- ✓ The CSR approach is holistic and integrated with the core business strategy for addressing social and environmental impacts of businesses.
- ✓ CSR needs to address the wellbeing of all stakeholders and not just the company's shareholders.
- ✓ Philanthropic activities are only a part of CSR, which otherwise constitutes a much larger set of activities entailing strategic business benefits.

CSR in India

- ✓ CSR in India has traditionally been seen as a philanthropic activity. And in keeping with the Indian tradition, it was an activity that was performed but not deliberated. As a result, there is limited documentation on specific activities related to this concept. The Companies Act, 2013 has introduced the idea of CSR to the forefront and through its 'disclose' or 'explain' mandate, is promoting greater transparency and disclosure.
- ✓ CSR in India tends to focus on what is done with profits after they are made. On the other hand, sustainability is about factoring the social and environmental impacts of conducting business, that is, how profits are made. Corporate sustainability essentially refers to the role that companies can play in meeting the agenda of sustainable development.
- ✓ CSR and sustainability are so closely entwined, it can be said that CSR and sustainability is a company's commitment to its stakeholders to conduct business in an economically, socially and environmentally sustainable manner that is transparent and ethical."

Benefits of CSR Programme

- ✓ Communities provide the licence to operate: Apart from internal drivers such as values and ethos, some of the key stakeholders that influence corporate behaviour include governments (through laws and regulations), investors and customers. In India, a fourth and increasingly important stakeholder is the community and many companies have started realising that the 'licence to operate' is no longer given by governments alone, but communities that are impacted by a company's business operations.
- ✓ Attracting and retaining employees: Several human resource studies have linked a company's ability to attract, retain and motivate employees with their CSR commitments. Interventions that encourage and enable employees to participate are shown to increase employee morale and a sense of belonging to the company.
- ✓ Communities as suppliers: There are certain innovative CSR initiatives emerging, wherein companies have invested in enhancing community livelihood by incorporating them into their supply chain. This has benefitted communities and increased their income levels, while providing these companies with an additional and secure supply chain.
- ✓ Enhancing corporate reputation: The traditional benefit of generating goodwill, creating a positive image and branding benefits continue to exist for companies that operate effective CSR programmes.

Key Features of CSR

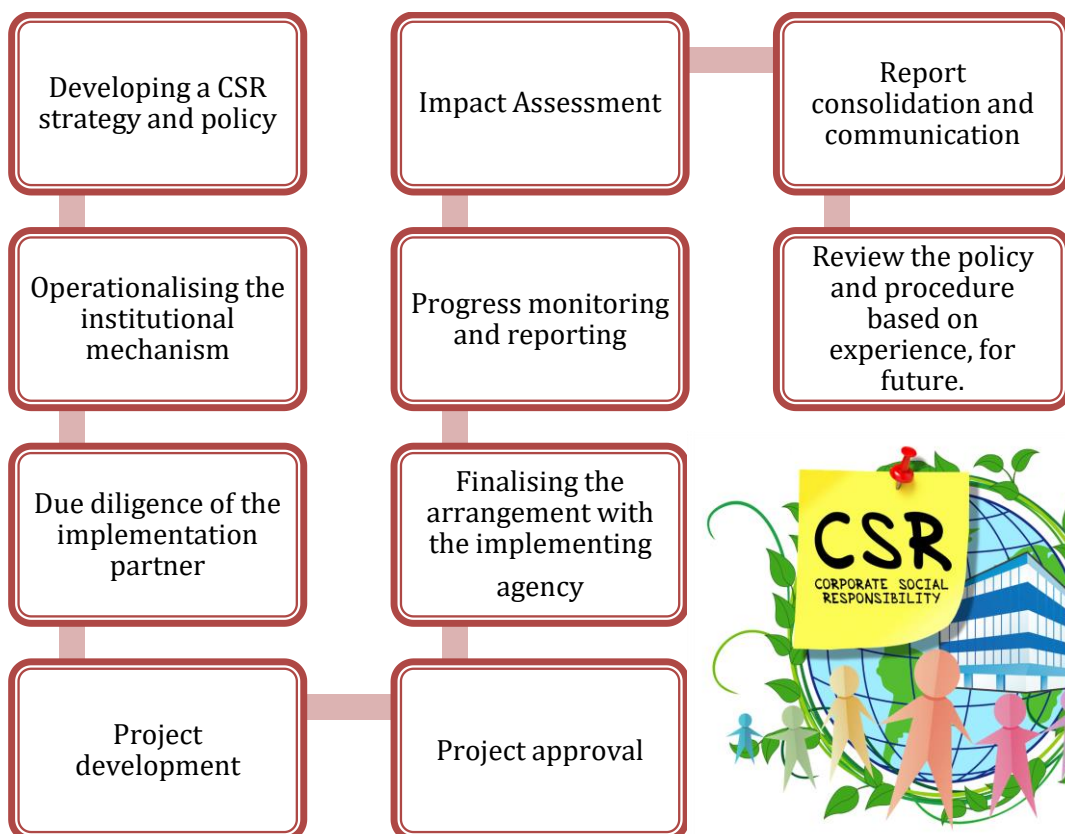
The concept of CSR is governed by clause 135 of the Companies Act, 2013. The indicative activities which can be undertaken by a company under CSR have been specified under Schedule VII of the Act

- ✓ Surplus arising out of the CSR projects or programmes or activities shall not form part of the business profit of a company.
- ✓ The company can implement its CSR activities through the following methods:
 - Directly on its own : This would require adequate manpower and other infrastructure of the company.
 - Through its own non-profit foundation set-up so as to facilitate this initiative.
 - Through independently registered non-profit organisations that have a record of at least three years in similar such related activities. They may be implementing agency only or both implementing organisation and beneficiary.
 - Collaborating or pooling their resources with other companies.

Specialized Implementing Agencies

- ✓ Community based organizations whether formal or informal;
- ✓ Elected local bodies such as Panchayats;
- ✓ Voluntary Agencies (NGOs);
- ✓ Institutes/Academic Organisations;
- ✓ Trusts, Missions, etc. (NGOs)
- ✓ Self-help Groups;
- ✓ Government, Semi-Government and autonomous Organisations;
- ✓ 8. Mahila Mandals/Samitis and the like

- ✓ Only CSR activities undertaken in India will be taken into consideration.
- ✓ Activities meant exclusively for employees and their families will not qualify.



CSR Activities as per Schedule VII of the Companies Act, 2013:

- ✓ Eradicating extreme hunger and poverty;
- ✓ Promotion of education
- ✓ Promoting gender equality and empowering women
- ✓ Reducing child mortality and improving maternal health
- ✓ Combating HIV, AIDS, malaria and other diseases
- ✓ Ensuring environmental sustainability
- ✓ Employment enhancing vocational skills
- ✓ Social business projects
- ✓ Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women
- ✓ Such other matters as may be prescribed.

Developing a CSR Strategy and Policy

The objective of this step is to Develop the CSR strategy and policy.

Purpose

The guidance provided in the Act and the rules on what constitutes a CSR policy are that it should:

- ✓ exclude normal business activities of the company.
- ✓ contain a list of the CSR projects or programmes which the company plans to undertake

Activities

- ✓ Reviewing the past as well as the current CSR activities and examining their alignment with Schedule VII of the Companies Act, 2013.
- ✓ Studying the publicly available information on national and local development priorities.
- ✓ Meeting development experts in the government as well as the NGOs to understand priorities and identifying potential areas of intervention.
- ✓ Conducting internal meetings with business leaders to establish the relevance of potential CSR activities to the company's core business.
- ✓ Studying the good CSR practices of other companies and their achievements.
- ✓ Developing a CSR strategy that defines.
- ✓ Annually developing a CSR policy in line with the Companies Act, 2013 rules that defines programmes, geographies and budgets for the following financial year, aligned with the strategy and ensuring that the 2% requirement of funds allocation is met.
- ✓ Establish methods for monitoring and reporting.

Inputs

- ✓ Guidance from the board.
- ✓ Companies Act requirements.
- ✓ Corporate business strategy, plan and supply chain.
- ✓ Development priorities: both, national and wherever the company has business interests.

Outputs

The CSR policy document and an indication of sectors and issues, geographies and a profile of the beneficiaries.

Developing a Operationalising the institutional mechanism

The objective of this step is to Establish a legal entity and aligning the accounting, tax, finance, administration, HR and IT systems to deliver the commitments made in the CSR policy.

Purpose

In order for a corporate to gain the greatest advantage through the investment of intellectual and financial resources, they are required to select their implementation mechanism.

Activities

- ✓ Selecting the organization model for the CSR implementation: in-house versus outsourced and its legal entity (trust, society, Section 8 company, inhouse department, etc).
- ✓ Identifying the implementation model (grant making, direct project execution, etc).
- ✓ Formalising the job description, the roles and responsibilities and the reporting relationships for the CSR team (whether in-house or in a foundation).
- ✓ Integrating budgeting, procurement, payments and reporting for CSR with the existing finance, administration and IT systems.
- ✓ Analysing accounting systems and chart of accounts and make required changes to record all expenses appropriately. Establish a method of allocation for the expenses (or assets created) that are partly for the CSR and partly for business or employee use.

Inputs

The CSR strategy

Outputs

- ✓ creation of a separate legal entity or a CSR department for CSR activities
- ✓ other institutional mechanisms to align the accounting, finance, administration, HR and IT systems with CSR activities

Due diligence of the implementation partner

The objective of this step is to Select the implementation partner.

Purpose

Due diligence refers to the process a company undertakes to determine the risks as well as the benefits of working with a potential implementation partner. This process has to be sufficiently robust to ensure that a company's implementation partners have the reputation, competence and integrity to deliver effective programmes on the ground.

Activities

- ✓ Establishing a due diligence criteria to evaluate the implementation or concept development agency including its incorporation, permits and licenses, systems,

processes, public image, management, team deployment, track record, financial soundness, competence level, presence in desired geography, compatibility with company CSR policy and any conflicts of interest.

- ✓ Establishing a due diligence criteria for evaluation and empanelment of private funders for partnership and joint projects.
- ✓ Evaluating the partnership opportunities for its risks and benefits.

Inputs

- ✓ the CSR strategy and policy.
- ✓ discussions with communities, board, staff, other funders, local government officials, local leaders or influencers, auditors.
- ✓ studying the books of accounts and the auditor's report.

Outputs

A due diligence report

Project development

The objective of this step is to Develop a feasible project proposal.

Purpose

The CSR strategy of a company will be implemented through a series of projects which will have definite beginnings, ends, expected outputs and outcomes as well as budgets associated with it. These projects may be of a short duration (a few months) or multi-year.

Activities

- ✓ Developing a framework to identify key stakeholder groups including the local community, the local government or bodies, academia and research institutions, investors, etc.
- ✓ Conducting a needs assessment (if required) to assess development priorities. The methodology for this can be participatory processes, surveys or a combination of the two.
- ✓ Studying and adopting good practices to address similar challenges based on prior experiences or lessons available from other practitioners and develop the approach.
- ✓ Detailing the project: the objectives, the beneficiaries and the impact on the beneficiaries, the assumptions, the expected outputs and outcomes, detailed activities, potential to influence public policy and practice.
- ✓ Identifying the indicators of success with the means of verification and establish the baseline for each. This can be commissioned as a separate study or can even be included in the needs assessment stage.
- ✓ Estimating the budget and how it will be funded specifying the community contributions, leveraging of the government schemes and contributions from the other donors.
- ✓ Indicating the monitoring and evaluation methodologies for impact measurement.

Inputs

- ✓ the CSR policy.
- ✓ institutional mechanisms.
- ✓ information from the government sources, previous studies done in the area, etc.

- ✓ information on programs targeting similar geographies and beneficiary groups or strategies.
- ✓ monitoring impact measurement reports from any earlier projects.

Outputs

- ✓ a project context including the roles of other development factors.
- ✓ key needs of the target beneficiaries.
- ✓ project goals, KPIs, baselines and expected end lines.
- ✓ project milestones for progress monitoring purposes.
- ✓ activities and timelines to achieve the stated project goals.
- ✓ budgets along with the basis for estimation.
- ✓ risks and mitigation strategies.
- ✓ progress reporting: content, frequency.

Project approval

The objective of this step is to Approve the project based on the CSR policy objectives, principles and guidelines.

Purpose

Every project, whether developed by the inhouse team or an external agency, must be formally examined and approved. This is to ensure that each project is in line with the CSR strategy and policy, the monitoring indicators are clearly defined and relevant and there is an adequate budget available. Projects that go on for longer durations or demand a larger amount of resources must be scrutinised more carefully than the others.

Activities

- ✓ Determining the delegation of power for the project approval.
- ✓ Establishing an evaluation framework for the appraisal of the project concepts and implementing agencies that ensure complete alignment with the CSR policy.
- ✓ Establishing tests for the theory of change; whether the concept will be able to deliver the intended results. Establishing tests for the value for money, economy, effectiveness and efficiency.
- ✓ Reviewing risks and mitigation measures.
- ✓ Identifying resource availability and any specific organizational requirements and constraints.
- ✓ Laying down organizational supervision and oversight requirements.

Inputs

- ✓ a project proposal
- ✓ due diligence report

Outputs

An approved project proposal including a monitoring process and reporting and responsibility for this.

Finalising the arrangement with the implementing agency

The objective of this step is to Agree upon and sign the MoU with the partner.

Purpose

While working with an external agency, it is very important to enter into a formal arrangement which is referred to here as a Memorandum of Understanding or MoU. It defines the roles, responsibilities, deliverables, commitments and consequences in case of any breach. This is essentially a formal acknowledgement that all the partners have voluntarily consented to work together to achieve an agreed outcome that requires each one to play their respective roles.

Activities

- ✓ Developing template MoUs based on the context. Specify the outputs and outcomes, the approach and methodology, the KPIs, key parameters to be monitored and reported, the mode of communication, contract management team, scope of change in management procedures, dispute or conflict resolution mechanisms, inspection and audit requirements, contract closeout requirements, timelines, milestones and deliverables, budgets, process of invoicing and release of payments, etc
- ✓ Establishing a process for negotiation of the MoU with the implementing agency.
- ✓ Negotiating, agreeing upon and signing the MoU.

Inputs

- ✓ an approved project proposal
- ✓ due diligence report

Outputs

MoU with the implementing agency including the disbursement schedule

Progress monitoring and reporting

The objective of this step is to Monitor progress, distilling lessons and forming the basis for reporting.

Purpose

Routine progress monitoring.

Activities

- ✓ Determining the monitoring schedule for each project based on the approved project proposal.
- ✓ Obtaining all relevant progress reports from the project, studying them and making a note of the gaps.
- ✓ Holding discussions with the implementation team on reasons for slippages (if any) and agreeing on a corrective action. This may be done through a field visit or remotely, based on what has been agreed in the MoU.
- ✓ Holding discussions with the implementation team regarding what lessons are emerging and how they can be applied within the project as well as outside.

Inputs

- ✓ The approved project proposal.
- ✓ Previous monitoring reports.

Outputs

- ✓ Determining midcourse corrections.
- ✓ Recommendations for future project designs.
- ✓ Project monitoring reports to the CSR committee.

Impact Assessment

The objective of this step is to Measure the outcome and impact of the projects.

Purpose

Impacts of the development projects typically take a while to manifest. For instance, a girl child education programme can show an increased enrolment and retention of girls and on a monthly basis, but further impacts such as improved learning levels will take at least a year. So, impact measurement studies have different objectives from project monitoring and typically have to be undertaken after providing sufficient time for them to manifest.

Activities

- ✓ Identifying methods for conducting the impact assessment and outcome measurement suited to the context and the size of the project and budgets available.
- ✓ Identifying the skills set required for the impact measurement team and accordingly identifying, selecting and appointing the team.
- ✓ Assisting the team to prepare the methodology for selecting a sample, conducting surveys, focus group discussions collecting information on the identified indicators.
- ✓ Making the provisions for the site visits by the team, involvement of the agency involved during the baseline and needs assessment.
- ✓ Undertaking the impact measurement exercise and preparing the report.
- ✓ Identifying the lessons for future interventions.

Inputs

- ✓ resource planning.
- ✓ the project MoU.

Outputs

- ✓ impact measurement report.
- ✓ recommendations for the future project designs.

Due Report consolidation and communication

The objective of this step is to Report the CSR at an individual project level, consolidated at a programme level and aligned with the requirements under the Companies Act, 2013 and the CSR committee.

Purpose

In the context of the Companies Act, 2013 this is also a mandatory requirement as it provides crucial inputs to preparing the directors' report.

Activities

- ✓ Identifying the recipient of the report: the board of directors, investors, government agencies, beneficiaries, etc.
- ✓ Selecting the appropriate reporting framework that is aligned with the requirements of the Companies Act, 2013 and the global best practices.
- ✓ Consolidating project reports into programme reports and an overall CSR report.

Inputs

- ✓ CSR strategy and policy.
- ✓ the project MoU.
- ✓ monitoring reports from individual projects.

Outputs

- ✓ consolidated CSR reports.
- ✓ external stakeholder communication.

Sustainability Development

Sustainability Development is the development of a process by which needs of the future is fulfilled without harming the future.

It was defined in the report “our common future” commonly known as Brundtland Report released by Brundtland Commission (1987).

Triple Bottom Line / 3Ps Approach	<ul style="list-style-type: none"> ✓ Economic approach: The current decision should not impair the prospects of maintaining or improving future living standards. This also called “Profit” approach. ✓ Ecological/Environment Approach: Scarce natural resources should be preserved for the future, which would include preservation of genetic diversity, water, mines, forests etc. Industries should use minimum natural resources. Any industry damaging the environment through affluent discharge should be avoided or minimised. This also called “Planet” approach ✓ Social approach: The industry is for the society and shall not damage social security, values and welfare of the people. This also called “People” approach
Steps involved in Managing Business	<ul style="list-style-type: none"> ✓ Identify problem areas ✓ Set thrust areas for solution ✓ Set targets/goals ✓ Evaluate projects ✓ Select project ✓ Planning the action ✓ Use tools and technology ✓ Innovating ideas/processes ✓ Schedule of actions ✓ Organising ✓ Staffing ✓ Directing ✓ Monitoring ✓ Corrective action ✓ Review action.

Managing Business sustainably	<ul style="list-style-type: none"> ✓ A manager is a person that is held responsible for the planning of things that will benefit the situation that they are controlling. To be a manager of sustainability, one needs to be a manager that can control issues and plan solutions that will be sustainable, so that what they put into place will be able to continue for future generations. ✓ Managers need to understand that their values are critical factors in their decisions. ✓ sustainable management requires finding out what business activities fit into the Earth's carrying capacity and also defining the optimal levels of those activities. ✓ Sustainability values form the basis of the strategic management, process the costs and benefits of the firm's operations, and are measured against the survival needs of the planets stakeholders. <table border="1" data-bbox="451 638 1412 981"> <tr> <td data-bbox="451 638 651 981">Areas where action may be taken</td><td data-bbox="651 638 1412 981"> <ul style="list-style-type: none"> ✓ Change present process to alternate process which would reduce use of natural resources; ✓ Convince and make the community to reduce waste, use alternate source, protect the environment, adopt recycling, use bio degradable packaging; ✓ Control deforestation and encourage of forestation; ✓ Reduce discharge of affluent in the environment; install affluent treatment pants etc.; ✓ Sustainable agriculture; ✓ Carbon emission management. etc. </td></tr> </table>	Areas where action may be taken	<ul style="list-style-type: none"> ✓ Change present process to alternate process which would reduce use of natural resources; ✓ Convince and make the community to reduce waste, use alternate source, protect the environment, adopt recycling, use bio degradable packaging; ✓ Control deforestation and encourage of forestation; ✓ Reduce discharge of affluent in the environment; install affluent treatment pants etc.; ✓ Sustainable agriculture; ✓ Carbon emission management. etc. 						
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Sustainability Management: Benefits and Need	<ul style="list-style-type: none"> ✓ Sustainable management takes the concepts from sustainability and synthesizes them with the concepts of management. ✓ Sustainability has three branches: the environment, the needs of present and future generations, and the economy. ✓ Sustainable management has been created to be defined as the application of sustainable practices in the categories of businesses, agriculture, society, environment, and personal life by managing them in a way that will benefit current generations and future generations. <p>Sustainable management is needed because it is an important part of the ability to successfully maintain the quality of life on our planet. Sustainable management can be applied to all aspects of our lives.</p> <p>What needs to be sustainably managed?</p> <table border="1" data-bbox="451 1400 1412 1711"> <tr> <td data-bbox="451 1400 699 1467">Business</td><td data-bbox="699 1400 1412 1467">if the business is unsustainable, they will cease to be able to be in competition.</td></tr> <tr> <td data-bbox="451 1467 699 1534">Community</td><td data-bbox="699 1467 1412 1534">if the community is to prosper, then the management must be sustainable</td></tr> <tr> <td data-bbox="451 1534 699 1601">Forest and natural resources</td><td data-bbox="699 1534 1412 1601">to be able to be continually used by our generation and future generations.</td></tr> <tr> <td data-bbox="451 1601 699 1711">Our personal lives</td><td data-bbox="699 1601 1412 1711">It will help sustain our immediate surroundings and environment, and it can be done by managing our emotional and physical well-being</td></tr> </table>	Business	if the business is unsustainable, they will cease to be able to be in competition.	Community	if the community is to prosper, then the management must be sustainable	Forest and natural resources	to be able to be continually used by our generation and future generations.	Our personal lives	It will help sustain our immediate surroundings and environment, and it can be done by managing our emotional and physical well-being
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Sustainability Reporting	<p>UNO supports principles of Responsible Investment (PRI). These principles have subscribed by 3500 signatories who are investors. They have committed to integrate ESG factors into investment decision making. Most of the large companies in the world are already reporting their ESG profile in line with globally recognized parameters.</p> <p>Studies have made by one rating agency on ESG ratings which shows variance in rating in different sectors. Though not mandatory ESG rating would give the message to the outsiders, stakeholders about the ESG approach of the entity. More and more companies are coming under ESG</p>								

	<p>philosophy and practice.</p> <p>In view of the above, it has become important to reporting of company's performance on sustainability related factors and its importance is as relevant operational performance.</p> <p>SEBI had in November 2015, prescribed format in reporting ESG parameters listed entities. SEBI has raised the format in May, 2021 for reporting ESG parameters called Business Responsibility and Sustainability Report (BRSR). It seeks disclosure from listed entities on their performance against the principles of National Guidelines on Responsible Business Conduct (NGBRC). Each parameter is divided into leadership and essential indicators, whereas the former is voluntary and latter is mandatory.</p>
Purpose of Disclosure	<ul style="list-style-type: none"> ✓ The disclosure, are in nature of quantity and standards so that it can be easily compared with other similar entities by third parties, particularly a prospective investor. ✓ Engaging with stakeholders in most proper way beneficial to both. ✓ The corporates need to look beyond financial figures for effective ecosystem between corporate, society and environment.
Reporting	With effect from financial year 2022-23, the filing shall be mandatory for top 1000 companies listed in any of the exchange, based on market capitalization.