

# Indian Financial Code

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**Bill No. abc of 2014**

## Indian Financial Code

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### BILL

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

*An Act to regulate the financial sector and to introduce principles for financial regulation and the constitution, objectives, powers and interaction of Financial Agencies and to bring coherence and efficacy in the financial regulatory framework.*

*WHEREAS this Act lays down mechanisms of independence and accountability, and creates precise objectives, powers and processes for Financial Agencies.* 5

*WHEREAS this Act is a principles-based law, neutral in its application to any specific financial sector and seeks to focus on ownership-neutrality and fostering competition.* 10

*WHEREAS this Act reorganizes the existing Indian financial regulatory architecture in light of the dynamic growth experienced by the country.*

*WHEREAS this Act formalises regulatory governance in financial regulation, introduces specific protections for consumers of financial products and financial services, the principles of prudential regulation, lays down the position of law in certain specific contracts, trading and market abuse, provides a mechanism for the resolution of certain types of financial service providers, introduces systemic risk oversight in the financial system, focuses on the responsibility of financial inclusion and market development, sets out the outlook on capital controls, and formalises the process of public debt management in the country.* 15 20

*WHEREAS this Act deems the existing Reserve Bank of India to be incorporated under this Act entrusting it with the role of monetary policy-making, the central bank and the regulation of banking and payment systems.* 25

*WHEREAS this Act establishes a Financial Authority to regulate all financial services other than banking and payment systems.*

*WHEREAS this Act establishes a Resolution Corporation to carry out the resolution of certain types of financial service providers in distress.* 30

*WHEREAS this Act establishes a Financial Redress Agency to redress the complaints of retail consumers.*

*WHEREAS this Act establishes a Financial Sector Appellate Tribunal to adjudicate on matters provided for in this Act.* 35

*WHEREAS this Act establishes the Public Debt Management Agency for the management of public debt, cash, and contingent liabilities of the Central Government.* 40

*WHEREAS this Act makes the existing Financial Stability and Development Council a statutory agency for fostering the stability and resilience of the financial system.*

## PART I

## PRELIMINARY AND DEFINITIONS

## CHAPTER 1

## PRELIMINARY

- 5     **1.** (1) This Act will be called the Indian Financial Code, 2015.
- (2) This Act extends to the whole of India.
- (3) This Act will come into force from such date as may be notified by the Central Government.
- 10     (4) The Central Government will have the power to notify different dates for different provisions of this Act to be brought into force.

Short title,  
application and  
commencement.

## CHAPTER 2

## DEFINITIONS

2. In this Act, unless the context requires otherwise, –
- 15     (1) “Act” means the Indian Financial Code, 2015 and all rules, regulations and bye-laws made under it.
- (2) “actuary” means a person certified to practice as such by the Institute of Actuaries of India under section 9 of the Actuaries Act, 2006 (35 of 2006).
- (3) “administrative law member” means –
- 20             (a) in the case of a Financial Agency, other than the Council, an executive member of the board who is qualified in the field of law and is designated as such under section 89; and
- (b) in the case of the Council, a member of the Executive Committee who is qualified in the field of law and is appointed as such under section 89.
- 25     (4) “administrative law officer” means an employee of the Financial Agency who is qualified in the field of law and is appointed as such under section 89.
- (5) “administrative law wing” means a wing of the Financial Agency as constituted under Chapter 24.
- 30     (6) “advice” means a recommendation, opinion, statement or any other form of personal communication directed at a consumer that is intended or could reasonably be regarded as being intended, to influence the consumer in making a transactional decision.
- (7) “advisory council” means an advisory council constituted under section 33.
- (8) “annual report” means the annual report of a Financial Agency, the Tribunal or the Central Government under this Act.
- 35     (9) “auditor” means a chartered accountant certified to practice as such by the Institute of Chartered Accountants of India under section 6 of the Chartered Accountants Act, 1949 (38 of 1949).

Definitions.

- (10) “authorised dealer” means a person authorised under Chapter 62 to engage in the business of dealing in foreign exchange.
- (11) “banking” means the business of accepting deposits from the public with the promise of repaying such deposits on demand at an agreed rate of return.
- (12) “bank” means a financial service provider carrying on banking. 5
- (13) “bench” means a bench of the Tribunal.
- (14) “beneficial owner” means a person whose name is recorded as such with a depository and the term “beneficial ownership” will be construed accordingly.
- (15) “board” means the board of a Financial Agency.
- (16) “bye-laws” mean the bye-laws made under this Act. 10
- (17) “capital account transaction” means a transaction which alters the assets or liabilities including contingent liabilities, outside India of residents or in India of non-residents.
- (18) “capital distribution” means a distribution of cash or other property by a financial service provider to its owners made on account of their ownership. 15
- (19) “capital resources” mean financial resources held by a regulated person to absorb unexpected losses.
- (20) “capital instrument” means an instrument for making an investment in or contribution to the capital resources of a regulated person, including any security issued by or loan made to the regulated person. 20
- (21) “central counterparty” means a person interposed between counterparties to contracts traded in one or more markets for securities, becoming the buyer to every seller and the seller to every buyer.
- (22) “central payment system” means the payment system established under section 271. 25
- (23) “chairperson” means any of the following:
- (a) the Financial Authority Chairperson, with respect to the Financial Authority;
  - (b) the Reserve Bank Chairperson, with respect to the Reserve Bank;
  - (c) the Redress Agency Chairperson, with respect to the Redress Agency; 30
  - (d) the Corporation Chairperson, with respect to the Corporation;
  - (e) the Council Chairperson, with respect to the Council; and
  - (f) the Debt Agency Chief Executive, with respect to the Debt Agency.
- (24) “Chapter” includes all rules, regulations and bye-laws made under that Chapter. 35
- (25) “Civil Procedure Code” means the Code of Civil Procedure, 1908 (5 of 1908).
- (26) “Class A offence” means the offence described under section 369.
- (27) “Class B offence” means the offence described under section 369.
- (28) “Class C offence” means the offence described under section 369.

- (29) “clearing” means the process of transmitting, reconciling and wherever relevant, confirming payment obligations or transfers of securities, prior to settlement.
- 5 (30) “combination” has the meaning assigned to it under section 5 of the Competition Act.
- (31) “Competition Act” means the Competition Act, 2002 (12 of 2003).
- (32) “Competition Commission” means the Competition Commission of India established under section 7 of the Competition Act.
- 10 (33) “complainant” means a retail consumer who has filed a complaint with the Redress Agency or whose complaint has been forwarded by the Regulator to the Redress Agency.
- (34) “complaint” means an expression of dissatisfaction made by or on behalf of a consumer, alleging that the consumer has suffered or is likely to suffer an inconvenience or loss on account of a financial product provided or a financial service rendered.
- 15 (35) “consumer” means a person who has availed, avails or intends to avail of a financial service or had, has or intends to have a right or interest in a financial product.
- (36) “Consumer Advisory Council” means the advisory council constituted by the Regulator under Chapter 41.
- 20 (37) “contract of insurance” means a contract under which a financial service provider, for consideration, assumes the risk of one or more persons, and distributes it across a class of similarly situated persons, each of whose risks has been assumed in a similar transaction, and includes any instrument that may be prescribed by the Central Government to be a contract of insurance.
- 25 (38) “control” means the right to control, directly or indirectly, individually or in concert with other persons having a common objective or purpose, whether by virtue of ownership or management rights, by agreement or in any other manner –
- 30 (a) the management or policy decisions of a person; or
- (b) the appointment or removal of the majority of the members of the body responsible for the oversight of the affairs of a person.
- (39) “Corporation” means the Resolution Corporation established under section 3.
- (40) “Corporation Board” means the board of the Corporation.
- 35 (41) “Corporation Chairperson” means the chairperson of the Corporation.
- (42) “Council” means the Financial Stability and Development Council established under section 3.
- (43) “Council Board” means the board of the Council.
- (44) “Council Chairperson” means the chairperson of the Council.
- 40 (45) “Council Chief Executive” means the chief executive of the Executive Committee of the Council.
- (46) “covered service provider” means a covered service provider as defined in section 287.

- (47) “credit arrangement” means an arrangement that is a credit facility, credit guarantee or a combination of these, but does not include such credit arrangements that may be prescribed.
- (48) “credit facility” means an arrangement for extension of credit, irrespective of its form, but does not, unless otherwise prescribed, include a credit facility, in terms of which – 5
- (a) a creditor undertakes to supply goods or services or to pay any amount, with or without collateral or guarantee, to the borrower or on behalf of, or at the direction of, the borrower; and
  - (b) any charge, fee or interest is payable by the borrower or on behalf of or at the direction of the borrower to the creditor in lieu of the arrangement referred to in clause (a). 10
- (49) “credit guarantee” means an arrangement by which any person guarantees to discharge the monetary liability of another person, irrespective of its form, but does not, unless otherwise prescribed, include an undertaking or promise to satisfy the obligation of another consumer in respect of a credit arrangement. 15
- (50) “Criminal Procedure Code” means the Code of Criminal Procedure, 1973 (2 of 1974).
- (51) “current account transaction” means a transaction that is not a capital account transaction, and includes, – 20
- (a) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business;
  - (b) payments due as interest on loans and as net income from investments;
  - (c) remittances towards living expenses of relatives or dependents; or 25
  - (d) travel expenses, medical expenses, insurance, or education expenses of relatives or dependents.
- (52) “Data Centre” means the Financial Data Management Centre established under section 332.
- (53) “Data Centre Director” means the director of the Data Centre. 30
- (54) “day” means a calendar day.
- (55) “debenture” means any instrument evidencing debt, whether or not secured by a charge on assets.
- (56) “Debt Agency” means the Public Debt Management Agency established under section 3(1)(f). 35
- (57) “Debt Agency Chief Executive” means the chief executive of the Debt Agency.
- (58) “deposit” means a contribution of money made by a person to another otherwise than for the purpose of acquiring a security, which is repayable on demand or otherwise, but excludes such contributions as may be prescribed.
- (59) “depository” means a person engaged in the business of providing depository service. 40
- (60) “depository service” means the service provided by a person where beneficial ownership in a financial product is held by such provider, in trust for or on behalf of the beneficial owner or any other person nominated by the beneficial owner. 45

- (61) “derivative” means any transferable instrument –
- (a) giving the right but not the obligation to acquire any security;
  - (b) giving the right but not the obligation to sell any security;
  - (c) giving the right to exchange any security;
  - 5 (d) providing for exchange of one or more payments based on value of one or more securities, currencies, interest rates, yields, other derivatives, financial indices, credit ratings, or financial measures;
  - (e) giving rise to a settlement determined by reference to value of securities, currencies, interest rates, yields, other derivatives, financial indices, credit ratings or financial measures; or
  - 10 (f) giving rise to a settlement determined by reference to commodities other than when –
    - (i) such instrument is not traded on an exchange;
    - (ii) the transaction is in ordinary course of business;
    - 15 (iii) the transaction is not subject to clearing and settlement through an Infrastructure Institution or subject to regular margin calls; and
    - (iv) neither of the parties to the transaction is a financial service provider.
- (62) “eligible enterprise” means a person, other than an individual that at the relevant time, has a net asset value or turnover not exceeding a specified amount, but excludes a financial service provider who is a consumer of a financial product or financial service that is substantially similar to the financial product or financial service that such person provides.
- (63) “exchange” means any person that constitutes, maintains or provides a market place or platform for bringing together purchasers and sellers of securities.
- 25 (64) “Executive Committee” means the Executive Committee of the Council established under section 312.
- (65) “executive member” means a member of a board, not being a nominee member who is responsible for the day-to-day management and functioning of the Financial Agency, and includes –
- 30 (a) an administrative law member; and
  - (b) the chairperson, in case of all Financial Agencies except the Council.
- (66) “executive remuneration” means the remuneration paid or payable by a regulated person to –
- (a) persons exercising significant functions;
  - 35 (b) persons who have a specified connection with the regulated person, which may include, persons providing specified services to the regulated person or their officers and employees; and
  - (c) officers and employees of a description specified by the Regulator.
- (67) “Finance Minister” means the minister in the Council of Ministers, who heads the ministry of the Central Government dealing with finance.
- 40 (68) “Financial Agency” means –
- (a) the Corporation;
  - (b) the Council;
  - (c) the Debt Agency;



- (d) the Financial Authority;
  - (e) the Redress Agency; and
  - (f) the Reserve Bank.
- (69) “Financial Authority” means the Financial Authority as established under section 3. 5
- (70) “Financial Authority Board” means the board of the Financial Authority.
- (71) “Financial Authority Chairperson” means the chairperson of the Financial Authority.
- (72) “financial contract” means a contract for the provision of a financial product or financial service. 10
- (73) “financial product” means –
- (a) securities;
  - (b) contracts of insurance;
  - (c) deposits;
  - (d) credit arrangements; 15
  - (e) retirement benefit plans;
  - (f) small savings instruments;
  - (g) foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another that are to be settled immediately; and 20
  - (h) any other instrument that may be prescribed under section 161.
- (74) “financial regulatory data” means all information –
- (a) that a Financial Agency generates in the course of performance of its executive or quasi-judicial functions;
  - (b) that a financial service provider or an authorised dealer is obligated to submit to a Financial Agency under law. 25
- (75) “financial representative” means any person, other than an employee, acting on behalf of a financial service provider, in connection with the provision of a financial product or financial service.
- (76) “financial service” means – 30
- (a) buying, selling, or subscribing to a financial product or agreeing to do so;
  - (b) acceptance of deposits;
  - (c) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
  - (d) effecting contracts of insurance; 35
  - (e) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
  - (f) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of –
- (i) buying, selling, or subscribing to, a financial product; 40
  - (ii) availing a financial service; or
  - (iii) exercising any right associated with a financial product or financial service;

- (g) establishing or operating an investment scheme;
  - (h) maintaining or transferring records of ownership of a financial product;
  - (i) underwriting the issuance or subscription of a financial product;
  - (j) providing information about a person's financial standing or creditworthiness;
  - (k) selling, providing, or issuing stored value or payment instruments or providing payment services;
  - (l) making arrangements for carrying on any of the financial services in clauses (a) to (k);
  - (m) rendering or agreeing to render advice on or soliciting for the purposes of –
    - (i) buying, selling, or subscribing to, a financial product;
    - (ii) availing any of the financial services in clauses (a) to (k); or
    - (iii) exercising any right associated with a financial product or any of the financial services in clauses (a) to (k);
  - (n) any service carried out by an Infrastructure Institution; and
  - (o) any other service that may be prescribed under section 161.
- (77) “financial service provider” means a person engaged in the business of providing a financial service.
- (78) “financial system” means the aggregation of all financial service providers in India, along with –
- (a) the financial markets in which they operate;
  - (b) their financial products and financial services; and
  - (c) the financial contracts entered into by them.
- (79) “financial system crisis” means a state of the financial system where there is a large-scale disruption to the provision of financial services due to an impairment of all or parts of the financial system that has the potential to have serious negative consequences for India.
- (80) “financial system database” means the database of financial regulatory data.
- (81) “financial year” means the period beginning April 1 and ending March 31 of the immediately following year.
- (82) “fit and proper persons” means persons who –
- (a) possess sufficient relevant professional qualifications, knowledge, skills, expertise and experience to carry out the functions required to be performed by them;
  - (b) are of good repute and integrity;
  - (c) are physically and mentally capable of performing their duties;
  - (d) have not been sentenced to imprisonment for one hundred and eighty days or more;
  - (e) have not been convicted of an offence involving moral turpitude; and
  - (f) have not been convicted of an offence under this Act.
- (83) “foreign currency” means any currency other than Indian currency.
- (84) “foreign currency contract” means a contract –

- (a) to buy or sell any foreign currency; or
  - (b) to exchange any one currency for another.
- (85) “foreign exchange” means foreign currency and includes –
- (a) deposits, credits and balances payable in foreign currency;
  - (b) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in foreign currency; or 5
  - (c) drafts, travellers cheques, letter of credit or bills of exchange, expressed or drawn by persons outside India but payable in Indian currency.
- (86) “government security” means a security that is created and issued by the Central Government for the purpose of raising debt. 10
- (87) “group” in relation to a person means the person and other persons –
- (a) that control, are controlled by, or are under common control with the person;
  - (b) that have the capacity to exercise a significant influence over the financial decisions of that person due to the existence of an arrangement or relationship between them; and 15
  - (c) over whose financial decisions the person has the capacity to exercise a significant influence, due to the existence of an arrangement or relationship between them.
- (88) “hearing centre” means physical infrastructure that enables real-time interaction between a bench of the Tribunal and the litigants for conduct of a hearing. 20
- (89) “Indian currency” means any currency which is legal tender in India.
- (90) “Infrastructure Institution” means any person, which acts as –
- (a) an exchange;
  - (b) a depository; 25
  - (c) a trade repository;
  - (d) a central counterparty;
  - (e) a settlement system including a settlement system in a payment system; and
  - (f) any other person notified by the Central Government. 30
- (91) “inquiry committee” means the committee established by the Central Government to enquire whether the grounds of removal for a member have been met under section 23.
- (92) “insurer” means a financial service provider carrying on the business of effecting contracts of insurance. 35
- (93) “investment contract” means an investment in any person with reasonable expectation of profit or return to be derived from entrepreneurial or managerial efforts.
- (94) “investment scheme” means any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income, where – 40

- (a) persons participating in such schemes do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and
  - (b) the arrangement has either of the following characteristics –
    - (i) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and
    - (ii) the property is managed as a whole by any person on behalf of the participants.
- (95) “issuer” means, –
- (a) a body corporate that issues or proposes to issue any security; or
  - (b) any person, other than a body corporate under clause (a), performing the acts and assuming the duties of an issuer, depositor or manager pursuant to the relevant documentation or instrument.
- (96) “Judicial member” means a Tribunal member having the qualifications set out in section 377.
- (97) “liquidity assistance” means credit extended by the Reserve Bank to a financial service provider under section 273.
- (98) “liquidity resources” means the financial resources held by a regulated person aimed at ensuring that there is no significant risk that its liabilities cannot be met as they fall due.
- (99) “Monetary Policy Committee” means the Monetary Policy Committee of the Reserve Bank established under section 256.
- (100) “member” means a member of the board.
- (101) “negotiable instrument” has the meaning assigned to it under Negotiable Instruments Act, 1881 (26 of 1881).
- (102) “nominating authority” means the Financial Agency, Central Government or State Government, as the case may be, nominating a nominee member.
- (103) “nominee member” means a member of the board of a Financial Agency, nominated by persons identified under Part II.
- (104) “non-executive member” means a member of the board of a Financial Agency other than an executive members and nominee members.
- (105) “non-resident” means a person other than a resident.
- (106) “notification” means a notification published in the Official Gazette, and the terms “notified” and “notify” will be construed accordingly.
- (107) “order” means an order as described in section 93.
- (108) “Part” includes all regulations, rules and bye-laws made under that Part.
- (109) “payment instruction” means any instrument, authorisation or order in any form, including electronic means, to effect a payment, –
- (a) by any person to a system participant; or
  - (b) by a system participant to another system participant.
- (110) “payment obligation” means an obligation of one system participant to pay another system participant such amounts that are due as a result of clearing of payment instructions.

- (111) “payment system” means a system that enables payment of funds to be effected between a payer and a beneficiary, involving clearing, payment or settlement or all of them, and includes, –
- (a) systems like debit cards, credit cards and electronic money;
  - (b) systems to connect a payer and a beneficiary operated by a person who is neither the payer nor the beneficiary; and
  - (c) creating substitutes for legal tender with the promise of converting them into legal tender freely.
- (112) “person” includes, –
- (a) an individual;
  - (b) a Hindu undivided family;
  - (c) a company;
  - (d) a trust;
  - (e) a partnership;
  - (f) a limited liability partnership;
  - (g) an association of persons or body of individuals, whether incorporated or not;
  - (h) every body corporate, artificial juridical person not falling within clauses (a) to (g); or
  - (i) any agency, office or branch owned or controlled by any of the persons mentioned in clauses (a) to (g).
- (113) “policy-holder” means a counterparty other than the insurer, to a contract of insurance and includes a person to whom the whole of the interest of the policy-holder in the contract of insurance is assigned, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition.
- (114) “practice direction” means a direction governing the procedure or a practice before the Tribunal.
- (115) “prescribe” means prescribed by rules made by Central Government under this Act, and the term “prescribed” will be construed accordingly.
- (116) “Presiding Officer” means the presiding officer of the Tribunal under section 4.
- (117) “pro-cyclical effects” means the extent to which prudential requirements imposed under this Act are positively correlated with changes in overall economic conditions.
- (118) “procedure committee” means the procedure committee of the Tribunal constituted under section 393.
- (119) “professional diligence” means the due care and skill commensurate with honest market practices and good faith that a financial service provider would be reasonably expected to exercise towards a consumer.
- (120) “public authority” means any authority or body or institution of self-government established or constituted, including any body owned controlled or substantially financed, directly or indirectly with the funds provided by the Government, by or under, –
- (a) the Constitution of India;

- (b) any law made by the Parliament or the legislature of any State; or
  - (c) any notification issued or order made by the Government.
- (121) “public debt” means the obligation of the Central Government arising from internal or external borrowings.
- 5 (122) “public servant” has the meaning assigned to it under section 21 of the Indian Penal Code, 1860 (45 of 1860).
- (123) “publish” means publishing of information in a manner best suited to bring it to the attention of the persons which are affected by the information and to the public at large, including by way of electronic means, as soon as may be practicable.
- 10 (124) “Redress Agency” means the Financial Redress Agency established under section 3.
- (125) “Redress Agency Board” means the board of the Redress Agency.
- (126) “Redress Agency Chairperson” means the chairperson of the Redress Agency.
- 15 (127) “Registrar” means the registrar of the Tribunal.
- (128) “regulated activity” means a financial service that is specified by the Regulator to be a regulated activity for the purposes of this Act.
- (129) “regulated person” means a financial service provider that –
- (a) is engaged in the business of carrying on a regulated activity; or
  - 20 (b) has been designated as a Systemically Important Financial Institution.
- (130) “regulations” means the regulations made under this Act.
- (131) “Regulator” means the Reserve Bank or the Financial Authority, as applicable, in accordance with the allocation of responsibilities under section 7 and “Regulators” means both the Regulators, as the context may require.
- 25 (132) “regulatory inconsistency” means inconsistency in the treatment by Regulators of financial services that may be similar in nature or pose similar risks.
- (133) “related party” in relation to a person means –
- (a) a person belonging to the same group as that person;
  - (b) a person responsible for the oversight and strategic management of that person; or
  - 30 (c) a relative of the persons under clause (b), as may be specified by the Regulator; and
  - (d) persons falling within the meaning of the term under applicable audit and accounting standards.
- 35 (134) “related party transaction” includes the following transactions between related parties, –
- (a) any arrangement for the provision of a financial product or financial service;
  - (b) transfer of any assets or liabilities;
  - 40 (c) making of any advances or loans;
  - (d) entrusting assets or money;

- (e) any explicit or implicit guarantees;
  - (f) donations of any kind; and
  - (g) any other transaction specified by the Regulator.
- (135) “relevant personal circumstances” mean the objectives, financial situation and needs of a retail consumer as would reasonably be considered to be relevant for the purpose of giving advice to the retail consumer. 5
- (136) “Reserve Bank” means the Reserve Bank of India established under section 3.
- (137) “Reserve Bank Board” means the board of the Reserve Bank.
- (138) “Reserve Bank Chairperson” means the chairperson of the Reserve Bank.
- (139) “resident” means – 10
- (a) an individual whose domicile or habitual abode is in India, and includes –
    - (i) a citizen of India, other than when such citizen stays outside India for the purposes of employment, business, vocation, or in circumstances as would indicate intention of such individual to stay outside India for an uncertain period; or 15
    - (ii) an individual, not being a citizen of India, when such individual stays in India for the purposes of employment, business, vocation, or stays with spouse of such individual, such spouse being a resident, or in circumstances as would indicate intention of such individual to stay in India for an uncertain period; or 20
  - (b) a person, other than an individual, the control and management of whose affairs is substantially located in India.
- (140) “respondent” means a financial service provider against whom a complaint has been filed with the Redress Agency. 25
- (141) “retail advisor” means a financial service provider that gives advice to a retail consumer.
- (142) “retail consumer” means a consumer who is an individual or an eligible enterprise where the value of the financial product or of the financial service rendered, does not exceed such amount as may be specified. 30
- (143) “retirement benefit plan” means any arrangement or scheme, including pension, that –
- (a) is established or maintained for the purposes of providing benefits in old age to the beneficiaries of the arrangement or scheme; and
  - (b) restricts withdrawals of contributions or accumulations until the maturity of the arrangement or scheme, in accordance with its terms. 35
- (144) “rules” means the rules made by the Central Government under this Act.
- (145) “security” means a transferable and marketable financial interest which is not a negotiable instrument and, unless otherwise prescribed, includes –
- (a) shares and instruments equivalent to shares in the capital of any person; 40
  - (b) debentures;
  - (c) any form of secured debt as defined under section 2(ze) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- (d) depository receipts in respect of securities;
  - (e) derivatives;
  - (f) government securities;
  - (g) transferable warehouse receipts;
  - 5 (h) rights or interest in securities;
  - (i) instruments admitted to trading on an exchange;
  - (j) any investment contract which is not a deposit or a contract of insurance, unless exempted by the Central Government; and
  - 10 (k) such other instruments as may be prescribed by the Central Government to be securities.
- (146) “security interest” means a right, title or interest, of any kind whatsoever upon movable or immovable property, created in favour of a regulated person.
- (147) “settlement” means the process by which obligations confirmed by clearing are discharged.
- 15 (148) “settlement system” means a system which facilitates settlement.
- (149) “show cause notice” means a notice as described in section 91.
- (150) “significant function” means a function that enables or is likely to enable the person discharging the function to exercise a significant influence over the conduct of a financial service provider’s affairs and includes the functions of oversight, strategic management and effective control over the financial service provider.
- 20 (151) “small savings instruments” means –
- (a) a deposit as defined under section 3 of the Government Savings Bank Act, 1873 (5 of 1873);
  - 25 (b) a savings certificate as defined under section 2(c) of the Government Savings Certificates Act, 1959 (46 of 1959); and
  - (c) any subscription to the public provident fund issued under section 4 of the Public Provident Fund Act, 1968 (23 of 1968).
- 30 (152) “specified” means specified by regulations made under this Act and the term “specify” will be construed accordingly.
- (153) “Special Court” means a court not inferior to a Court of Session, established or designated as a special court under section 370;
- (154) “system participant” means a bank or any other person participating in a payment system and includes the system provider.
- 35 (155) “suspension order” means an order issued by the Central Government temporarily suspending a member under section 24.
- (156) “system provider” means a person who is engaged in the business of operating a payment system.
- 40 (157) “system-wide measure” means a measure that seeks to mitigate systemic risk in the financial system and may be applicable to the entire financial system or one or more parts of the financial system.
- (158) “systemic indicator” means an indicator so determined by the Council to designate financial service providers as Systemically Important Financial Institutions.



- (159) “systemic risk” means a risk, arising either in India or elsewhere, of the occurrence of a financial system crisis.
- (160) “Systemically Important Financial Institution” means a financial service provider so designated under section 318.
- (161) “Systemically Important Payment System” means a payment system that is designated as a Systemically Important Financial Institution under section 318. 5
- (162) “Technical member” means a Tribunal member, who is not a Presiding Officer or a Judicial member.
- (163) “trade repository” means a financial service provider that maintains a centralised electronic record or database of transaction data. 10
- (164) “transactional decision” means a decision taken by a consumer concerning –
- (a) whether, how, and on what terms, to avail of a financial product or financial service; or
  - (b) whether, how, and on what terms, to exercise a right in relation to a financial product or financial service or to demand the discharge of a duty owed to the consumer in terms of such product or service. 15
- (165) “Tribunal” means the Financial Sector Appellate Tribunal established under section 4.
- (166) “Tribunal member” means a member of the Tribunal, including the Presiding Officer. 20
- (167) “warehouse receipt” has the meaning assigned to it under section 2(u) of the Warehousing (Development and Regulation) Act, 2007 (37 of 2007).

## PART II

## FINANCIAL AGENCIES AND THE TRIBUNAL

## CHAPTER 3

## ESTABLISHMENT OF FINANCIAL AGENCIES

- 5     **3.** (1) The following Financial Agencies are established to exercise the powers and discharge the functions assigned to them under this Act, –
- (a) Financial Authority;
  - (b) Reserve Bank of India;
  - (c) Financial Redress Agency;
  - 10    (d) Resolution Corporation;
  - (e) Financial Stability and Development Council; and
  - (f) Public Debt Management Agency.
- (2) Each Financial Agency will be a body corporate having –
- (a) perpetual succession; and
  - 15    (b) a common seal.
- (3) Subject to the provisions of this Act, each Financial Agency will have the power and ability to, –
- (a) enter into and execute contracts;
  - (b) acquire, hold and dispose of property, both movable and immovable; and
  - 20    (c) sue and be sued.
- (4) Each Financial Agency, except the Council, will have its head office in Mumbai, and may establish offices at other places in or outside India.
- (5) The Council will have its head office in New Delhi.
- (6) The Debt Agency will establish an office in New Delhi.

Establishment and  
incorporation of  
Financial Agencies.

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## CHAPTER 4

## ESTABLISHMENT AND STRUCTURE OF THE TRIBUNAL

- 4.** (1) A tribunal by the name of the Financial Sector Appellate Tribunal is established to exercise the jurisdiction, powers and authority conferred upon it, under this Act.
- 30    (2) The Tribunal will have its main bench at Mumbai, and may establish benches and hearing centres at any other place in India.
- 5.** (1) The Tribunal will comprise –
- (a) a Presiding Officer; and
  - (b) at least one Judicial member and one Technical member.

Establishment of  
Tribunal.

Composition of  
Tribunal.

- (2) The Central Government may in consultation with the Presiding Officer notify a higher number of Tribunal members.
6. The qualifications, disqualifications, appointment, removal of the Tribunal members and the general functioning of the Tribunal will be governed by the provisions of Chapter 90.
- Other provisions governing the Tribunal and Tribunal members.  
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## CHAPTER 5

## ALLOCATION OF REGULATION OF FINANCIAL SERVICES

7. (1) The Reserve Bank will regulate banking, Systemically Important Payment Systems and authorised dealership.
- Allocation of regulation of financial services.
- (2) The Financial Authority will regulate, – 10
- (a) all financial services, except banking, Systemically Important Payment Systems and authorised dealership; and
- (b) all financial products.
- (3) The Central Government will notify an identified calendar date prospective to the date of the notification from which a financial service or class of financial services will be regulated by the Financial Authority or the Reserve Bank under this Act. 15
- (4) The provisions of section 413 will take effect in relation to any regulatory agency or body corporate from which the power to regulate such financial service or class of financial services, is transferred from the date of such notification. 20

## PART III

## FUNCTIONING OF FINANCIAL AGENCIES

## CHAPTER 6

## BOARDS OF FINANCIAL AGENCIES

- 5     **8.** (1) The general direction and management of the affairs and business of the Financial Agencies will vest in their respective boards, namely, – Management by boards.
- (a) The Financial Authority Board, with respect to the Financial Authority;
- (b) The Reserve Bank Board, with respect to the Reserve Bank;
- (c) The Redress Agency Board, with respect to the Redress Agency;
- 10     

(d) The Corporation Board, with respect to the Corporation;

(e) The Council Board, with respect to the Council; and

(f) The Debt Agency Board, with respect to the Debt Agency.

(2) Each board may exercise all powers that may be exercised and do all acts that may be done by the Financial Agency whose general direction and management has been vested with that board.

15     

(3) Each board must review the performance of the Financial Agency in giving effect to the objectives, carrying out the functions and utilising the resources of the Financial Agency.

## CHAPTER 7

## STRENGTH AND COMPOSITION OF BOARDS

- 20     **9.** (1) Unless otherwise provided under this Act, – Composition of boards.
- (a) each board will comprise executive members, non-executive members and nominee members;
- (b) the number of executive members will not exceed half the strength of the board; and
- 25     

(c) at least one of the executive members of each board will be an administrative law member.

(2) The Central Government must appoint each member in accordance with this Act, except for members of the Redress Agency Board.

30     

(3) The provisions of any rule, regulation or bye-law that has the effect of negating this section will be void.

(2) The Financial Authority Board and the Reserve Bank Board will have at least one and not more than two nominee members.

35     

(3) The Central Government must nominate the nominee members of the Financial Authority Board and the Reserve Bank Board.

Financial Authority Board and Reserve Bank Board.

- |     |  |                       |
|-----|--|-----------------------|
| 11. | (1) The Redress Agency Board will have a minimum of four members and a maximum of seven members.   | Redress Agency Board. |
|     | (2) The Redress Agency Board will not have an administrative law member.   |                       |
|     | (3) The Regulators must jointly appoint all members of the Redress Agency Board, in consultation with the Central Government.  | 5                     |
|     | (4) Each Regulator must nominate one of its employees as a nominee member to the Redress Agency Board.   |                       |
| 12. | (1) The Corporation Board will have a minimum of six members and a maximum of nine members.  | Corporation Board.    |
|     | (2) The Reserve Bank, Financial Authority and the Central Government must nominate one nominee member each to the Corporation Board.   | 10                    |
| 13. | (1) The Council Board will have four nominee members.  | Council Board.        |
|     | (2) The nominee members of the Council Board will comprise –   |                       |
|     | (a) the Finance Minister, as a nominee of the Central Government;  |                       |
|     | (b) the Reserve Bank Chairperson, as a nominee of the Reserve Bank;  | 15                    |
|     | (c) the Financial Authority Chairperson, as a nominee of the Financial Authority; and  |                       |
|     | (d) the Corporation Chairperson, as a nominee of the Corporation.  |                       |
|     | (3) The Finance Minister will be the Council Chairperson.  |                       |
| 14. | (1) The Debt Agency Board will have a minimum of five members and a maximum of seven members.  | Debt Agency Board.    |
|     | (2) The Debt Agency Board will have at least four executive members.   |                       |
|     | (3) The Reserve Bank and the Central Government will nominate one nominee member each to the Debt Agency Board.  |                       |
|     | (4) If the Debt Agency borrows on behalf of one or more State Governments, these State Governments will nominate one nominee, on behalf of all such State Governments, to be selected as under – | 25                    |
|     | (a) if the Debt Agency borrows on behalf of one State Government, that State Government will nominate one nominee member in the prescribed manner; and   | 30                    |
|     | (b) if the Debt Agency borrows on behalf of two or more State Governments, these State Governments will nominate one nominee member, by rotation, in the prescribed manner.                      |                       |
|     | (5) The Debt Agency Board will not have an administrative law member and a non-executive member.   | 35                    |

## CHAPTER 8

### ELIGIBILITY AND SELECTION OF MEMBERS

- |     |   |   |
|-----|---|---|
| 15. | (1) The members of the Financial Authority Board must have expertise in dealing with matters relating to finance, economics, law or public policy in the area of finance. | Qualifications for appointment as a member. |
|     |   | 40  |

- (2) The members of the Reserve Bank Board must have expertise in dealing with matters relating to finance, economics, banking, payments, monetary policy, law or public policy in the area of finance.
- 5 (3) The members of the Redress Agency Board must have expertise in dealing with matters relating to finance, economics, law, public policy or consumer protection in the area of finance, including redress of consumer disputes.
- (4) The members of the Corporation Board must have expertise in dealing with matters relating to finance, economics, risk management, or the regulation, supervision, resolution of financial service providers, law or public policy in the area of finance.
- 10 (5) The members of the Debt Agency Board must have expertise in dealing with matters relating to economics, public debt, finance, public finance, financial markets, law or public policy in the area of finance.

- 15 **16. (1)** A person cannot be appointed as a member, if at the time of appointment, that person, –
- (a) is an executive director or employee of a financial service provider;
- (b) is a member of an advisory council of that Financial Agency;
- (c) is not a fit and proper person;
- (d) is an employee of the Central Government or any State Government;
- 20 (e) is a sitting judge of a court of law or a sitting member of a statutory tribunal;
- (f) is a member of Parliament, state legislature, a local legislature under Part VIII of the Constitution of India, a panchayat or a municipality;
- (g) has been appointed twice as a member of that Financial Agency;
- 25 (h) has served as the chairperson of any other Financial Agency; or
- (i) will not be able to serve a term of at least three years before reaching the age of retirement.
- (2) The disqualifications under sub-sections (1)(d) and (1)(i) will not apply to nominee members.
- 30 (3) A person cannot be appointed as a member of the Reserve Bank Board if that person is a member of the Monetary Policy Committee unless that person is, –
- (i) the Reserve Bank Chairperson; or
- (ii) the executive member designated by the Reserve Bank Board to serve on the Monetary Policy Committee.
- 35 (4) A person cannot be appointed as a non-executive member on a board, if that person is a non-executive member on any other board.

Disqualifications  
for appointment as  
a member.

- 17. (1)** Except for nominee members, the Central Government must appoint each member from a list of persons short-listed by a selection committee.
- (2) The Central Government must constitute the selection committee in accordance with Schedule 1.
- 40 (3) The selection committee must follow the procedure laid down in Schedule 1.
- (4) The selection committee must consider the following factors when selecting persons, –

Selection of certain  
members.

- (a) merit;
  - (b) balance of the board;
  - (c) independence; and
  - (d) conflict of interest.
- (5) For the purposes of sub-section (4), – 5
- (a) “merit” means qualifications, experience, and expertise as per the conditions of eligibility for appointment to the board of that Financial Agency;
  - (b) “balance of the board” means that the board proportionately and adequately represents different skills and expertise as per the conditions of eligibility for members; 10
  - (c) “independence” means the ability to maintain and exercise independent judgment in the discharge of duties; and
  - (d) “conflict of interest” means that persons appointed do not have interests which may conflict with the duties of that member.
18. (1) Except for nominee members, members will hold office for a term of five years or until the age of retirement under sub-section (2), whichever is earlier. Conditions of service of members.
- (2) The age of retirement of executive members will be sixty-five years.
- (3) The Central Government must prescribe the terms of appointment of members, including with respect to, –
- (a) salary and allowances; 20
  - (b) leave;
  - (c) pension;
  - (d) gratuity; and
  - (e) medical and retirement benefits.
- (4) The Central Government may prescribe separate terms of appointment for – 25
- (a) executive members;
  - (b) chairpersons;
  - (c) non-executive members; and
  - (d) nominee members.
- (5) When prescribing the terms of appointment of members, the Central Government must consider the requirements of – 30
- (a) maintaining independence of the board; and
  - (b) attracting requisite talent and expertise to the board.
- (6) The terms on which a member is appointed must not be varied to his disadvantage after appointment. 35
- (7) Nominee members will serve at the pleasure of the nominating authority.
- (8) In the case of the Redress Agency, the references to rules to be made by the Central Government on the matters stipulated under this section will stand substituted by references to the Regulators to jointly make bye-laws on such matters. 40

- (9) A person who has served as an executive member or non-executive member will not be eligible for employment by the Central Government for a period of twelve months from the date on which he ceases to be such member.

- 5      **19.** (1) An executive member will be considered as a whole time employee of that Financial Agency. Executive members.
- (2) The board may permit in writing, an executive member to undertake such honorary work as is not likely to interfere with his duty as an executive member.

- 20.** While nominating persons as nominee members, the nominating authority must ensure that the qualifications, experience and achievements of that person are commensurate with the skills required of the members of that board. Nominee members.
- 10

## CHAPTER 9

### RESIGNATION, REMOVAL AND SUSPENSION OF MEMBERS

- 21.** (1) A member may resign by giving a notice of resignation to the Central Government. Resignation.
- 15      (2) After giving a notice of resignation, a member will continue to hold office until the earlier of, –
- (a) the date the Central Government appoints a person to the post vacated by such resignation; or
- (b) the expiry of ninety days from the date the notice of resignation was received by the Central Government. Resignation.
- 20      (3) If the Central Government appoints a person prior to the expiry of the ninety day period under sub-section (2), the Financial Agency will pay the salary of the outgoing member for the entire ninety day period.
- 22.** The Central Government may remove a member from office only if that member has, – Grounds for removal of members.
- 25      (a) been adjudged insolvent;
- (b) been sentenced to imprisonment for one hundred and eighty days or more;
- (c) been convicted of an offence involving moral turpitude;
- (d) engaged in any employment during the tenure of appointment, in violation of the terms and conditions of his service; Grounds for removal of members.
- 30      (e) acquired any financial or other interest contrary to the terms and conditions of his service that is likely to prejudice his functions;
- (f) failed to adequately disclose any direct or indirect pecuniary interest under section 28(1);
- 35      (g) made any material misrepresentation to the selection committee;
- (h) abused his position so as to render his continuance in office prejudicial to the objectives of that Financial Agency; or
- (i) become physically incapable of discharging his duties;
- (j) become of unsound mind.



23. (1) To remove a member, the Central Government must satisfy the requirements of sub-sections (2) to (7). Process for removal of members.
- (2) The Central Government must –
- (a) establish the inquiry committee to inquire if the grounds for removal have been met; 5
  - (b) give the inquiry committee, in writing, all facts and information relevant to the grounds on which the Central Government proposes to remove the member; and
  - (c) allocate adequate resources to the inquiry committee to enable it to make its inquiry. 10
- (3) The inquiry committee must comprise three persons to be nominated by the Chief Justice of India, as under, –
- (a) two sitting or retired judges of the Supreme Court or a High Court; and
  - (b) one independent expert having experience in the field of finance and public administration. 15
- (4) The inquiry committee will be chaired by the senior-most judge from amongst the judges nominated under sub-section (3)(a).
- (5) The inquiry committee must give the member, –
- (a) an inquiry notice; and
  - (b) a reasonable opportunity to be heard and present any relevant evidence. 20
- (6) The inquiry committee must, within thirty days from the date on which is it established, submit a written report to the Central Government stating, –
- (a) whether the grounds on which the Central Government proposes to remove the member have been met; and
  - (b) the facts and reasons in support of its opinion. 25
- (7) If the report of the inquiry committee states that any ground for removal has been met, then the Central Government must publish, –
- (a) a notification removing the member from the board; and
  - (b) the report under sub-section (6).
- (8) The Central Government must issue the notification within, – 30
- (a) thirty days from the date of submission of the report by the inquiry committee; or
  - (b) fifteen days from the date of submission of the report by the inquiry committee, where the Central Government has issued a suspension order under section 24. 35
- (9) The member will cease to hold office from the date of the notification under sub-section (7).
- (10) In this section, “inquiry notice” means a notice which –
- (a) is in writing;
  - (b) states the grounds on which the member is proposed to be removed; 40
  - (c) contains all the facts and information provided to the inquiry committee by the Central Government; and

- (d) allows the member to make written representations to the inquiry committee against such proposed removal within a reasonable time stated in that notice.

- 5      **24.** (1) Where the board is satisfied that any of the grounds for removal of a member have been met, it may recommend the temporary suspension of such member, to the Central Government.
- Suspension of members.
- (2) The recommendation made to the Central Government under sub-section (1):
- (a) must be in writing and signed by all members of the board; and
- (b) will not bind the Central Government to suspend the concerned member.
- 10      (3) Where the Central Government accepts the recommendation of the board, it must –
- (a) issue a suspension order; and
- (b) constitute the inquiry committee within fifteen days from the date of the suspension order.
- 15      (4) The inquiry committee may, in writing, recommend the temporary suspension of a member to the Central Government and will bind the Central Government.
- (5) A suspension order, –
- (a) must be in writing;
- 20      (b) must be made after giving the concerned member a reasonable opportunity of being heard;
- (c) must state the reasons for suspension;
- (d) must be accompanied with the recommendation of the board or the inquiry committee, as the case may be; and
- 25      (e) will cease to have effect on the date on which the inquiry committee submits its report under section 23.
- (6) The Central Government may reverse a suspension order, -
- (a) where the recommendation for suspension was made by the board and the inquiry committee has not been established, on a written recommendation of the board signed by all members of the board; and
- 30      (b) in all other cases, on a written recommendation by the inquiry committee.
- (7) A member suspended under this section will be entitled to his salary, allowances and other benefits as per the conditions of service applicable to him.
- Casual vacancies.
- 35      **25.** (1) The Central Government must fill a vacancy on any board –
- (a) where the casual vacancy reduces the strength of the board below the minimum strength within fifteen days from the date on which the vacancy arises; and
- (b) in all other cases, within one hundred and eighty days from the date on which the vacancy arises.
- 40      (2) If the Central Government does not comply with sub-section (1)(b), it must, –

- (a) prepare a report stating the reasons for such non-compliance, within ninety days from the date on which the period under sub-section (1)(b) expires; and
- (b) lay the report before both houses of Parliament immediately or if the Parliament is not in session at that time, in the immediately following session.

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## CHAPTER 10

### DECISION MAKING BY THE BOARD

- 26.** (1) A board must discharge its duties by taking decisions through a majority vote of the members present at a meeting of the board. Decisions of a board.  
10
- (2) Each member will have one vote.
- (3) If there is an equality of votes, the person chairing the meeting will, unless otherwise stipulated in the bye-laws have a casting vote.
- 27.** (1) A meeting of a board must be held in compliance with the requirements of Schedule 2. Meetings of a board.  
15
- (2) A board must make bye-laws consistent with the requirements of Schedule 2, to govern the proceedings of its meetings.
- 28.** (1) Any member who has any direct or indirect interest in any matter likely to come up for consideration at a meeting of the board must, as soon as possible after the relevant circumstances have come to that member's knowledge, disclose the nature of his interest to the board. Conduct of members.  
20
- (2) A disclosure made by a member must be recorded in the proceedings of the meeting of the board at which the matter comes up for discussion and that member must recuse from any deliberation or decision of the board with respect to that matter. 25
- 29.** No act or proceeding of the board will be invalid merely by reason of, – Validity of proceedings not affected.
- (a) any vacancy or defect, in the constitution of the board;
  - (b) any defect in the appointment of a person as a member; or
  - (c) any violation of the bye-laws of the Financial Agency not affecting the merits of the decision. 30

## CHAPTER 11

### GENERAL FUNCTIONING OF THE BOARD

- 30.** (1) The board may make bye-laws delegating the functions of the Financial Agency to the chairperson or any other member or employee of the Financial Agency, subject to any condition that may be provided in the bye-laws. Delegation by the board.  
35
- (2) The board must not delegate the functions mentioned in sections 8(3), 57(2), 58(3), 197(10), 45(8), 42(7), 403(5) and 43(2) of this Act.

- (3) The provisions of sub-section (2) do not apply to the Council Board.
- (4) Unless provided otherwise in the Act, the chairperson is the chief executive officer of the Financial Agency having powers of general direction and control in respect of all administrative matters of that Financial Agency.
- 5 **31.** (1) A Financial Agency may appoint such employees as are necessary for the efficient discharge of its functions. Employees of a Financial Agency.
- (2) The Financial Agency must make bye-laws to determine the procedure of selection, terms, compensation and conditions of the appointment and service of persons appointed under this section.
- 10 **32.** (1) Except in the pursuit of its objectives under this Act, a Financial Agency must not, – Business which a Financial Agency may not transact.
- (a) engage in trade or otherwise have a direct interest in any commercial, industrial or other undertaking;
- 15 style="padding-left: 40px;">(b) purchase any capital, including any shares of any bank or of any other person or grant loans against such capital or shares; or
- (c) advance money on the mortgage or otherwise against the collateral of immovable property or documents of title relating to such immovable property or become the owner of immovable property.
- 20 (2) The Reserve Bank may acquire an interest in a commercial, industrial or other undertaking in the satisfaction of any of its claims.
- (3) Any interest of the nature under sub-section (2), acquired by the Reserve Bank for the satisfaction of its claims, will be disposed of at the earliest.
- 25 (4) The provisions of sub-section (1)(c) will not prevent a Financial Agency from acquiring or holding property necessary for its business or residential premises for its use.

## CHAPTER 12

### ADVISORY COUNCILS

- 33.** (1) The Regulator must set up a Consumer Advisory Council as required under Part VII. Constitution and role of advisory councils.
- 30 (2) A board must set up advisory councils if either of the following conditions is met, –
- (a) any other law applicable to the Financial Agency requires an advisory council to be constituted; and
- 35 style="padding-left: 40px;">(b) the board finds that it is expedient, necessary or relevant for the discharge of its functions, to set up that advisory council.
- (3) In setting up advisory councils, the board may consider its need for advice on any matter as it may consider necessary including, –
- (a) sectors of the financial system which require particular skill, information or expertise; and

- (b) specified classes of financial service providers regulated by the Financial Agency.
- (4) Each advisory council must comprise experts in the issues for which the advisory council has been constituted.
- (5) No member of an advisory council may serve for a total period of more than ten years on that advisory council. 5
- 34.** (1) An advisory council must discharge the functions for which it has been constituted and such functions may include, – Functions of the advisory council.
- (a) making representations to the board, in the form of advice, comments or recommendations, on the policies and practices of the Financial Agency; 10
- (b) preparing and submitting reports advising the board on all draft regulations, prior to the expiry of the period for receiving comments from the public on such draft regulations;
- (c) interacting with financial service providers and the public, as may be necessary to discharge its functions; and 15
- (d) on the request of any member of the board, providing advice to the board on any matter.
- (2) The functions of an advisory council must be limited to the issues for which it was constituted.
- (3) The advisory council must discharge its functions under this section by making reports to the board. 20
- (4) The Financial Agency must publish all reports received from the advisory council and the terms of reference issued by the board seeking the advice of the advisory council.
- (5) The Financial Agency must publish the following documents, with the regulations, – 25
- (a) reports and terms of reference for advice, on draft regulations under sub-section (1)(b); and
- (b) reports and terms of reference under sub-section (1)(c), where the interaction is part of the regulation-making process under this Act. 30
- (6) The Financial Agency must publish all other reports and terms of reference within a period of forty five days from the date on which these reports are submitted to the board.
- 35.** (1) The board must make bye-laws governing the functioning of advisory councils. Bye-laws governing advisory councils.
- (2) The bye-laws must make provisions for the efficient functioning of advisory councils, including – 35
- (a) the process of selecting experts as members of advisory councils; and
- (b) the resources to be allocated to the advisory councils to discharge their functions.

## CHAPTER 13

## FUNDING OF FINANCIAL AGENCIES

- Fund.
- 36. (1)** Each Financial Agency must constitute a fund, to which the following amounts may be credited –
- 5 (a) all grants made to the Financial Agency by the Central Government;
  - (b) all fees received by the Financial Agency; and
  - (c) all sums received by the Financial Agency from the prescribed sources.
- (2)** The fund must be applied for meeting the following expenses –
- 10 (a) the salaries, allowances and other remuneration of members and employees of the Financial Agency;
  - (b) expenses incurred by the Financial Agency for the discharge of its functions; and
  - (c) expenses incurred by the Financial Agency in furthering the objectives of this Act.
- Levy and collection of fees by a Financial Agency.
- 15 **37. (1)** Each Financial Agency must specify -
- (a) the scale of fees that it will levy and collect for the discharge of its functions under this Act and any other law; and
  - (b) the manner in which it will collect these fees.
- (2)** In levying fees, the Financial Agency must take into consideration one or more of the following factors, as may be relevant –
- 20 (a) the nature, scope and size of business carried out by the financial service provider;
  - (b) the requirement that the levy of fees does not constrain competition;
  - 25 (c) the requirement that the levy of fees is not disproportionate to the costs likely to be incurred by the Financial Agency in discharging the functions for which the fees will be levied; and
  - (d) the financial requirements of the Financial Agency.

## CHAPTER 14

## ACCOUNTABILITY MECHANISMS FOR FINANCIAL AGENCIES

- Review of performance of board.
- 30 **38. (1)** The board must evaluate the performance of each member.
- (2)** Every Financial Agency must make bye-laws stipulating the process to be followed by the board for evaluating the performance of its members, including the requirement of a member to recuse himself from deliberations or decisions involving an evaluation of his performance.
- Audit committee.
- 35 **39. (1)** Every board must have an audit committee, consisting of at least two non-executive members, to review whether –
- (a) the Financial Agency is in compliance with applicable laws;
  - (b) the bye-laws of the Financial Agency promote transparency and best practices of governance;

- (c) the Financial Agency is in compliance with the decisions of the board; and
    - (d) the Financial Agency is managing risks to its functioning in a reasonable manner.
  - (2) The audit committee must make a report, at least once every financial year, of its findings under this section, to the board and the report must be attached with the annual report. 5
  - (3) The audit committee must maintain a system by which any person may communicate to the audit committee, any incidence of –
    - (a) violation of laws by the Financial Agency;
    - (b) theft or misappropriation of resources of the Financial Agency by any person; 10
    - (c) abuse of powers of the Financial Agency by any member, employee or agent of the Financial Agency; or
    - (d) violation of any decision of the board by any member, employee or agent of the Financial Agency. 15
  - (4) The board must make bye-laws governing information to be provided to the audit committee, and the provision of adequate resources to enable the audit committee to discharge its functions under this Act effectively.
  - (5) In this section, in case of the Council, the audit committee must comprise of atleast two nominee members. 20
  - (6) No member of the audit committee may serve continuously for more than five years on that committee.
- 40.** (1) A Financial Agency must maintain a website or any other universally accessible repository of electronic information to – Publication of information.
- (a) publish all information that the Financial Agency is obliged to publish under this Act or any other law; 25
    - (b) provide a copy of all rules, regulations, bye-laws made and all guidance issued, by the Financial Agency, including all amendments to these rules, regulations, bye-laws and guidance;
    - (c) provide information about the manner in which applications to the Financial Agency are to be made; and 30
    - (d) provide material information about the functions of the Financial Agency.
  - (2) All information published under sub-section 403(3) must be in an easily accessible and text-searchable format.
  - (3) The board must review the quality of the website or other repository, based on international best practices, at least once every three years. 35
  - (4) The board must -
    - (a) prepare a report containing the findings of the review under sub-section 403(5); and
    - (b) publish the report with the annual report. 40
  - (5) The Financial Agency may make bye-laws implementing the requirements of this section.

- (6) Any information not published on the website or other universally accessible repository of the Financial Agency as per the requirements of this section, will be presumed to not have been published, for the purposes of this Act.

- 5      **41.** (1) Each Financial Agency must prepare a report of expenditure with respect to each of its functions and objectives for each financial year. Allocation and use of resources by a Financial Agency.
- (2) Each Financial Agency must maintain a system of allocation of resources to carry out its functions and meet its objectives as stated in its report of expenditure.
- 10      (3) The Central Government may prescribe additional reports a Financial Agency has to make relating to its expenditure.
- (4) At least once every three years, the board must review the quality of the report of that Financial Agency and its system of allocation of resources, to ensure compliance with the provisions of this section.
- 15      (5) The reports of expenditure must be published with the annual report of the Financial Agency.
- 42.** (1) The Financial Agency must develop a system to measure its performance of each function required to be carried out, and the efficiency with which that function was discharged. Performance and efficiency of a Financial Agency.
- 20      (2) The Financial Agency must make bye-laws setting out the system of measurement referred to in sub-section (1).
- (3) The Financial Agency must lay down goals for the discharge of each function imposed on it by this Act for the financial year.
- 25      (4) The Financial Agency must measure its efficiency in relation to its functions in accordance with the system developed under sub-section (1) in a reasonable and objective manner for each financial year.
- (5) The Financial Agency must at the end of each financial year prepare a report comparing information from sub-section (4) with the goals that were set for the financial year under sub-section (3).
- 30      (6) The Central Government may prescribe additional reports a Financial Agency must make relating to the performance and discharge of its functions.
- (7) At least once every three years, the board must review the quality of the report made under sub-section (6) to ensure compliance with the requirements of this section.
- 35      (8) The report of efficiency and performance must be published with the annual report.
- (9) In this section, “reasonable and objective manner”, in relation to the system of measurement includes, –
- 40      (a) a system of measurement that best represents any function being measured;
- (b) a standardised system that allows comparison, where possible; and
- (c) quantitative systems of measurement, where possible.



43. (1) Each Financial Agency must furnish to the Central Government at such time and in such manner and form as may be prescribed, such returns, statements and particulars, with regard to proposed or existing operations of the Financial Agency as may be prescribed. Returns and reports.
- (2) The board must submit to the Central Government an annual report within ninety days from the end of every financial year. 5
- (3) The board must publish the annual report on the same day as or before the date on which it is submitted to the Central Government.
- (4) The annual report must be in such manner and form as may be prescribed, and must give a true and full account of the performance of the Financial Agency in the previous financial year including, – 10
- (a) a review of the Financial Agency's activities in relation to the discharge of its functions and the achievement of its objectives; and
- (b) all information that is necessary to understand the discharge of functions and the achievement of the objectives of the Financial Agency that has been published by the Financial Agency. 15
- (5) The annual report must contain, –
- (a) the report of the review committee under section 39;
- (b) the report of compliance with the memorandum of understanding referred to in section 47; 20
- (c) findings of the review of the quality of the website or other repository under section 40;
- (d) report of expenditure under section 41;
- (e) report on the performance and efficiency of the Financial Agency under section 42; 25
- (f) certified accounts, audit report, and the observations of the board under section 44;
- (g) with respect to the Redress Agency, the additional information required of the Redress Agency under section 144;
- (h) with respect to the Regulator, the additional information required of the Regulator under section 148(2); 30
- (i) with respect to the Council, additional information the Council must submit under section 340;
- (j) with respect to the Reserve Bank, –
- (i) description of the business of the Central Government carried out by the Reserve Bank, under section 274; 35
- (ii) description of the business of State Governments carried out by the Reserve Bank, under section 275; and
- (iii) the additional documents set out in section 248;
- (k) report on violation of regulations under section 94; 40
- (l) a statement of the deliberations of the Financial Agency, accompanied by the records of meetings of the Financial Agency;
- (m) a statement indicating any statutory obligation that the Financial Agency or the board has not complied with, and reasons for such non-compliance;
- (n) a statement by the chairperson, in relation to the activities and performance of the Financial Agency; 45

- (o) a statement of major activities the Financial Agency will undertake in the subsequent financial year; and
  - (p) a statement which any member of the board may wish to include.
- (6) The Central Government must lay a copy of the annual report as soon as possible after its receipt before each House of Parliament, for a total period of thirty working days to be calculated in the manner specified in section 69(3).
- 5
44. (1) A Financial Agency must maintain accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
- 10
- (2) The Reserve Bank, while preparing its financial statements, must comply with accounting standards to the extent that is in the opinion of the Reserve Bank Board appropriate to do so, having regard to the objects and functions of the Reserve Bank.
- (3) The accounts of a Financial Agency must be audited annually by the government auditor.
- 15
- (4) The audit by the government auditor must not include an audit of performance of the Financial Agency.
- (5) The government auditor must, –
- 20
- (a) certify the accounts of the Financial Agency; and
  - (b) make an audit report.
- (6) The certified accounts and the audit report must be placed before the audit committee and the board, which must record its observations on the audit report.
- 25
- (7) The annual report must include –
- (a) certified accounts and audit report placed before the board; and
  - (b) the observations of the board on the audit report.
- (8) In relation to the audit of the accounts of the Reserve Bank, the government auditor must not audit, –
- 30
- (a) the deliberations, decisions or minutes of the Monetary Policy Committee under section 264, and the actions of the Reserve Bank under section 270 in relation to implementing monetary policy decisions;
  - (b) the transactions by the Reserve Bank under sections 272 and 273; and
  - (c) any part of a discussion or communication between members of the Reserve Bank Board, members of the Monetary Policy Committee, and officers and employees of the Reserve Bank related to clauses (a) and (b).
- 35
- (9) A Financial Agency must preserve such records for such period of time and in such manner as the Central Government may prescribe.
- (10) In this section, “government auditor” means the Comptroller and Auditor-General of India, or any other person appointed by the Comptroller and Auditor-General of India in this regard.
- 40
45. (1) Each Financial Agency must arrange for a review of its performance and efficiency by a team of experts.
- Review by external experts.

- (2) The review must take place every three financial years.
- (3) The team of experts must comprise persons, -
  - (a) who are experts in the field which the Financial Agency regulates;
  - (b) who are external to that Financial Agency; and
  - (c) who do not have a conflict of interest with the Financial Agency. 5
- (4) Each Financial Agency must make bye-laws in relation to the following matters, -
  - (a) the required composition of the team of experts;
  - (b) the process of selection and appointment of the experts;
  - (c) the terms of service of the experts; and 10
  - (d) the duration and terms of the review.
- (5) The review under this section must, -
  - (a) be based on international best practices;
  - (b) give an opinion on whether the Financial Agency is organised and operating effectively to pursue its objectives under this Act and any other law; 15
  - and
  - (c) make proposals for the Financial Agency to consider.
- (6) The Financial Agency must ensure that the team of external experts has access to relevant information and resources as are necessary to carry out the review.
- (7) The team of experts must submit a report of its review to the board at least sixty days prior to the expiry of the three year period mentioned in sub-section (1). 20
- (8) The board must consider and publish the report within one hundred and eighty days from the date on which it is submitted to the board.

## CHAPTER 15

25

## OTHER OBLIGATIONS

- Confidentiality.
- 46. (1) The Central Government, each Financial Agency, every member, every member of an advisory council and every employee of a Financial Agency, must maintain the confidentiality of any financial regulatory data and other commercially sensitive information that is obtained or produced in the discharge of any of its functions under this Act, unless, - 30
    - (a) any provision of this Act permits or requires its publication or disclosure;
    - (b) any other law or any agreement in force permits or requires its publication or disclosure;
    - (c) the person from whom it was obtained and if different, the person to whom it relates, consents to the disclosure; 35
    - (d) it is already available to the public from other sources;
    - (e) it is in the form of a summary or collection of information so framed, that it is not possible to ascertain from it information relating to any particular person; 40
    - (f) the disclosure enables or assists the Financial Agency or the Central Government to discharge its functions under this Act; or

- (g) the disclosure is directed by a judicial authority having appropriate jurisdiction, for the purpose of any judicial proceeding.
- (2) In sub-section (1), “agreement” means an agreement in accordance with this Act, between –
- 5 (a) two or more Financial Agencies;
- (b) one or more Financial Agencies and the Central Government; or
- (c) one or more Financial Agencies and a State Government.
- (3) Nothing in this section will restrict the power of a public authority to exempt any information under section 8 of the Right to Information Act, 2005 (22 of 10 2005).
47. (1) Each Financial Agency must enter into a memorandum of understanding with the other Financial Agencies in respect of its obligations under this Act, to co-ordinate with the other Financial Agencies, or to undertake joint action. Co-ordination between Financial Agencies.
- (2) The memorandum of understanding may include –
- 15 (a) co-operation in making regulations, including regulations required to be made jointly by more than one Financial Agency;
- (b) the process for making joint appointments, including appointment of members of the Redress Agency required to be made jointly by the Regulators;
- 20 (c) the process by which a Financial Agency may make a reference to the Regulator for undertaking enforcement action under section 95 and the manner in which the Regulator must deal with such reference;
- (d) co-operation for harmonising regulations governing similar matters;
- (e) access to and sharing of information;
- 25 (f) cross-staffing of employees; and
- (g) the process of consultation regarding any change that may have been proposed by any party to the memorandum of understanding.
- (3) Each Financial Agency must, -
- (a) prepare a report of its compliance with the memorandum of understanding; and
- 30 (b) publish the report of compliance in its annual report.
48. (1) If two or more Financial Agencies are required to issue joint regulations or agree on any joint action required to be taken under this Act, they must initiate the process for doing so as soon as possible. Joint action by Financial Agencies.
- (2) If the Financial Agencies are unable to arrive at an agreement with respect to the joint regulations to be issued or the joint action to be taken under sub-section (1) within one hundred and eighty days of initiating the process they must refer the matter to the Council.
- 35 (3) The Council must resolve any issue in accordance with the provisions of section 329.

## 40 CHAPTER 16

### INTERACTION BETWEEN THE COMPETITION COMMISSION AND THE REGULATOR

49. (1) The Competition Commission may submit its comments on draft regulations issued by a Regulator for public consultation under Chapter 17. Consultation for draft regulations.

- (2) The Regulator must take into account any comments that are submitted to it by the Competition Commission.
  - (3) If the Regulator disagrees with any comments made by the Competition Commission, it must give the Competition Commission a statement in writing with its reasons for disagreement. 5
50. (1) This section applies where the Competition Commission is of the opinion that a negative effect has been created, or is likely to be created, on account of, – Report by the Competition Commission.
- (a) any regulatory provision or practice of a Regulator ; or
  - (b) a feature or a combination of features of a market that could be dealt with by regulatory provisions or practices. 10
- (2) In this section –
- (a) “negative effect” means the prevention, restriction or distortion of competition in a market for financial products or financial services;
  - (b) “regulatory provision” means any regulations, guidance or code issued by the Regulator under this Act; and 15
  - (c) “feature of a market” means –
    - (i) the structure of a market for financial products or financial services or any aspect of that structure; and
    - (ii) the conduct, whether or not in the market for the concerned financial products or financial services, of financial service providers or consumers. 20
- (3) If the conditions contained in sub-section (1) are satisfied, the Competition Commission must submit a report to the Regulator stating, –
- (a) details of the Competition Commission’s findings on the negative effect; and 25
  - (b) its recommendation on actions to be taken by the Regulator.
51. (1) The Regulator must, within the period agreed to between the Regulator and the Competition Commission, provide a response to the Competition Commission stating how it proposes to deal with the Competition Commission’s report. Response by Regulator.
- (2) The response must state, – 30
- (a) whether it has decided to take any action or to take no action;
  - (b) if it has decided to take action, what action it proposes to take; and
  - (c) reasons for its decisions.
- (3) The response must be, –
- (a) submitted to the Competition Commission; and 35
  - (b) published by the Regulator, along with the Competition Commission’s report.
52. (1) If after the Competition Commission has made a report under section 50 and the Regulator has submitted its response under section 51, the Competition Commission continues to remain of the opinion that a negative effect is created, the Competition Commission may issue binding directions to the Regulator requiring it to take particular actions to remedy the negative effect. Competition Commission’s power to issue directions. 40

- (2) If the Competition Commission issues a direction to the Regulator under this section, it must publish a statement containing details of the direction issued with reasons and submit a copy of it to the Central Government.
- (3) The Central Government must have a copy of the directions issued by the Competition Commission laid before the Parliament.

**53.** (1) The Competition Commission must make a reference to the Regulator when it undertakes any proceedings under the Competition Act in which at least one of the parties is a financial service provider.

Reference by the  
Competition  
Commission.

(2) The reference must contain, –

- (a) details of the circumstances relating to which proceedings are being undertaken by the Competition Commission;
- (b) any particular issue relating to the proceedings on which the Competition Commission requires the Regulator's inputs; and
- (c) any other matter agreed to between the Regulator and the Competition Commission.

(3) The Regulator must assess the reference and respond to the Competition Commission within the period agreed to between the Regulator and the Competition Commission, with a report on the referred matter.

(4) The report must contain, –

- (a) the Regulator's response, with reasons, to any particular issues referred by the Competition Commission for its inputs;
- (b) the Regulator's recommendations, if any, on factors that should be considered by the Competition Commission in relation to the proceedings; and
- (c) information about the Regulator's decision to nominate a non voting member under section 54.

(5) The Competition Commission must take into account the Regulator's report while taking its decision on the referred matter.

**54.** (1) The Regulator may nominate a person as a non-voting member of the Competition Commission in any proceedings under the Competition Act if, –

Appointment of  
non-voting  
member.

- (a) at least one of the parties to the proceedings is a financial service provider; and
- (b) it appears to the Regulator that a decision taken or likely to be taken by the Competition Commission may have a whilesignificant negative impact on the pursuance of the Regulator's objectives under this Act or any other law.

(2) The person nominated by the Regulator must be a member or a senior official of the Regulator.

(3) The person nominated by the Regulator will be entitled to attend and participate in the Competition Commission's proceedings on the referred matter but will not entitled to vote on it.

- |     |  |                                    |
|-----|--|------------------------------------|
| 55. | (1) The Regulator must make a reference to the Competition Commission to report any conduct of a financial service provider that appears to the Regulator to be a suspected violation of the Competition Act.  | Reference by the Regulator.        |
|     | (2) The reference must contain details of, –   |                                    |
|     | (a) the circumstances in respect of which the reference is being made; and   | 5                                  |
|     | (b) the Regulator’s reasons for suspecting a violation of the Competition Act.   |                                    |
|     | (3) The Competition Commission must assess the reference and respond to the Regulator within the period agreed to between the Regulator and the Competition Commission, with a report on the referred matter.  |                                    |
|     | (4) The report must contain the Competition Commission’s decision, with reasons, on whether or not to initiate proceedings under the Competition Act in relation to the referred matter.                       | 10                                 |
| 56. | (1) The Competition Commission and the Regulator must enter into a memorandum of understanding to establish the procedures for co-operation between them, within six months from the commencement of this Act. | Memorandum of understanding.<br>15 |
|     | (2) The memorandum of understanding must provide for, –  |                                    |
|     | (a) the period within which the Regulator must submit its response to the Competition Commission under section 51;   |                                    |
|     | (b) the detailed process for references to be made by the Competition Commission to the Regulator and by the Regulator to the Competition Commission under sections 53 and 55;                                 | 20                                 |
|     | (c) the process for appointment of a nominee by the Regulator as non-voting member of the Competition Commission under section 54;   |                                    |
|     | (d) the process for co-ordination between the Competition Commission and the Regulator in relation to the review of any combination involving a financial service provider, under this Act;                    | 25                                 |
|     | (e) the exchange of information between the Competition Commission and the Regulator; and  |                                    |
|     | (f) the manner in which a market will be identified for the purposes of this Act.  | 30                                 |
|     | (3) The Regulator and the Competition Commission may agree to revise the terms of the memorandum of understanding from time to time.   |                                    |

## PART IV

## DELEGATED LEGISLATION BY FINANCIAL AGENCIES

## CHAPTER 17

## REGULATIONS AND GUIDANCE

- 5 57. (1) A Financial Agency may make regulations to carry out the purposes of this Act, by notification, in a manner consistent with this Act. Power of a Financial Agency to make regulations.
- (2) The board of a Financial Agency must approve every regulation proposed to be made by that Financial Agency.
- 10 58. (1) The board must approve and publish a draft of a proposed regulation, accompanied with a statement setting out, – Process of making regulations.
- (a) the objectives of the proposed regulation;
- (b) the problem that the proposed regulation seeks to address;
- (c) how solving this problem is consistent with the objectives given to the Financial Agency under this Act;
- 15 (d) the manner in which the proposed regulation will address this problem;
- (e) the manner in which the proposed regulation complies with the provision of this Act under which the regulation is made;
- (f) an analysis of costs and an analysis of benefits of the proposed regulation;
- 20 (g) the process by which any person may make a representation in relation to the proposed regulation;
- (h) how the proposed regulation is in accordance with the principles of regulation mentioned in the Part under which it is made; and
- 25 (i) reasons for preferring one principle over any other, if multiple principles are mentioned in the Part under which the regulation is proposed to be made and if the Financial Agency makes such preference.
- (2) The Financial Agency must, –
- (a) give a time of not less than twenty-one days to enable any person to make a representation in relation to a proposed regulation; and
- 30 (b) consider all representations made to it within that time.
- (3) To make the regulation, –
- (a) the board must approve the regulation; and
- (b) the Financial Agency must publish –
- 35 (i) all the representations received by it under sub-section (1)(g); and
- (ii) unless provided otherwise in this Act, a general account of the response of the Financial Agency to the representations.
- (4) If the regulations differ substantially from the proposed regulations, in addition to the requirements of sub-section (3), the Financial Agency must publish –
- (a) the details and reasons for such difference; and



(b) an analysis of costs and an analysis of benefits, of the differing provisions.

59. (1) A Financial Agency may dispense with the procedure under section 58 if the time required to comply with such procedure is detrimental to the objectives of this Act. Emergency regulation making.  
5
- (2) If a Financial Agency makes a regulation under this section, it must –
- (a) publish the reasons for invoking this section;
  - (b) submit a report to the Central Government within seven days from the date on which such regulation is notified; and
  - (c) ensure that the regulation is accompanied by the documents under sections 58(1)(a) to 58(1)(e), and if applicable, section 58(1)(h) and section 58(1)(i). 10
- (3) A regulation made under this section will cease to have effect after one hundred and eighty days from the date on which that regulation is notified.
60. (1) When carrying out an analysis of costs and benefits under this Chapter, the Financial Agency must consider the probable costs that will be borne by and the probable benefits that will accrue to persons affected by the regulation, including, – Standard of analyses of costs and benefits.
- (a) financial service providers in complying with the regulation;
  - (b) consumers, both directly and indirectly; and 20
  - (c) the Financial Agency in enforcing the regulation.
- (2) The Financial Agency must use, –
- (a) the best available data, and wherever not available, reasonable estimates, to carry out the analysis; and
  - (b) the most appropriate scientific method available to carry out the analysis. 25
- (3) Where the Regulator makes a regulation under Part VIII, an analysis of costs and benefits of such regulation must consider the effect of the regulation over a continuing period of time not being less than five years after the regulation is made.
61. (1) A Financial Agency may publish general guidance for the purpose of clarifying regulations made by it. General guidance.  
30
- (2) All requirements of section 58 apply to the process of making general guidance, except the requirements of section 58(1)(f) and section 58(4)(b).
- (3) The Financial Agency may withdraw or amend any general guidance issued by it at any time for reasons to be recorded in writing and published. 35
- (4) In the case of a conflict between the text of a regulation made by the Financial Agency and any general guidance pertaining to it, the text of the regulation will prevail.
- (5) A violation of a general guidance alone will not constitute a violation of any law or regulation. 40
- (6) A Financial Agency may delegate the function of issuing a general guidance to a committee of the board, comprising at least, –

- (a) one executive member;
  - (b) two non-executive members, where the board has non-executive members.
- (7) Where a Financial Agency has delegated the function of issuing general guidance to a committee, such committee must meet all the requirements to be met by the board under section 58.
62. (1) A Financial Agency must review every regulation made by it within three years from the date on which that regulation is notified. Review of regulations.
- (2) The review must comprise –
- (a) an analysis of costs and an analysis of benefits of the regulation;
  - (b) an analysis of all interpretations of the regulation made by the Financial Agency, the Tribunal, any High Court or the Supreme Court; and
  - (c) an analysis of the applicability of the regulation to any change in circumstances since that regulation was issued.
- (3) The report made by the Financial Agency upon such review, must be tabled before the board at least sixty days prior to the expiry of the three year period.
- (4) The Financial Agency must publish the report within forty-five days from the date on which it is tabled before the board.

## CHAPTER 18

### 20 BYE-LAWS OF FINANCIAL AGENCIES

63. (1) Each Financial Agency must make bye-laws governing, – Power of Financial Agencies to make bye-laws.
- (a) the internal functioning of the Financial Agency and the board, including the procedure for making bye-laws by the Financial Agency; and
  - (b) for such other matters as are required to be governed by bye-laws under this Act.
- (2) The board of a Financial Agency must approve the draft of every bye-law proposed to be made by that Financial Agency.
- (3) The board must approve and publish a draft of the proposed bye-law, accompanied with a statement setting out, –
- (a) the provisions of the Act under which the bye-law is proposed to be made;
  - (b) the objectives of the bye-law; and
  - (c) the issue the bye-law seeks to address.
- (4) The Financial Agency must, –
- (a) give a time of not less than twenty-one days to enable any person to make a representation in relation to a proposed bye-law; and
  - (b) consider all representations made to it within that time.
- (5) To make the bye-law, –
- (a) the Financial Agency must publish all the representations received by it and consider them; and

- (b) the board must approve the bye-law.
- (6) The board must publish the bye-law, immediately upon approval.
64. (1) A Financial Agency may dispense with the requirements mentioned in section 63(4) and section 63(5)(a), if the circumstances so require. Process for making bye-laws in exigency.
- (2) If a Financial Agency makes a bye-law under this section, it must publish the reasons for invoking this section. 5
- (3) A bye-law made under this section will remain in force for a period identified by the Financial Agency, not exceeding one hundred and eighty days from the date on which it is published.
- CHAPTER 19 10  
MISCELLANEOUS
65. (1) The Central Government must by notification, prescribe – Power of Central Government to make rules.
- (a) the manner in which nominee members of state governments will be nominated under section 14(4);
- (b) the manner in which nominee members will be appointed to a board under Part II; 15
- (c) the terms and conditions of service of members under 18(3); and
- (d) such other matters as required by any provision of this Act.
- (2) The Central Government may by notification prescribe, –
- (a) the manner in which a Financial Agency will carry out the cost and benefit analysis of regulations; 20
- (b) the terms and conditions of service for different types of members, under section 18(4);
- (c) additional reports of performance and discharge of functions, to be made by the Financial Agency under section 42(6); 25
- (d) additional reports of expenditure to be made by the Financial Agency under section 41(3);
- (e) the matters which may be prescribed under Part X;
- (f) emergency rules made under section 242;
- (g) the manner of management of public debt by the Debt Agency under section 354; and 30
- (h) the institution of proceedings for offences under section 371(6).
66. (1) The Central Government must publish a draft of every proposed rule. Process for making rules.
- (2) The Central Government must, –
- (a) give a time of not less than twenty-one days to enable any person to make a representation in relation to a proposed rule; and 35
- (b) consider all representations made to it within that time.
- (3) The Central Government must publish all representations received by it from the public before the rule is notified.

- (4) If no date is prescribed in the notification of a rule, the rule will come into effect from the date of its publication.

67. (1) The Central Government must review every rule made by it within three years from the date on which the rule is notified.

Review of rules.

- 5 (2) The review must comprise, –

(a) an analysis of all interpretations of the rules by the Central Government, a Financial Agency, the Tribunal, any High Court or the Supreme Court; and

- 10 (b) an analysis of the applicability of the rule to any change in circumstances since that rule was notified.

- (3) The report made by the Central Government, upon such review, must be laid before the each House of Parliament, in accordance with section 69.

- (4) The Central Government must publish the report within forty-five days from the date on which it is laid before the Parliament.

- 15 68. (1) Every rule, regulation and bye-law must be effective from an identified calendar date that is prospective to the date of notification and is set out in the regulation.

Prospective application of delegated legislation.

- 20 (2) In identifying a date under sub-section (1), the Financial Agency or the Central Government must have due regard to the time necessary for persons impacted to comply with that rule, regulation or bye-law.

- (3) A regulation made under section 59 may be exempted from the requirements of sub-section (2), if the Financial Agency publishes the reasons for invoking this exemption.

- 25 69. (1) Every rule, regulation and bye-law must be laid before each House of Parliament, as soon as may be possible, after it is made.

Regulations, bye-laws and rules to be laid before Parliament.

- (2) Every rule, regulation and bye-law must be laid before each House of Parliament for a total period of thirty working days, while it is in session.

- (3) In calculating the thirty working days period, no account is to be taken of any time during which the Parliament is dissolved or prorogued.

- 30 (4) A rule, regulation or bye-law will be deemed to be approved by Parliament at the expiry of thirty working days unless, before the end of that period, both Houses of Parliament agree that such rule, regulation or bye-law –

(a) should not be made, in which case that regulation, bye-law or rule, will be of no effect; or

- 35 (b) should be made with certain modifications, in which case that regulation, bye-law or rule, will come into effect in the modified form.

- (5) The annulment or modification of a rule, regulation or bye-law by the Parliament will not affect the validity of anything already done under that rule, regulation or bye-law.

## PART V

## EXECUTIVE FUNCTIONS OF FINANCIAL AGENCIES

## CHAPTER 20

## DISPOSAL OF APPLICATIONS

70. (1) An application to a Financial Agency under this Act must, except to the extent otherwise provided in this Act, be disposed of in accordance with this Chapter. Applications generally.
- (2) Regulations made by a Financial Agency may supplement but must not dilute the provisions of this Chapter.
- (3) In this Chapter –
- (a) “application” means an application seeking, – 10
    - (i) an authorisation, registration or approval from a Financial Agency;
    - (ii) cancellation or variation of an authorisation, registration or approval granted by a Financial Agency;
    - (iii) specified exemptions from a Financial Agency;
    - (iv) review of an order by an administrative law member; 15
    - (v) general guidance from a Financial Agency; or
    - (vi) modification or withdrawal of an existing application.
  - (b) “applicant” means any person who makes an application to a Financial Agency or an administrative law member of a Financial Agency for review of an order. 20
71. (1) An application to a Financial Agency must be made in the specified manner. Procedure for making applications.
- (2) The Financial Agency must acknowledge the receipt of an application, whether complete or not, within seven days from the date of receipt.
- (3) An applicant may, at any time before the Financial Agency gives its order apply for, – 25
- (a) modification of an existing application; or
  - (b) withdrawal of an existing application, with or without leave to re-apply.
- (4) If an applicant withdraws an application and re-applies the Financial Agency must process the application afresh.
72. (1) The Financial Agency may in writing require an applicant to provide additional information as it considers reasonably necessary to enable it to determine the application. Additional information.
- (2) While requesting additional information, the Financial Agency must state the relevance of the additional information sought.
73. (1) Where an application received by a Financial Agency is incomplete, the Financial Agency must inform the applicant in this regard within thirty days from the date of receipt of the application. Procedure for determination of applications.

- (2) A Financial Agency must take decisions on applications in accordance with the provisions of this Act.
- (3) A Financial Agency must ensure that an application is determined within one hundred and eighty days from the date on which the complete application was received by the Financial Agency.
- (4) The period mentioned under sub-section (3) may be extended by the Tribunal on an application made by the Financial Agency.
- (5) If a Financial Agency does not reject an application within one hundred and eighty days from the date on which such application has been received, then unless such period has been extended by the Tribunal, that application will be deemed to have been accepted.
- (6) A Financial Agency must issue a show cause notice to the applicant, if it proposes to, –
- (a) reject an application; or
  - (b) approve the application with conditions other than those specified in respect of that class of applications.
- (7) A Financial Agency must dispose of an application by an order.
- (8) An order disposing of an application must state, –
- (a) whether the application is accepted or rejected;
  - (b) where the application is rejected, the reasons for rejection;
  - (c) where the application is made for an authorisation, the financial services for which the authorisation is granted;
  - (d) where the application was made for a purpose other than for authorisation, the matters in respect of which the approval or exemption is granted;
  - (e) conditions, if any, subject to which the authorisation, registration, approval or exemption, is granted;
  - (f) the period, if any, for which the authorisation, registration or approval, is effective;
  - (g) the provisions of the Act under which the authorisation, registration, approval or exemption is granted.

## CHAPTER 21

### INFORMATION AND INSPECTIONS

74. A Financial Agency may make regulations requiring financial service providers to make reports in a specified form, manner and frequency. Reporting requirements.
75. (1) In addition to the reports specified under section 74, the Regulator may require a financial service provider to provide such documents and information as are reasonably required by it for the discharge of its functions under this Act. Power to gather information.
- (2) If the Regulator requires a financial service provider to provide information or produce documents, it must give a notice in writing to that financial service provider stating the reasons for such requisition.

- (3) The Regulator must specify the manner in which a financial service provider must provide information or produce documents sought by it including, –
- (a) the designation of employees who may seek such information or documents;
  - (b) the time-limit within which such information has to be provided or document produced; 5
  - (c) the place where such information has to be provided or document produced; and
  - (d) the form in which such information has to be provided or document produced. 10
- Inspections.
76. (1) The Regulator may inspect a financial service provider at specified intervals or on specified occasions.
- (2) The Corporation may inspect a covered service provider in accordance with the provisions of Part XII.
- (3) The Regulator must, – 15
- (a) give a notice of inspection to the financial service provider before carrying out the inspection;
  - (b) record the documents inspected and the findings of such inspections in a specified form; and
  - (c) provide the record of such documents and findings to the financial service provider so inspected. 20
- (4) The Regulator may make copies of the documents and records inspected.
- (5) Notwithstanding anything contained in any law in force, inspection includes the right to, –
- (a) access the relevant documents and records of the financial service provider; 25
  - and
  - (b) question any employee of the financial service provider.
- (6) The Regulator must specify, –
- (a) the intervals at which a financial service provider may be inspected;
  - (b) occasions at which a financial service provider may be inspected; 30
  - (c) the minimum requirements and format of the notice of inspection;
  - (d) the minimum duration of the inspection;
  - (e) the steps the financial service provider has to carry out to enable the inspection;
  - (f) the time period within which the record of documents inspected and findings arrived at, must be provided by the Regulator to the financial service provider; and 35
  - (g) such other requirements to be met by the financial service provider to enable the Regulator to collect accurate information about the financial service provider. 40
- (7) Regulations under this section must balance the requirements of the Regulator with the requirement to, –

- (a) cause minimum disruption in the business of financial service providers;  
and
  - (b) not impose unreasonable burden upon financial service providers.
- (8) The Regulator must make bye-laws governing the process for initiating and conducting inspections.
- (9) The requirements stipulated in this section will be applicable to the Corporation in its inspection of covered service providers.
- (10) The Corporation may specify the circumstances in which it may dispense with the requirements stipulated under this section where it inspects a covered service provider designated as being in imminent risk to viability or critical risk to viability.

## CHAPTER 22

### INVESTIGATIONS

77. (1) Where the Regulator has information or reasonable grounds to suspect that any person is violating or has violated any provision of the Act, the Regulator may investigate such violation. Commencing investigations.
- (2) The Regulator must appoint one or more investigators to investigate the violation and record such appointment.
- (3) The record of appointment must provide for –
- (a) the appointment of the investigator;
  - (b) reason for commencing the investigation;
  - (c) scope of the investigation;
  - (d) the duration of the investigation, which will not exceed one hundred and eighty days in the first instance; and
  - (e) the method of reporting of the investigation.
- (4) The Regulator may modify the terms of appointment contained in sub-section (3), if the circumstances of the investigation require such modification.
- (5) In this Chapter, “investigator” means an employee of such designation as would be appropriate under the bye-laws for appointment as an investigator.
78. (1) The Regulator may investigate the following persons under this Act – Persons who may be investigated.
- (a) a financial service provider;
  - (b) an employee or financial representative of a financial service provider;
  - (c) a person carrying out any activity subject to regulation by a Financial Agency and the person in control of such person;
  - (d) a person suspected of being involved in a current account transaction or capital account transaction in violation of this Act;
  - (e) a person suspected of market abuse; and
  - (f) a person suspected of having aided or abetted a violation under this Act.



- (2) The Regulator may in the course of investigation require any other person who is likely to have information relevant or helpful to the investigation being carried out, to submit such information as may be reasonably required by it for the purpose of such investigation.
- (3) Where the Regulator requisitions any information under sub-section (2), it must provide to the person from whom such information is sought the reasons for seeking such information from such person. 5
- (4) The person requisitioned under sub-section (2) is bound to provide such information.
79. (1) The investigator must exercise the powers contained in section 80 only after giving a notice in writing to the person under investigation stating – Notice of investigation. 10
- (a) the relationship between the person who is investigated and the scope of the investigation under section 77(3); and
- (b) the reasons recorded to such person.
80. (1) The investigator will have the same powers as are vested in a civil court under the Civil Procedure Code while trying a suit, in respect of the following matters, Powers of the investigator. 15
- 
- (a) the discovery and production of any document, including books of account;
- (b) summoning and enforcing the attendance of any individual and examining him on oath; 20
- (c) requiring such individuals to produce relevant records and documents; and
- (d) issuing commissions for the examination of persons or documents.
- (2) The investigator may require any employee, director or person in control of a person under investigation to, – 25
- (a) produce any book, document, records or information relating to the person under investigation, which are in his custody or power; and
- (b) appear in person or through an authorized representative before the investigator and respond to the questions of the investigator. 30
- (3) Every person referred to in sub-section (2) must produce to the investigator, all the books, documents, records and information required by the investigator, which are in his custody or power.
- (4) The investigator may, –
- (a) make copies of any document, record or information produced; and 35
- (b) retain the books, accounts or any other records obtained in the course of investigation, for a period not exceeding thirty days from the date on which they are obtained.
- (5) Where the investigator proposes to retain such books, accounts or records for a period exceeding thirty days, it must comply with the process set out in section 81. 40
- (6) Any copy of a document or record made by the investigator will be presumed to be a true and accurate copy, unless evidence is produced to the contrary.

Search and seizure.

81. (1) An investigator may, –

- (a) enter and search the premises of the person being investigated;
- (b) seize and retain custody of books, accounts or any other records of the person being investigated;
- 5 (c) impound and retain the securities in respect of any transaction under investigation;
- (d) attach, for a period not exceeding thirty days, the proceeds, involved in the violation being investigated, in the bank accounts of any financial service provider.
- 10 (2) If an investigator proposes to use the powers under sub-section (1), the investigator, –
  - (a) must make an application to the Magistrate;
  - (b) may requisition the services of any police officer or any officer of the Central Government or both, to assist him for all or any of the purposes set out in sub-section (1), and it will be the duty of every such officer to comply with such requisition.
- (3) The Magistrate may issue an order authorising the investigator to carry out the actions contained in sub-section (1) if the investigator satisfies the Magistrate that, –
  - 20 (a) the person may not co-operate with the investigation; or
  - (b) any direction to the person may lead to destruction of information or records which is required by the investigator.
- (4) The order of the Magistrate under sub-section (3) will have the same legal effect as a warrant issued by an appropriate court under the Criminal Procedure Code.
- 25 (5) The investigator may keep in its custody the books, accounts and other records seized under this section for a period set out in the order of the Magistrate, not exceeding the duration of the investigation.
- (6) The investigator must, –
  - 30 (a) return such books, accounts and records to the person from whose custody or power they were seized, with or without identification marks placed on them or any part of them; and
  - (b) inform the Magistrate of such return.
- 35 (7) Except as otherwise provided in this section, every search or seizure made under this section must be carried out in accordance with the provisions of the Criminal Procedure Code relating to searches or seizures made under that Code.
- (8) In this Chapter, “Magistrate” means a Magistrate or Judge of such designated court in Mumbai as may be notified by the Central Government.

40 82. The investigator must make the following reports to the Regulator containing such details as may be stipulated in the bye-laws of the Regulator, –

Investigation report.

- (a) after the lapse of time mentioned in the record of appointment, an interim report indicating the reasons for not completing the investigation within such time; and

(b) after the conclusion of the investigation, a final report.

- 83.** (1) An investigator may apply to an administrative law member for an order under this section if pending investigation the investigator has reasonable grounds to believe that a person being investigated is taking or about to take any action which, –
- Preventive measures during investigation.  
5
- (a) constitutes a violation of any provision of law enforced by the Regulator; and
- (b) may prevent the investigator from conducting the investigation effectively.
- (2) An application under sub-section (1) must state the reasons justifying the action sought to be taken. 10
- (3) The administrative law member may issue an order under sub-section (1) if he has reasonable grounds to believe that if no order is passed, –
- (a) consumers of the financial service provider will suffer injury which may not be compensated adequately after the investigation is complete;
- (b) the investigator will not be able to effectively carry out the investigation; 15  
or
- (c) any eventual enforcement action that may be taken by the Regulator after the investigation is complete will not be enforceable due to change of circumstances.
- (4) If the administrative law member is satisfied that any of the grounds mentioned in sub-section (3) have been met, he may issue an order requiring the person being investigated, – 20
- (a) to cease or desist from carrying out any action that would meet the objectives of issuing the order as mentioned in sub-section (3);
- (b) to maintain records in a manner and form directed by the investigator; 25  
and
- (c) to keep any monies collected from consumers in a separate account or deposit such monies with the Regulator.
- (5) An order under this section must balance the action ordered under sub-section (4) with the requirement to cause least possible disruption to the person to whom such order applies. 30
- (6) Where the administrative law member proposes to issue an order under this section, he must issue a show cause notice to the person who is sought to be directed to take the action under the order.
- (7) In exceptional circumstances, an order under this section may be passed without issuing such show cause notice, but such person will be given a hearing at the earliest possible opportunity before an administrative law member. 35
- (8) After a hearing under sub-section (7), the administrative law member must pass a new order modifying, confirming, recalling or setting aside the previous order. 40
- (9) An order passed under this section will remain in force for a period of ninety days.
- (10) Upon the expiry of ninety days, if the investigation has not been completed, the administrative law member may, upon the application of the investigator, extend the order for a further period of ninety days, if – 45

- (a) the conditions contained in sub-section (3) have been met; and
- (b) the administrative law member, by an order, determines that a longer period is appropriate for completion of the investigation.

## CHAPTER 23

## OFFENCES UNDER THIS PART

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- 84.** A person commits a Class B offence, if he fails without reasonable cause or refuses to – Failure to co-operate.

(a) produce to the investigator any book, document, record or information under section 80(2); or

- 10 (b) appear before the investigator when required to do so or answer any question which is put to him by the investigator under section 80(2).

- 85.** A person who deliberately or recklessly gives a Financial Agency material information that is false or misleading is guilty of a Class A offence. Misleading a Financial Agency.

- 15 **86.** A person commits a Class A offence if he violates an order passed under section 83. Failure to comply with preventive measure.

## PART VI

## QUASI-JUDICIAL FUNCTIONS OF FINANCIAL AGENCIES

## CHAPTER 24

## ADMINISTRATIVE LAW WING

5

87. Each Financial Agency, except the Debt Agency and the Redress Agency will have a separate administrative law wing which will perform the quasi-judicial functions of that Financial Agency. Performance of quasi-judicial functions.
88. (1) The administrative law wing will comprise at least one administrative law member and administrative law officers. Composition and role of administrative law wing.
- (2) The bye-laws must state, –
- (a) the number of administrative law officers that the Financial Agency will have;
  - (b) the levels of seniority of administrative law officers; and
  - (c) the terms of employment of administrative law officers. 15
- (3) Administrative law officers must exclusively perform the functions assigned to them by the administrative law member.
- (4) Each Financial Agency must ensure the operational segregation, independence and neutrality of administrative law officers.
89. (1) The Central Government must, – Administrative law member.
- (a) for every Financial Agency except the Council, designate at least one of the executive members as an administrative law member at the time of appointment of such member;
  - (b) for the Council, appoint one administrative law member on the Executive Committee. 25
- (2) Where there are more than one administrative law members, the Central Government must designate one of such administrative law members as being responsible for exercising the powers of general direction and control in respect of all the administrative matters of the administrative law wing including, –
- (a) the assessment and review of the performance of administrative law officers of that Financial Agency; 30
  - (b) issuing orders in accordance with section 83; and
  - (c) the review of orders passed by administrative law officers of that Financial Agency under section 99.
- (3) If there is a vacancy in the position of an administrative law member, then until that vacancy is filled, – 35
- (a) the seniormost administrative law member of that Financial Agency will discharge all the functions of the administrative law member whose position has fallen vacant; or

- (b) in the absence of any other administrative law member, the seniormost administrative law officer in that Financial Agency will exercise the powers under section 83 and section 99, except the function of reviewing orders that were passed by him.
- 5 (4) The administrative law member designated under sub-section (2) must, –
- (a) allocate the work amongst himself and the other administrative law members; and
- (b) determine the jurisdiction of each administrative law officer.
- 10 (5) An administrative law member must not be involved in any function of the Financial Agency that conflicts with the independence and neutrality of that member, including the undertaking of enforcement actions.
- (6) The administrative law member must –
- (a) assign only quasi-judicial functions to administrative law officers;
- 15 (b) ensure that the allocation of functions of administrative law officers does not conflict with their independence and accountability.
90. The performance of administrative law officers must be appraised only by the administrative law member designated by the Central Government under section 89(2).
- Supervision of administrative law wing.

## CHAPTER 25

## 20 SHOW CAUSE NOTICES AND ORDERS

91. (1) A show cause notice issued under this Act must, –
- (a) be in writing;
- (b) state the action which the Financial Agency proposes to take;
- (c) give causes requiring the proposed action;
- 25 (d) describe the effect of the proposed action; and
- (e) state whether any material exists in support of the show cause notice.
- (2) The show cause notice must provide the noticee a reasonable period, which must not be less than twenty-one days, within which the noticee may make representations to the Financial Agency.
- 30 (3) The Financial Agency may grant a reasonable extension of time for making the representations.
- (4) After the period under sub-section (2) or as extended under sub-section (3) has expired, the Financial Agency must decide within a reasonable period whether to issue an order undertaking an enforcement action.
- 35 (5) In sub-section (2), the opportunity to make representations must include a hearing before an administrative law officer or as the case may be an administrative law member.
- (6) A Financial Agency must –
- (a) not publish any show cause notice issued by it; and
- 40 (b) keep it confidential.
- Content and standard of show cause notices.

- (7) In this Chapter, “noticee” means a person to whom a show cause notice or order applies.
92. When a Financial Agency issues any show cause notice or order, it must allow the noticee access to the material on which the show cause notice or order is based, which may support or undermine the proposed action. Access to material with regard to show cause notice and order.  
5
93. (1) Every order under this Act must, – Content and standard of orders.
- (a) be in writing;
  - (b) state the reasons for the order;
  - (c) state the material relied upon in making the order; and
  - (d) clearly state – 10
    - (i) the right if any, to have the matter reviewed by the administrative law member or appealed before the Tribunal under this Act; and
    - (ii) the time-limit for making an application for such review or preferring an appeal.
- (2) If the order was preceded by a show cause notice, the action to which the order relates must be the same action proposed in the show cause notice. 15
- (3) An order does not, unless it states otherwise with reasons, become effective until thirty days have elapsed from the date of issue of the order.
- (4) An order which requires a person to take certain identified actions must provide reasonable time to such person to perform such actions. 20
- (5) A Financial Agency must publish all orders passed by it unless they fall under the exception under sub-section (6)(b).
- (6) A Financial Agency must not publish an order, if – 25
- (a) it involves a private warning; or
  - (b) not publishing such order is in the interests of the consumers, and the reasons for the same are recorded in writing.
94. (1) Every Financial Agency must make regulations governing the show cause notices and orders it issues. Requirement to make regulations.
- (2) The regulations must – 30
- (a) ensure that show cause notices and orders are issued and responses to show cause notices are considered, only by administrative law officers;
  - (b) ensure that only the administrative law member issues show cause notices and orders and considers the responses received in relation proceedings under sections 83 and 318 respectively; and
  - (c) state the procedure the Financial Agency will follow to issue orders. 35
- (3) The Financial Agency must make a report of every breach of regulations made under this section and include such report as a part of the annual report of the Financial Agency.

## CHAPTER 26

### ENFORCEMENT ACTIONS

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95. (1) Each of the following constitutes an “enforcement action” under this Act, – Types of enforcement actions.

- (a) issuance of a private warning;
  - (b) issuance of a public statement;
  - (c) issuance of a direction requiring the person to correct a violation;
  - (d) imposition of a monetary penalty; and
  - 5 (e) variation, suspension or cancellation of an authorisation, registration, approval or exemption granted by the Financial Agency to the person, which are related to the violation.
- (2) The Regulator may undertake one or more enforcement actions against a person for, –
- 10 (a) violation of any applicable provision of this Act;
  - (b) violation of any order or direction issued by a Financial Agency under this Act; or
  - (c) aiding or attempting market abuse.
- (3) When a Regulator issues a private warning, it must not publish such warning, but may provide copies of the warning to any Financial Agency on a confidential basis.
- (4) Where a person violates an order or direction issued by a Financial Agency other than a Regulator, such Financial Agency may make a reference to the Regulator for taking an enforcement action.
- 20 (5) Where a Financial Agency makes a reference to the Regulator for violation of any provision of this Act administered by the Financial Agency, the Regulator may take enforcement action.
- (6) The Regulator must not take an enforcement action in the nature of suspending, varying or cancelling a registration, approval or exemption granted by a Financial Agency unless the Financial Agency has sought such enforcement action in its reference.
- 25 (7) The memorandum of understanding between a Financial Agency and the Regulator must include the manner in which a Financial Agency may make a reference to the Regulator for taking enforcement action and the manner in which the Regulator must deal with such reference.
- 30
- 96.** (1) Any enforcement action taken by a Regulator must be proportionate to the violation in respect of which the enforcement action is proposed to be undertaken.
- (2) The Regulator must consider the following factors while determining the enforcement action to be taken against a person, –
- 35 (a) the nature and seriousness of the violation committed by the person, including whether the violation was –
    - (i) deliberately carried out by the person;
    - (ii) caused due to the recklessness of the person; or
    - (iii) caused due to negligence on the part of the person;
  - 40 (b) the consequences and impact of the violation, including the extent of, –
    - (i) benefit or unfair advantage gained by the person as a result of the violation; and
    - (ii) loss caused, or likely to be caused, to consumers or other persons as a result of the violation;

Factors for determining appropriate enforcement action.



- (c) the conduct of the person upon the discovery of the occurrence of the violation;
  - (d) repetitive nature of the violation; and
  - (e) offences committed by the person under this Act.
- (3) While determining the amount of monetary penalty to be imposed on a person involved in market abuse, the Regulator must, in addition, consider the extent to which the market abuse had an impact on the segment of the market on which it was committed and on other segments of the market. 5
- (4) If the violation was due to negligence and did not cause any substantial loss to any person, the Regulator must not impose an enforcement action in the nature of varying, suspending or cancelling an authorisation, registration, approval or exemption granted by a Financial Agency to the person. 10
- (5) An enforcement action by the Regulator for a violation does not bar the Regulator from prosecuting a person for an offence under this Act, but any fine required to be paid upon conviction for an offence may be set off against any monetary penalty paid by such person in an enforcement action in respect of the same cause of action. 15

## CHAPTER 27

### PROCEDURE FOR ENFORCEMENT ACTIONS

97. (1) The Regulator must issue a show cause notice to a person against whom it proposes to take an enforcement action. 20 Show cause notice.
- (2) The show cause notice must contain an assessment by the Regulator of the manner in which the factors under section 96 are applicable to the violation committed by the person.
98. (1) The Financial Agency must give a discontinuance notice to the concerned person if it decides not to take an action proposed in a show cause notice. Conclusion of proceedings through discontinuance notice.
- (2) A discontinuance notice must identify the action or actions which are being discontinued.
- (3) A discontinuance notice may be published by the Financial Agency if the person to whom such discontinuance notice relates, requests such publication. 30
99. (1) A person against whom an order is passed may make an application to the administrative law member of the Regulator for review of the order, within fourteen days from the date of receipt of such order. Procedure for review of orders.
- (2) The administrative law member must pass an order either setting aside or confirming, with or without modification, the order under review. 35

## CHAPTER 28

### PENALTIES

100. (1) The maximum monetary penalty that may be imposed will be determined in the following manner, – Maximum amount of monetary penalties.

- (a) if the violation was committed deliberately, the maximum monetary penalty that may be imposed will be higher of, –
- (i) three times the amount of the loss caused, or likely to have been caused, to consumers or other persons as a result of the violation; or
  - (ii) three times the amount of the benefit or unfair advantage gained as a result of the violation;
- (b) if the violation was caused due to recklessness, the maximum monetary penalty that may be imposed will be higher of –
- (i) two times the amount of the loss caused, or likely to have been caused, to consumers or other persons as a result of the violation; or
  - (ii) two times the amount of the benefit or unfair advantage gained as a result of the violation;
- (c) if the violation was caused due to negligence, the maximum penalty that may be imposed will be the higher of –
- (i) one and a half times the amount of the loss caused, or likely to have been caused, to consumers or other persons as a result of the violation; or
  - (ii) one and a half times the amount of the benefit or unfair advantage gained as a result of the violation.
- (2) The total amount of the monetary penalty must not be more than rupees one crore, or any other amount that the Central Government may prescribe from time to time, if the amount of loss caused, or likely to have been caused or the amount of gain made or likely to have been made as a result of the violation, is trivial.
- (3) The Regulator must make bye-laws containing guidelines on the amount of monetary penalty that it may impose for a class or classes of violations under this Act.
101. (1) The Regulator may direct any person who made profit or averted loss by indulging in any activity in contravention of this Act, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.
- (2) The Regulator may provide restitution to persons who have been affected by a violation of the Act, from the amount so disgorged, if the following conditions are met, –
- (a) the loss suffered by the persons is directly attributable to the violation;
  - (b) the persons who have suffered loss due to the violation can be reasonably identified; and
  - (c) the amount disgorged is sufficient to provide restitution to similarly placed persons.
- (3) The Regulator must specify –
- (a) the procedure for claiming restitution under this section;
  - (b) the time-period within which such restitution may be claimed; and
  - (c) other matters incidental to enabling the Regulator to provide restitution from the amount disgorged under this section.

Disgorgement.

- (4) If any amount is left with the Regulator after providing restitution, it must transfer such amount to the Consolidated Fund of India.
- (5) This section does not prevent an aggrieved person from pursuing other legal remedies against a person who has committed a violation under this Act.
- (6) In any proceeding brought under sub-section (5), the amount payable by a person who has committed a violation to the aggrieved person, must be reduced by any amount which the aggrieved person has received under this section. 5
- 102.** (1) The Regulator must appoint atleast one of its employees as a Recovery Officer for the purpose of this Act. Recovery of amounts.
- (2) The Recovery Officer may exercise the powers set out in sub-section (3) if a person fails to comply with, – 10
- (a) an order imposing a monetary penalty;
- (b) an order of the Tribunal imposing a monetary penalty or costs under this Act; or
- (c) an adjudication order for payment of compensation passed by the Redress Agency. 15
- (3) The Recovery Officer may recover a monetary penalty or costs referred to in sub-section (2) in any of the following ways, in descending order of priority, namely –
- (a) attachment and sale of movable property belonging to the defaulter; 20
- (b) attachment of the bank account of the defaulter;
- (c) attachment and sale of immovable property owned by the defaulter;
- (d) where the defaulter is an individual, arrest and detention of such individual in prison;
- (e) appointing a receiver for the management of the movable and immovable properties belonging to the defaulter. 25
- (4) For the purpose of such recovery, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, will apply with necessary modifications as if the said provisions and rules, – 30
- (a) were the provisions of this Act; and
- (b) referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961 (43 of 1961).
- (5) In this section, the movable or immovable property or monies held in a bank account will include property or monies which meet all the following conditions, – 35
- (a) property or monies transferred by the defaulter without adequate consideration;
- (b) such transfer is made, – 40
- (i) on or after the date on which the amount in the certificate drawn up under section 222 of the Income Tax Act, 1961 (43 of 1961) had become due; and
- (ii) to the defaulter's spouse, minor child, son's wife or son's minor child; 45

- (c) such property or monies are held by, or stand in the name of, any of the persons referred to in sub-clause (b), including where they are so held or stand in the name of such persons after they have attained the age of majority.

5 (6) In this section, “defaulter” means the person referred to in sub-section (2).

103. The Regulator must transfer all monies collected by it from the imposition of any penalties to the Consolidated Fund of India.

Transfer of penalties to the Consolidated Fund of India.

104. (1) Any person, against whom the Regulator has issued a show cause notice under Chapter 27 may at any time before an order is issued under that Chapter, make an application to the administrative law member of the Regulator for settlement of the violation alleged in the show cause notice.

Settlement of enforcement action proceedings.

(2) The administrative law member may upon receipt of the application either, –

(a) accept the application by recording such acceptance in a settlement agreement to be executed by the Regulator and such person; or

15 (b) reject the application for settlement.

(3) In considering an application under this section, the Regulator must consider the following factors, –

(a) gravity of the violation alleged in the show cause notice, including whether the violation has been classified as a criminal offence under this Act;

20 (b) the conduct of the person upon the discovery of the occurrence of the alleged violation;

(c) repetitive nature of the alleged violation;

(d) benefit or unfair advantage gained by the person as a result of the alleged violation;

25 (e) loss caused, or likely to be caused, to consumers or other persons as a result of the alleged violation; and

(f) whether the alleged violation has impacted the integrity of the financial system.

(4) The settlement agreement must require the person named in the show cause notice to do one or more of the following, –

30 (a) pay a fee in such amount to the Regulator as may be recorded in the settlement agreement;

(b) disgorge an amount equivalent to the gain made or loss averted by the alleged violation; and

35 (c) take such corrective and remedial steps as may be recorded in the settlement agreement.

(5) If a settlement agreement requires a person to take the step set out in sub-section (4)(b), the Regulator may provide restitution to the persons who have suffered by the alleged violation in accordance with the procedure for restitution under section 101.

40

(6) The Regulator must specify, –

(a) the procedure for making an application for a settlement under this section; and

- (b) the process for arriving at a settlement agreement.
- (7) The regulations must ensure that the process for arriving at a settlement agreement is transparent and consistent across all violations of a specified class.
- (8) Neither the Regulator nor the person against whom the show cause notice is issued may rely on or introduce as evidence during any subsequent proceedings in respect of the same or another cause of action, – 5
  - (a) views expressed, suggestions or proposals made by either party in respect of a possible settlement;
  - (b) admissions made by either party in the proceedings for settlement; and
  - (c) the fact that the other party had indicated his willingness to accept a proposal for settlement. 10
- (9) The Regulator must publish a copy of a settlement agreement immediately upon its execution.
- (10) A settlement agreement is, –
  - (a) final and binding as between the Regulator and the person who executes it; 15
  - (b) enforceable as an order; and
  - (c) not appealable before the Tribunal or any other court or authority.
- (11) If the Regulator has executed a settlement agreement in respect of an alleged violation, it must – 20
  - (a) neither institute any proceedings for taking an enforcement action in respect of the same cause of action as is covered in the settlement agreement;
  - (b) nor institute criminal proceedings against the person in respect of the same cause of action. 25
- (12) The provisions of Chapter 20 will not apply to applications made under this section.

## PART VII

## FINANCIAL CONSUMER PROTECTION

## CHAPTER 29

## OBJECTIVES AND PRINCIPLES

5 **105.** Regulations under this Part must further the following objectives, –

Objectives.

- (a) protecting and promoting the interests of consumers; and
- (b) promoting public awareness of matters relating to financial products and financial services.

10 **106. (1)** The Regulator must consider and balance the following principles while making regulations under this Part, –

Principles of consumer protection to be considered by the Regulator.

- (a) the level of protection required for a consumer may vary depending on the following, –

- (i) the level of knowledge, experience and expertise of the consumer;
- (ii) the nature and degree of risk embodied in the financial product or financial service being availed by the consumer; and
- (iii) the extent of dependence of the consumer on the financial service provider;

- (b) consumers must ordinarily take responsibility for their transactional decisions;

- (c) any obligation imposed on a financial service provider should be reasonably commensurate with the anticipated aggregate benefits for consumers;

- (d) competition in the markets for financial products and financial services is in the interests of consumers and includes, –

- (i) minimisation of barriers to competition; and
- (ii) similar treatment of financial service providers, offering similar financial products or similar financial services to similarly placed consumers;

- (e) access to financial products and financial services is in the interest of consumers; and

- (f) innovation in financial products and financial services is in the interests of consumers.

(2) While making regulations, the Regulator must, –

- (a) consider information received from the Redress Agency under section 142; and

- (b) also publish a statement describing how each of the principles under subsection (1) and the information received under clause (a), have been considered and addressed.

40 **107.** While providing any financial product or financial service, every financial service provider must consider, –

Principles of consumer protection to be considered by financial service providers.

- (a) the level of knowledge, experience and expertise of the consumer;

- (b) the nature and degree of risk embodied in the financial product or financial service being availed by the consumer; and
- (c) the extent of dependence of the consumer on the financial service provider.

## CHAPTER 30

## PROTECTION OF CONSUMERS

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108. (1) A financial service provider and a financial representative must exercise professional diligence while entering into a financial contract or discharging any obligation under it.		Requirement of professional diligence.
109. (1) An unfair provision in a non-negotiated financial contract is void.		Unfair provision in financial contracts.
(2) For the purposes of this section, a provision in a financial contract is “unfair”, if it, –	10	
(a) causes a significant imbalance in the rights and obligations of the parties to the financial contract, to the detriment of the consumer; and		
(b) is not reasonably necessary to protect the legitimate interests of the financial service provider.	15	
(3) The factors to be taken into account while determining whether a provision in a financial contract is unfair include, –		
(a) the nature of the financial product or financial service offered under the financial contract;		
(b) the extent to which the provision meets any of the following conditions, –	20	
(i) it is not expressed in reasonably plain language that is likely to be understood by the consumer;		
(ii) it is not legible and presented clearly; and		
(iii) it is not readily available to the consumer affected by the provision;		
(c) the extent to which the provision allows a consumer to compare it with other contracts for similar financial products or financial services; and	25	
(d) the financial contract as a whole and the terms of any other contract on which it is dependent.		
(4) For the purposes of this section, a financial contract is a “non-negotiated contract” if, –	30	
(a) it is substantially not negotiable by the consumer; or		
(b) as compared to the consumer, the financial service provider has a substantially greater bargaining power in determining the provisions of the financial contract.		
(5) A determination of whether a financial contract is “substantially not negotiable” under sub-section (4)(a) must not consider any provision in the financial contract that, –	35	
(a) defines the financial product or financial service offered under the contract;		
(b) sets the price that is paid or payable, for the provision of the financial product or financial service under the contract if such price has been clearly disclosed to the consumer; or	40	

- (c) is required or expressly permitted under any law or regulations.
- (6) For the purposes of sub-section (5)(b), the term 'price' does not include an amount, the payment of which is contingent on the occurrence or non-occurrence of any particular event.
- 5 (7) A determination of whether a financial service provider has "substantially greater bargaining power" under sub-section (4)(b) must consider, –
- (a) an overall and substantial assessment of the financial contract; and
- (b) the substantial circumstances surrounding the financial contract.
- 10 (8) The onus of proving that a contract is not a non-negotiated financial contract will be on the financial service provider.
- (9) If a provision in a non-negotiated financial contract is determined to be unfair, the parties to that financial contract will continue to be bound by the remaining provisions of that financial contract to the extent that the financial contract is capable of enforcement without the unfair provision.
- 15 (10) The Regulator may specify provisions that will be presumed to be unfair provisions under this section.
- 110.** (1) Unfair conduct in relation to financial products or financial services is prohibited.
- (2) For the purposes of this section, "unfair conduct" means an act or omission of a financial service provider or its financial representative, that significantly impairs or is likely to significantly impair the ability of a consumer to make a transactional decision and includes, –
- 20 (a) misleading conduct; and
- (b) abusive conduct.
- 25 (3) For the purposes of this section, "misleading conduct" means an act or omission of a financial service provider or its financial representative in relation to a financial product or financial service, that satisfies all the following conditions, –
- (a) it is likely to cause the consumer to take a transactional decision that the consumer would not have otherwise reasonably taken;
- 30 (b) the conduct involves, –
- (i) providing the consumer with inaccurate information or information that the financial service provider or financial representative does not believe to be true; or
- 35 (ii) providing accurate information to the consumer in a manner that is deceptive;
- (c) the conduct pertains to the following factors, –
- (i) the main characteristics of a financial product or financial service, including its features, benefits and risks to the consumer;
- 40 (ii) the consumer's need for a particular financial product or financial service or its suitability for the consumer;
- (iii) the consideration to be paid for the financial product or financial service or the manner in which the consideration is calculated;

Unfair conduct  
prohibited.



- (iv) the existence, exclusion or effect of any provision in a financial contract, which is a material provision in the context of that financial contract;
    - (v) the nature, attributes and rights of the financial service provider, including its identity, regulatory status and affiliations; or 5
    - (vi) the rights of the consumer under any law or regulations.
  - (4) For the purposes of this section, “abusive conduct” means an act or omission of a financial service provider or its financial representative in relation to a financial product or financial service that, –
    - (a) involves the use of coercion or undue influence; and 10
    - (b) causes or is likely to cause the consumer to take a transactional decision that the consumer would not have taken otherwise.
  - (5) A determination of whether a conduct uses coercion or undue influence must consider the following, –
    - (a) the timing, location, nature or persistence of the conduct; 15
    - (b) the use of threatening or abusive language or behaviour;
    - (c) the relative bargaining power of the parties;
    - (d) any non-contractual restrictions imposed by the financial service provider, where the consumer wishes to exercise rights under a financial contract, including – 20
      - (i) the right to terminate the financial contract;
      - (ii) the right to switch to another financial product or another financial service provider; and
    - (e) a threat to take any action, depending on the circumstances in which the threat is made. 25
- Miscellaneous.
- 111.** The Regulator may specify acts and omissions that will be presumed to be unfair, misleading or abusive for the purposes of this Chapter.

## CHAPTER 31

### REQUIREMENT OF DISCLOSURE

- Initial disclosures.
- 112.** (1) A financial service provider must ensure disclosure of information that is reasonably required by a consumer to make an informed transactional decision. 30
- (2) A financial service provider will be deemed to not have ensured disclosure of information, unless such disclosure is made, –
- (a) sufficiently before the consumer enters into a financial contract, so as to allow the consumer reasonable time to understand the information; 35
  - (b) in writing and in a manner that is likely to be understood by the consumer; and
  - (c) in a manner that enables the consumer to make a reasonable comparison of the financial product or financial service with other similar financial products or financial services. 40
- (3) The Regulator may specify the information that must be disclosed to a consumer in relation to a financial product or financial service, which may include –

- (a) the main characteristics of the financial product or financial service, including its features, benefits and risks to the consumer;
- (b) the consideration to be paid for the financial product or financial service;
- (c) information relating to specified provisions, and their existence, exclusion or effect, in the financial contract;
- (d) the attributes of the financial service provider including its identity and regulatory status;
- (e) the contact details of the financial service provider and the methods of communication to be used between the financial service provider and the consumer;
- (f) the rights of the consumer to rescind a financial contract; and
- (g) the rights of the consumer under any law or regulations.

**113.** (1) A financial service provider must provide a consumer that is availing a financial product or financial service provided by it, with the following continuing disclosures, –

Continuing disclosures.

- (a) any material change to the information that was required to be disclosed under section 112;
- (b) information relating to the status or performance of a financial product held or financial service availed of by the consumer as may be required to assess the rights or interests of the consumer in that financial product or financial service; and
- (c) any other information that may be specified.

(2) A continuing disclosure must be made –

- (a) within a reasonable period of time of the occurrence of a material change or at reasonable periodic intervals, as applicable; and
- (b) in writing and in a manner that is likely to be understood by the consumer.

(3) The Regulator may specify the, –

- (a) nature of information that must be disclosed on a continuing basis to a consumer that has availed of a specified financial product or specified financial service;
- (b) time-period within which continuing disclosures of information are to be made for a specified financial product or specified financial service; or
- (c) circumstances in which the consumer will have a right to terminate the financial contract upon a continuing disclosure being made.

**114.** The Regulator may specify, –

Regulations regarding disclosure requirements.

- (a) the manner in which the disclosure of information relating to a financial product or financial service must be made to a consumer;
- (b) exemptions for a class of financial service providers, from the application of all or any portions of this Chapter; or
- (c) modifications to the manner in, or extent to which, all or any portions of the Chapter applies to a class of financial service providers.

## CHAPTER 32

## PROTECTION OF PERSONAL INFORMATION

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| <p><b>115.</b> In this Chapter, “personal information” means, –</p> <p>(a) any information that allows a consumer to be identified; or</p> <p>(b) any information that discloses the identity of a consumer with respect to any transaction in, or ownership of, any financial product or financial service.</p>   | <p>Meaning of personal information.</p> <p>5</p>   |
| <p><b>116.</b> (1) A financial service provider must, –</p> <p>(a) maintain the confidentiality of personal information and not disclose it to a third party except in a manner expressly permitted under sub-section (2);</p> <p>(b) make reasonable efforts to ensure that any personal information that it holds is accurate, up to date and complete;</p> <p>(c) ensure that consumers can obtain reasonable access to their personal information; and</p> <p>(d) allow consumers an effective opportunity to seek modifications to their personal information to ensure that the personal information held by the financial service provider is accurate, up to date and complete.</p> <p>(2) A financial service provider may disclose personal information to a third party only if any of the following conditions are met, –</p> <p>(a) it has obtained the consent of the consumer and, –</p> <p style="padding-left: 20px;">(i) the consumer has been informed of the specific purposes for which the disclosure may be made;</p> <p style="padding-left: 20px;">(ii) the consumer has been given an opportunity to refuse;</p> <p style="padding-left: 20px;">(iii) the consent is obtained prior to disclosure; and</p> <p style="padding-left: 20px;">(iv) the consent is recorded in writing.</p> <p>(b) the consumer has directed the disclosure to be made;</p> <p>(c) a law or regulation requires the financial service provider to make such disclosure;</p> <p>(d) a court or tribunal has issued an order for such information to be disclosed;</p> <p>(e) the third party is an agent of the financial service provider and the financial service provider has made, –</p> <p style="padding-left: 20px;">(i) arrangements to ensure that the third party maintains confidentiality of the personal information of the consumer;</p> <p style="padding-left: 20px;">(ii) such disclosure only for the purpose of providing the financial service or financial product to the consumer, or to protect the financial service provider from fraud or false claims;</p> <p style="padding-left: 20px;">(iii) arrangements to ensure that the third party uses the personal information only for such purpose as directed by the financial service provider; and</p> <p style="padding-left: 20px;">(iv) arrangements to ensure that the third party is not in possession of any personal information after the agency with the third party ceases to exist.</p> | <p>Duty to protect personal information.</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> |

- (3) For the purposes of this section, “third party” includes a related party of the financial service provider.

**117.** The Regulator may specify, –

Regulations regarding personal information.

- (a) requirements for the collection, storage, modification and protection of personal information by financial service providers including, –
- (i) the manner of maintenance of records of personal information;
  - (ii) the time-periods for which the records are to be maintained; and
  - (iii) the manner in which records of personal information should be dealt with after the expiry of the specified period;
- (b) mechanisms to ensure that consumers have access to, and are given an effective opportunity to seek modifications to, their personal information.

## CHAPTER 33

### REDRESS OF COMPLAINTS

- 118.** (1) A financial service provider must have in place an effective mechanism to receive and redress, in a prompt and efficient manner, complaints received from its consumers in relation to financial products or financial services provided by it or by its financial representatives.

Responsibility of financial service providers.

(2) A financial service provider must keep a consumer informed of, –

- (a) the right to seek redress for any complaints;
- (b) the processes followed by the financial service provider to receive and redress complaints; and
- (c) the process and manner in which a consumer may seek redress from the Redress Agency.

- 119.** (1) The Regulator must specify mechanisms to redress complaints in a prompt and fair manner, including, –

Regulations regarding redress of complaints.

- (a) the manner in which a complaint may be made and the time-period within which the complaint must be filed; and
- (b) the process to be followed by a financial service provider to receive and redress complaints and the time limits for each step of the process.

(2) The regulations may in addition, specify the following, –

- (a) the time-periods and intervals at which information under section 118(2) has to be provided;
- (b) the form and manner in which information under section 118(2) has to be provided, including a requirement to make the information available on a financial service provider’s website;
- (c) a requirement to maintain records of each complaint received by a financial service provider and the measures taken for its redress;
- (d) a requirement to submit periodic reports to the Regulator about the receipt and redress of complaints in the specified manner; and
- (e) the process to be followed where two or more financial service providers may be jointly responsible for the redress of a complaint.

## CHAPTER 34

## SUITABILITY OF ADVICE FOR RETAIL CONSUMERS

<b>120.</b> (1) A retail advisor must, –	Assessment of suitability.
(a) make reasonable efforts to obtain accurate and adequate information about the relevant personal circumstances of a retail consumer; and	5
(b) give advice that is suitable for the retail consumer.	
(2) The failure to consider any information that was not reasonably available at the time of giving advice pursuant to the exercise of professional diligence, does not constitute a violation of sub-section (1).	
(3) If it is reasonably apparent to a retail advisor that the available information regarding the relevant personal circumstances of a retail consumer is inaccurate or incomplete, the advisor must warn the retail consumer of the consequences of proceeding on the basis of such inaccurate or incomplete information.	10
(4) If a retail consumer intends to avail of a financial product or financial service specified under section 121, which the retail advisor determines unsuitable for the retail consumer, the retail advisor, –	15
(a) must clearly communicate its advice to the retail consumer in writing and in a manner that is likely to be understood by the retail consumer; and	
(b) may provide the financial product or financial service requested by the retail consumer only after complying with clause (a) and obtaining a written acknowledgement from the retail consumer.	20
<b>121.</b> (1) The Regulator must specify the financial products or financial services which may be provided to retail consumers or a class of retail consumers, only after advice has been given to them under section 120.	Regulations regarding suitability of advice.
(2) The Regulator may specify, –	25
(a) the information required to determine the relevant personal circumstances of a retail consumer for a specified financial product or specified financial service; or	
(b) the types of communications issued by a financial service provider to a retail consumer that would not constitute advice for the purposes of section 120.	30
(3) The Regulator must take into account the following factors while making regulations under sub-sections (1) and (2), –	
(a) the complexity and the risks related to a financial product and financial service;	35
(b) the extent to which the cost of seeking information about the relevant personal circumstances of retail consumers might restrict the access of retail consumers to a financial product or financial service; and	
(c) the extent to which the disclosures made under sections 112 to 114 allow retail consumers to assess the suitability of a financial product or financial service, for their purposes.	40
<b>122.</b> (1) A retail advisor must, –	Dealing with conflicts of interests.

- (a) provide a retail consumer with information regarding any conflict of interest, including any conflicted remuneration that the retail advisor has received or expects to receive for making an advice to the retail consumer; and
  - 5 (b) give primacy to the interests of the retail consumer, regardless of any conflict of interest.
- (2) A retail advisor must -
- (a) give the information under sub-section (1)(a) in a manner that is likely to be understood by the retail consumer; and
  - 10 (b) obtain from the retail consumer a written acknowledgement of the receipt of the information.
- (3) The Regulator may specify, -
- (a) the circumstances in which a benefit received by a retail advisor would be considered to be a conflicted remuneration; or
  - 15 (b) the nature, type and structure of benefits permitted to be received by a retail advisor for a financial product or financial service.
- (4) For the purposes of this section, “conflicted remuneration” means any benefit, whether monetary or non-monetary, derived by a retail advisor from persons other than a retail consumer that could under the circumstances, reasonably be expected to influence the advice given by the retail advisor to that retail consumer.
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## CHAPTER 35

## OTHER POWERS AND FUNCTIONS OF THE REGULATOR

- 123.** (1) The following persons must register with the Regulator, -
- 25 (a) every financial representative; and
  - (b) every employee, of a financial service provider or a financial representative, who interacts with consumers, in the course of his employment.
- (2) Every person covered under sub-section (1) must make an application for registration to the Regulator.
- 30 (3) The Regulator must specify, -
- (a) the eligibility requirements for registration of individuals as employees or financial representatives;
  - (b) different eligibility requirements for registration of individuals as employees or financial representatives, for different classes of financial services; and
  - 35 (c) exemptions for specified classes of employees or financial representatives from the requirements of registration.
- (4) The Regulator must maintain, publish and keep updated a database of all persons registered under this section.
- 40 **124.** (1) A financial service provider must file all material information with the Regulator in relation to, -

Registration of certain employees and financial representatives.

File and use process for financial products.

- (a) any financial product that it proposes to offer to consumers; or
  - (b) any material variation to a financial product already offered to consumers.
- (2) The Regulator may specify, –
- (a) the information required to be filed with it in relation to any financial product, or a material variation to a financial product; and 5
  - (b) what would constitute a material variation to a financial product.
- (3) A financial service provider must not offer a financial product to consumers unless, –
- (a) it has filed all material information with the Regulator in respect of such financial product; and 10
  - (b) a period of sixty days has elapsed from the date of filing of the information with the Regulator.
- 125.** (1) A financial service provider will be held liable for any act or omission by a financial representative in connection with the provision of a financial product or financial service on behalf of the financial service provider. Responsibility of financial service providers for financial representatives. 15
- (2) Nothing contained in sub-section (1) will make a financial service provider liable for an offence committed by a financial representative.

## CHAPTER 36

### REDRESS AGENCY

- 126.** (1) The objective of the Redress Agency is to redress the complaints of retail consumers against financial service providers, received directly or forwarded by the Regulator, through mediation and adjudication. Redress through mediation and adjudication. 20
- (2) The Redress Agency must discharge its functions through, –
- (a) screening of complaints as per the provisions of section 129;
  - (b) mediation between a complainant and respondent to arrive at a settlement of the complaint, as per the provisions of section 130; and 25
  - (c) if a complaint is not redressed through mediation, through adjudication as per the provisions of section 132.
- 127.** (1) The Redress Agency Board must appoint mediators and adjudicators with appropriate qualifications and experience. Appointment of mediators and adjudicators. 30
- (2) Mediators and adjudicators appointed by the Redress Agency Board must be persons of ability and integrity who have, –
- (a) shown capacity in dealing with consumer protection issues, including redress of consumer disputes; or
  - (b) knowledge and expertise in the fields of law or finance. 35
- (3) The Redress Agency Board must make bye-laws governing the terms of appointment of a person as a mediator or an adjudicator.
- (4) The bye-laws may provide for the appointment of mediators and adjudicators on a part-time basis.

- (5) The terms on which a mediator or an adjudicator is appointed must not be varied to his disadvantage after appointment.
- (6) The Redress Agency Board must make bye-laws governing the allocation of work to mediators and adjudicators and the management of conflicts of interest, including –
  - (a) a list of conflicts of interest that must be managed or avoided;
  - (b) disclosures that mediators and adjudicators must provide regarding any conflicts of interest;
  - (c) actions that must be taken by mediators, adjudicators and the Redress Agency in case a conflict of interest is apparent; and
  - (d) consequences for not disclosing, or failing to disclose a conflict of interest as required by bye-laws.
- (7) The powers and functions of adjudicators under sections 132, 134 and 138 may not be delegated to any other person.

## CHAPTER 37

### PROCEEDINGS BEFORE THE REDRESS AGENCY

- 128.** (1) The Redress Agency must accept a complaint, if all the following conditions are met, –

Jurisdiction of the Redress Agency.

- (a) the complainant is a retail consumer or where the complaint is forwarded by the Regulator, the person aggrieved is a retail consumer;
- (b) the retail consumer has already made a complaint to the financial service provider and, –
  - (i) the financial service provider has failed to resolve the complaint within the time-period specified by the Regulators under section 136(1); or
  - (ii) the retail consumer is not satisfied with the resolution of the complaint by the financial service provider;
- (c) the retail consumer has not initiated any proceeding before any other court, tribunal or authority, and in which the cause of action is substantially the same as the subject-matter of the complaint;
- (d) a final decree or final order on substantially the same cause of action as the complaint has not been made by any other court, tribunal or authority;
- (e) the complainant makes a specific claim of financial loss suffered by him, or loss or damage caused on account of distress or inconvenience, and the claim is within the limits specified in section 136(1); and
- (f) the respondent provided, or promised to provide a financial service to the complainant.

- (2) In this section, “decree” will have the same meaning as in section 2(2) of the Code of Civil Procedure, 1908.

- 129.** (1) The Redress Agency must screen a complaint to ensure it meets the requirements of section 128 before it is referred to mediation.

Screening of complaints.



- (2) The Redress Agency may dismiss a complaint upon screening or at a subsequent time, if it becomes aware that the requirements of section 128 had not been met.
  - (3) If the Redress Agency receives a complaint against a financial service provider who has not been authorised to provide the services provided to the complainant, the Redress Agency must immediately communicate such information to the Regulator. 5
  - (4) If the Redress Agency dismisses a complaint upon screening on the ground that the complainant has not made a complaint to the respondent before filing its complaint with the Redress Agency, the Redress Agency must assist the complainant in filing such complaint with the respondent. 10
  - (5) The Redress Agency must communicate the dismissal of a complaint upon screening to the complainant along with a statement in writing stating the reasons for the dismissal.
  - (6) The Redress Agency must refer a complaint that is not dismissed under this section to a mediator. 15
  - (7) During the screening process, the Redress Agency must, –
    - (a) provide reasonable assistance to complainants in filing the complaints;
    - (b) inform the complainant of all the following, –
      - (i) the remedies available to the complainant, and limits on the monetary compensation that can be claimed at the Redress Agency; 20
      - (ii) the procedure for mediation and determination;
      - (iii) the rights and obligations of the complainant during mediation and determination; and
      - (iv) the assistance, if any, that the Redress Agency may provide the complainant. 25
- 130.** (1) The mediator must attempt to resolve the complaint through mediation. Mediation and settlement process.
- (2) If during the mediation the mediator receives factual information concerning the complaint from a party, he must –
    - (a) disclose the substance of that information to the other party ; and 30
    - (b) give the other party an opportunity to present any explanation which he considers appropriate.
  - (3) If a party gives any information to the mediator subject to a specific condition that it be kept confidential, the mediator must not disclose that information to the other party. 35
  - (4) The parties must co-operate with the mediator and must endeavour to comply with requests made by the mediator to submit information and attend mediation meetings.
  - (5) Each party may, on its own initiative or at the invitation of the mediator, submit to the mediator suggestions for the settlement of the dispute. 40
  - (6) If the parties arrive at a settlement through mediation, the mediator must record the settlement in writing in the form of a settlement agreement between the parties.

- (7) The mediator must explain to the parties the consequences of and rights available to them under the settlement agreement and this Act.
- (8) A settlement agreement will be, –
- (a) final and binding, as between the parties to it; and
  - (b) enforceable as though it were an order.
- (9) The settlement agreement must state a time period within which the terms of the settlement agreement are to be performed.
- (10) The Redress Agency must immediately inform the Regulator if a complainant informs the Redress Agency that the respondent is refusing to adhere to the terms of the settlement agreement.
- (11) The Regulator must enforce the settlement agreement upon receiving information from the Redress Agency that the respondent is refusing to adhere to the terms of the settlement agreement.
- (12) Notwithstanding anything contained in any other law in force, the mediator and the parties must keep confidential all matters relating to the mediation, except where necessary for the implementation of the settlement agreement.
- 131. (1)** A mediator must refer a complaint to an adjudicator for adjudication, if, –
- (a) a settlement agreement has not been arrived at within the specified time limit; or
  - (b) the mediator is of the view that a settlement is not possible and informs the parties in writing of such decision along with reasons.
- (2) No party must present the mediator as a witness during determination, any arbitral or judicial proceedings.
- (3) No party may not rely on or introduce as evidence during determination, arbitral or judicial proceedings, –
- (a) views expressed or suggestions made by the other party in respect of a possible settlement of the complaint;
  - (b) admissions made by the other party in the course of mediation;
  - (c) proposals made by the mediator; and
  - (d) the fact that the other party had indicated his willingness to accept a proposal for settlement.
- 132. (1)** An adjudicator to whom a complaint has been referred must, –
- (a) provide the parties an opportunity to be heard, which may be restricted to written representations;
  - (b) resolve the dispute with due regard to, –
    - (i) the provisions of this Act;
    - (ii) the terms of the financial contract between the complainant and the respondent, which forms the basis of the complaint;
    - (iii) any code of conduct applicable to the respondent; and
    - (iv) past adjudications made by the Redress Agency in similar cases; and
  - (c) communicate the adjudication to the parties, in the form of an adjudication order.

Referring a  
complaint for  
adjudication.

Adjudication by  
adjudicator.

- (2) The adjudicator may at any time during the adjudication, entertain a proposal from either party for settlement of the complaint.
  - (3) Where the parties arrive at a settlement during the adjudication, the provisions of sections 130(6) to 130(12), will apply to such settlement, with the adjudicator discharging the role of the mediator in those proceedings. 5
  - (4) If the adjudicator determines the complaint in favour of the complainant, the adjudicator may, –
    - (a) award to the complainant compensation of such amount, as the adjudicator considers fair, to be given by the respondent for, –
      - (i) direct financial loss suffered by the complainant which naturally arose in the usual course of things from a breach by the respondent of its obligations; 10
      - (ii) the interest on such loss; and
      - (iii) loss or damage caused to the complainant, on account of any material distress or material inconvenience suffered by the complainant; 15
    - (b) direct the parties to take such steps as the adjudicator considers appropriate.
  - (5) An award of compensation, including interest, if any, must be within the limits specified under section 136(1). 20
  - (6) An adjudication order must state the reasons for the adjudication.
  - (7) An adjudication order is enforceable in the same manner as though it were an order of the Regulator.
  - (8) The Redress Agency must immediately inform the Regulator if a complainant informs the Redress Agency that the respondent is refusing to comply with the adjudication order. 25
  - (9) The Regulator must enforce the adjudication order upon receiving information from the Redress Agency that the respondent is refusing to comply with the adjudication order, including by use of its powers for recovery of penalties.
133. (1) A complainant may withdraw his complaint at any time before an adjudication order is made. Withdrawal and dismissal of complaints. 30
- (2) The mediator or adjudicator, as the case may be, may satisfy himself that the complaint is not being withdrawn due to coercion, undue influence, misrepresentation or fraud.
  - (3) An adjudicator may dismiss a complaint without considering its merits if after filing a complaint with the Redress Agency, a complainant initiates another proceeding in any other court or tribunal, with substantially the same cause of action against the respondent, without withdrawing his complaint. 35
  - (4) The adjudicator must record the reasons for dismissal in an adjudication order while dismissing a complaint under section (3). 40
  - (5) The adjudicator must provide the complainant an opportunity to be heard before dismissing the complaint.
134. Adjudicators have the same powers as those of a civil court under the Civil Procedure Code in respect of, – Adjudicators vested with powers of civil court.

- (a) dismissing an application for default or deciding it *ex parte*; and
- (b) setting aside any dismissal of any complaint for default or any *ex parte* order passed by it.

135. Any person aggrieved by an adjudication order may appeal before the Tribunal.

Appeal to the Tribunal.

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## CHAPTER 38

### REDRESS AGENCY'S PROCEDURES

136. (1) The Regulators must jointly specify, –

Regulations relating to Redress Agency's procedures.

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(a) the time limit within which a retail consumer must submit a complaint to the Redress Agency and the circumstances in which the time limit may be extended by the Redress Agency;

(b) the monetary limit on the award of compensation that may be made by the Redress Agency, which may contain different limits for different classes of complaints; and

15

(c) the procedure to be followed for accepting, screening, mediation and determination of complaints.

(2) Regulations made under sub-section (1)(c) must specify –

(a) information required to be submitted by the retail consumer as part of the complaint;

20

(b) the formats of any complaints, responses, applications and like documents to be submitted before the Redress Agency;

(c) roles and responsibilities of mediators and adjudicators with reference to the procedures to be followed for mediation and determination;

(d) time-limits for receiving, screening, mediation and adjudication;

25

(e) the evidence which may be required or admitted, the extent to which it should be oral or written;

(f) details of the circumstances and the manner in which an adjudicator may award costs as provided for in section 138;

(g) the scale of fees to be levied on financial service providers under for the operation of the Redress Agency; and

30

(h) the scale of fees payable by respondents to the Redress Agency, which may vary for different kinds of complaints.

137. (1) The Redress Agency must make use of technology to improve access to the Redress Agency and to enable it to discharge its functions in an efficient manner.

Use of technology.

(2) The use of technology will include use of mechanisms that allow, –

35

(a) parties to submit documents and information to the Redress Agency through electronic means;

(b) parties and other concerned persons to participate in the proceedings of the Redress Agency from remote locations without being physically present;

40

(c) electronic filing and management of complaints;

(d) use of automated systems for scheduling the hearing of complaints; and

- (e) provision of electronic access to complaint-related information to the parties to a complaint.
- (3) If a complainant accesses the Redress Agency using a mechanism that allows parties to participate in the proceedings of the Redress Agency from remote locations without being physically present, the respondent must also access the Redress Agency in the same manner. 5

## CHAPTER 39

## OTHER PROVISIONS GOVERNING THE REDRESS AGENCY

- |      |  |  |
|------|--|--|
|      |  | Costs.                                     |
| 138. | (1) The adjudicator has the power to award reasonable costs against the respondent and in favour of the complainant, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the adjudicator, the respondent's conduct was improper or led to an unreasonable burden on the complainant.                             | 10   |
|      | (2) The adjudicator has the power to award reasonable costs against the complainant, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the adjudicator, the complaint is found to be without foundation or merit or the complainant's conduct was improper or led to an unreasonable burden on the respondent. | 15   |
| 139. | (1) The Redress Agency may, by notice in writing given to any person who is a party to a complaint, require that person to provide any information or documents which the Redress Agency considers necessary for the determination of the complaint.   | Power to call for information.<br>20       |
|      | (2) The information or documents must be provided or produced, –   |  |
|      | (a) within such reasonable period as may be required by the Redress Agency; and  | 25   |
|      | (b) in the case of information, in such manner or form as may be required by the Redress Agency.   |  |
|      | (3) Any person who deliberately fails to comply with a notice under this section commits a Class C offence.  |  |
| 140. | (1) The Redress Agency must, at the end of each financial year, prepare and submit to the Regulator, a report containing, –  | Funding from the Central Government.<br>30 |
|      | (a) details of the financial requirements of the Redress Agency for the next financial year; and   |  |
|      | (b) a payment schedule indicating the amount of funds that each Regulator must pay to the Redress Agency and the timelines for the same.   | 35   |
|      | (2) The Redress Agency must publish the report immediately upon its submission to the Regulators.  |  |
|      | (3) Each Regulator must pay into an account designated for that purpose the amounts stipulated in the report in accordance with the payment schedule.  |  |
| 141. | The Redress Agency may collect fees from respondents.  | Collection of fees.<br>40                  |

142. (1) The Regulators must monitor and review the functioning of the Redress Agency for discharging their functions effectively. Sharing of information with the Regulators.
- (2) The Redress Agency must share the following information with the Regulators, on an ongoing basis, –
- 5 (a) numbers of complaints accepted and rejected, and grounds for rejection;
  - (b) number of complaints resolved through mediation;
  - (c) information concerning settlement agreements;
  - (d) information regarding non-enforcement of settlement agreements;
  - (e) number of complaints referred to determination;
  - 10 (f) reasons for referral to determination;
  - (g) information concerning adjudication orders;
  - (h) information regarding non-enforcement of adjudication orders;
  - (i) number of complaints withdrawn or dismissed;
  - (j) reasons for withdrawal of complaints;
  - 15 (k) number of cases in which costs were imposed, and reasons for imposing costs;
  - (l) information regarding adherence to timelines and procedures regarding acceptance, screening, mediation and determination by the Redress Agency; and
  - 20 (m) any other information that the Regulator may require the Redress Agency to provide to it in pursuance of its functions under section (1).
143. (1) Prior to the commencement of each year, the Regulators must in consultation with the Redress Agency, determine, – Performance of the Redress Agency.
- 25 (a) the productivity, timeliness and service quality targets expected to be achieved by the Redress Agency in that year;
  - (b) the acceptable level of deviation from the targets determined under sub-section (a); and
  - (c) the systems to be used to accurately measure the functioning of the Redress Agency.
  - 30 (2) The targets and systems determined under sub-section (1) must include, –
  - (a) promotion of transparency;
  - (b) an accurate representation of functioning of the Redress Agency;
  - (c) the requirements of persons appearing before the Redress Agency;
  - (d) objective methods of measurement where possible;
  - 35 (e) subjective methods of measurement where objective measurements are not possible; and
  - (f) the incorporation of global best practices in the measurement of functioning of bodies set up to address consumer complaints.
  - (3) The targets under sub-section (1)(a) may include targets relating to, –
  - 40 (a) the average cost per complaint expected to be incurred by complainants, respondents or the Redress Agency;

- (b) the number of complaints expected to be processed by the Redress Agency within a given time-period; and
  - (c) the average time expected to be taken by the Redress Agency for processing a complaint.
- (4) The Redress Agency must publish, – 5
- (a) the targets and systems determined under sub-section (1); and
  - (b) details of the Redress Agency's performance against the targets and systems.
- 144.** (1) In addition to the requirements contained in section 43, the annual report of the Redress Agency must contain, – Annual report of the Redress Agency.  
10
- (a) a review of the Redress Agency's performance against the targets and systems determined under section 143; and
  - (b) any other requirements specified by the Regulators.
- (2) If the Redress Agency fails to achieve a target determined under section 143 and the extent of deviation exceeds the acceptable level determined under that section, the annual report must include an explanation containing reasons for the failure to achieve the target and the actions intended to be taken by the Redress Agency to remedy the situation. 15
- 145.** (1) The Central Government may, by notification, provide that nothing contained in the Consumer Protection Act, 1986 (68 of 1986) will apply to a retail consumer in respect of any complaint covered under this Act, in such parts of India, as considered necessary, from such date as may be notified by the Central Government. Power to exclude application of the Consumer Protection Act, 1986.  
20
- (2) A notification under this section may be issued by the Central Government, if it is satisfied that, – 25
- (a) the number of complaints being referred to the Redress Agency under this Act are significantly higher than the complaints referred to the consumer courts established under the Consumer Protection Act, 1986 (68 of 1986);
  - (b) the Redress Agency is effectively discharging its functions under this Act; and 30
  - (c) the issuance of the notification will not cause a significant detriment to the interests of retail consumers.

## CHAPTER 40

### FINANCIAL AWARENESS

- 146.** (1) The Regulator must undertake measures to promote financial awareness among consumers. Duty to promote financial awareness.  
33
- (2) In this Part, "financial awareness" means awareness concerning the rights and protections available to consumers of financial products and financial services.
- 147.** (1) The Regulator may establish a separate body corporate to carry out the promotion of financial awareness. Power to establish a financial awareness body.  
40

- (2) If the Regulator decides to establish a financial awareness body, it must, –
- (a) take such steps as are necessary to ensure that the financial awareness body is, at all times, capable of discharging the function of promoting financial awareness; and
  - (b) provide services to the financial awareness body which the Regulator considers would facilitate the promotion of financial awareness.
- 5
- 148.** (1) The Regulator must ensure that it has in place appropriate mechanisms to achieve and monitor the achievement of the financial awareness objective, which include, –
- 10
- (a) the inclusion of a budget relating to financial awareness in its annual budget; and
  - (b) the inclusion of an annual plan relating to financial awareness in its financial plan, which must set out, –
- (i) the targets of financial awareness for the year, which should, to the extent possible, be in the form of quantifiable targets;
  - (ii) relative priorities of each of the targets;
  - (iii) measures planned to achieve the targets;
  - (iv) the manner in which the extent of achievement of each of the targets is to be determined and monitored; and
  - (v) the allocation of resources towards implementing each of the targets.
- 15
- (2) In addition to the requirements contained in section 43, the annual report of the Regulator must include, –
- (a) details of the extent to which the targets for the year as mentioned in the annual plan have been met;
  - (b) an explanation containing reasons for any failure to achieve the targets stated in the annual plan and the actions intended to be taken to remedy the situation; and
  - (c) details of its latest accounts relating to the cost of pursuing the financial awareness function.
- 20
- (3) The Regulator must publish details of its performance against the financial awareness targets determined under sub-section (1)(b)(i).
- 25
- 30

Mechanisms to achieve and monitor financial awareness.

## CHAPTER 41

### ADVISORY COUNCIL ON CONSUMER PROTECTION

- 35 **149.** (1) The Regulator must establish and maintain a Consumer Advisory Council to carry out the functions under section 34 while representing the interests of consumers.
- (2) The functioning of the Consumer Advisory Council will be in accordance with Chapter 12, other than in respect of the aspects provided in this Chapter.
- 40 (3) The Consumer Advisory Council will comprise a minimum of five and a maximum of nine members who are consumers or persons representing the interests of consumers, to be appointed by the Regulator.

Establishment of Consumer Advisory Council.



- (4) The Regulator must ensure that the membership of the Consumer Advisory Council gives a fair degree of representation to experts in the fields of personal finance and consumer rights.
  - (5) While appointing the members of the Consumer Advisory Council, the Regulator must also take into account the need to ensure proper geographical representation from across the country. 5
  - (6) The Regulator must appoint one of the members of the Consumer Advisory Council to be its chairperson.
150. (1) The Regulator must take into account any representations or reports that are made to it by the Consumer Advisory Council in discharge of its functions. Role of the Consumer Advisory Council.
- (2) If the Regulator disagrees with a view expressed, or proposal made, in the representation or report, it must give the Consumer Advisory Council a statement in writing of its reasons for disagreeing.

## CHAPTER 42

## OFFENCES UNDER THIS PART

151. (1) A person commits a Class B offence if he induces a consumer to avail of a financial service by deliberately or recklessly making any material statement or promise that is false, deceptive or misleading. 15
- (2) A person commits a Class B offence, if he deliberately or recklessly, –
- (a) fails to provide any material information under section 113; or 20
  - (b) provides any material information under section 113 that is false, deceptive or misleading.
- (3) A person commits a Class A offence if he deliberately or recklessly fails to maintain the confidentiality of personal information resulting in contravention of section 116(1)(a). 25
- (4) A person commits a Class B offence if he is grossly negligent in maintaining the confidentiality of personal information resulting in contravention of section 116(1)(a).
- (5) A person commits a Class B offence if he deliberately fails to conduct an assessment of suitability of a retail consumer resulting in contravention of section 121. 30
- (6) A retail advisor commits a Class B offence if he deliberately suppresses information regarding the existence of a conflict of interest resulting in contravention of section 122(1)(a).
- (7) A person commits a Class B offence if he fails to file material information in relation to a financial product or material variation to a financial product resulting in contravention of section 124. 35

## PART VIII

## PRUDENTIAL REGULATION

## CHAPTER 43

## OBJECTIVES AND PRINCIPLES

Objectives.

5 **152.** (1) Regulations under this Part must further the following objectives, –

- (a) promoting the safety and soundness of a regulated person; and
- (b) contributing to the stability and resilience of the financial system.

(2) Promoting the safety and soundness of a regulated person means, –

- 10 (a) the affairs of the regulated person being organised, overseen and managed in a manner that enables it to discharge the obligations owed to its consumers; and
- (b) the probability of failure of the regulated person being within a reasonable level.

(3) In this section, “failure of the regulated person” means, –

- 15 (a) the regulated person being unable to meet its liabilities when they fall due; or
- (b) an action being initiated under Part XII to address a risk to the viability of the regulated person.

20 **153.** (1) The Regulator must consider and balance all the following principles while making regulations under this Part, –

Principles of prudential regulation.

(a) obligations imposed on a regulated person should be proportionate to, –

- 25 (i) the nature, scale and complexity of the risks inherent in the regulated activity;
- (ii) the manner in which the regulated activity ranks on the factors contained in section 162(1)(b); and
- (iii) in case of a regulated person that is a Systemically Important Financial Institution, the relevance of the regulated person for the stability and resilience of the financial system;

30 (b) it should be feasible for the Regulator to monitor the compliance of regulations by a regulated person;

(c) persons who control, oversee or manage the affairs of a regulated person remain responsible for the safety and soundness of the regulated person;

35 (d) activities that are similar in nature or pose similar risks to the fulfilment of the Regulator’s objectives under section 152(1) should be treated similarly;

(e) competition in the markets for financial products and financial services is desirable in the interests of consumers and includes –

- 40 (i) minimisation of barriers to competition; and
- (ii) neutrality in the treatment of financial service providers, irrespective of their ownership;

(f) facilitating access to financial products and financial services is desirable;

- (g) innovation in financial products and financial services is desirable;
- (h) the Indian financial system is globally competitive; and
- (i) the effect of regulations on the stability and resilience of the financial system, in particular, the need to minimise pro-cyclical effects, should be considered.

5

## CHAPTER 44

### AUTHORISATION TO CARRY ON THE BUSINESS OF PROVIDING FINANCIAL SERVICES

- 154.** (1) No person may carry on the business of providing a financial service or purport to do so, without an authorisation from the Regulator to provide that financial service.
- (2) For the purposes of this section, “provide a financial service ” means providing a financial service to a consumer in India, whether from within the territory of India or outside.
- (3) A Regulator must not reject an application seeking authorisation merely on the ground that no regulation governing the subject matter of the application is in effect.
- (4) A person purports to provide a financial service if, whether or not intended, the person, –
- (a) adopts the description of being authorised, or exempt from the requirement of being authorised, to provide the financial service; or
  - (b) conducts itself in a manner that indicates or is likely to indicate that the person is authorised, or exempt from the requirement of being authorised, to provide the financial service.
- 155.** (1) The requirement to obtain authorisation under section 154 will not apply to, –
- (a) a financial representative of a financial service provider, if both the following requirements are met, –
    - (i) the financial representative is carrying on an activity that is connected with the provision of a financial service for which such financial service provider is authorised; and
    - (ii) such financial service provider has accepted and recorded, responsibility for the activities of the financial representative.
  - (b) an employee of a financial service provider or financial representative or a financial representative registered under section 123(1);
  - (c) the Central Government or a State Government providing specified financial services.
- (2) The Regulator may specify the form and manner in which the financial service provider will accept responsibility, maintain and file records of acceptances under sub-section (1)(a) with the Regulator.
- 156.** (1) A request for authorisation to carry on a financial service must be made to the Regulator in the form of an application.

Prohibition on providing financial services without authorisation.  
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Exemption from requirement to obtain authorisation.

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Grant of authorisation.  
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- (2) The Regulator may issue an order authorising the carrying on of any or all the financial services in respect of which the application is made after being satisfied that the applicant satisfies the authorisation criteria specified by the Regulator.
- 5 (3) The Regulator may specify criteria for the grant of an authorisation to carry on a specified class or classes of financial services, including requirements pertaining to the following –
- (a) the capital structure, including the minimum capital required by it;
  - (b) the legal and organisational structure;
  - 10 (c) the ownership structure, including restrictions on ownership by specified persons or a specified class of persons;
  - (d) the systems of governance required to be put in place;
  - (e) fit and proper person criteria for persons engaged in the oversight or strategic management of the applicant;
  - 15 (f) conditions to be satisfied in case the applicant is a member of a specified class of persons; and
  - (g) evidence of being in a position to comply with the applicable prudential requirements under Chapter 45.
- (4) Where the Regulator has specified criteria for the grant of an authorisation, the Regulator must specify whether the applicant is required to satisfy the criteria at the time of authorisation or on a continuous basis.
- 20
- 157.** (1) The Regulator may specify certain financial services for which authorisation may be granted without an order under section 156. Authorisation through self-registration.
- (2) A person may make an application for carrying out financial services specified under sub-section (1), and such application will constitute an authorisation under this Act, subject to the following conditions, –
- 25
- (a) the applicant certifies that the application meets all the requirements specified by the Regulator under sub-section (1); and
  - (b) the application has been acknowledged by the Regulator.
- (3) The Regulator may specify the following, –
- 30
- (a) the financial services to which this section applies;
  - (b) the form in which the application must be made; and
  - (c) the information that must be provided in such application.
- 158.** (1) The Regulator may prospectively cancel, suspend or modify an authorisation, either on the application of the concerned financial service provider or acting on its own. Cancellation, suspension or modification of authorisation.
- 35
- (2) The authorisation may be modified by, –
- (a) adding or removing a financial service from the list of financial services for which the authorisation was granted;
  - 40 (b) modifying the description of a financial service for which the authorisation was granted; or
  - (c) modifying the conditions on which the authorisation was granted.

- (3) The Regulator may cancel, suspend or modify an authorisation, acting on its own, if, –
- (a) the financial service provider has failed or is likely to fail, to satisfy the specified authorisation criteria; or
  - (b) the financial service provider has failed, for a continuous period of eighteen months, to carry on the regulated activity for which authorisation was granted. 5
- (4) If the Regulator decides to cancel, suspend or modify an authorisation issued to a financial service provider at the request of the concerned financial service provider, it need not issue a show cause notice or an order. 10
- (5) The Regulator must make an order which cancels, suspends or modifies an authorisation granted to a financial service provider, available to the general public through its website.
159. (1) The Regulator must issue a unique identifier to each person authorised to carry out a financial service. Database of authorisations and exemptions. 15
- (2) The Regulator must maintain, publish and keep updated a database of –
- (a) persons authorised to carry out a financial service; and
  - (b) cancellations, suspensions or modifications of authorisations.
160. A financial service provider may offer financial products to consumers in the manner provided under section 124. File and use process for financial products. 20
161. (1) The Central Government may prescribe any facility or instrument, in addition to those listed in section 2(73), to be a financial product if it allows a person to – Power to vary the meaning of financial products and financial services.
- (a) make a contribution of money or securities, where the person making the contribution does not have any day-to-day control over the use of the contribution, and the contribution is made with the objective of – 25
    - (i) getting a financial return or any benefit; or
    - (ii) safekeeping of the contribution;
  - (b) manage, avoid or limit the financial consequences arising from – 30
    - (i) the happening or not happening of a particular event; or
    - (ii) fluctuations in receipts or costs, including prices, currency exchange rates and interest rates;
  - (c) make payments, or cause payments to be made, otherwise than by the physical delivery of Indian currency; or
  - (d) borrow money. 35
- (2) The Regulator may specify any service or class of services, rendered by specified persons, to be excluded from the list of financial services under section 2(76), subject to such conditions as may be specified.

## CHAPTER 45

## PRUDENTIAL REQUIREMENTS

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162. (1) In specifying any financial service as a regulated activity, the Regulator must take into account the following factors, – Regulations regarding regulated activities.

- (a) inherent difficulties in fulfilling the obligations owed to consumers while providing the financial service; and
- (b) nature of the relationship between a financial service provider and its consumers, including, –
  - 5 (i) the nature and extent of detriment that may be caused to consumers in case of non-fulfilment of obligations owed to them by the financial service provider;
  - (ii) the ability of consumers to access and process information relating to the safety and soundness of the financial service provider; and
  - 10 (iii) the ability of consumers to co-ordinate among themselves to monitor the safety and soundness of the financial service provider.

(2) While specifying a regulated activity, the Regulator must specify the manner in which a category or sub-category of a regulated activity ranks on the basis of the factors stated in sub-section (1).

15 **163.** (1) The Regulator may make regulations, –

Restrictions on a regulated person.

- (a) prohibiting a category of regulated persons from engaging in any business other than the business of rendering a financial service;
  - (b) restricting a category of regulated persons from rendering specified financial services.
- 20 (2) The prohibition under sub-section (1)(a) will not apply to the extent such service is rendered for enforcing a security interest of the regulated person.
- (3) Regulations under this section must specify, –
- (a) the category of regulated persons to whom the prohibition under sub-section (1)(a) applies;
  - 25 (b) the conditions, if any, on which a category of regulated persons may engage in a business other than the business of rendering a financial service;
  - (c) the category of regulated persons to whom the restriction under sub-section (1)(b) applies;
  - (d) the financial services that are restricted under sub-section (1)(b); and
  - 30 (e) the conditions, if any, on which a category of regulated person may render a financial service restricted under (1)(b).

**164.** (1) The Regulator may specify, –

Protection and separation of assets.

- (a) the conditions on which a category of regulated persons may create encumbrances on its assets or the assets of its consumers;
  - 35 (b) the requirement that a category of regulated persons must separate the assets of its consumers from the assets of the regulated person.
- (2) An encumbrance created in contravention of the regulations made under this section will be void as against the creditors of such regulated person.
- (3) For purposes of sub-section (1)(b), the Regulator may specify, –
- 40 (a) the method of separation of the assets;
  - (b) the method of administration of the separated assets; and
  - (c) any matter directly related to such separation.

- 165.** (1) A regulated person must, at all times, – Capital resource requirements.
- (a) maintain adequate capital resources that ensure there is no significant risk that its liabilities cannot be met, and
  - (b) ensure that its capital resources are equal to or in excess of the capital resource requirements specified by the Regulator under sub-section (2). 5
- (2) The Regulator must specify, –
- (a) the capital resource requirements for different categories of regulated persons;
  - (b) the duration within which the requirements are to be met;
  - (c) the manner in which the amounts or values of assets and liabilities are to be calculated; and 10
  - (d) the manner in which changes in the value of assets and liabilities are to be recognised and calculated.
- (3) While making regulations under this section, the Regulator may provide for, –
- (a) the manner in which capital instruments are to be classified into different tiers of capital resources; 15
  - (b) limits on the use of different tiers of capital resources by regulated persons to meet the capital resource requirements; and
  - (c) a requirement that a specified portion of the capital resources must be held in the form of specified capital instruments. 20
- (4) If the Regulator makes regulations under sub-section (3)(a), it must take into account, –
- (a) the extent to which a capital instrument is likely to absorb losses;
  - (b) the permanence of the capital instrument and the extent of its availability, when required, including the extent of variation in its loss absorption capacity upon change of time, context and circumstances; 25
  - (c) the manner in which the capital instrument ranks for repayment, compared to other debts and liabilities, upon winding up, dissolution or similar procedure involving the regulated person; and
  - (d) the extent of fixed costs, including obligation to make capital distribution or interest, associated with the capital instrument. 30
- 166.** (1) The Regulator may issue an order to a Systemically Important Financial Institution mandating additional capital resources requirements, in proportion to the contribution of such Systemically Important Financial Institution to systemic risk and in accordance with regulations made in this behalf. Additional capital resources requirements.  
35
- (2) The Regulator must specify the circumstances in which an additional capital resources requirement may be imposed and the manner in which it will be calculated.
- (3) The Regulator may issue an order to a regulated person mandating additional capital resources requirements to be satisfied by the regulated person, if the Regulator finds that – 40
- (a) the risks undertaken by the regulated person deviate significantly from the basis on which the capital resources requirements under section 165 were determined by the Regulator;

- (b) the systems of governance of the regulated person deviate significantly from the standards contained in sections 170 to 174 or the regulations made under those sections, where –
- (i) those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to; and
  - (ii) the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe.
- (4) The regulated person must make every effort to remedy the deficiencies that led to the imposition of the additional capital resources requirement under sub-section (3).
- (5) The Regulator must –
- (a) periodically review the additional capital resources requirement imposed on a regulated person; and
  - (b) remove the requirement when the regulated person has remedied the deficiencies which led to its imposition to the satisfaction of the Regulator.
- (6) For purposes of this section, “additional capital resources requirement” means a requirement to maintain additional capital resources over and above those required to be maintained as per the capital requirements contained in section 165 or the regulations made under it.
- 167. (1)** A regulated person must intimate the Regulator, in writing, of its intention to issue a capital instrument for inclusion within its capital resources, providing the following details, –
- (a) the amount of capital resources that the regulated person is seeking to raise through the intended issue and the person to whom the capital instrument is intended to be issued;
  - (b) identify the tier of capital resources that the capital instrument is intended to fall within; and
  - (c) any feature of the capital instrument which is novel, unusual or different from a capital instrument of a similar nature previously issued by the regulated person or widely available in the market.
- (2) The intimation must be given at least thirty days before the intended date of issue, except in specified exceptional circumstances.
- (3) The Regulator must specify –
- (a) capital instruments to which this section does not apply, which may be determined taking into account factors including, the extent to which capital instruments of a similar nature are widely available in the market or have been previously issued by the regulated person; and
  - (b) exceptional circumstances under sub-section (2), which may include situations where there is a risk of a regulated person’s capital resources falling below the capital resource requirement applicable to it, if the notice period under that sub-section is observed.
- 168. (1)** A regulated person must, at all times, –
- (a) maintain adequate liquidity resources, and

Notice of issuance  
of capital  
instruments.

Liquidity  
requirements.



- (b) ensure that its liquidity resources are equal to or in excess of the liquidity resource requirements specified by the Regulator under sub-section (2).
  - (2) The Regulator must specify, – –
    - (a) the liquidity resource requirements for different categories of regulated persons; 5
    - (b) the duration within which the requirements are to be met; and,
    - (c) the manner in which the amounts or values of assets and liabilities are to be calculated.
  - (3) While making regulations under this section, the Regulator may provide for, –
    - (a) the conditions that must be satisfied for a resource to be regarded as being a satisfactory liquidity resource for the purposes of meeting the liquidity requirements; 10
    - (b) requirements to maintain specified ratios or reserves to meet liquidity requirements; and
    - (c) limits on the use of different financial resources to meet the liquidity requirements taking into account the liquidity of such financial resources, as noted by the Regulator over a period of time. 15
- 169.** (1) A regulated person must invest its assets and the assets of its consumers in a prudent manner, taking into account the following principles, – Investment.
- (a) investments must be made in assets whose risks can be properly identified, measured, monitored, managed, controlled and reported by the regulated person; 20
  - (b) investments must be made in a manner that ensures the security, quality, liquidity and profitability of the assets of the regulated person;
  - (c) investments must be made taking into account the nature and duration of the regulated person's liabilities; 25
  - (d) in case of any conflict of interest, investments must be made in the best interests of the consumers of the regulated person; and
  - (e) assets must be properly diversified in order to avoid excessive exposure to any particular person, asset, sector or group, or geographical area and excessive accumulation of risk in the assets of the regulated person. 30
- (2) The Regulator must specify, –
    - (a) the manner in which the provisions of this section apply to different categories of regulated persons;
    - (b) any investment restrictions applicable to a regulated activity; and 35
    - (c) the consequences of non-compliance with the regulations made under this section.
  - (3) While making regulations under sub-section (2)(b), the Regulator must take into account the need, –
    - (a) to ensure the security, quality, liquidity and profitability of the assets of the regulated person; 40
    - (b) to ensure the protection of funds of consumers, which may be done through, –

- (i) a requirement to segregate the funds or assets of consumers from the other funds or assets of the regulated person; or
  - (ii) any other prohibition or restriction on the disposal of, or other dealing with, funds or assets belonging to consumers.
- 5 (4) Regulations under this section must not provide for quantitative restrictions on the composition of the assets of a regulated person.
- (5) For purposes of this section, “quantitative restrictions” means the imposition of maximum or minimum limits on the holding of any particular asset or class of assets.
- 10 **170.** (1) A regulated person must, –
  - (a) have in place effective systems of governance which provide for the sound and prudent management of its affairs; and
  - (b) ensure that the systems of governance adopted by it are implemented, reviewed and updated, on a regular basis.
- 15 (2) The systems of governance of a regulated person must include policies and procedures on, –
  - (a) governance and controls;
  - (b) risk management;
  - (c) internal audit; and
  - 20 (d) where relevant, outsourcing.
- (3) A regulated person must take into account the following factors while determining its systems of governance, –
  - (a) the nature, scale and complexity of its business;
  - (b) the diversity of its operations, including geographical diversity;
  - 25 (c) the volume and size of transactions carried out by it;
  - (d) the degree of risk associated with each area of its operation; and
  - (e) its group-wide risks.
- (4) The Regulator may specify that, –
  - 30 (a) a regulated person must put in place a written policy on any aspect of its systems of governance; and
  - (b) the policies required to be put in place under clause (a) must be reviewed and revised periodically.
- 35 **171.** (1) A regulated person must have in place an appropriate organisational and governance structure comprising efficient policies and procedures, to ensure that, –
  - (a) persons carrying on significant functions on its behalf are persons, who meet the following requirements –
    - 40 (i) possess sufficient relevant professional qualifications, knowledge, skills, expertise and experience to carry out the functions required to be performed by them;
    - (ii) are physically and mentally capable of performing their duties; and
    - (iii) have not been convicted of an offence under this Act.

Systems of governance.

Governance and controls.

- (b) there is a clear allocation and appropriate segregation of responsibilities within its organisation;
  - (c) there are adequate systems for reporting, communication and co-operation within its organisation;
  - (d) the performance of multiple tasks by individuals does not, and is not likely to, prevent the sound performance of their duties; 5
  - (e) its executive remuneration policy is –
    - (i) consistent with its available resources and risk profile; and
    - (ii) minimises any potential conflict of interest;
  - (f) it has in place appropriate administrative, accounting and internal monitoring procedures; and 10
  - (g) it maintains adequate and orderly books and records, in the manner and for the periods specified by the Regulator.
- (2) The Regulator must specify requirements relating to, –
- (a) the appointment of persons, for overseeing the implementation of the systems of governance of the regulated person; 15
  - (b) preventing conflict of interest of persons responsible for carrying on significant functions in relation to regulated persons; and
  - (c) the circumstances and manner in which the Regulator may replace the body responsible for the oversight of the regulated person's affairs or the members of such body. 20
- (3) The Regulator may specify requirements relating to, –
- (a) appointment, responsibilities and process of appointment of persons, carrying on significant functions, including a requirement to obtain approval before a person can carry on specified significant functions; 25
  - (b) the size and composition of the bodies responsible for the oversight or strategic management of regulated persons;
  - (c) the establishment of specified committees or groups for carrying out specified functions in relation to regulated persons;
  - (d) the processes to be followed by the bodies, committees and groups mentioned in clauses (b) and (c); 30
  - (e) the structure or form of executive remuneration of persons performing significant functions in relation to regulated persons;
  - (f) control and ownership structure of regulated persons;
  - (g) systems and processes required to be put in place by regulated persons to ensure effective compliance with applicable laws and regulations and internal policies; and 35
  - (h) restrictions on capital distributions by regulated persons under specified circumstances.
- Risk management.
172. (1) A regulated person must have in place an effective risk management system comprising policies and processes necessary to properly identify, measure, prioritise, monitor, manage and report, on a continuous basis, the risks to which the regulated person is or could be exposed. 40
- (2) The risk management system put in place by the regulated person must, –

- (a) be integrated into its organisational structure and decision making processes;
- (b) enable it to properly identify and assess the risks to which it is, or could be, exposed in the short, medium and long-term;
- 5 (c) take into account inter-dependencies of risks, concentration of a particular risk and overall risk tolerance levels;
- (d) provide for the reporting of risk exposures to the bodies responsible for its oversight and strategic management;
- 10 (e) implement risk mitigation techniques that are appropriate according to the nature of the risks assumed by it; and
- (f) ensure that its affairs are conducted in a manner that enable it to cover its expected losses.

(3) The Regulator may specify, –

- 15 (a) the types of risks that need to be taken into account in relation to a regulated activity, which may include business risks, investment risks, operational risks, credit risks, concentration risks and liquidity risks;
- (b) the types of risk management and risk mitigation techniques required to be followed in respect of a regulated activity;
- (c) methods to be used for identifying, measuring and monitoring risks; and
- 20 (d) reporting requirements to be complied with by a regulated person when it undertakes specified types of risks.

**173.** (1) A regulated person must have in place an effective internal audit system to, –

Internal audit.

- (a) examine and evaluate the adequacy and effectiveness of its systems of governance; and
- 25 (b) issue recommendations based on the result of examinations and evaluations carried out in accordance with clause (a) and verify compliance with those recommendations.

(2) The internal audit system must be designed in a manner that, –

- 30 (a) ensures the independence and impartiality of the persons carrying out the internal audit function; and
- (b) allows persons carrying out the internal audit function to, –
  - (i) express their findings and recommendations to the bodies responsible for the oversight and strategic management of the regulated person; and
  - 35 (ii) communicate directly with any officer or employee of the regulated person and have complete and unrestricted access to all information and records, as they consider necessary for the discharge of their functions, subject to confidentiality requirements.

(3) The Regulator may specify –

- 40 (a) the procedures that must be followed by persons performing the internal audit function;
- (b) requirements that certain findings that are made in exercise of the internal audit function must be notified to the body responsible for the oversight of the regulated person;

- (c) requirements that certain findings that are made in exercise of the internal audit function under clause (b) must be reported to the Regulator; and
- (d) the format of the internal audit systems and findings to be reported to the Regulator under this section.

174. (1) A regulated person must take due care when outsourcing material functions. Outsourcing.  
5
- (2) If a regulated person outsources a material function it must remain fully responsible for discharging all its obligations under this Act in respect of such function.
- (3) A regulated person must –
- (a) obtain an authorisation from the Regulator before outsourcing a critical function; 10
  - (b) not outsource such critical function in contravention of the criteria, if any, specified by the Regulator.
- (4) The Regulator must specify –
- (a) the functions which constitute critical functions; 15
  - (b) the minimum eligibility criteria or minimum quality standards for service providers;
  - (c) particulars of information that the regulated person must obtain from the service provider and submit to the Regulator.
- (5) A regulated person must report to the Regulator, the failure of any service provider to perform a critical function, as soon as such failure comes to the notice of the regulated person. 20
- (6) In this section, –
- (a) “critical function” means a function, a defect or failure in the performance of which, would materially impair the ability of the regulated person to meet its obligations to its consumers; 25
  - (b) “due care” includes the requirements, –
    - (i) that the outsourcing of any function or activity is in accordance with the governance policy referred to in section 170(2);
    - (ii) that there are no conflicts of interest that may impair the service provider’s ability to deliver to the required standard; 30
    - (iii) that a detailed review is performed of the potential service provider’s ability to deliver the required functions satisfactorily;
    - (iv) that the regulated person has entered into a written agreement with the service provider clearly setting out their respective rights and obligations; 35
    - (v) that the outsourcing does not impair the quality of the regulated person’s systems of governance;
    - (vi) that the outsourcing does not impede the Regulator’s ability to monitor the regulated person; 40
    - (vii) that the service provider maintains confidentiality of the data shared with or generated by, it while performing the outsourced function or activity in the same manner and to the same extent as the regulated person would have had to maintain;
    - (viii) that the outsourcing does not cause an excessive increase in the risks faced by the regulated person; 45

- (ix) that the outsourcing does not undermine the continuous and satisfactory provision of financial services to the consumers of the regulated person; and
- (x) the service provider is required to disclose any development that may have a material impact on its ability to carry out the outsourced functions.
- (c) “material function” means a function, a defect or failure in the performance of which, would materially impair the continuing compliance by a regulated person with the conditions of its authorisation or its obligations under this Act or the Regulations made under it and includes critical function;
- (d) “outsourcing” means the act of appointing another person to perform a function or activity which would otherwise be performed by the regulated person in the normal course of business, and any other form of the word must be construed accordingly; and
- (e) “service provider” means a person to whom the performance of any material function has been outsourced and includes service providers located outside India.

## CHAPTER 46

## AUDITORS AND ACTUARIES

- 175.** (1) A regulated person must appoint an auditor, actuary or any other professional performing a similar function, as may be specified by the Regulator, to exercise the powers and functions under section 176.
- (2) The Regulator must specify, –
- (a) the regulated activities covered by this section;
  - (b) the eligibility criteria for appointment under sub-section (1); and
  - (c) the powers, functions and responsibilities of persons appointed under sub-section (1).
- (3) The Regulator may specify, –
- (a) the manner and time within which a person under sub-section (1) is to be appointed;
  - (b) a requirement for the Regulator to be informed of such appointment;
  - (c) provisions that enable the Regulator to make an appointment if no appointment has been made; and
  - (d) conditions relating to the term of office, remuneration, removal or resignation of person appointed under sub-section (1).
- 176.** (1) An auditor or actuary appointed under section 175(1) to act for a regulated person will be entitled to, –
- (a) access the books and records of the regulated person at all times; and
  - (b) require such information and explanations from the regulated person or its officers, as it considers necessary for the performance of its duties as such auditor, actuary or other professional.

Appointment of  
auditors and  
actuaries.

Powers and  
functions of  
auditors and  
actuaries.

- (2) The Regulator may specify that an auditor or actuary must communicate specified information or opinions to the Regulator on any matter that the Regulator reasonably believes to be relevant for the exercise of any of its functions.
- (3) The matters to be communicated to the Regulator under sub-section (2) may include matters relating to persons other than the concerned regulated person. 5
- (4) If the Regulator specifies that this section applies to any person other than auditors or actuaries, it must also specify the manner and extent to which the section applies to them.
177. (1) If it appears to the Regulator that an auditor, actuary or other professional appointed under section 175 has failed to comply with the requirements imposed on it under this Act or regulations made under it, it may disqualify such person from acting as the auditor, actuary or in any other capacity, as the case may be, for a regulated person or a category of regulated persons. Disqualification. 10
- (2) If the Regulator proposes to disqualify an auditor, actuary or other professional under this section, the proposed disqualification, – 15
- (a) will be deemed to be an enforcement action against the person sought to be disqualified; and
- (b) may be made after complying with the process set out in section 27.
- CHAPTER 47
- PROVISIONS GOVERNING PARTICULAR TRANSACTIONS 20
178. (1) No person may carry out the following actions, without obtaining the approval of the Regulator, – Actions involving regulated persons.
- (a) a merger, amalgamation or restructuring of a regulated person;
- (b) transfer or acquisition, of control of, or a significant interest in, a regulated person; 25
- (c) sale, disposal or acquisition of the whole, or substantially the whole, of an undertaking of a regulated person;
- (d) sale, disposal or acquisition of a significant portion of the assets or liabilities of a regulated person; and
- (e) voluntary winding up, dissolution, or any similar action involving the discontinuation of the business, of a regulated person. 30
- (2) A person that proposes to take an action under sub-section (1) must make an application to the Regulator.
- (3) The Regulator must specify, –
- (a) the categories of regulated persons to which this section applies; 35
- (b) the manner in which the provisions of this section apply to different categories of regulated persons;
- (c) the scope of the terms “significant interest” and “significant portion of assets or liabilities”;
- (d) the form and manner in which the application under sub-section (2) must be made; and 40

- (e) the information required to be submitted by a person that seeks to carry out an action under sub-section (1).
- (4) The Regulator may specify the terms and conditions on which the actions mentioned under sub-section (1) may be taken in relation to a category of regulated persons.
- (5) Where a person takes an action under sub-section (1) in contravention of this section or a regulation made under this section, the Regulator may take an enforcement action in relation to such person, including, –
- (a) requiring the cancellation of the contravening action; and
- (b) compensating third parties adversely affected by the contravening transaction.
- 179.** (1) A regulated person must ensure that related party transactions are entered into on an arms-length basis. Transactions with related parties.
- (2) The Regulator must specify, –
- (a) the manner in which the provisions of this section apply to different categories of regulated persons;
- (b) the classes of related party transactions that must be reported to the Regulator;
- (c) any limits on the permissible value, frequency or proportion of related party transactions;
- (d) the classes of related party transactions that are prohibited in relation to specified regulated activities; and
- (e) the meaning of “relatives” for the purposes of sub-section 2(133)(c).
- (3) The Regulator may specify the circumstances under which a class or classes of transactions will not be considered related party transactions for the purposes of this section.
- (4) While making regulations under sub-sections (2) and (3), the Regulator must take into account, –
- (a) the risks arising from the related party transaction to the safety and soundness of the regulated person;
- (b) the conflict of interest that may arise on account of the related party transaction; and
- (c) the manner in which the related party transaction may affect the ability of the regulated person to effectively discharge its obligations towards its consumers.

## CHAPTER 48

### FUNCTIONS AND POWERS OF THE REGULATOR

- 180.** (1) For the purpose of this section, “stress tests” means tests to assess the ability of regulated persons to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. Conduct of stress tests.



- (2) The Regulator may specify, –
- (a) the requirement that specified categories of regulated persons must conduct stress tests;
  - (b) the intervals at which different categories of regulated persons must conduct stress tests; 5
  - (c) quantitative tools and methods for the conduct of stress tests by regulated persons; and
  - (d) the requirement to inform the Regulator of the results of the stress tests.
- 181.** (1) The Regulator may impose restrictions or requirements in relation to a regulated person if the Regulator has reason to believe that the affairs of the regulated person are being conducted in a manner that contravenes, or is likely to contravene section 172. Imposition of restrictions or requirements. 10
- (2) The Regulator must specify, –
- (a) the circumstances in which a restriction or requirement may be imposed under sub-section (1); and 15
  - (b) the types of restrictions or requirements that may be imposed.
- (3) A restriction or requirement under this section may relate to the, –
- (a) manner in which the regulated person conducts its business; or
  - (b) liabilities and financial obligations that may be undertaken by the regulated person. 20
- (4) A restriction or requirement imposed under sub-section (1), –
- (a) must be appropriate for the purposes of addressing the deficiencies leading to its imposition; and
  - (b) will be deemed to be an enforcement action for the purpose of this Act and the Regulator must follow the procedure set out in chapter 27 before issuing it. 25
- (5) The Regulator must, –
- (a) review the compliance by the regulated person with a restriction or requirement imposed on it;
  - (b) review the effectiveness of a restriction or requirement in addressing the deficiencies which led to the imposition of the restriction or requirement; and 30
  - (c) remove the restriction or requirement when the regulated person has remedied the deficiencies, which led to their imposition, to the satisfaction of the Regulator. 35
- (6) A regulated person may appeal to the Tribunal against the inaction of the Regulator under clause (5)(c).
- 182.** (1) The Regulator may specify the following requirements in cases where persons belonging to a group are engaged in carrying out more than one category of regulated activities, – Supervision of groups. 40
- (a) group-wide requirements to supplement any of the requirements contained in Chapter 45; or

- (b) group-wide supervisory review and reporting procedures and intervention measures to ensure compliance with the group-wide requirements specified under clause (a).
- 5 (2) The Regulator must specify the manner in which the provisions of this section apply to groups consisting of persons engaged in carrying out different categories of regulated activities.
- (3) While making regulations under sub-section (1), the Regulator must take into account the risk exposures inherent in groups carrying on specified regulated activities.
- 10 **183.** The Regulators must enter into arrangements to co-operate with each other in connection with the authorisation, regulation and supervision of, – Responsibility of  
Regulators to  
co-operate.
- (a) financial service providers that are engaged in carrying out more than one financial service, and such financial services are regulated by different Regulators; and
- 15 (b) financial service providers belonging to groups where the members of the group are engaged in carrying out more than one financial service, and such financial services are regulated by different Regulators.

## CHAPTER 49

### OFFENCES UNDER THIS PART

- 20 **184.** (1) A person commits a Class B offence if he carries on the business of providing a financial service without authorisation resulting in contravention of section 154. Offences.
- (2) A person who carries on the business of providing a financial service without authorisation and does or omits to do anything which, if done or omitted by a person authorised to provide such service, would constitute an offence under this Act, will also be liable for enforcement actions and prosecution as applicable to such action or omission.
- 25 (3) A person commits a Class C offence if he contravenes a provision of Chapter 46.

## PART IX

## CONTRACTS, TRADING AND MARKET ABUSE

## CHAPTER 50

## PRINCIPLES RELATING TO CONTRACTS OF INSURANCE

- |   |   |
|---|---|
| <p><b>185.</b> (1) A policy-holder has a duty of utmost good faith towards the insurer in relation to a contract of insurance to ensure that the insurer makes an informed decision in relation to the contract of insurance, including at the time of entering into the contract.</p> <p>(2) The Regulator may specify the meaning and scope of utmost good faith in relation to specified class or classes of contracts of insurance.</p>   | <p>Utmost good faith.<br/>5</p> <p>10</p>                 |
| <p><b>186.</b> (1) Insurable interest is not required to constitute a valid contract of insurance.</p> <p>(2) The Regulator may specify a class or classes of contracts of insurance that must require an insurable interest.</p>   | <p>Insurable interest.</p>                                |
| <p><b>187.</b> (1) An assignment of a contract of insurance is void unless it is recorded by the insurer.</p> <p>(2) An insurer must not refuse to record an assignment of a contract of insurance made in the specified manner.</p> <p>(3) The Regulator must specify the manner in which a contract of insurance must be assigned.</p> <p>(4) The Regulator may specify prohibitions or restrictions on the assignment of a class or classes of contracts of insurance.</p>   | <p>Assignment of insurance policies.<br/>15</p> <p>20</p> |
| <p><b>188.</b> The Regulator must make regulations to protect the interests of the policy-holder in the event of a lapse of a contract of life insurance.</p>   | <p>Lapse of contracts of life insurance.</p>              |
| <p><b>189.</b> (1) Where an insurer is liable under a contract of insurance in respect of an act of a third party, the insured person must disclose to the insurer, at the time of making the claim, the amount, if any, received by such insured person from a third party towards indemnification of the losses.</p> <p>(2) If the insured person has not received any amount from the third party before making the claim from the insurer but receives such amount after the insurer has fully and finally settled the insured person, the insurer has a lien on such amount up to the sum so indemnified.</p> <p>(3) After the insurer has fully and finally settled the claim of the insured person under a contract of insurance, the insurer –</p> <p style="padding-left: 20px;">(a) has a lien on any amount received by the insured person from such third party; and</p> <p style="padding-left: 20px;">(b) the insurer may recover the amount from –</p> <p style="padding-left: 40px;">(i) the insured person; or</p> <p style="padding-left: 40px;">(ii) where the third party has not paid such amount to the insured person, such third party.</p> | <p>Subrogation.<br/>25</p> <p>30</p> <p>35</p>            |

## CHAPTER 51

## RIGHTS RELATING TO FINANCIAL PRODUCTS AND FINANCIAL SERVICES

Nomination.

190. (1) An individual who owns a financial product or is a beneficiary of a financial service may at any time nominate any person to whom such financial product or benefit of financial service must be transmitted in the event of the death of such individual owner.
- (2) Where more than one individual jointly hold a financial product or avail of a financial service, such joint holders may jointly nominate any person to whom all the rights in the financial product or benefits of the financial service will be transmitted in the event of the death of such joint holders.
- (3) A person nominated under section (1) or section (2) will, upon the death of the holder or all the joint holders of the financial product or the beneficiary or all the joint beneficiaries of the financial service be exclusively entitled to all the rights of such holders or beneficiaries, as the case may be, unless the nomination is varied or cancelled in the specified manner.
- (4) Sub-section (3) will supersede any other law time being in force or any disposition, whether testamentary or otherwise, in respect of a financial product or financial service.
- (5) Where the nominee is a minor, the owner of a financial product or beneficiary of a financial service may appoint any individual to become entitled to the financial product or benefit of the financial service, in the event of the death of the nominee during minority.
- (6) An individual must make and vary nominations only in the specified manner.
- (7) If the nature of the financial product or financial service is such that it is only applicable to the owner or beneficiary and no rights subsist on the death of such owner or beneficiary, then the provisions of this section will not create any such right.
- (8) The Regulator must specify the manner in which an individual may make and vary nominations in respect of a financial product held or financial service availed by such individual.

191. (1) Contracts in derivatives are legal and enforceable, if, –
- (a) they are traded over an exchange; or
- (b) they are executed or traded between sophisticated counterparties.
- (2) Section (1) will supersede section 30 of the Indian Contract Act, 1872 (9 of 1872).
- (3) In this section, a “sophisticated counterparty” means any person other than a retail consumer under this Act.

Enforceability of derivatives.

## CHAPTER 52

## INFRASTRUCTURE INSTITUTIONS

192. (1) Regulations made under this Chapter must balance the following, –

Principles for governing Infrastructure Institutions.

- (a) the obligations and requirements imposed on Infrastructure Institutions under this Act;
  - (b) the costs of setting up new Infrastructure Institutions and the costs to consumers of Infrastructure Institutions; and
  - (c) the requirement that Infrastructure Institutions must remain globally competitive. 5
- (2) The Regulator must publish a report every three years, –
  - (a) reviewing its conduct in relation to its functioning and exercise of powers contained in sub-section (1); and
  - (b) explaining the manner in which the balance contained in sub-section (1) has been achieved. 10
- 193. (1) An Infrastructure Institution must ensure that its ownership and governance structures give precedence to the interests of consumers over the profit-making motive, if any, of the Infrastructure Institution. Ownership and governance structures of Infrastructure Institutions.
- (2) The Regulator may specify, – 15
  - (a) the maximum ownership interest that can be held by a class or classes of persons in an Infrastructure Institution;
  - (b) the manner of calculating the ownership interests of different classes of persons in an Infrastructure Institution;
  - (c) the requirement to have independent members on the governing body of an Infrastructure Institution; and 20
  - (d) the requirement to have a representative or class of representatives of consumers availing of the services provided by the Infrastructure Institution, on the governing body of an Infrastructure Institution.
- 194. (1) All Infrastructure Institutions must have adequate governance and monitoring mechanisms to identify and minimise market abuse. Obligation to minimise market abuse.
- (2) The Regulator may require specified classes of Infrastructure Institutions to take specified measures to identify and minimise market abuse.
- 195. (1) An Infrastructure Institution must not place any condition on a consumer availing the financial services provided by it, except through its bye-laws. Bye-laws of Infrastructure Institutions.
- (2) An Infrastructure Institution must make bye-laws to govern, –
  - (a) the financial services provided by it;
  - (b) the consumers availing the financial services provided by it;
  - (c) the relationships between consumers availing of the financial services provided by it, with respect to such services; and 35
  - (d) matters incidental to clauses (a), (b) and (c).
- 196. (1) The bye-laws of an Infrastructure Institution must, – Principles governing bye-laws.
- (a) promote the objectives contained in sections 105 and 152 and take into consideration the principles contained in sections 106 and 153;
  - (b) promote the objective that the Council is required to pursue as contained in section 311; 40

- (c) provide non-discriminatory access to all persons using its financial services;
  - (d) minimise market abuse; and
  - (e) foster transparency.
- 5 (2) In this section –
- (a) “non-discriminatory access” means, –
    - (i) not creating differential obligations for similarly placed consumers; and
    - (ii) not preventing similarly placed persons from availing a financial service provided by the Infrastructure Institution;
  - (b) “transparency” means that adequate information about the functions and transactions carried out on the Infrastructure Institution is available to all the consumers availing the financial services provided by it to enable them to make informed decisions about their transactions.
- 10
- 15 (3) In relation to exchanges, “transparency” in addition to the provisions contained in sub-section (2)(b), includes the requirement that an exchange must freely provide information about the issuer, price, volume and liquidity of all securities traded.
197. (1) The board of an Infrastructure Institution must approve the draft of every bye-law proposed to be made by that Infrastructure Institution.
- 20
- (2) The Infrastructure Institution must make an application to the Regulator for approval of every proposed bye-law.
- (3) The application must contain, –
- (a) a draft of the proposed bye-law; and
  - (b) a statement setting out the objectives of the proposed bye-law and the issue the proposed bye-law seeks to address.
- 25
- (4) The Regulator may reject an application if a proposed bye-law undermines the requirements contained in section 196(1).
- (5) The Regulator must, immediately upon receipt of the application, publish the draft of the proposed bye-law and the statement.
- 30
- (6) The Regulator must, -
- (a) give not less than twenty one days to enable any person to make a representation in relation to the proposed bye-law; and
  - (b) immediately publish and communicate, all representations made to it, to the Infrastructure Institution.
- 35
- (7) The Infrastructure Institution must, –
- (a) consider the representations forwarded to it by the Regulator; and
  - (b) communicate to the Regulator any modification, it intends to make to the draft of the proposed bye-law, not later than fourteen days from the date of receipt of the representations from the Regulator.
- 40
- (8) The board of the Infrastructure Institution must approve the final bye-law proposed to be made.

Process for making  
bye-laws.

- (9) The Infrastructure Institution must submit an application to the Regulator for approval of the final bye-law.
- (10) The Regulator must dispose of an application for approval of a final bye-law within fourteen days from the date of receipt of the application.
- (11) The Infrastructure Institution must, immediately upon receipt of the approval of the Regulator, publish the final bye-law together with the date on which such bye-law takes effect. 5
- 198.** (1) An Infrastructure Institution may dispense with the requirements contained in section 197, except the requirement mentioned in sub-section 197(8) , if the circumstances so require. Process for making bye-laws in exigency. 10
- (2) If an Infrastructure Institution makes a bye-law under this section, it must publish –
- (a) the bye-law together with the date on which such bye-law takes effect; and
- (b) the reasons for invoking this section. 15
- (3) A bye-law made under this section will remain in force for a period identified by the Infrastructure Institution, not exceeding ninety days from the date on which it is published.
- 199.** (1) Where a consumer violates a bye-law of an Infrastructure Institution, the Infrastructure Institution may, by an order, take such measures as may be provided in its bye-laws in relation to such consumer. Violation of bye-laws. 20
- (2) The Infrastructure Institution must provide a copy of the order to the consumer, immediately upon issuance of the order.
- (3) The Regulator must make regulations requiring an Infrastructure Institution to, – 25
- (a) implement adequate monitoring mechanisms to identify violations of the bye-laws of the Infrastructure Institution;
- (b) inform the Regulator of any violation of its bye-laws;
- (c) take specified measures against consumers who violate the bye-laws of the Infrastructure Institution; and 30
- (d) implement an adjudicatory mechanism to ensure the fair and efficient disposal of matters involving violation of bye-laws by its consumers.
- (4) A consumer aggrieved by an order under this section may prefer an appeal to the Tribunal against such order.
- 200.** Employees of an Infrastructure Institution will not be liable in damages for anything done or omitted in the discharge of their duties under this Act, unless it is shown that such act or omission was in bad faith. Liability. 35
- 201.** (1) The Regulator may give directions to an Infrastructure Institution, if it appears to the Regulator that an Infrastructure Institution has failed, or is reasonably likely to fail, to satisfy the authorisation requirements. Power of Regulator to give directions to an Infrastructure Institution. 40
- (2) If the Regulator proposes to give directions under this section, it must issue a show cause notice.

- (3) If the Regulator decides to give directions under this section, it must issue an order.
- (4) Directions under this section must be limited to taking remedial measures relevant to ensure that the Infrastructure Institution continues to provide the financial service in compliance with this Act.

202. (1) An Infrastructure Institution must publish information of its activities which, –

Requirement of Infrastructure Institution to publish information.

- (a) protects the interests of its consumers; and
- (b) allows the Regulator and the Council to make informed decisions.

10 (2) The Regulator may specify, –

- (a) the information required to be published by the Infrastructure Institution;
- (b) the form and manner in which information has to be published; and
- (c) the frequency of the publication.

## CHAPTER 53

### 15 CONTRACTUAL ISSUES PERTAINING TO INFRASTRUCTURE INSTITUTIONS

203. (1) When a transaction carried out using the services of an Infrastructure Institution attains finality, –

Finality of transactions.

- (a) such transactions must not be reversed; and
- (b) no court, tribunal or authority in an insolvency, winding up or similar proceeding must reverse the transaction.

20 (2) The Regulator may specify the conditions under which, –

- (a) a class or classes of transactions attain finality; and
- (b) a class or classes of transactions may be reversed.

25 (3) The Regulator may specify different conditions for different classes of transactions or different classes of Infrastructure Institutions.

(4) The provisions of this section apply notwithstanding any provision of any law in force.

30 (5) Sub-section (4) does not bar any person from making a claim for compensation for any loss arising out of any transaction under any other law, subject to section 200.

204. (1) An Infrastructure Institution, acting as a settlement system, will have lien over the assets or collateral deposited with it, by a consumer availing the services of such Infrastructure Institution.

Lien of an Infrastructure Institution.

35 (2) The lien of the Infrastructure Institution over such asset or collateral will subsist until all transactions initiated or carried out by the relevant consumer are completed.

(3) The Infrastructure Institution may use such asset or collateral to settle any claims arising out of any transaction carried out by the relevant consumer.



- (4) The provisions of this section apply notwithstanding, –
- (a) any decision made in an insolvency, winding up or similar proceeding; or
  - (b) operation of any law or contract in force.

205. (1) An Infrastructure Institution acting as a settlement system may lend securities or funds to its consumers.
- (2) The Regulator may specify the conditions governing the lending of securities and funds by Infrastructure Institutions.

Securities lending.

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## CHAPTER 54

## DEMATERIALISATION OF FINANCIAL PRODUCTS

206. (1) Every security issued by way of a public offering must be in dematerialised form.
- (2) Every person subscribing to securities, otherwise than by way of a public offering, must have the option either to receive the security certificates or hold securities in dematerialised form with a depository.

Holding securities in dematerialised form.

207. (1) Every person subscribing to a financial product other than a security, must have the option to receive such financial product in physical form or in hold it in dematerialised form with a depository.
- (2) The Regulator may specify a class or classes of financial products which must be held with a depository only in dematerialised form.

Holding other financial products in dematerialised form.

208. All securities with the same terms and conditions held by a depository must be in fungible form.

Securities in depositories to be in fungible form.

209. (1) Notwithstanding anything contained in any other law in force, a depository will be the registered owner for the purpose of effecting and recording the transfer of beneficial ownership of financial products on behalf of a beneficial owner.
- (2) The beneficial owner of a financial product will be entitled to all the rights and benefits and be subject to all the liabilities in respect of such financial product, held by a depository.
- (3) The depository as a registered owner, will have no voting rights or benefits in respect of the financial products held by it except to the extent contained in sub-section (1).

Rights of depositories and beneficial owners.

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210. (1) Where a person proposes to hold a security with a depository, –
- (a) the issuer must intimate such depository the details of allotment of the security; and
  - (b) on receipt of such information, the depository must, subject to its bye-laws, enter in its records the name of the allottee as the beneficial owner of that security.

Registration of transfer of financial product with depository.

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- (2) Where a person proposes to hold any financial product other than a security, with a depository, –

- (a) the financial service provider providing the financial product must intimate such depository the details of the financial product issued; and
- (b) on receipt of such information, the depository must, subject to its bye-laws, enter in its records the name of such person as the beneficial owner of the financial product.
- (3) A depository must on receipt of information register the transfer of a financial product in the name of the transferee.
- (4) The Regulator must specify the form and content of information to be provided by a person under this section.
211. Notwithstanding anything contained in any law in force, the following transactions will not be liable to stamp duty –
- (a) the transfer of registered ownership of a financial product, not being a security, from a person to a depository or from a depository to a beneficial owner; and
- (b) transfer of beneficial ownership of a dematerialised financial product, not being a security.
212. (1) A beneficial owner may create a pledge or hypothecation in respect of a financial product owned by such beneficial owner.
- (2) A beneficial owner must give intimation of such pledge or hypothecation to the depository with which the financial product is held and such depository must, on receipt of such intimation, record the pledge or hypothecation.
- (3) An entry in the records of a depository under sub-section (2) will be evidence of a pledge or hypothecation.
213. A depository must maintain a register containing the names of the beneficial owners of financial products held with it, in accordance with law.
214. (1) A depository must furnish to the financial service provider issuing or providing a financial product, information about the transfer of such financial product in the name of beneficial owners at such intervals and in such manner as may be specified.
- (2) The financial service provider issuing or providing the financial product must make available to the depository copies of the relevant records in respect of the financial product held by such depository as may be specified.
- (3) The Regulator must specify the form, frequency and manner in which such information must be furnished.
215. (1) If a beneficial owner seeks to opt out of a depository in respect of any financial product, such beneficial owner must inform the depository in the specified manner.
- (2) The depository must, on receipt of an intimation, make appropriate entries in its records and inform the financial service provider providing or issuing the financial product of such option exercised by the beneficial owner.

Stamp duty on dematerialised financial products.

Pledge or hypothecation of financial products held in a depository.

Register of beneficial owners.

Furnishing of information and records by depository and issuer.

Option to opt out in respect of any financial product.

- (3) The financial service provider must issue the certificate of security or other financial product to the beneficial owner or the transferee, as the case may be, within thirty days of the receipt of intimation from the depository.
- (4) The Regulator must specify the mode and manner of intimation, scale of fees and other incidental matters. 5
- (5) The duty on the financial service provider under sub-section (3) is subject to compliance by the beneficial owner with the appropriate regulations under sub-section (4).
- 216.** The Bankers' Books Evidence Act, 1891 (18 of 1891) applies in relation to a depository as if it were a bank as defined in section 2 of that Act. The Bankers' Books Evidence Act, 1891 to apply to depositories.
- CHAPTER 55**  
**ISSUE AND LISTING OF SECURITIES**
- 217.** (1) Every issuer making a public offering has an obligation to, – Obligations in a public offering.
- (a) provide adequate information, before a public offering is made, about the issuer and the security proposed to be issued, to allow persons to make an adequately informed decision to subscribe to such public offering; 15
- (b) provide adequate information, on a regular basis, about the issuer and the security issued, to allow persons to make adequately an informed decision about dealing in such securities;
- (c) have in place systems of governance and processes to ensure that the issuer does not discriminate between the owners of a class of securities of the issuer; and 20
- (d) comply with other specified conditions, prior to and after the making of the public offering.
- (2) The Regulator must specify, – 25
- (a) what constitutes a public offering, for purposes of this section;
- (b) the information that must be provided under this section;
- (c) the form, manner and frequency with which such information must be provided; and
- (d) the systems of governance and processes the issuer must implement. 30
- (3) The Regulator may specify conditions to be complied with for public offerings, and different conditions may be specified for, –
- (a) different classes of securities;
- (b) different classes of issuers; and
- (c) different classes of persons subscribing to a security. 35
- (4) The Regulator may specify exemptions for a class or classes of issuers from the provisions of this section.
- 218.** (1) Every security with respect to which a public offering has been made must be listed on an exchange. Listing of securities on an exchange.

- (2) If any class of securities is listed on an exchange, a further issue of the same class of securities of the same issuer, must be listed.

- 219.** (1) Any person seeking to list any security on an exchange must make an application to such exchange.

Application for listing of securities on an exchange.

- 5 (2) No such application to an exchange may be entertained unless it has been made, –

- (a) with the consent of the issuer of the securities concerned; and  
(b) in the form and manner provided by the bye-laws of the exchange.

- 10 (3) The exchange must inform the applicant of its decision on an application for listing within thirty days from the date on which it receives the complete application from the applicant.

- (4) If the exchange rejects the application for listing, it must, –

- (a) make an order; and  
(b) immediately provide a copy of such order to the applicant.

- 15 (5) A person aggrieved by the order of the exchange may appeal to the Tribunal.

- (6) An exchange must make bye-laws in relation to –

- (a) disclosure by the issuer of adequate information regarding the issuer or the security listed on the exchange within a definite time;  
(b) the form and manner of making an application for listing; and  
20 (c) the conditions for granting an approval for listing.

- 220.** (1) An issuer may make an application to an exchange for de-listing its securities from that exchange.

Voluntary de-listing.

- (2) Where an exchange proposes to allow an application for de-listing a security under this section, the de-listing must comply with –

- 25 (a) the specified conditions and the specified process; and  
(b) the bye-laws of the exchange.

- (3) The Regulator must specify the process to be followed and conditions to be met by an issuer seeking to de-list a security under this section.

- (4) Regulations and bye-laws made under this section must ensure that, –

- 30 (a) the holders of securities proposed to be de-listed are given an opportunity to sell their securities at a fair price;  
(b) the process for determination of the fair price is transparent; and  
(c) the de-listing process is efficient.

- 35 (5) The Regulator may exempt a specified class or classes of issuers or a specified class or classes of securities from the provisions of this section.

- 221.** (1) An exchange may de-list a security if any of the following conditions are met, –

Compulsory de-listing.

- (a) the issuer has contravened a bye-law of the exchange, which allows the exchange to de-list the securities of that issuer; or

- (b) the security does not have adequate liquidity and may be used for market abuse.
  - (2) Where the Regulator or an exchange proposes to make an order for de-listing a security, the Regulator or the exchange, as the case may be, must issue a show cause notice to the issuer. 5
  - (3) Where the Regulator decides to make an order for de-listing, the Regulator must make an order.
  - (4) Where an exchange decides to make an order for de-listing, the exchange must make an order.
  - (5) A person aggrieved by the order of the exchange may appeal to the Tribunal. 10
  - (6) The Regulator must specify the process to be followed and conditions to be met for de-listing of securities under this section.
  - (7) An exchange must make bye-laws –
    - (a) containing the contraventions for which a security may be de-listed; and
    - (b) governing the matters relating to de-listing, which are not specified. 15
- Takeover.
- 222.** (1) Where there is a change in the control of an issuer whose shares are listed on an exchange, –
- (a) the holders of the shares of such issuer must have the opportunity to sell their shares on terms that are not inferior to the terms on which the majority shareholders of such issuer sell their shares; and 20
    - (b) the issuer must provide adequate informaton to ensure that all the holders of the shares of an issuer have adequate information to make an informed decision in relation to such opportunity.
  - (2) In this section, “change in the control of an issuer” includes an actual or potential change in the control of the issuer. 25
  - (3) The Regulator must specify, –
    - (a) the circumstances in which, –
      - (i) any conduct in relation to the issuer may be presumed to constitute a change in the control of the issuer; and
      - (ii) a class or classes of holders of the shares of an issuer may be presumed to be the majority shareholders of the issuer; 30
    - (b) the content, and form and manner of providing information under section (3);
    - (c) the factors which will be taken into consideration for determining whether the terms offered to the holders of the shares of an issuer are inferior to the terms on which the majority shareholders sell their shares; and 35
    - (d) restrictions on any action, in relation to the issuer, which may prevent the determination of whether the terms offered to the holders of the shares of an issuer are inferior to the terms on which the majority shareholders sell their shares. 40
  - (4) The Regulator may, in consultation with the Corporation, exempt a transaction from compliance with regulations under sub-section (3), by an order, for the purpose of carrying out transactions under Part XII.

- (5) The Regulator must, in consultation with the Corporation, specify the conditions under which specified transactions may be exempted from compliance with sub-section (3) for the purpose of carrying out transactions under Part XII.

- 5 **223.** (1) An issuer must ensure that any buy back of securities listed on an exchange by the issuer is carried out in a manner which, – Buy Back.
- (a) does not discriminate between the holders of the securities;
  - (b) provides a fair value to persons from whom the securities are bought back; and
  - 10 (c) is equitable to those who choose to sell their securities.
- (2) The Regulator may specify the conditions governing the buy back of securities by the issuer, including the, –
- (a) conditions of buy back;
  - (b) procedure of buy back; and
  - 15 (c) general obligations of issuer.

## CHAPTER 56

### MARKET ABUSE

- 224.** Regulations made under this Chapter must further the objective of promoting a free and fair market for securities. Objectives.
- 20 **225.** Regulations made under this Chapter must consider and balance the following principles, – Principles.
- (a) absence of artificial distortions in the prices of securities is in the interest of consumers;
  - (b) genuine transactions in the market for securities must be protected; and
  - 25 (c) innovation in the market for securities is in the interests of issuers and consumers.
- 226.** (1) A person is prohibited from committing market abuse. Prohibition on market abuse.
- (2) In this Act, a person commits market abuse, if he engages in conduct, which involves, –
- 30 (a) insider trading;
  - (b) abuse of information;
  - (c) tipping off;
  - (d) placing an order or entering into a transaction, which is manipulative or employs a fictitious device or a form of deception or contrivance; or
  - 35 (e) dissemination of false or misleading information.
- 227.** (1) In this Chapter, – Definitions relating to market abuse.
- (a) “issuer” means an issuer of a security;

- (b) “security” means a listed security, including a security proposed to be listed, which is the subject matter of the market abuse;
- (c) “insider” means any person who has access to unpublished price sensitive information, –
  - (i) as a result of his position, in an administrative, management or supervisory capacity in the issuer or in any person related to the issuer; 5
  - (ii) as a result of his employment, profession or duties in relation to the issuer or in any person related to the issuer;
  - (iii) by the receipt of such information from a person referred to in sub-clauses (i) or (ii), where the recipient of the information could be reasonably expected to know that the communicator of such information – 10
    - (A) falls under sub-clauses (i) or (ii); or
    - (B) has received such information, directly or indirectly, from a person referred to in sub-clauses (i) or (ii). 15
- (d) “person related to the issuer” means a person who is by virtue of his relationship with the issuer in a position to access unpublished price sensitive information;
- (e) “unpublished price sensitive information” means any information, which meets all the following conditions, – 20
  - (i) relates specifically to the issuer or a related investment;
  - (ii) is of a precise nature;
  - (iii) is not generally available; and
  - (iv) upon becoming generally available, is likely to materially affect the price of the security; 25
- (f) “precise nature” in relation to any information, means information indicating a circumstance that exists or may reasonably be expected to come into existence;
- (g) “classified information” means information which meets all the following conditions, – 30
  - (i) is not generally available; and
  - (ii) upon becoming generally available, is likely to materially affect the price of the security;
- (h) “transaction information” means information, which meets all the following conditions, – 35
  - (i) relates to a transaction or a proposed transaction in the security or a related investment;
  - (ii) is not generally available; and
  - (iii) would give the person in possession of such information an unfair advantage over other persons trading or proposing to trade in the security; 40
- (i) “generally available” in relation to information means information which is capable of being accessed by the public on a non-discriminatory basis, and includes research and analysis based thereon. 45
- (j) “related investment” means an investment, information relating to which, is likely to materially affect the price or value of a security;
- (k) “trade” means to subscribe, purchase or sell or agree to subscribe, purchase or sell, and the word “trading” will be construed accordingly.

(2) The Regulator must specify the circumstances in which a security will be regarded as proposed to be listed, for purposes of this Chapter.

(3) The Regulator may specify, –

- (a) the class or classes of information which may be presumed to materially affect the price of a security;
- (b) a class or classes of persons who may be presumed to be insiders;
- (c) a class or classes of persons who may be presumed to be related to the issuer.

Insider trading.

**228.** (1) An insider engages in insider trading if he trades in securities, when in possession of unpublished price sensitive information.

(2) In a proceeding brought in relation to insider trading, it will be a defense for the insider to prove any of the following, –

- (a) that the insider did not trade on the basis of the unpublished price sensitive information;
- (b) that the insider had no reason to believe, exercising reasonable diligence that, –
  - (i) the information in his possession was unpublished price sensitive information; or
  - (ii) the person who communicated the unpublished price sensitive information to the insider violated any law or confidentiality obligation by making such communication;
- (c) that the transaction was a trade between insiders in possession of the same unpublished price sensitive information;
- (d) that there were appropriate and adequate arrangements in place to ensure that the insider does not engage in insider trading and there is no evidence of a breach of any such arrangement;
- (e) that the individual who made the trading decision was not the individual in possession of the unpublished price sensitive information, and no unpublished price sensitive information was communicated by the individual possessing such information to the individual making trading decisions on behalf of the insider; and
- (f) that the person who was in possession of the unpublished price sensitive information did not influence the decision to trade.

Abuse of information.

**229.** (1) A person engages in abuse of information, if, –

- (a) he is not an insider; and
- (b) he trades in a security when in possession of classified information or transaction information, obtained by him in the course of performance of his duties or profession.

(2) In a proceeding brought in relation to abuse of information, it will be a defense to prove, –

- (a) that there were appropriate and adequate arrangements in place to ensure that he does not engage in abuse of information and there is no evidence of a breach of such arrangements;



- (b) that the individual who made the trading decision was not the individual in possession of the classified information or transaction information, as the case may be, and no classified information or transaction information was communicated by the individual possessing such information to the individual taking trading decisions; and 5
- (c) that the person who was in possession of the classified information or transaction information did not influence the decision to trade.
- Tipping-off.
- 230.** (1) A person engages in tipping off where, –
- (a) such person, being an insider, communicates or allows access to any unpublished price sensitive information to any person; 10
- (b) such person, not being an insider, communicates or allows access to any classified information or transaction information obtained by him in the course of performance of his duties or profession, to any person; or
- (c) such person induces or causes a person referred to in clauses (a) or (b) to communicate or give access to unpublished price sensitive information, classified information or transaction information, as the case may be. 15
- (2) A person will be deemed to not have engaged in tipping off, where such communication or access is for, –
- (a) legitimate purposes; or
- (b) the performance of duties or the discharge of legal obligations, of the person communicating such information. 20
- Manipulative transactions and devices.
- 231.** (1) Transactions or orders to trade are manipulative or employ a fictitious device or a form of deception or contrivance, if they, —
- (a) give, or are likely to give, a false or misleading impression as to the liquidity in, demand for, supply or the price of, a security or a related investment; or 25
- (b) secure the price, liquidity, demand or supply of a security or a related investment, at an abnormal or artificial level.
- (2) In a proceeding brought against a person under this section, it will be a defense for such person to prove that the transactions or orders to trade, were, – 30
- (a) placed for legitimate reasons; or
- (b) in conformity with accepted market practices on the market on which they were placed.
- (3) A determination of whether transactions undertaken or orders to trade placed are manipulative or employ a fictitious device or a form of deception or contrivance, must take into account the following factors, – 35
- (a) whether such transactions or orders have directly impacted the price or liquidity of the security;
- (b) whether such transactions or orders form a discernible pattern or are consistent with the previous conduct or patterns of trade, of the person undertaking or placing them; 40
- (c) whether such transactions or orders represent a significant proportion of the volume of transactions in the security;

- (d) where such transactions or orders are placed by persons interested in a related investment, whether such transactions or orders led to significant or abnormal changes in the price of the security;
- (e) whether such transactions or orders led to no change in the beneficial ownership of a security;
- (f) whether such transactions or orders involve position reversals, without any apparent reason;
- (g) whether such transactions or orders are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and led to a change in the price of the security;
- (h) whether such transactions or orders were within the control of the person undertaking transactions or placing such orders; and
- (i) such other factors as may be specified.

(4) The Regulator may specify, –

- (a) conduct which may be presumed to be manipulative or involve a fictitious device, other form of deception or contrivance;
- (b) the circumstances which will be presumed to be legitimate reasons;
- (c) practices that constitute accepted market practices on specified markets;
- (d) factors which the Regulator must consider in determining whether the conduct of a person involves manipulation, or employs a fictitious device or other form of deception or contrivance.

**232.** (1) A person engages in dissemination of false or misleading information if such person, –

Dissemination of false or misleading information.

- (a) disseminates information by any means, which gives, or is likely to give, a false or misleading impression as to a security or a related investment; and
- (b) knew or could reasonably be expected to have known that such information was false or misleading.

(2) In a proceeding brought against a person under this section it will be a defense for such person to prove that, –

- (a) he was under a *bona fide* belief that the information was correct at the time of its dissemination;
- (b) he took reasonable steps to disseminate the correct information as soon as he discovered that the information was not correct;
- (c) that he disseminated the information in compliance with the law, if any, applicable to the dissemination of such information;
- (d) he disclosed any material interest that he held in the security or related investment, prior to or at the time of dissemination; and
- (e) he did not stand to financially gain from the dissemination.

(3) The Regulator may specify, –

- (a) the matters in respect of which a person disseminating information must make disclosures;
- (b) the manner in which the disclosure must be made;
- (c) the timing and format of the disclosure.

- 233.** (1) The Regulator may specify exemptions for a class or classes of conduct or securities from this Chapter or any of its provisions, including, –
- Safe harbours,  
defenses and  
presumptions.
- (a) the conditions to be satisfied to claim such exemption; and
- (b) the disclosures to be made and reporting requirements to be met, to claim such exemption. 5
- (2) The Regulator may specify, –
- (a) the defenses which a person may take in a proceeding brought against him for market abuse;
- (b) such disclosures to be made and requirements to be met towards achieving compliance with the provisions of this Chapter. 10

## CHAPTER 57

### OFFENCES UNDER THIS PART

- 234.** (1) An issuer commits a Class A offence if it deliberately suppresses material information required to be provided in a public offering. Failure to disclose  
in public offering.
- (2) An issuer commits a Class B offence if it is grossly negligent in providing material information required to be provided in a public offering resulting in losses for persons participating in such public offering. 15
- 235.** (1) A person commits a Class A offence if he deliberately or recklessly engages in aiding, abetting or conduct constituting market abuse. Offence of market  
abuse.
- (2) A person commits a Class B offence if he is grossly negligent in his conduct resulting in his committing market abuse. 20
- (3) The Regulator may institute criminal proceedings under this section, if each of the following conditions is satisfied –
- (a) the market abuse significantly impacted the market on which it was committed; 25
- (b) the market abuse caused –
- (i) actual gains or avoidance of loss, to the person who committed it;  
or
- (ii) actual loss to consumers on the market on which it was committed.

## PART X

## CAPITAL CONTROLS

## CHAPTER 58

## OBJECTIVES AND PRINCIPLES

- 5 **236.** (1) Rules and regulations under this Part must be made with the objective of, – Objectives.
- (a) facilitating capital account transactions in a manner that encourages investment and economic growth in India;
  - (b) managing adverse short-term fluctuations in the balance of international payments; and
  - 10 (c) regulating capital account transactions that affect national security.
- 237.** The Central Government must consider the following principles while making rules under this Part, – Principles.
- (a) similar investments in India made by residents and non-residents, must be treated similarly;
  - 15 (b) similar investments in India by non-residents from different jurisdictions, must be treated similarly; and
  - (c) similar investments outside India by residents, must be treated similarly;
  - (d) the benefits of restrictions relating to a class of capital account transactions must outweigh the potential costs of such restrictions.

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## CHAPTER 59

## CURRENT ACCOUNT TRANSACTIONS

- 238.** (1) Payment transactions resulting from cross-border trade in goods and services and other current account transactions are not subject to any restriction, condition or prohibition, under this Act. Current account convertibility.
- 25 (2) The Central Government may prescribe reporting requirements to be met by a person who proposes to enter or has entered, into a current account transaction.

## CHAPTER 60

## CAPITAL ACCOUNT TRANSACTIONS

- 30 **239.** Capital account transactions are not subject to any prohibition, restriction or condition, except, if any, imposed pursuant to this Part. Capital account convertibility.
- 240.** (1) The Central Government may prescribe, – Power to make rules.
- (a) the prohibition of one or more classes of capital account transactions;
  - 35 (b) the requirement to obtain the approval of the Central Government in relation to a capital account transaction that affects national security;

- (c) the requirement to obtain the approval of the Central Government or the Reserve Bank to enter into any class or classes of capital account transactions; and
    - (d) procedures, conditions, limits or restrictions in relation to any class or classes of capital account transactions. 5
  - (2) In this section, a capital account transaction affects national security if it involves any of the following, –
    - (a) control or ownership of critical infrastructure by a non-resident;
    - (b) control or ownership of critical technologies by a non-resident;
    - (c) control or ownership of assets in India by a foreign government; 10
    - (d) control or ownership of assets in India by a non-resident, which –
      - (i) presents a threat to the peaceful coexistence of India with other nations; or
      - (ii) presents a threat, or a major disruption, to foreign relations of India; and 15
    - (e) any other matter as may be prescribed.
  - (3) In this section, –
    - (a) “critical infrastructure” means systems and assets, whether physical or virtual, so vital to India that the incapacity or destruction of such systems or assets would have a debilitating impact on the Indian economy or national defence; and 20
    - (b) “critical technologies” means technology, critical components, or items essential to national defence.
- 241.** (1) The provisions of section 66 will not apply to rules made under this Part. Process for making rules relating to capital controls.
- (2) The Central Government must, by notification, make rules under this Part – 25
- (a) in consultation with the Reserve Bank; and
  - (b) in accordance with the process contained in section 58, except the requirements contained in section 58(1)(f) and section 58(4)(b).
- (3) The consultation with the Reserve Bank under sub-section (2)(a) must relate to, – 30
- (a) the problem to be addressed, the goals sought to be achieved and the alternatives available for addressing the problem or achieving the goals;
  - (b) the economic rationale, including the expected benefits and likely costs; and
  - (c) the effect on investment climate, efficiency, and balance of payments. 35
- 242.** (1) If the Central Government determines that an emergency condition or circumstance exists, it may, by notification, prescribe any or all of the following, – Emergency rules relating to capital controls.
- (a) the temporary suspension of any payment or receipt on account of a capital account transaction;
  - (b) the requirement to obtain the prior approval of the Central Government to enter into a capital account transaction; 40
  - (c) the requirement of safe-keeping of funds borrowed by a resident from a non-resident.

- (2) Nothing contained in section 241 will apply to rules made under this section.
- (3) Within fifteen days from the date on which a condition or circumstance was determined by the Central Government to be an emergency condition or circumstance, the Central Government must consult the Reserve Bank on the rules, if any, proposed to be made under this section, in respect of the matters contained in section 241(3).
- (4) The rules made under this section must be accompanied by the documents contained in sections 58(1)(a) to 58(1)(e).
- (5) A rule made under this section will cease to have effect after ninety days from the date on which that rule is notified.
- (6) If the Central Government determines that the rules made under this section are required to be in force for a period of more than ninety days, it must make the rules by following the procedure contained in section 241.
- (7) The Central Government may determine the existence of an emergency condition or circumstance, if, –
- (a) there is an outbreak of a natural calamity in India;
  - (b) there are grave and sudden changes in domestic economic conditions;
  - (c) there are grave and sudden changes in foreign economic conditions;
  - (d) international payments and international finance are facing or expected to face serious difficulties;
  - (e) a national emergency is proclaimed under Article 352 of the Constitution of India; or
  - (f) a financial emergency is proclaimed under Article 360 of the Constitution of India.
- 243.** (1) Where the Central Government has prescribed the requirement to obtain the approval of the Central Government in relation to a capital account transaction, the Central Government must prescribe –
- (a) the designation of officers to whom the application for approval must be made;
  - (b) the form and manner of making applications for approval under this Part; and
  - (c) the procedure for making an application for review of orders made by the Central Government under this section.
- (2) The Central Government must acknowledge the receipt of an application, whether complete or not, immediately upon receipt.
- (3) Where an application received by the Central Government is incomplete, the Central Government must inform the applicant in this regard within thirty days from the date of receipt of the application.
- (4) The Central Government must decide all applications in accordance with the provisions of this Act.
- (5) Except where the application involves a capital account transaction that affects national security, the Central Government must issue a show cause notice to the applicant, if it proposes to:
- (a) reject an application; or

Decisions on  
capital account  
transactions.

- (b) approve the application with conditions other than those prescribed in respect of that class of applications.
- (6) The Central Government must ensure that an application is determined within ninety days from the date on which the complete application was received by the Central Government. 5
- (7) The period mentioned under sub-section (6) may be extended by the Tribunal on an application made by the Central Government.
- (8) If the Central Government does not reject an application within ninety days from the date on which such application has been received, then unless the period is extended under sub-section (7), that application will be deemed to have been accepted. 10
- (9) The Central Government must issue an order disposing of an application under this section.
- (10) A person who has received an order from the Central Government under this section may apply to a senior officer of the Central Government for a review of such order, within fourteen days from the date of receipt of such order. 15
- (11) If the senior officer finds that there is an apparent error in the order, the senior officer may amend or set aside such order.
- (12) The senior officer must convey the decision –
  - (a) by an order; and 20
  - (b) within a period of thirty days from the date of receipt of the application under sub-section (10).
- (13) An appeal from an order of the senior officer will lie to the Tribunal.
- (14) In this section, “senior officer” means an officer of the Central Government not below the rank of Secretary to the Government of India, and prescribed by the Central Government to act as a senior officer for the purpose of this Part. 25

## CHAPTER 61

### ADMINISTRATION OF CAPITAL CONTROLS

- 244. (1) The Reserve Bank must, – Administering authority.
  - (a) implement the rules under this Part; and 30
  - (b) make, in consultation with the Central Government, regulations for the purpose of such implementation.
- (2) The Reserve Bank may undertake investigations of persons involved in capital account transactions or current account transactions in accordance with the provisions of Chapter 22. 35
- (3) The Reserve Bank may undertake enforcement actions in relation to persons involved in capital account transactions in accordance with the provisions of Part VI.
- (4) Where the Central Government has information or reasonable grounds to suspect that an authorised dealer or a person involved in a capital account transaction is violating or has violated any provision of any regulation or rule made under this Part, or any condition of any approval granted by the Central Government, the Central Government must convey such information, in writing, to the Reserve Bank. 40

- (5) Where the Central Government has conveyed such information to the Reserve Bank, the Reserve Bank must investigate such authorised dealer or person involved in a capital account transaction.
- 5 (6) For the purposes of sub-section (3), in addition to those under section 95, enforcement action includes –
- (a) a direction for reversal of transactions;
  - (b) a direction to a non-resident to divest itself of control or of its investment in or transactions with, the resident;
  - 10 (c) a direction to a resident to divest itself of control or of its investment in or transactions with, the non-resident;
  - (d) a declaration for annulment of transactions;
  - (e) a direction for amendment of the structure of transactions; and
  - (f) a direction to an authorised dealer to undertake transactions.

## CHAPTER 62

### 15 AUTHORISED DEALERS

245. A person may sell or draw foreign exchange for a capital account transaction or a current account transaction, to or from an authorised dealer, only in accordance with the provisions of this Part. Dealing in foreign exchange.
- 20 246. (1) Prior to undertaking a transaction on behalf of any person, an authorised dealer must be reasonably satisfied that the transaction – Undertaking of transactions by authorised dealers.
- (a) is genuine; and
  - (b) will not contravene the provisions of this Part.
- (2) The Regulator must specify the documents to be submitted to an authorised dealer at the time of undertaking a transaction involving foreign exchange.
- 25 (3) The authorised dealer will be deemed to have fulfilled the requirement under sub-section (1), if it reviews and verifies the specified documents.
- (4) The authorised dealer must refuse, in writing, to undertake a transaction if it determines that a person has, –
- (a) failed to submit a specified document; or
  - 30 (b) submitted a document which the authorised dealer does not believe to be genuine.
- (5) A person aggrieved by a refusal of the authorised dealer under sub-section (4) may complain, in such manner as may be specified, with the Reserve Bank.
- (6) The Reserve Bank must specify, –
- 35 (a) the manner in which complaints under section (5) must be made to it;
  - (b) time-limits, if any, within which the complaint must be made;
  - (c) class or classes of officers, with appropriate seniority, to whom the complaints must be made;
  - 40 (d) the manner in which a hearing will be given to the person making the complaint and the authorised dealer; and



- (e) the time-limit within which the Reserve Bank must dispose of a complaint.
- (7) The Reserve Bank must dispose of a complaint made under section (5) by an order.

## CHAPTER 63

## ANNUAL REPORTS

5

Annual reports of the Central Government.

247. (1) The Central Government must, in relation to this Part, publish an annual report within ninety days of the expiry of the year to which the report relates.
- (2) The annual report of the Central Government must contain, –
- (a) an analysis of each capital account transaction affecting national security, including the nature of the acquisitions and potential impact on critical infrastructure or critical technologies; 10
  - (b) an analysis of effectiveness of the rules made by the Central Government under this Part;
  - (c) information of the number of acquisitions reviewed by the Central Government, organised by sector, product and country of foreign ownership; 15
  - (d) the total number of approvals granted by the Central Government;
  - (e) the total number of applications rejected by the Central Government;
  - (f) the time taken for disposal of each application made under this Part;
  - (g) the total number of orders along with a summary of the orders of the senior officer; 20
  - (h) the total number of orders of the senior officer upheld and struck down by the Tribunal, along with a summary of the decisions of the Tribunal; and
  - (i) such other prescribed matters as are necessary to give a complete disclosure and analysis of the performance of functions by the Central Government under this Part. 25
248. In addition to the requirements contained in section 43, the annual report of the Reserve Bank must contain, –
- (a) an analysis of effectiveness of the regulations made by the Reserve Bank under this Part; 30
  - (b) information on the number of acquisitions reviewed by the Reserve Bank, organised by sector, product and country of foreign ownership;
  - (c) the total number of approvals granted by the Reserve Bank under this Part;
  - (d) the total number of applications rejected by the Reserve Bank under this Part;
  - (e) the total number of investigations conducted by the Reserve Bank under this Part; 35
  - (f) the total number of enforcement actions taken by the Reserve Bank under this Part;
  - (g) the total number of decisions of the administrative law member of the Reserve Bank under this Part upheld and struck down by the Tribunal, along with a summary of such decisions of the Tribunal; and 40
  - (h) such other prescribed matters as are necessary to give a complete disclosure and analysis of the performance of functions by the Reserve Bank under this Part.

Annual reports of the Reserve Bank.

- 249.** The Central Government must prescribe the matters to be included in the annual report of the Central Government and the Reserve Bank under this Part.

Rules on annual reports in relation to capital controls.

## PART XI

## RESERVE BANK OF INDIA

## CHAPTER 64

## OBJECTIVES AND FUNCTIONING OF THE RESERVE BANK

- 250.** The objectives of the Reserve Bank under this Part are to, –
- Objectives.  
5
- (a) formulate and implement monetary policy; and
  - (b) carry on other activities of a central bank, including –
    - (i) to issue currency of India;
    - (ii) to transact certain business of the Central Government and the State Government, as contained in section 274 and section 275 respectively; 10
    - and
    - (iii) to act as banker to banks.
- 251.** (1) The capital of the Reserve Bank may be increased by, –
- Capital of the  
Reserve Bank.
- (a) payment of additional amounts to the Reserve Bank by the Central Government; and 15
  - (b) subscription to additional capital of the Reserve Bank by the Central Government.
- (2) The Central Government must notify any increase in capital of the Reserve Bank.
- 252.** The quorum for a meeting of the Reserve Bank Board will be half the total number of members of the Reserve Bank Board, –
- Quorum for the  
meetings of  
Reserve Bank  
Board.
- (a) at least one of whom must be the Reserve Bank Chairperson; and
  - (b) in the absence of the Reserve Bank Chairperson, an executive member designated by the Reserve Bank Board.
- 253.** (1) The Reserve Bank Board will be supported by advisory councils in the following areas, –
- Advisory council on  
banking and  
payment.
- (a) banking; and
  - (b) payments.
- (2) The advisory councils must, in addition to the matters contained in section 34, prepare and submit to the Reserve Bank Board an annual statement on material developments in their respective fields and their recommendations in relation to such developments. 30

## CHAPTER 65

## MONETARY POLICY FUNCTION

- 254.** (1) The objective of monetary policy is to achieve price stability while striking a balance with the objective of the Central Government to achieve growth.
- Objectives of  
monetary policy.  
35

(2) In this Chapter, –

- (a) “price stability” means meeting the inflation target.
- (b) “inflation” means the year-on-year change expressed in percentage terms in the monthly Consumer Price Index.
- 5 (c) “inflation target” means the inflation target determined in accordance with section 255.
- (d) “Consumer Price Index” refers to the consumer price index published by the Central Government.
- 10 (e) “Policy Rate” means a rate at which banks borrow from the Reserve Bank and which is approved by the Monetary Policy Committee as the Policy Rate.

**255.** Inflation target for each financial year will be determined in terms of the Consumer Price Index by the Central Government in consultation with the Reserve Bank every three years.

Determination of inflation target.

15 **256.** (1) The Reserve Bank must constitute a Monetary Policy Committee to determine by majority vote the Policy Rate required to achieve the inflation target.

Monetary Policy Committee.

(2) The Monetary Policy Committee will comprise –

- (a) the Reserve Bank Chairperson as its chairperson;
- 20 (b) one executive member of the Reserve Bank Board nominated by the Reserve Bank Board;
- (c) one employee of the Reserve Bank nominated by the Reserve Bank Chairperson; and
- (d) four persons appointed by the Central Government.

25 (3) The Central Government must appoint the members referred to in sub-section (2)(d) from amongst candidates selected by a selection committee constituted by the Central Government in accordance with Schedule 1.

(4) The selection committee must follow the procedure laid down in Schedule 1 for selection of members of the Monetary Policy Committee.

30 **257.** (1) The Central Government will nominate one representative to attend all the meetings of the Monetary Policy Committee.

Representative of the Central Government.

(2) The representative of the Central Government may participate in the deliberations of the Monetary Policy Committee but will not be entitled to vote on any resolution of the Monetary Policy Committee.

35 (3) The representative of the Central Government must prepare a statement, approved by the Central Government to be made before the Monetary Policy Committee at each of its meetings.

**258.** (1) The Reserve Bank must appoint a secretary to the Monetary Policy Committee.

Secretary to the Monetary Policy Committee.

(2) The secretary must carry out the following functions, –

- (a) communicate with members of the Monetary Policy Committee on behalf of the Reserve Bank;

- (b) advise the Monetary Policy Committee on rules of procedure for meetings of the Monetary Policy Committee;
  - (c) record minutes of meetings of the Monetary Policy Committee;
  - (d) record the vote of each member for each resolution tabled at a meeting of the Monetary Policy Committee; 5
  - (e) prepare a transcript of each meeting of the Monetary Policy Committee;
  - (f) ensure that the functioning of the Monetary Policy Committee is in compliance with this Chapter;
  - (g) maintain all records of the Monetary Policy Committee;
  - (h) make regular reports to the Reserve Bank Board about the functioning of the Monetary Policy Committee; and 10
  - (i) any other function related to the Monetary Policy Committee as may be required by the Reserve Bank or the Central Government.
- (3) The Reserve Bank must provide the secretary with adequate resources to effectively carry out the functions of the secretary. 15
- 259.** (1) The members of the Monetary Policy Committee appointed under section 256(2)(d) will not be considered as employees of the Reserve Bank. Terms and conditions of members of the Monetary Policy Committee.
- (2) The terms and conditions of service, including honorarium, of such members will be provided for by the Reserve Bank by way of bye-laws.
- (3) Such members of the Monetary Policy Committee will serve on the Monetary Policy Committee for a term of four years. 20
- (4) The Reserve Bank must provide the members of the Monetary Policy Committee with privileges equivalent to those provided to an executive member of the Reserve Bank Board.
- 260.** (1) A member of the Monetary Policy Committee appointed under section 256(2)(d) may resign by giving a notice of resignation to the Central Government. Resignation of a member of the Monetary Policy Committee.
- (2) Such member must provide a copy of such notice to the Reserve Bank Chairperson.
- (3) After giving a notice of resignation, a member will continue to hold office until the earlier of, – 30
- (a) the date the Central Government appoints a person to the post vacated by such resignation; or
  - (b) the expiry of one hundred and eighty days from the date the notice of resignation was received by the Central Government.
- 261.** (1) The Central Government may remove any member of the Monetary Policy Committee appointed under section 256(2)(d) if such member has, – Removal of a member of the Monetary Policy Committee.
- (a) been at any time or is adjudged insolvent;
  - (b) been convicted of an offence involving moral turpitude;
  - (c) been absent from more than three consecutive meetings of the Monetary Policy Committee, without obtaining prior leave; 40
  - (d) failed to adequately disclose any conflict of interest;
  - (e) abused his position as such member;

- (f) has violated section 264(4);
- (g) become physically incapable of discharging his duties; or
- (h) become of unsound mind.

(2) To remove such member, the Central Government must, –

- (a) provide such member with an opportunity to be heard; and
- (b) publish the reasons for the removal of such member.

(3) The Reserve Bank Board may remove a member of the Monetary Policy Committee referred to in sections 256(2)(b) or 256(2)(c).

10 **262.** (1) The Reserve Bank must provide all information to the Monetary Policy Committee that may be required to achieve the inflation target.

Information for the Monetary Policy Committee.

(2) In addition to the information provided under sub-section (1), any member of the Monetary Policy Committee may at any time request the Reserve Bank for additional information including any data, models or analysis.

15 (3) The Reserve Bank must provide such information to a member of the Monetary Policy Committee within reasonable time, unless such information, –

- (a) allows a specific person or group of specific persons to be identified; and
- (b) is not publicly available.

20 (4) If the Reserve Bank provides any additional information to any member of the Monetary Policy Committee upon a request, it must provide the same information to all the members of the Monetary Policy Committee.

**263.** (1) The Monetary Policy Committee must meet at least once every two months.

Meetings of the Monetary Policy Committee.

(2) The Reserve Bank must publish a schedule of the meetings of the Monetary Policy Committee for a financial year at least one week before the first meeting in that financial year.

25 (3) A meeting may be convened otherwise than in accordance with the schedule, –

- (a) by way of a decision taken at a prior meeting of the Monetary Policy Committee; or
- (b) if, in the opinion of the Reserve Bank Chairperson, a meeting is required and advance intimation has been given to all the members of the Monetary Policy Committee.

(4) The decision to hold a meeting under sub-section (3)(b) must be published by the Reserve Bank as soon as practicable.

35 (5) A meeting of the Monetary Policy Committee will be chaired by the Reserve Bank Chairperson and, in the absence of the Reserve Bank Chairperson, the member of the Reserve Bank Board nominated to the Monetary Policy Committee.

(6) The quorum for a meeting of the Monetary Policy Committee will be five members, –

- (a) at least one of whom must be the Reserve Bank Chairperson; and
- (b) in his absence, the member of the Reserve Bank Board nominated to the Monetary Policy Committee.

- (7) Each member of the Monetary Policy Committee will have one vote for each proposed resolution.
- (8) Decisions in a meeting of the Monetary Policy Committee must be taken by a majority vote of the members of the Monetary Policy Committee present and voting. 5
- (9) In the event of a tie amongst the members of the Monetary Policy Committee, the Reserve Bank Chairperson will have a second and casting vote.
- (10) The decisions of the Monetary Policy Committee will be binding on the Reserve Bank.
- (11) Each member of the Monetary Policy Committee must write a single statement stating the reasons for voting in favour of or against proposed resolutions. 10
- 264.** (1) The Reserve Bank must publish every resolution adopted by the Monetary Policy Committee immediately after the conclusion of a meeting of the Monetary Policy Committee at which such resolution was adopted. Publication of proceedings and decisions of meetings of the Monetary Policy Committee. 15
- (2) On the fourteenth day after every meeting of the Monetary Policy Committee, the Reserve Bank must publish the minutes of the proceedings of such meeting, including –
- (a) any presentation made by the Reserve Bank;
  - (b) resolutions that were adopted by the Monetary Policy Committee at the meeting; 20
  - (c) vote of each member of the Monetary Policy Committee, together with the manner of voting of each member on resolutions that were passed at the meeting; and
  - (d) statements of the members of the Monetary Policy Committee.
- (3) The Reserve Bank must publish the transcript of every meeting of the Monetary Policy Committee held in a year after the expiry of three years from the end of such year. 25
- (4) A member of the Monetary Policy Committee must not communicate or allow access to any person to the contents of any matter deliberated or discussed at a meeting of the Monetary Policy Committee, including the documents or information tabled at such meetings. 30
- 265.** (1) The Reserve Bank must publish a document explaining the steps the Reserve Bank will take to implement the decisions of the Monetary Policy Committee, including any changes thereto. Operating procedure of monetary policy.
- (2) The Reserve Bank must make bye-laws stipulating,– 35
- (a) the particulars which must be included in such document; and
  - (b) the frequency with which such document must be published.
- 266.** (1) Once every six months, the Reserve Bank must publish a document explaining, – Medium term price stability expectation document. 40
- (a) sources of changes in inflation; and
  - (b) forecasts of inflation for the immediately following six to eighteen months.

267. (1) If the inflation target is not met, the Reserve Bank must set out in a report to the Central Government,—
- Failure to maintain inflation target.
- (a) the reasons for the inflation target not being met;
  - (b) remedial actions proposed to be taken; and
  - 5 (c) an estimate of the time-period within which the inflation target is proposed to be achieved pursuant to timely implementation of proposed remedial actions.
- (2) The Central Government must, in consultation with the Reserve Bank, determine what constitutes a failure to meet the inflation target.
- 10 (3) The failure to meet inflation target must relate to —
- (a) the band of inflation; and
  - (b) the period over which the inflation must remain within such band.
268. (1) The Reserve Bank must make bye-laws in relation to the following,—
- Power of the Reserve Bank to make bye-laws.
- 15 (a) the process for requisitioning information from the Reserve Bank under section 262(2);
  - (b) the manner and process of recording and counting of votes at meetings of the Monetary Policy Committee;
  - (c) the conduct of meetings of the Monetary Policy Committee including a provision allowing such meetings to be held by electronic means;
  - 20 (d) the manner of noting of minutes of meetings of Monetary Policy Committee; and
  - (e) the terms and conditions of services of members, including honorarium, of the Monetary Policy Committee members.
269. For giving effect to the decisions of the Monetary Policy Committee, the Reserve Bank may in accordance with provisions of this Chapter, sell, buy, lend or borrow for its own account in the open market any of the following, —
- Implementing monetary policy.
- 25 (a) government securities;
  - (b) securities whose full redemption and interest payments are guaranteed by the Central Government;
  - 30 (c) bullion; and
  - (d) other securities approved by the Monetary Policy Committee.

## CHAPTER 66

## OTHER CENTRAL BANK POWERS

270. (1) The Reserve Bank has such powers as are necessary to carry out its functions as a central bank under this Act, including —
- General powers of the Reserve Bank.
- 35 (a) receive money on deposit and pay interest on deposits;
  - (b) purchase, sell, discount and rediscount bills of exchange, promissory notes and treasury bills;
  - (c) purchase and sell government securities;



- (d) hold, purchase and sell securities issued by foreign governments;
  - (e) maintain deposits with other banks, including foreign banks;
  - (f) purchase and sell Special Drawing Rights issued by the International Monetary Fund;
  - (g) purchase, sell and otherwise deal in gold, specie and other precious metals; 5
  - (h) establish credits and give guarantees;
  - (i) open accounts in a central bank in any other country or in the Bank for International Settlements or any other international or regional bank, and to act as agent or mandatory or depository or correspondent for any of those banks or organisations and pay interest on any of those deposits; 10
  - (j) issue bills and drafts and effect transfers of money; and
  - (k) acquire, hold, lease or dispose immovable property.
- (2) In this section “International Monetary Fund” has the meaning assigned to it under the International Monetary Fund and Bank Act, 1945 (47 of 1945). 15
- 271.** (1) The Reserve Bank must establish and maintain a central payment system for settlement by the Reserve Bank of payment obligations of identified financial service providers, including a real-time gross settlement system. Payment system of the Reserve Bank.
- (2) In this section, “identified financial service providers” means, –
- (a) banking service providers; 20
  - (b) Infrastructure Institutions which provide clearing and settlement services and have been designated as Systemically Important Financial Institutions; and
  - (c) any other financial service provider notified by the Central Government, in consultation with the Reserve Bank. 25
- (3) The Reserve Bank must specify, –
- (a) the mode of operation of the central payment system;
  - (b) the conditions under which the access to the central payment system may be withdrawn; and
  - (c) all other issues connected or related to the central payment system. 30
- (4) If the Reserve Bank proposes to withdraw the access of an identified financial service provider to the central payment system, it must issue a show cause notice to the identified financial service provider.
- (5) If the Reserve Bank decides to withdraw the access of an identified financial service provider to the central payment system, it must issue an order to the identified financial service provider. 35
- (6) If the Reserve Bank withdraws access of an identified financial service provider from the central payment system, then the Regulator must cancel the authorisation of such identified financial service provider to act as a bank, or, to act as an Infrastructure Institution which provides clearing and settlement services. 40
- (7) The central payment system will be an Infrastructure Institution for the purposes of section 203 and no other provision of this Act will apply to the central payment system.

272. (1) The Reserve Bank may provide short-term funds against adequate collateral to system participants in the central payment system to meet a shortage of funds of such system participants. Temporary liquidity assistance.
- (2) The Reserve Bank must specify, –
- 5       (a) the procedure for availing assistance; and
- (b) the manner in which relevant information in relation to the utilisation of assistance under this section, will be shared with the Regulator.
- (3) In this section, “short-term” means overnight or such other period as may be stipulated by the bye-laws of the Reserve Bank.
- 10 273. (1) The Reserve Bank may provide liquidity assistance against adequate collateral to a financial service provider or a class of financial service providers if such advance is necessary to maintain the stability of the economy and credit system of India, on such terms and conditions as the Reserve Bank may determine. Emergency liquidity assistance.
- (2) The Reserve Bank must specify, –
- 15       (a) the terms and conditions for provision of such assistance, including extent, duration, cost, end-use restrictions and other conditions on which such assistance may be extended;
- (b) the nature of collateral to be provided by a financial service provider to avail liquidity assistance; and
- 20       (c) any other criteria to receive liquidity assistance.
- (3) Prior to extending liquidity assistance, the Reserve Bank must consult –
- (a) the Financial Authority, when assistance is sought to be provided to a financial service provider not regulated by the Reserve Bank under Part VIII; and
- 25       (b) the Corporation, when assistance is sought to be provided to a covered service provider.
- (4) The Reserve Bank must make a determination with regard to the matters under sub-section (2) prior to extending liquidity assistance to a financial service provider.
- 30 (5) No person will have recourse to the Tribunal against such determination made by the Reserve Bank.
- (6) The Reserve Bank must specify, –
- (a) the procedure to be followed by a financial service provider for availing liquidity assistance; and
- 35       (b) the manner in which relevant information in relation to the utilisation of assistance under this section will be shared with relevant Financial Agency for regulatory purposes.
- (7) The Reserve Bank will be guided by the following principles while extending liquidity assistance, –
- 40       (a) confidentiality regarding the use of this assistance by financial service providers; and
- (b) expediency in making a decision to extend assistance.

- 274.** (1) The Central Government must, – Business of the  
Central  
Government.
- (a) entrust the Reserve Bank with all its money, remittance, exchange and banking transactions in India; and
  - (b) deposit, free of interest, all its cash balances with the Reserve Bank.
- (2) The Reserve Bank will accept monies on account of the Central Government and will make payments on behalf of the Central Government. 5
- (3) The Reserve Bank will carry out exchange, remittance and other banking operations for the Central Government.
- (4) All actions under sub-section (1) will be in accordance with the conditions agreed between the Reserve Bank and the Central Government. 10
- (5) The Central Government must lay such agreement before the Parliament, as soon as practicable.
- (6) The Reserve Bank must publish such agreement.
- (7) Sub-section (1) does not prevent the Central Government from carrying on money transactions or holding requisite balances at places where the Reserve Bank has no branches or agencies. 15
- (8) The Reserve Bank must include a description of the business of the Central Government carried on by the Reserve Bank in its annual report.
- 275.** (1) The Reserve Bank may by agreement with a State Government, – Business of State  
Governments.
- (a) undertake all the money, remittance, exchange and banking transactions in India of such State; and 20
  - (b) maintain the deposit of all cash balances of the State with itself, free of interest.
- (2) Any agreement under sub-section (1) will be laid before Parliament, as soon as practicable and must be published. 25
- (3) The Reserve Bank must include details of the business of State Governments carried on by the Reserve Bank in its annual report.

## CHAPTER 67

### CURRENCY

- 276.** (1) The Reserve Bank will have the sole right to issue bank notes in India. Right to issue bank  
notes.
- (2) Every bank note issued by the Reserve Bank will be –
- (a) legal tender at any place in India in payment or on account for the amount expressed on it; and
  - (b) guaranteed by the Central Government.
- (3) The Reserve Bank must with the approval of the Central Government specify, – 35
- (a) the denomination value of the bank notes to be issued by the Reserve Bank; and
  - (b) the form, design and material of the bank notes.

- (4) No stamp duty under the Indian Stamp Act, 1899 (2 of 1899) will be payable in respect of bank notes issued by the Reserve Bank.
- (5) The Reserve Bank will not reissue bank notes that in its opinion are torn, defaced or excessively soiled.
- 5 (6) No person will have the right to recover from the Central Government or the Reserve Bank, the value of any lost, stolen, mutilated or imperfect bank note.
- (7) The Reserve Bank may, with the approval of the Central Government, specify the conditions under which the value of a note described under sub-section (6) may be refunded as of grace.
- 10 **277.** (1) The Central Government must not put into circulation any rupee coins, except through the Reserve Bank. Issue of rupee coins.
- (2) The Reserve Bank must not dispose of rupee coins otherwise than for the purposes of circulation.
- 15 (3) The Reserve Bank must, in exchange for bank notes, supply notes of lower value and rupee coins in such quantities which, in the opinion of the Reserve Bank, are required for circulation.
- (4) The Central Government must supply coins to the Reserve Bank on demand for the purpose of supply under sub-section (3).
- 20 (5) If the Central Government fails to supply coins upon demand by the Reserve Bank, the Reserve Bank will be released from the obligation under sub-section (3).
- 278.** (1) The Central Government may on the recommendation of the Reserve Bank notify, – Withdrawal of currency.
- 25 (a) the non-issue or discontinuance of issue of bank notes of certain denominational values; or
- (b) that any series of bank notes of any denomination will cease to be legal tender in accordance with the conditions notified.
- (2) The notification must provide a deferred prospective date from which it takes effect.
- 30 (3) The notification must give reasonable time for persons to return such currency to any branch of the Reserve Bank.
- (4) When the notification takes effect, all currency to which the notification applies will cease to be legal tender.
- 35 (5) Notwithstanding sub-section (4), the Reserve Bank will continue to be liable to pay currency issued by it.
- 279.** (1) The holder of currency of any denomination, may demand to exchange such currency for currency of lower denomination of his choice, during normal banking hours, at any branch of the Reserve Bank. Exchange of currency.
- (2) The Reserve Bank must execute all demands promptly.
- 40 (3) If the Reserve Bank is unable to execute a demand under this section within the same day as the demand was made it must make a report to the Central Government.

- (4) The Reserve Bank must withdraw damaged notes from circulation.
- (5) The Central Government may require the Reserve Bank to establish branches at such locations as determined appropriate by the Central Government for the purpose of this section.
- 280.** (1) The Reserve Bank will have a separate and wholly distinct department known as the Issue Department for the issuance of bank notes. Issue Department.  
5
- (2) The Reserve Bank must issue bank notes solely through the Issue Department.
- (3) The aggregate assets of the Issue Department must be an amount not less than the total liabilities of the Issue Department.
- (4) The liabilities of the Issue Department will be an amount equal to the total bank notes in circulation at that point of time. 10
- (5) The assets of the Issue Department will not be subject to any liability other than the liabilities of the Issue Department.
- (6) The Reserve Bank must, in consultation with the Central Government, make bye-laws in relation to the nature, minimum value and other aspects relating to the assets of the Issue Department. 15
- (7) The Issue Department will not issue bank notes to any person except in exchange for other bank notes or for such coin, bullion or securities as may be stipulated by the Reserve Bank in this regard.
- 281.** The Reserve Bank will issue rupee coins on demand in exchange for bank notes and will issue bank notes on demand in exchange for coins which is legal tender under the Indian Coinage Act, 2011 (11 of 2011). Obligation to  
apply different  
forms of currency.
- 282.** (1) No person other than the Reserve Bank or the Central Government, where expressly authorised must, – Issue of demand  
bills and notes.
- (a) draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand; 25
- (b) borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person; or
- (c) make or issue any promissory note expressed to be payable to the bearer of the instrument. 30
- (2) Sub-section (1) does not prevent any cheque or drafts, including hundis, which may be payable to the bearer on demand, to be drawn on a person's account with a banker, shroff or agent.
- (3) In this section, the phrases “bill of exchange”, “promissory note”, “cheque”, “draft” and “banker” have the meaning assigned to them under the Negotiable Instruments Act, 1881 (26 of 1881). 35
- 283.** (1) The Reserve Bank must specify the procedure for the Reserve Bank to obtain information relevant for its functions under this Part. Power of Reserve  
Bank to obtain  
information.

- (2) A person must comply with a request for providing information issued under sub-section (1) and provide the required information or documents, in its possession or power, to the Reserve Bank.

## CHAPTER 68

## ACCOUNTS OF THE RESERVE BANK

5

- 284.** (1) The Reserve Bank must prepare and publish a statement of its assets and liabilities on a weekly basis. Statement of assets and liabilities.
- (2) The statement must relate to assets and liabilities as at the close of business of the day on which such statement is prepared.
- 10 (3) If a day on which a statement is to be prepared is a holiday, as notified by the Central Government, then the statement must be prepared and published on the last business day preceding that day.
- (4) A copy of the statement must be submitted to the Central Government.
- 285.** (1) The Reserve Bank Board must maintain a policy in relation to the payment of surplus profits to the Central Government. Allocation of surplus profits.
- 15 (2) In accordance with its policy, the Reserve Bank must pay profits held by it to the Central Government, after making adequate provisions for, –
- (a) reserves to meet future contingencies; and
- 20 (b) bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and for all other matters for which provision are usually provided for by a banking service provider.
- (3) The Reserve Bank must publish the policy made under sub-section (1) and any modifications made to such policy from time to time.
- 25 (4) The annual financial statements prepared by the Reserve Bank must clearly explain the provisions made by the Reserve Bank, along with the reasons for every provision.

## PART XII

## RESOLUTION OF FINANCIAL SERVICE PROVIDERS

## CHAPTER 69

## OBJECTIVES AND SCOPE

- 286.** The objective of the Corporation is to protect, – Objectives.  
5
- (a) the stability and resilience of the financial system;
  - (b) consumers of covered obligations up to a reasonable limit; and
  - (c) public funds, to the extent possible.
- 287.** (1) Each Regulator must, in consultation with the Corporation, specify – Covered and  
Insured Services.
- (a) a class or classes of financial service, which will be an Insured Service; 10  
and
  - (b) a class or classes of financial service providers, which must be Insured Service Provider.
- (2) Regulations made under sub-section (1) must consider the following factors–
- (a) the nature and extent of detriment that may be caused to consumers by the non-fulfilment of obligations owed to them by the relevant class of financial service providers; 15
  - (b) the capacity of consumers to access and process information relating to the safety and soundness of the relevant class of financial service providers; 20  
and
  - (c) the inherent difficulties for financial service providers in fulfilling such obligations.
- (3) Regulations made under sub-section (1) must consider whether the financial service provider is governed by a law that allows the Regulator and the Corporation to use their respective powers under this Part in respect of such financial service provider. 25
- (4) In this Part, –
- (a) “Consumer Insurance” means the insurance provided by the Corporation to consumers of an Insured Service Provider, covering the event of failure of the Insured Service Provider, which leads to the Insured Service Provider being unable to provide a specified financial service to its consumers; 30
  - (b) “Insured Service” means a financial service under sub-section (1) which can be provided by financial service providers only after obtaining Consumer Insurance; and 35
  - (c) “Covered Service Provider” means, –
    - (i) an Insured Service Provider; and
    - (ii) any Systemically Important Financial Institution.
- 288.** (1) Every financial service provider must register and obtain Consumer Insurance from the Corporation before providing an Insured Service. Registration and  
Consumer  
Insurance.  
40

- (2) Every Systemically Important Financial Institution must apply for registration with the Corporation within fifteen days of being classified as such.
- (3) The Corporation must specify the following for obtaining registration and Consumer Insurance—
- (a) the procedure a Covered Service Provider must follow;
  - (b) the information a Covered Service Provider must provide;
  - (c) the scale of fees a Covered Service Provider must pay; and
  - (d) other incidental matters.
- (4) The Corporation must confirm an application for registration and provide the registration and Consumer Insurance, as applicable, within twenty one days from the date of the application.
- (5) A Systemically Important Financial Institution must submit a resolution plan to the Corporation, at the time of registration.

## CHAPTER 70

## CONSUMER INSURANCE

- 289.** (1) The Regulator and the Corporation must jointly specify the quantum of coverage necessary for each class of Insured Service.
- (2) In determining the quantum of coverage of Consumer Insurance, the Regulator and the Corporation must consider the effect on consumers due to failure to provide the Insured Service.
- (3) The Corporation must specify the process by which Consumer Insurance must be provided to consumers in the event of failure of an Insured Service Provider in providing an Insured Service.
- 290.** (1) Every Covered Service Provider must pay the following types of fees to the Corporation, —
- (a) fees for resolution; and
  - (b) fees for administrative expenses of the Corporation.
- (2) Every Insured Service Provider must additionally pay insurance premium for Consumer Insurance.
- (3) The Corporation must specify the following, —
- (a) the scale of fees for resolution and administrative expenses to be paid by Covered Service Providers;
  - (b) the information which a Insured Service Provider must provide to the Corporation to calculate premium;
  - (c) the manner and methodology of assessment of premium payable by different classes of Insured Service Provider;
  - (d) the manner and mode of payment of premium by Insured Service Providers to the Corporation; and
  - (e) the frequency at which the premium and fees are to be paid.

Features of  
Consumer  
Insurance.Payments to be  
made to the  
Corporation.



- (4) An Insured Service Provider may only through a written agreement with the Corporation change a premium amount, interest or any other payment to be made to the Corporation by reason of a set-off or claim by the Covered Service Provider against the Corporation.
- (5) If the Corporation has any reason to consider that the information provided by the Covered Service Provider under this section is untrue, incorrect or misleading, the Corporation may, after recording its reasons in writing, inspect a Covered Service Provider. 5
- (6) No court, tribunal or authority may, in any proceeding relating to any dispute between the Corporation and any Covered Service Provider, injunct the payment of any amount by the Covered Service Provider to the Corporation. 10
- 291.** (1) The Corporation must constitute the following funds, – Funds of the Corporation.
- (a) a fund for each class of Consumer Insurance provided by the Corporation to the Insured Service Providers, called the insurance fund;
- (b) a fund for meeting the expenses of carrying out resolution, called the resolution fund; and 15
- (c) a fund for all the administrative functions of the Corporation called the general fund.
- (2) The Corporation must deposit the amounts as follows, –
- (a) premium for each type of Consumer Insurance, in the insurance fund created for such Consumer Insurance; 20
- (b) fees for resolution in the resolution fund; and
- (c) all other fees and income in the general fund.
- (3) The Corporation may invest the monies in the funds in a prudent manner.
- (4) The Corporation must, as far as possible, invest the monies in the insurance fund in compliance with the general principles of insurance. 25
- (5) The Corporation must remit any income from any investment to the fund from which such investment was made.
- (6) The Corporation must utilise each fund only for the purpose it has been constituted. 30
- (7) The insurance funds of the Corporation may be used only for the following purposes,–
- (a) payment to consumers of a Covered Service Provider after the Corporation has been appointed as the receiver of the Covered Service Provider; or
- (b) payment to another Covered Service Provider to take over the obligations of a Covered Service Provider in resolution. 35
- (8) The Corporation must within ninety days from the date of utilisation of any fund from any of the insurance funds, submit a report to the Central Government in the prescribed form and manner.
- (9) The Central Government must prescribe the form and manner in which the report must be made. 40

- Withdrawal and  
de-registration.
292. (1) A Covered Service Provider that is an Insured Service Provider, must de-register from the Corporation and withdraw from Consumer Insurance if it ceases to provide an Insured Service, by making an application.
- 5 (2) A Covered Service Provider that is a Systemically Important Financial Institution, must de-register from the Corporation if it ceases to be a Systemically Important Financial Institution by making an application.
- 10 (3) A Covered Service Provider, which is both an Insured Service Provider and a Systemically Important Financial Institution ceases to be an Insured Service Provider or, as the case may be, a Systemically Important Financial Institution, must withdraw from Consumer Insurance if it ceases to provide an Insured Service or ceases to be an Insured Service Provider, as the case may be, by making an application.
- 15 (4) A Covered Service Provider, which is both an Insured Service Provider and a Systemically Important Financial Institution, must deregister from the Corporation, if it ceases to provide an Insured Service or ceases to be an Insured Service Provider, as the case may be, and also ceases to be a Systemically Important Financial Institution, by making an application.
- (5) The Corporation must pass orders to decide an application for withdrawal from Consumer Insurance or deregistration from Corporation, as the case may be.
- 20 (6) If the Corporation is satisfied that the condition for withdrawal from Consumer Insurance or de-registration from the Corporation has been met, the Corporation may on its own carry out the withdrawal from the Consumer Insurance or as the case may be from registration with the Corporation.
- 25 (7) The Corporation must specify the process by which Consumer Insurance will be withdrawn and de-registration will be carried out.

## CHAPTER 71

## RESOLUTION

- Defining risk to  
viability.
293. (1) The Corporation and the Regulator must jointly specify criteria for classification of Covered Service Providers into any one of the following categories of risk to viability, –
- 30 (a) low, where the probability of failure of a Covered Service Provider is substantially below the acceptable probability of failure;
- (b) moderate, where the probability of failure of a Covered Service Provider is marginally below or equal to acceptable probability of failure;
- 35 (c) material, where the probability of failure of a Covered Service Provider is marginally above acceptable probability of failure;
- (d) imminent, where the probability of failure of a Covered Service Provider is substantially above the acceptable probability of failure;
- 40 (e) critical, where the probability of failure of a Covered Service Provider is substantially above the acceptable probability of failure, and the Covered Service Provider is on the verge of failing to meet its obligations to its consumers.
- (2) The regulations under this section may take into account the following features of a Covered Service Provider, –

- (a) adequacy of capital;
  - (b) asset quality;
  - (c) capability of management;
  - (d) earnings sufficiency;
  - (e) liquidity of the Covered Service Provider; and 5
  - (f) sensitivity of the Covered Service Provider to adverse market conditions
- (3) The Corporation and the Regulator may jointly specify different conditions for different categories of Covered Service Provider.
- (4) Designation of a Covered Service Provider into any of the categories of risk to viability specified under sub-section (1) will not be subject to appeal. 10
- (5) Designation of a Covered Service Provider as being critical risk to viability, must be made through an order.
- 294.** (1) The Regulator must regularly inspect Covered Service Providers to designate each Covered Service Provider to one of the categories of risk to viability. Inspection of Covered Service Providers. 5
- (2) The Corporation may nominate one or more of its officers or agents to accompany the inspection of the Regulator. 15
- (3) The Regulator must share the findings of its inspections and the basis of classification of a Covered Service Provider to the category of risk to viability.
- (4) The Corporation may request information from any Covered Service Provider relating to its business. 20
- (5) If in the opinion of the Corporation the risk to viability designation of any Covered Service Provider by the Regulator is incorrect, then the Corporation, after recording reasons, may inspect any Covered Service Provider classified by the Regulator as low or moderate risk to viability to independently determine the risk to viability of the Covered Service Provider. 25
- (6) The Regulator must specify the manner of inspection of Covered Service Providers under this section.
- (7) The Regulator and the Corporation must jointly specify the manner of joint inspections under sub-section (2).
- (8) The Corporation must provide the reason for inspecting a Covered Service Provider under this section to such Covered Service Provider, after carrying out such inspection. 30
- (9) If the Regulator designates a Covered Service Provider as in the category of moderate risk to viability the Regulator may carry out additional inspections to ascertain the risk to viability of the Covered Service Provider. 35
- 295.** (1) If the Regulator designates a Covered Service Provider as being in the category of material risk to viability then all of the following must be done, – Material risk to viability.
- (a) the Regulator may carry out additional inspections of the Covered Service Provider to monitor the risk to viability designation of the Covered Service Provider; 40
  - (b) the Covered Service Provider must submit a Restoration Plan to the Regulator;

- (c) the Covered Service Provider must submit a resolution plan to the Corporation; and
  - (d) the Corporation may carry out inspections of the Covered Service Provider; which may involve inspection of the premises and locations of business of the Covered Service Provider, and independently designate the risk to viability of the Covered Service Provider.
- (2) If the Corporation, at any time, classifies a Covered Service Provider as being in the category of material risk to viability, the Corporation may, –
- (a) carry out additional inspections of the Covered Service Provider to monitor the risk to viability of the Covered Service Provider; and
  - (b) require the Covered Service Provider to submit a resolution plan.
- (3) When a Covered Service Provider is classified as being in the category of material risk to viability by the Regulator, the Regulator may by order, prevent the Covered Service Provider from carrying out any or all of the following actions, –
- (a) accepting funds which increase liabilities to consumers;
  - (b) payment of any capital distribution by the Covered Service Provider;
  - (c) payment of any bonuses to any director, employee or manager of the Covered Service Provider;
  - (d) acquiring any interest in any other business;
  - (e) establishing new locations of carrying out business or acquiring new clients;
  - (f) carrying out transactions with any member of any group to which the Covered Service Provider belongs; and
  - (g) repayment of any debt which is not due.
- (4) When a Covered Service Provider is classified as being in the category of material risk to viability, the Regulator may, by order, require the Covered Service Provider to carry out any or all of the following actions, –
- (a) increase the capital of the Covered Service Provider through such means as may be stated in the order, which may include conversion of securities from one type to other in terms of such securities, or issue of new securities; or
  - (b) sell identified assets.
- (5) The Regulator may vary an order under sub-sections (3) or (4), on the application of the Covered Service Provider, if it is satisfied that such variation will, –
- (a) reduce the financial obligation of the Covered Service Provider; or
  - (b) restore the Covered Service Provider to the category of low or moderate risk to viability.
- 296.** (1) The Corporation or the Regulator may classify a Covered Service Provider as being in the category of imminent risk to viability if, –
- (a) the Regulator or the Corporation pursuant to an inspection under Section 294 designates the Covered Service Provider in the category of imminent risk to viability;
  - (b) the Covered Service Provider has not submitted a restoration plan within a reasonable time after being ordered by the Regulator to do so;

Imminent risk to  
viability.

- (c) the Covered Service Provider has failed to implement a Restoration Plan, in full or part, within such time as indicated in the Restoration plan;
  - (d) the Covered Service Provider has failed to submit to the Corporation a resolution plan after being ordered to so; or
  - (e) the Regulator or the Corporation determines, by an order, that there has been a fraud in the business of the Covered Service Provider, which significantly affects the business of the Covered Service Provider. 5
- (2) When Covered Service Provider is classified as being in the category of imminent risk to viability –
- (a) if the Covered Service Provider is not a Systemically Important Financial Institution, it must submit a resolution plan to the Corporation within seven days from the date of being so classified; and 10
  - (b) the Corporation may appoint employees or agents to continuously inspect the Covered Service Provider, including by being present at the principal location of business and any other location of the Covered Service Provider, and observing any meeting of the management of the Covered Service Provider or any other functioning of the Covered Service Provider. 15
- (3) When a Covered Service Provider is classified as being in the category of imminent risk to viability the Corporation may, by order, prevent the Covered Service Provider from carrying out any or all of the following actions – 20
- (a) actions listed under section 295(3);
  - (b) payment of any fees to any agent or service provider of the Covered Service Provider;
  - (c) payment of any remuneration to any employee, director or manager of the Covered Service Provider in excess of any limit set in the order; 25
  - (d) carrying out any financial service as may be provided in the order including;
  - (e) making of any advances; and
  - (f) any other action which may, in the opinion of the Corporation, help in the resolution of the Covered Service Provider. 30
- (4) When a Covered Service Provider is classified as being in the category of imminent risk to viability the Regulator may, in consultation with the Corporation, by order, –
- (a) require the Covered Service Provider to carry out any actions that the Regulator could require a Covered Service Provider to undertake under Section 295(4); 35
  - (b) remove the any or all persons in control of the Covered Service Provider from any position in the Covered Service Provider;
  - (c) require the owners of the Covered Service Provider to appoint new managers for the Covered Service Provider; 40
  - (d) require the Covered Service Provider to undertake any action, which in the opinion of the Corporation, may reduce the risk category of the Covered Service Provider; or
  - (e) supercede and reconstitute the board of the Covered Service Provider.
- 297. (1)** If any of the following conditions are met, then the provisions of chapter 73 apply–

Critical Risk to  
viability.

- (a) the Regulator or the Corporation classifies a Covered Service Provider as being in the category of critical risk to viability; or
  - (b) any court of competent jurisdiction declares a Covered Service Provider bankrupt.
- 5 (2) The Regulator or the Corporation must classify a Covered Service Provider as in the category of critical risk to viability only through an order.
- (3) Shareholders representing more than fifty percent of the total paid up capital of the Covered Service Provider, or creditors representing more than fifty percent of the outstanding indebtedness of the Covered Service Provider, or any owner of the Covered Service Provider, may appeal to the Tribunal against the order within three days of issuing of such order.
- 10 (4) In the interest of protecting consumers of the Covered Service Provider, the Tribunal or any court, must not injunct the order of the Regulator or Corporation.
- 15 (5) If in any other proceeding or appeal before the Tribunal or a competent court it is established that the classification of the Covered Service Provider to the category of critical risk to viability was without any reasonable grounds, then such court may award parties aggrieved by such order, such damages as may be reasonable to compensate for the loss suffered by such aggrieved parties.
- 20 **298.** (1) If the Corporation classifies an Insured Service Provider to be at imminent risk or critical risk to viability, the Corporation may, by order, withdraw Consumer Insurance from such Insured Service Provider.
- (2) No consumer of the Insured Service Provider will enjoy any Consumer Insurance from the date of the order.
- 25 (3) Withdrawal of Consumer Insurance under this section will not affect the Consumer Insurance of consumers, before the Consumer Insurance was withdrawn.

Revocation of  
Consumer  
Insurance.

## CHAPTER 72

### RESTORATION AND RESOLUTION PLANS

- 299.** (1) Every restoration plan must contain the following, –
- 30 (a) clear identification of the assets and liabilities of the Covered Service Provider;
- (b) any contingent liabilities of the Covered Service Provider;
- (c) steps which the Covered Service Provider must take to qualify to be classified as in the category of moderate risk to viability;
- 35 (d) how the steps may result in the Covered Service Provider to be qualified to be classified as in the category of moderate risk to viability;
- (e) the time within which the entire restoration plan and each step of the plan will be executed; and
- (f) any other relevant information specified by the Regulator.
- 40 (2) The Regulator must specify, –
- (a) the form and manner in which the restoration plan is required to be made; and

Restoration plan.

- (b) any relevant information required by the Regulator.
- (3) The Regulator may, by order, require a Covered Service Provider to provide such additional information as may be required by the Regulator to adjudge the functioning of a restoration plan.
- 300.** (1) Every resolution plan must contain the following, – Resolution plan.  
5
- (a) clear identification of the assets and liabilities of the Covered Service Provider;
  - (b) any contingent liabilities of the Covered Service Provider; and
  - (c) such other relevant information as specified by the Corporation which may be required by the Corporation to sell or transfer the assets and liabilities of the Covered Service Provider 10
- (2) The Corporation must specify –
- (a) the form and manner in which the resolution plan is required to be made; and
  - (b) any relevant information required by the Corporation. 15
- (3) The Corporation may by order require a Covered Service Provider to provide such additional information as may be required by the Corporation to transfer or sell the assets of the Covered Service Provider.
- (4) Every financial service provider designated as a Systemically Important Financial Institution must submit a Resolution Plan to the Corporation within ninety days of such designation. 20

## CHAPTER 73

### RESOLUTION OF A COVERED SERVICE PROVIDER

- 301.** (1) Where a Covered Service Provider is classified as being in the category of critical risk to viability or is adjudged bankrupt by a court of competent jurisdiction, then notwithstanding anything contained in any law, the following provisions will be immediately applicable, – Immediate actions.  
25
- (a) the Covered Service Provider will be deemed to be in liquidation for purposes of any law;
  - (b) the Corporation will be deemed to be the liquidator of the Covered Service Provider; 30
  - (c) the Regulator may withdraw or modify any authorisations granted to the Covered Service Provider to carry out any financial service;
  - (d) the Corporation must publish consequences of the application of this section; and 35
  - (e) the Regulator must publish the withdrawal or modification permissions to carry out financial services.
- (2) The Corporation must specify the form and manner of information to be published under this section.
- 302.** (1) The Corporation will have all the powers that a liquidator has under any law governing the insolvency of the Covered Service Provider. Powers of the  
Corporation as  
liquidator.

(2) The powers of the Corporation, as liquidator, will include the power to, –

- (a) access and control all records, accounts, returns and books of the Covered Service Provider;
- 5 (b) do all acts and to execute, in the name and on behalf of the Covered Service Provider, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the Covered Service Provider's seal;
- (c) manage and handle the assets of the Covered Service Provider in a prudent manner;
- 10 (d) sell any property, including movables, immovables and actionable claims, of the Covered Service Provider by public auction or private contract, as maybe determined by the Corporation to be prudent, with power to transfer such property to any person or body corporate, or to sell the same in parcels;
- 15 (e) sell the whole of the undertaking of the Covered Service Provider as a going concern;
- (f) nullify any transfer of property, delivery of goods, payment, execution of a contract or other act made, taken or done by or against the Covered Service Provider within one hundred and eighty days before the appointment of the Covered Service Provider as a liquidator, which, had it been
- 20 made, taken or done by or against an individual within one hundred and eighty days before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference;
- (g) raise any money required on the security of the assets of the Covered Service Provider;
- 25 (h) institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the Covered Service Provider;
- (i) invite and settle claims of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities as established in
- 30 Section 306;
- (j) to repudiate any contract of the Covered Service Provider which, in the opinion of the Corporation is, *prima facie*, without legitimate business justification;
- 35 (k) to prove, rank and claim in the insolvency of any debtor to the Covered Service Provider for any balance against his estate, and to receive capital distributions in the insolvency, in respect of that balance, as a separate debt due from the insolvent debtor, and rateably with the other separate creditors;
- 40 (l) to take out, in the official name of the Corporation, letters of administration to any deceased debtor of the Covered Service Provider, and do any other act necessary for obtaining payment of any money due from such deceased debtor or his estate, which cannot be conveniently done in the name of the Covered Service Provider, and in all such cases, the money due will, for the purpose of enabling the Corporation to take out the letters of administration or recover the money, be deemed to be due to the
- 45 Corporation itself;
- 50 (m) to draw, accept, make and endorse any negotiable instrument in the name and on behalf of the Covered Service Provider, with the same effect with respect to the liability of the Covered Service Provider, as if such instrument had been drawn, accepted, made or endorsed by or on behalf of the Covered Service Provider;



- (n) to obtain professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the Covered Service Provider, appoint an agent to do any business which the Corporation is entitled to do;
  - (o) to continue the employment of some or all employees of the Covered Service Provider on such terms as may be agreed upon; and 5
  - (p) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary for the –
    - (i) winding up of the Covered Service Provider; 10
    - (ii) distribution of assets;
    - (iii) discharge of his duties and obligations and functions as liquidator.
  - (3) Notwithstanding anything contained in any other law, the Corporation will have the same powers as are vested in a civil court under the Civil Procedure Code while trying a suit, with respect to any person in control, director or manager of the Covered Service Provider– 15
    - (a) summon, enforce the attendance, and examine on oath;
    - (b) require the discovery and production of any document related to the Covered Service Provider; and
    - (c) receiving evidence on affidavits; 20
  - (4) The Central Government may make rules governing the actions of the Covered Service Provider as a liquidator under this section.
- 303.** (1) The Corporation must resolve a Covered Service Provider by transferring the whole or part of the assets and liabilities of the Covered Service Provider to, – Methods of resolving a Covered Service Provider.
- (a) another person, on terms agreed between the Covered Service Provider and such person; 25
  - (b) a bridge provider, in accordance with section 304;
  - (c) the Central Government, in accordance with section 305; or
  - (d) any combination of those listed above.
- (2) The Corporation must satisfy itself that no other method of resolution is possible before making a reference under section 305 30
- 304.** (1) The Corporation may create a bridge provider by incorporating a company, for the purpose of resolving a Covered Service Provider. Transfer of assets and liabilities to Bridge Provider.
- (2) The capital of the bridge provider will be in the form of equity shares, held entirely by the Corporation. 35
  - (3) The articles of association of the bridge provider must be, –
    - (a) approved by the Corporation; and
    - (b) executed by at least three representatives of the Corporation.
  - (4) The bridge provider must have a board of directors comprising of at least five directors and not more than ten directors, as appointed by the Corporation. 40
  - (5) On the application of the Corporation, the Regulator must, subject to specified conditions, provide such authorisation to the bridge provider as may be required for the bridge provider to operate.

- (6) After the Regulator has granted the appropriate authorisation to the bridge provider, –
- (a) the Corporation may transfer the whole or part of the assets and liabilities of the Covered Service Provider to such bridge provider;
  - (b) the bridge provider will have the same powers and be subject to the same laws as a Covered Service Provider carrying out similar financial services, with the following exceptions, –
    - (i) the Corporation may direct the bridge provider in respect of any matter and the bridge provider must comply with such directions;
    - (ii) the Regulator and the Corporation may exempt the bridge provider from complying with the provisions of this Act, for a period not exceeding two years; and
    - (iii) any other exception which the Central Government may, in writing, provide for such bridge provider.
- (7) The Corporation may provide the bridge provider with such funds from the resolution fund, as may be reasonably required by the bridge provider to carry on the business of the bridge provider.
- (8) The Corporation must resolve the bridge provider as expeditiously as possible, and in any event, within two years from the date of its incorporation.
- (9) The Corporation must resolve the bridge provider by transferring the whole or any part of the assets or liabilities of the bridge provider to, –
- (a) another person capable of providing the covered service, on terms agreed between the Covered Service Provider and such person;
  - (b) sale of the of the shares of the bridge provider constituting more than three-fourths of the equity capital of the bridge provider;
  - (c) liquidation of the bridge provider; or
  - (d) sale of the bridge provider to the Central Government.
- 305.** (1) If the Corporation determines that a Covered Service Provider, which is a Systemically Important Financial Institution, cannot be resolved otherwise, –
- (a) the Corporation may recommend to the Council for acquisition of the whole or part of the assets and liabilities of the Covered Service Provider by a company owned by the Central Government; and
  - (b) the Council may, upon receipt of a recommendation from the Corporation, make a similar recommendation to the Central Government.
- (2) A recommendation under sub-section (1) must, –
- (a) be in writing;
  - (b) contain detailed information about, –
    - (i) the assets and liabilities of the Covered Service Provider; and
    - (ii) an estimate of the cost that would be required to make the acquisition; and
  - (c) state the reasons for the recommendation.
- (3) The Central Government must, upon receipt of the recommendation from the Council, consider such recommendation and convey its decision in writing to the Council and the Corporation within sixty days from the date of receipt of the recommendation.

Transfer of assets and liabilities to Central Government.

- (4) If the Central Government refuses to accept the transfer the Corporation must liquidate the Covered Service Provider.
- (5) If the Central Government determines to acquire the whole or part of the assets or liabilities of a Covered Service Provider, the Corporation must transfer such assets and liabilities to the company identified by the Central Government, on such terms as determined by the Central Government, subject to sub-section (7). 5
- (6) Where the Central Government has acquired the whole or part of the assets or liabilities of a Covered Service Provider, the resulting entity must comply with the provisions of this Act, within ninety days from the date on which the Central Government acquires the assets or liabilities of the Covered Service Provider. 10
- (7) The Central Government must accept the transfer of assets of the Covered Service Provider after determining adequate compensation, if any, to be provided to the owners of the Covered Service Provider. 15
- (8) The Central Government must prescribe the method of calculation of compensation.

## CHAPTER 74

### LIQUIDATION OF THE COVERED SERVICE PROVIDER

- Priority of  
discharge of claims.
- 306.** (1) To the extent a Covered Service Provider cannot be resolved in the manner provided in section 303, notwithstanding any law for the time being in force, the liabilities of the Covered Service Provider must be discharged in the descending order of preference, set out below, –
- (a) if the Covered Service Provider was covered by Consumer Insurance, then the liabilities of the Covered Service Provider to its consumers covered by Consumer Insurance, to the extent of coverage of such Consumer Insurance; 25
  - (b) the costs incurred by the Corporation in acting as a liquidator;
  - (c) debts due to secured creditors;
  - (d) other liabilities of the Covered Service Provider to its consumers; 30
  - (e) liabilities to the sovereign;
  - (f) liabilities to unsecured creditors; and
  - (g) other liabilities.
  - (2) Except for the items in sub-section (1)(a) and sub-section (1)(b), distribution of funds under all the above items must be pro-rata to the liabilities to each person. 35
  - (3) The Corporation will not be liable for discharge of any liabilities of the Covered Service Provider exceeding the assets of the Covered Service Provider or the amount of the Consumer Insurance, whichever is higher.
  - (4) If the Corporation transfers any liability of the Covered Service Provider to a third person, then such third person will be liable to discharge such liability to the extent of such transfer. 40

307. (1) The Corporation will not be liable for any actions as a liquidator as long as it acted in a reasonable and prudent manner in handling the affairs of the Covered Service Provider in liquidation. Protection of action taken in good faith.
- 5 (2) To protect the interest of the consumers of a Covered Service Provider, all transactions carried out by the Corporation will be final, and no court or tribunal may grant any injunction of any transaction proposed by the Corporation or reverse any transaction carried out by the Corporation, under this chapter.
308. (1) The Corporation must pay the owners of the Covered Service Provider resolved under this chapter the following amounts, – Payment to owners.
- 10 (a) the surplus, if any, from the sale of the assets and liabilities of the Covered Service Provider;
- (b) the surplus, if any, from liquidation of the Covered Service Provider, after discharging other liabilities of Covered Service Provider; and
- 15 (c) the surplus, if any, from the sale of the bridge provider or the shares of the bridge provider.
- (2) The Corporation must specify the method by which any surplus under this section will be calculated.
- (3) No court or tribunal must grant any stay against any resolution under this chapter on the ground of the adequacy of compensation to be paid to the owners of the Covered Service Provider in resolution. Assistance and cooperation.
- 20 309. The appropriate Regulator must provide necessary assistance and cooperate with the Corporation in the discharge of its duties under this part.

## CHAPTER 75

### OFFENCES UNDER THIS PART

- 25 310. (1) A financial service provider commits a Class B offence if he fails to apply for registration or for consumer insurance, in violation of section 288. Offences.
- (2) An employee, manager or person in control of a Covered Service Provider commits a Class A offence, if such person, –
- 30 (a) transfers any assets of the Covered Service Provider in violation of any order of the Regulator or the Corporation under this Part;
- (b) transfers any assets of a the Covered Service Provider after such Covered Service Provider has been classified as in the category of imminent risk to viability;
- 35 (c) transfers any assets of the Covered Service Provider before it is classified as in the category of imminent risk to viability, with the objective of reducing the amount of assets available to the Corporation as liquidator;
- (d) refuses to provide information regarding the Covered Service Provider in liquidation when required to do so by the Corporation; or
- 40 (e) conceals or provides false information regarding a Covered Service Provider in resolution when required by the Corporation to provide information about the Covered Service Provider.

- (3) A person commits a Class B offence, if such persons commits any of the following actions –
- (a) assists a person commit any offence under sub-section (2);
  - (b) knowingly accepts or deals in any asset of a Covered Service Provider which is in resolution; or 5
  - (c) causes any asset of a Covered Service Provider in resolution to be hidden from the Corporation.
- (4) For the purpose of this section the court will presume publication of any notice of bankruptcy or any order of the Corporation or the Regulator designating a Covered Service Provider to be in the category of imminent risk to viability as notice of such information. 10

PART XIII

FINANCIAL STABILITY AND DEVELOPMENT COUNCIL

CHAPTER 76

OBJECTIVE AND FUNCTIONING OF THE FINANCIAL STABILITY AND DEVELOPMENT COUNCIL

5

Objective.

311. (1) The Council will pursue the objective of fostering the stability and resilience of the financial system by, –

- (a) identifying and monitoring systemic risk; and
- (b) taking all required action to eliminate or mitigate systemic risk.

10 312. (1) The Council will have an Executive Committee, comprising, –

Establishment of the Executive Committee.

- (a) a person appointed to the rank of Secretary to the Central Government, as the chairperson of the Executive Committee;
- (b) an executive member of the Reserve Bank Board nominated by the Reserve Bank Chairperson;
- 15 (c) the Financial Authority Chairperson;
- (d) the Corporation Chairperson;
- (e) the Council Chief Executive; and
- (f) an administrative law member.

20 (2) The Council Chief Executive and administrative law member will be considered as whole time employees of the Council.

(3) The Council Board may permit in writing, the Council Chief Executive and the administrative law member to undertake such honorary work as is not likely to interfere with their duties.

25 (4) The Council Chief Executive must have expertise on matters relating to systemic risk.

(5) The provisions of sections 16, 17 and 18 will apply to the appointment by the Council of the Council Chief Executive and an administrative law member of the Executive Committee.

30 (6) The Council must fill any vacancy in the office of the Council Chief Executive and the administrative law member of the Council in accordance with the provisions of section 25.

313. (1) The Executive Committee will exercise the following functions of the Council, –

Delegation to Executive Committee.

- 35 (a) designation of financial service providers as Systemically Important Financial Institutions under section 318; and
- (b) such other functions of the Council as are delegated to the Executive Committee.

- (2) An order passed by the Executive Committee in exercise of its function under sub-section (1)(a) does not become effective until it is confirmed by the Council Board.
- (3) Where there is any disagreement or lack of consensus in the Executive Committee regarding any proposed decision or proposed action, the Executive Committee must request the Council Board to make a decision regarding such proposed decision or proposed action. 5

## CHAPTER 77

## FUNCTIONS OF THE COUNCIL

314. (1) The Council must, while discharging its functions and exercising its powers under this Act, ensure that its actions, – 10 Principles.
- (a) take into account the principles of proportionality between the costs imposed and the benefits expected to be achieved;
  - (b) seek to reduce the potential for regulatory inconsistencies;
  - (c) do not cause a significant adverse effect on the competitiveness of the financial system; 15
  - (d) do not cause a significant adverse effect on the growth of the financial system in the medium or long-term; and
  - (e) lead to greater transparency and sharing of material information in relation to the financial system. 20
- (2) If a proposed action of the Council is likely to conflict with any principle under sub-section (1), the Council has a duty to explain before it can continue with the proposed action.
- (3) In this section, a “duty to explain” means that the Council must publish, –
- (a) the principles that are likely to conflict with the proposed action, and the extent of such conflict; 25
  - (b) the efforts taken by the Council to reconcile its proposed action with the principles; and
  - (c) a justification of the proposed action in relation to the achievement of its objective. 30
315. (1) The Council must monitor and analyse data, and conduct such research as is relevant to the achievement of its objective. Data analysis and research.
- (2) The functions of the Council relating to the monitoring and analysis of accessible data and conducting research include, –
- (a) identifying trends in the financial system that assist in the identification, measurement, and monitoring of systemic risk in the financial system; 35
  - (b) developing system-wide measures, systemic indicators for designating Systemically Important Financial Institutions and other tools that may be used to eliminate or mitigate systemic risk in the financial system;
  - (c) studying the impact on the financial system of any measures, systemic indicators, or tools on the financial system; and 40

(d) analysing international best practices for the efficient discharge of its functions.

(3) The Council must publish the results of its data monitoring, data analysis and research at frequent intervals.

5 **316.** The Council may specify the requirement to collect financial regulatory data where,

Council's access to data.

–  
(a) such data is relevant to the achievement of its objective; and

(b) the relevant Financial Agency has not specified the submission of such data.

10 **317.** (1) The Council must specify the systemic indicators for designating financial service providers as Systemically Important Financial Institutions.

Determination of systemic indicators.

(2) The Council must, in determining the systemic indicators, consider all of the following factors, –

(a) the nature of the financial service or financial product provided by the financial service provider;

15 (b) the size of the financial service provider;

(c) the interconnectedness of the financial service provider with the financial system and other segments of the economy;

(d) the substitutability of the financial service, the financial product or the financial service provider in the financial system; and

20 (e) any additional factors as may be specified.

(3) Regulations under this section must contain the following, –

(a) the application of the systemic indicators to the data of various categories or classes of financial services, financial products and financial service providers;

25 (b) the time-period within which the Council will designate financial service providers as Systemically Important Financial Institutions;

(c) the conditions and process of deciding requests for exemption from such designation; and

30 (d) the time-period within which the Council will convey its decision in relation to any requests for exemption from such designation.

**318.** (1) If the Council proposes to designate a financial service provider as a Systemically Important Financial Institution, the Council must issue a show cause notice.

Application of systemic indicators to financial service providers.

35 (2) If the Council decides to designate a financial service provider as a Systemically Important Financial Institution, it must issue an order.

(3) The Council must review as frequently as required, and at least once every financial year, the applicability of the systemic indicators contained in regulations made under section 317 to financial service providers.

40 **319.** (1) The Council must constitute a committee called the “Systemic Risk Committee”.

Systemic Risk Committee.



- (2) The Systemic Risk Committee will assist the Council in pursuance of its objectives under section 311 in the manner provided in this chapter.
- (3) The Systemic Risk Committee will comprise –
- (a) the Reserve Bank Chairperson;
  - (b) one member from the Reserve Bank, nominated by the Reserve Bank Chairperson; 5
  - (c) one member from the Financial Authority, nominated by the Financial Authority Chairperson;
  - (d) two independent members, nominated by the Central Government; and
  - (e) one non-voting member of the Central Government, to be nominated by the Central Government. 10
- (4) The Reserve Bank Chairperson will be the Chairperson of the Systemic Risk Committee.
- 320.** (1) The members of the Systemic Risk Committee will not be considered employees of the Council. 15
- (2) The two independent members of the Systemic Risk Committee will serve on the Systemic Risk Committee for a term of five years.
- (3) The members of the Systemic Risk Committee will be provided with privileges equivalent to those provided to those provided to a person appointed to the rank of Secretary to the Central Government. 20
- (4) Any member, other than an independent member, of the Systemic Risk Committee may be replaced by the agency nominating him.
- 321.** (1) The Systemic Risk Committee may set a counter-cyclical capital buffer seeking to address the pro-cyclical effects in the financial system. 25
- (2) The Systemic Risk Committee may issue recommendations to the Reserve Bank and the Financial Authority regarding any of the following, –
- (a) time-varying limit on the ratio between loan value and the value of collateral for specified sectors; and
  - (b) time-varying limit on the ratio between debt repayment and the income of the borrower for specified sectors. 30
- (3) On receiving a recommendation from the Systemic Risk Committee the Reserve Bank and the Financial Authority may respond either by complying with the recommendation by initiating a regulation making process under section 58, or providing an explanation on why it chooses to not comply with the recommendation. 35
- (4) The Reserve Bank or the Financial Authority, as the case may be, must respond to a recommendation made by the Systemic Risk Committee within ninety days from the date of the recommendation.
- (5) In case the Reserve Bank or the Financial Authority fails to provide an explanation to the Council within ninety days, the matter must be deliberated by the Council at its next meeting. 40
- (6) The Systemic Risk Committee will have the power to seek all information it considers relevant from the Data Centre and the Regulators for the purposes of exercising its functions under this section.

Terms and  
Conditions for  
Systemic Risk  
Committee  
members.

Functions of the  
Systemic Risk  
Committee.

322. (1) In the discharge of its functions under section 321, the Systemic Risk Committee must consider, –
- Discharge of functions by the Systemic Risk Committee.
- (a) that the counter-cyclical buffer or the recommendation must be made in a manner such that it applies to the entire financial system;
  - 5 (b) that the counter-cyclical buffer or the recommendation must be made in a manner such that it applies to a substantial part of the financial system that is exposed to, or is contributing to, a similar source of systemic risk; and,
  - 10 (c) that the counter-cyclical buffer or the recommendation must be time-varying.
- (2) The following documents must accompany the counter-cyclical buffer or the recommendation, –
- (a) the sources of risk the counter-cyclical buffer or the recommendation aims to mitigate;
  - 15 (b) the scope of implementation of the counter-cyclical buffer or the recommendation; and
  - (c) an explanation of the possible implementation of the counter-cyclical buffer or the recommendation to specified types of financial services, financial products, or financial service providers.
- 20 323. (1) The Systemic Risk Committee must meet at least four times in a calendar year.
- Process of functioning of the Systemic Risk Committee.
- (2) The Systemic Risk Committee meeting must be chaired by the Reserve Bank Chairperson and, in the absence of the Reserve Bank Chairperson, the member of the Reserve Bank Board nominated to the Systemic Risk Committee .
  - 25 (3) The Systemic Risk Committee must try to reach its decisions by consensus, failing which, by a majority vote of members present and voting.
  - (4) The Chairperson of the Systemic Risk Committee will have a casting vote.
  - (5) The quorum for a Systemic Risk Committee meeting will be three members, one of whom must be the Reserve Bank Chairperson and in his absence, the member nominated by Reserve Bank.
  - 30 (6) Each Systemic Risk Committee member will have one vote for each proposed resolution.
  - 35 (7) The Systemic Risk Committee must follow global best procedures for parliamentary or deliberative bodies, subject to all requirements under this Chapter, and the Central Government may prescribe rules of procedure for the Systemic Risk Committee after consultation with the Council.
  - (8) All decisions of the Systemic Risk Committee must be published immediately.
  - (9) Deliberations of the Systemic Risk Committee and records of votes will be published three years from the date of the meeting.
- 40 324. (1) The Council Board may specify detailed definitions of the system-wide measures mentioned in Schedule 3.
- System-wide measures.
- (2) In defining the system-wide measures, the Council Board should consider the following factors –

- (a) that the system-wide measure applies to the entire financial system; or
  - (b) that the system-wide measure applies to a substantial part of the financial system that is exposed to, or is contributing to, a similar source of systemic risk.
- (3) The Council Board must regularly, and at least once every financial year, review the implementation of –
  - (a) the counter-cyclical capital buffer; and
  - (b) the recommendations made by the Systemic Risk Committee .
- 325. (1) The Regulator may specify that that financial service providers can enter into certain classes of derivative contracts only by clearing them through central counterparties. Regulation of certain derivative contracts.
- (2) Before specifying such classes of derivative contracts, the Regulator must place a list of such derivative contracts before the Council Board.
- (3) The Regulator may specify the categories of central counterparties eligible for clearing such specified derivative contracts. 15
- (4) While specifying the classes of derivative contracts, the regulator must take into consideration the following –
  - (a) the derivative must have achieved a high level of standardisation in the respective market; and,
  - (b) the market for the derivative must have a high level of activity. 20
- 326. (1) The Regulator may specify that financial service providers provide information on transactions regarding specified classes of derivative contracts in furtherance of the objectives of this part. Information regarding transactions in certain derivative contracts.
- (2) Such regulation must apply only to those derivatives that are not cleared through a central counterparty. 25
- (3) The Regulator may specify that, –
  - (a) such information be provided to the regulator or specified information systems or repositories; and
  - (b) at a specified interval and in a specified format.
- (4) The Regulator may specify that institutions that issue or purchase derivative contracts must be registered with the Regulator. 30
- 327. (1) The Council must facilitate co-ordination and co-operation among Financial Agencies. Facilitating co-ordination and co-operation.
- (2) The functions of the Council relating to the facilitation of co-ordination and co-operation include, – 35
  - (a) review and examination of concerns of regulatory inconsistencies; and
  - (b) identification of gaps in actions of the Financial Agencies in dealing with similar matters.
- (3) The Council must facilitate knowledge-sharing and cross-staffing to create system-wide expertise by, – 40

- (a) examining and devising methods for incorporating cross-staffing positions and suitable periodic system-wide certification in financial regulation;
- (b) encouraging Financial Agencies to enter into Memorandums of Understanding regarding knowledge-sharing and cross-staffing; and
- 5 (c) requiring that the Financial Agencies include in their annual reports an account of how they have encouraged and benefited from cross-staffing and knowledge sharing.
- 328.** The Council may, upon direction from, or in consultation with, the Central Government, –
- 10 (a) co-ordinate and co-operate with, and represent the Republic of India at, specified international forums and foreign regulatory bodies, as may be necessary to achieve its objective;
- (b) seek to initiate knowledge-sharing and cross-staffing with international forums and foreign regulatory bodies, as may be necessary to achieve its objective;
- 15 (c) undertake actions that are required to be taken as a result of India's international obligations, as may be necessary to achieve its objective.
- 329.** (1) The Council Board must resolve any dispute between two or more Financial Agencies.
- 20 (2) The Council Board must resolve a dispute under this section only if at least one of the following conditions is met, –
- (a) a member or a Financial Agency submits a written request to the Council Board for the determination of such dispute; or
- (b) in the opinion of the Council Board, a dispute exists between two or more Financial Agencies that has the potential to cause regulatory uncertainty and adversely impact the stability of the financial system.
- 25 (3) Before resolving any dispute under this section, the Council Board must, as soon as practicable, and within ninety days of receiving such written request, or coming to an opinion that a dispute exists, –
- 30 (a) determine that the parties involved in the dispute have failed to resolve the dispute in good faith;
- (b) provide a copy of the written request, or a statement of its opinion, to all parties to the dispute;
- (c) undertake to seek the agreement of all parties to the dispute in relation to the resolution of such dispute by the Council Board; and
- 35 (d) publish the procedure of dispute resolution that the Council Board intends to follow, as described in sub-section (4).
- (4) The Council Board must follow a procedure of dispute resolution that is necessary to resolve the dispute fairly and expeditiously and is in conformity with the principles of natural justice.
- 40 (5) The Council Board must resolve all disputes as soon as possible, and at least within one year of publishing the procedure of dispute resolution.
- (6) In resolving a dispute, the Council Board must ensure that where a dispute relates to any action taken by a Financial Agency including the extent of jurisdiction of a Financial Agency in taking such action, the decision of the Council Board does not, –
- 45

Co-ordination and co-operation at international forums.

Resolution of disputes.

- (a) exempt the statutory duties of a party to the dispute; or
  - (b) divest a party to the dispute of any authority derived from this Act, or any other law currently in force.
- (7) A decision made by the Council Board under this section must be in writing, and published immediately. 5
- 330.** (1) The Council must stipulate, as frequently as appropriate, the parameters for the identification and determination of a financial system crisis. Role of the Council during a financial system crisis.
- (2) The Council must stipulate, in preparation for assistance in a financial system crisis, a statement of action in relation to potential financial system crises.
- (3) The statement of action must, – 10
- (a) be updated every financial year;
  - (b) take into account international best practices in relation to assistance during various types of financial system crises;
  - (c) contain a statement of policy in relation to the provision of fiscal assistance or other extraordinary assistance by the Central Government; and 15
  - (d) describe, in general terms, the manner in which the Council may provide assistance to the Central Government and Financial Agencies for various types of financial system crises.
- (4) The Central Government may on its own or upon advice from the Council determine that a financial system crisis has arisen and the Council must assist the Central Government and Financial Agencies as required, and particularly as stipulated in sub-section (5). 20
- (5) The Council must, –
- (a) provide and conduct such data analysis and research as may be necessary to understand and resolve the financial system crisis; 25
  - (b) assist Financial Agencies in their efforts relating to resolving the financial system crisis;
  - (c) provide advice to the Central Government in relation to the provision of fiscal assistance or other extraordinary assistance;
  - (d) initiate an audit of all actions leading up to, and taken during, the financial system crisis, and publish the results of the audit within a period of one year after the commencement of the financial system crisis; and 30
  - (e) where the financial system crisis continues for a period beyond one year, initiate an audit as described in this sub-section for every year of the financial system crisis, until such financial system crisis has ended. 35

## CHAPTER 78

## FINANCIAL DATA MANAGEMENT CENTRE

- 331.** (1) The Council will establish an electronic financial system database, which will be a repository containing financial regulatory data. Financial system database.
- (2) The Council must make bye-laws governing the manner, form, process, frequency, content and such other attributes of data submission by the concerned Financial Agency. 40

332. (1) The Council will establish a data centre by the name of the Financial Data Management Centre, which will administer the functioning of the financial system database. Management of the financial system database.
- (2) The Council must, –
- 5       (a) appoint an employee with appropriate qualifications to head the Data Centre;
- (b) dedicate adequate resources toward the functioning of the Data Centre; and
- (c) make bye-laws governing the functioning of the Data Centre.
- 10 333. (1) The Data Centre must, – Functioning of the Data Centre.
- (a) have regard to international best practices in the administration of the financial system database;
- (b) publish a report in relation to the functioning of the financial system database at such frequency as may be specified by the Council; and
- 15       (c) ensure that its actions, –
- (i) lead to efficient and accurate means of accessing financial regulatory data;
- (ii) reduce the costs of submitting financial regulatory data; and
- (iii) protect the confidentiality and security of financial regulatory data.
- 20       (2) The functions of the Data Centre may be supported by any person approved by the Council pursuant to an agreement between the Council and such person.
334. (1) All financial regulatory data must be submitted, – Submission of financial regulatory data to the financial system database.
- (a) in electronic form, unless such data is in a form which cannot be adequately converted into electronic form; and
- 25       (b) through the financial system database.
- (2) Where any financial regulatory data is either in a form that cannot be adequately converted into electronic form or cannot be submitted to the Data Centre, within the time-period required by the Financial Agency –
- (a) the person required to submit such data may directly submit such data to the Financial Agency;
- 30       (b) the Financial Agency which seeks the submission of such data must, within thirty days from the date of receipt of such data, submit such data electronically in such format as may be specified by the Council, to the Data Centre.
- 35       (3) Nothing in this section restricts a Financial Agency from maintaining a separate database of financial regulatory data that may be transmitted to it by the financial system database.
335. (1) The Council must enter into a memorandum of understanding with the Central Government and each Financial Agency, governing the terms on which the Access to financial regulatory data by a Financial Agency or Central Government.
- 40       Central Government or a Financial Agency, as the case may be, may access, submit and use the financial regulatory data sought by it from financial service providers or other persons.

- (2) The Council must enter into a memorandum of understanding with a Financial Agency and the Central Government governing the terms on which financial regulatory data, or other data, may be shared between Financial Agencies and between a Financial Agency and the Central Government.
336. (1) The Council must receive such access to the financial system database as may be required to achieve its objectives. Access to financial regulatory data by the Council.
- (2) The Council must specify the terms on which it may access and use the financial regulatory data contained in the financial system database.
337. (1) The Council must, in consultation with relevant Financial Agency, specify the manner in which the Data Centre may grant access to financial regulatory data in the financial system database to the public including – Access to financial regulatory data by the public.
- (a) the fees payable by the public for such access;
- (b) the class or classes of financial regulatory data that may be instantly accessed by the public;
- (c) the class or classes of financial regulatory data that may be accessed by the public only after the lapse of a particular time-period; and 15
- (d) the class or classes of financial regulatory data that may never be available for access.
- (2) Regulations under sub-section (1) must have regard to and address the obligations of confidentiality stipulated under law. 20

## CHAPTER 79

## OTHER PROVISIONS GOVERNING THE COUNCIL

338. The provisions of section 26 will apply to the Council Board in the following manner, – Decision making in the Council Board.
- (a) all provisions of the section will apply when there is a financial system crisis; and 25
- (b) where there is no financial system crisis, the Council Chairperson must seek to secure all decisions that the Council is authorised or required to make only by arriving at a consensus.
339. (1) There will be constituted a fund, established and maintained by the Council, to which the following will be credited, – Fund. 30
- (a) all grants, loans, and fees received by the Council; and
- (b) all sums received by the Council from such other sources as may be decided upon by the Central Government.
- (2) The fund will be applied for meeting, – 35
- (a) the salaries, allowances and other remuneration of the members, officers, and employees of the Council;
- (b) the expenses of the Council in performing its functions; and
- (c) any other costs and expenses as may be incurred by the Council in the performance of its functions under this Act. 40

Annual report.

**340.** In addition to the requirements under section 43, the Council must submit the following additional information in its annual report –

- (a) a statement setting out the value of the fund of the Council;
- (b) a statement mentioning the use of and accretions to the fund by the Council for the previous financial year;
- (c) all significant trends identified in the financial system relevant to the objectives of the Council;
- (d) an assessment of the stability and resilience of the financial system;
- (e) an assessment of the functioning of the Council in relation to India's international obligations, as relevant; and
- (f) any other statement that is necessary to give an accurate assessment of the functioning of the Council.

## CHAPTER 80

### OFFENCES UNDER THIS PART

Offences in relation to the financial system database.

**341. (1)** A person commits a Class A offence if he deliberately commits any of the following acts in relation to the financial system database, –

- (a) without being authorised to do so, accesses or causes to be accessed, or denies, or causes to be denied access, to financial regulatory data contained in the financial system database;
- (b) without being authorised to do so, downloads, extracts, copies, or reproduces in any form, financial regulatory data in the financial system database;
- (c) introduces or causes to be introduced, any computer virus or other computer contaminant into the financial system database;
- (d) damages or causes the damage of any financial regulatory data in the financial system database;
- (e) without authorisation, disrupts or causes disruption to the functioning of the financial system database;
- (f) damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the financial regulatory data in the financial system database; or
- (g) provides any assistance to any person to do any of the acts mentioned above.

**(2)** In this section, the expressions “computer contaminant”, “computer virus” and “damage” have the meanings respectively assigned to them under section 43 of the Information Technology Act, 2000 (21 of 2000).



## PART XIV

## DEVELOPMENT

## CHAPTER 81

## OBJECTIVE AND FUNCTIONS

- |  |  |
|--|--|
| <p><b>342.</b> (1) The Regulator must pursue the objective of fostering the development or improvement of market infrastructure or market process under this Part.</p> <p>(2) In this section, –</p> <p style="padding-left: 40px;">(a) “market infrastructure” means infrastructure provided, operated or maintained by an Infrastructure Institution; and</p> <p style="padding-left: 40px;">(b) “market process” means a process that is followed by any or all financial service providers.</p>  | <p>Objective.<br/>5</p> <p>10</p>  |
| <p><b>343.</b> The Regulator may, through regulations, adopt any of the following measures to pursue its objectives contained in section 342(1), –</p> <p style="padding-left: 40px;">(a) measures to modernise market infrastructure or market process, including in particular, the adoption of new technology;</p> <p style="padding-left: 40px;">(b) measures to provide for product differentiation, or enlarging consumer participation; and</p> <p style="padding-left: 40px;">(c) measures to align market infrastructure or market process with international best practices.</p>   | <p>Functions.<br/>15</p>   |
| <p><b>344.</b> (1) The Central Government may by a direction in writing require a Regulator to ensure the provision of any identified financial service, on such conditions as may be contained in the direction, –</p> <p style="padding-left: 40px;">(a) by any identified category of financial service providers; or</p> <p style="padding-left: 40px;">(b) to any identified classes of consumers.</p> <p>(2) The directions under this section must be with a view to ensure effective and affordable access of financial services to persons who would ordinarily not have such access.</p> <p>(3) The Central Government may, subject to the approval of the Parliament, reimburse the cost of granting such access by providing either cash, cash equivalents or tax benefits to identified financial service providers, if such cost has not been incurred in the ordinary course of business.</p> | <p>Power of Central Government to direct Regulators for provision of financial service.<br/>25</p> <p>30</p> |
| <p><b>345.</b> (1) The Council must coordinate among Regulators on matters requiring action by more than one Regulator in connection with development or improvement of market infrastructure or market process.</p> <p>(2) If differences of opinion between Regulators remain unresolved, the Council may make recommendations towards resolution to the Central Government.</p> <p>(3) The Central Government may by a direction in writing require a Regulator to act towards development or improvement of market infrastructure or market process on such conditions as may be contained in the direction.</p>   | <p>Power of Central Government in relation to market infrastructure and market process.<br/>35</p>           |

Principles.

**346.** The following principles must be taken into account by the Regulator when adopting any measures under section 343, and by the Central Government when issuing any directions under section 344, –

- (a) minimising any potential adverse impact on the objectives of, –
  - (i) the Regulator under Part VII;
  - (ii) the Regulator under Part VIII; and
  - (iii) the Council under Part XIII;
- (b) minimising the adverse impact on the ability of the financial system to achieve an efficient allocation of resources;
- (c) minimising the impact on the ability of consumers to take responsibility for their transactional decisions; and
- (d) ensuring that any obligation imposed on a financial service provider is consistent with the benefits, considered in general terms, that are expected to result from the imposition of that obligation.

Need for measures.

**347. (1)** A Regulator may adopt a measure under section 343 only after it has determined that in the absence of adopting such measure, the market infrastructure or market process will fail to, –

- (a) develop or improve adequately; or
- (b) function poorly.

**(2)** A Regulator must consult and co-ordinate with every other Regulator on a regular and frequent basis to identify instances where the adoption of such measures may be required or justified, and assess whether such intervention would develop or improve market infrastructure or market process.

## CHAPTER 82

### PROVISIONS FOR REVIEW

Review of measures and directions.

**348. (1)** There must be a review of, –

- (a) every measure that has been adopted under section 343; and
- (b) every direction that has been issued under section 344.

**(2)** A review under this section must be carried out at least once every twelve months after the adoption of the measure, or the issuance of the directions, as the case may be.

**(3)** A review under this section must, –

- (a) examine the efficacy and the impact of the measure or direction under review;
- (b) estimate the cost of having introduced such a measure or direction in the financial system; and
- (c) seek to identify best practices and make proposals to the Regulator or the Central Government, as the case may be, for any modifications that may be required in respect of such measure.

**(4)** The findings of the review must be submitted to the Agency as a report of recommendations.

- (5) There must be no conflict of interest between the team of experts and the Agency under review.
- (6) The Agency must ensure that the team of experts has access to relevant information and material as necessary to carry out the review.
- (7) The Agency must publish, – 5
- (a) every review submitted under sub-section (4); and
- (b) all information or data collected for the purpose of the review in a manner that does not allow information relating to any particular person to be ascertained from it.
- (8) In this section, “Agency” means the Central Government or the Regulator, as the case may be. 10
- 349.** A review under section 348 must be arranged, – Obligation to arrange for review of measures and directions.
- (a) by a Regulator if a measure under section 343 is implemented by only that Regulator;
- (b) by the Central Government if a direction under section 344 is issued to not more than one Regulator; or 15
- (c) by the Council if –
- (i) a measure under section 343 is implemented by more than one Regulator; or
- (ii) a direction under section 344 is issued to more than one Regulator. 20
- 350.** (1) The Council must collect and analyse all accessible data, and conduct research, that is relevant to the achievement of the objectives under this Part. Research and analysis by the Council.
- (2) The Council must, –
- (a) review and analyse the design and implementation of a measure or direction under sections 343 and 344; and 25
- (b) seek to facilitate co-ordination between the Regulators and identify areas where action needs to be taken by the Regulators to achieve the objectives under this Act if, –
- (i) a measure under section 343 is implemented by more than one Regulator; or 30
- (ii) a direction under section 344 is issued to more than one Regulator.
- (3) The findings of the Council must be, –
- (a) submitted to the Central Government and each Regulator; and
- (b) published.
- 351.** (1) The Council may call for such information or material as it determines necessary from the Regulator, Central Government, or financial service provider to carry out its functions under this Part. Collection of information or material by the Council.
- (2) The recipient of a request is bound to provide the information or material, if available with it, to the Council in a timely manner.
- (3) The Central Government must prescribe the procedure to be followed by the Council to requisition information under this section. 40

## PART XV

## PUBLIC DEBT MANAGEMENT AGENCY

## CHAPTER 83

## OBJECTIVE AND FUNCTIONS OF THE DEBT AGENCY

Objective.

- 5 **352.** (1) The objective of the Debt Agency is to, –
- (a) minimise the cost of raising and servicing public debt, over the long-term; and
  - (b) keep public debt within an acceptable level of risk at all times.
- 10 (2) The Debt Agency will carry out its objectives under the general superintendence of the Central Government.

Functions.

- 353.** (1) The Central Government must entrust the Debt Agency with, and the Debt Agency must undertake the, –
- (a) issuance and management of government securities; and
  - (b) management of public debt, contingent liabilities and cash, of the Central Government.
- 15 (2) The Debt Agency may perform such other functions as may be authorised under this Part.

## CHAPTER 84

## MANAGEMENT OF PUBLIC DEBT AND CONTINGENT LIABILITIES

Management of public debt.

- 20 **354.** (1) The Debt Agency must manage the public debt through, –
- (a) the formulation of a medium term public debt plan and an annual public debt plan; and
  - (b) the implementation of the medium term public debt plan and the annual public debt plan, as approved by the Central Government.
- 25 (2) The Debt Agency must, at the end of every three calendar years, submit a draft of a medium term public debt plan to the Central Government.
- (3) The Central Government must approve the draft medium term public debt plan with or without modifications, and communicate the same to the Debt Agency, as soon as may be practicable, after the date on which it is received from the
- 30 Debt Agency.
- (4) The Central Government may at any time, in consultation with the Debt Agency modify the medium term public debt plan.
- (5) The Debt Agency must implement, to the best of its abilities, the medium term public debt plan as approved and modified by the Central Government from
- 35 time to time.
- (6) The Debt Agency must, at the end of each calendar year, submit a draft of an annual public debt plan to the Central Government.

- (7) The draft annual public debt plan must take into account, –
- (a) the medium term public debt plan;
  - (b) the public debt at the relevant time, including inherent risks of the Central Government;
  - (c) the forecasts of revenue and expenditure of the Central Government; 5
  - (d) the prevailing and evolving market conditions for government securities;
  - (e) aspects of efficiency of public debt, including the cost, risk and phasing of borrowing and repayments; and
  - (f) such other factors as the Debt Agency may consider appropriate.
- (8) The Central Government must approve the draft annual public debt plan, with or without modifications, and communicate the same to the Debt Agency, as soon as may be practicable, after it is received from the Debt Agency. 10
- (9) The Central Government may, in consultation with the Debt Agency, modify the annual public debt plan at any time.
- (10) The Debt Agency must implement, to the best of its abilities, the annual public debt plan as approved and modified by the Central Government from time to time. 15
- (11) The Debt Agency must, in consultation with the Central Government, prepare an issuance schedule, at such times as the Debt Agency may determine to be practicable and necessary. 20
- (12) The Debt Agency must publish, –
- (a) the medium term public debt plan and the annual public debt plan, within ninety days from the date on which it is approved by the Central Government; and
  - (b) such other information as may be prescribed. 25
- (13) The Central Government must, by notification, prescribe, –
- (a) the information which must be published under section (12); and
  - (b) the intervals at which the information under section (12) must be published.
- (14) In this section, – 30
- (a) “medium term public debt plan” means a plan to achieve the desired composition of public debt for the immediately following three financial years.
  - (b) “composition of public debt” includes the amount, structure, maturity, currency, indexing and mode of issuance, of public debt.
  - (c) “annual public debt plan” means the annual plan for, – 35
    - (i) advising on the composition of public debt for the immediately following financial year; and
    - (ii) operationalising, in the immediately following financial year, the strategies mentioned in the medium term debt plan.
  - (d) “issuance schedule” means a calendar of the Central Government for issuance of government securities. 40
355. (1) The Debt Agency must manage the contingent liabilities of the Central Government through, –

Management of  
contingent  
liabilities.

- (a) the development, maintenance and management of a database of contingent liabilities;
- (b) the management and monitoring of contingent liabilities;
- (c) undertaking credit risk assessments in relation to contingent liabilities; and
- (d) advising the Central Government on the pricing and issuance of contingent liabilities; and
- (2) The Debt Agency must at the end of every financial year, assess the risks associated with the contingent liabilities of the Central Government, in accordance with international methodologies and practice.
- (3) The Debt Agency must publish information relating to contingent liabilities of the Central Government in the prescribed manner.
- (4) In this section, “contingent liabilities” means the explicit contingent liabilities of the Central Government.
- 15 **356.** The Central Government is liable to meet the obligations arising from the public debt issued by the Debt Agency.

Liability for  
financial  
obligations.

## CHAPTER 85

### GOVERNMENT SECURITIES

- 357.** (1) The Debt Agency must issue government securities in accordance with the provisions of this Part.
- (2) The terms and conditions of government securities will be such as may be prescribed.
- (3) The Debt Agency must maintain and manage the register of holders of government securities.
- (4) The register maintained by a depository under section 213 will be deemed to be the register required to be maintained by the Debt Agency.
- (5) The Central Government must prescribe the terms and conditions of government securities.
- 358.** (1) The Debt Agency will be responsible for making payment to the holders of government securities, in accordance with their terms.
- (2) The Central Government may prescribe the manner of claiming payments due on government securities.
- 359.** (1) Government securities having identical terms and conditions will be fungible.
- (2) All government securities will be freely transferable.
- (3) A transfer or the creation of an interest in a government security is void unless it is recorded by the Debt Agency.
- (4) The Debt Agency must not record the transfer or creation of an interest in a government security unless it is made in the prescribed manner.

Issue of  
government  
securities.

Management of  
government  
securities.

Fungibility and  
transferability of  
government  
securities.

- (5) Nothing contained in sub-section (3) will affect any transfer or creation of an interest pursuant to the operation of law or the order of a court.
- (6) The Central Government must prescribe the manner in which a government security may be transferred or subjected to an interest.
- 360.** (1) The Debt Agency must take steps to foster a liquid and efficient market for government securities. Fostering the market for government securities.
- (2) The Debt Agency must advise the Regulator and the Central Government on the policy and design of the market for government securities.
- (3) The Debt Agency must seek to ensure, –
- (a) equal access to the market for government securities; 10
  - (b) growth and diversity in the investor base for government securities;
  - (c) fair competition in the market for government securities; and
  - (d) transparency in the issuance and trading of government securities.
- CHAPTER 86**
- CASH MANAGEMENT** 15
- Cash management.
- 361.** (1) The Debt Agency must manage the cash of the Central Government by, –
- (a) collecting information about the cash of the Central Government, including co-ordination with the Central Government and the Reserve Bank to estimate the cash balances every day;
  - (b) monitoring the cash balances of the Central Government; 20
  - (c) developing systems to calculate and predict cash requirements of the Central Government;
  - (d) issuing and redeeming such short-term securities as may be required to meet the cash requirements of the Central Government;
  - (e) advising the Central Government on management of cash of the Central Government; and 25
  - (f) advising the Central Government on measures to promote efficient cash management practices and to deal with surpluses and deficits.
- (2) The Debt Agency must, in consultation with the Central Government, prepare a cash management plan for the Central Government on a daily, weekly or monthly basis, as the Debt Agency may determine to be practicable and necessary. 30
- (3) The periodic cash management plan must advise on the following matters, –
- (a) the forecasts of cash flows of the Central Government;
  - (b) synchronisation of cash flows with public debt management; and 35
  - (c) aspects of efficiency such as costs and risks associated with cash flows and measures to deal with deficit and surplus including investment of excess cash or buyback of domestic debt.
- (4) The Central Government must approve the periodic cash management plan, with or without modifications, from time to time, and communicate the approved periodic cash management plan to the Debt Agency, as soon as may be practicable. 40

- (5) The Central Government may, in consultation with the Debt Agency, modify the periodic cash management plan at any time as may be necessary.
- (6) The Debt Agency must implement to the best of its abilities, the periodic cash management plan as approved and modified by the Central Government.

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## CHAPTER 87

## OTHER FUNCTIONS

**362.** The Debt Agency must,—

Research and  
information.

- (a) develop, maintain and manage information systems that are necessary to carry out its functions efficiently;
- 10 (b) disseminate information and data relating to its functions to the public in a transparent, accountable and timely manner; and
- (c) conduct and foster research relevant for the efficient discharge of its functions.

Services to others.

**363.** (1) The Debt Agency may on behalf of any public authority, as may be permitted by the Central Government or any State Government, —

- (a) carry out the functions under section 353(1)(a) and 353(1)(b); or
- (b) provide technical assistance to enable the public authority or State Government, as the case may be, to carry out the functions under sections 353(1)(a) and 353(1)(b).

20 (2) A State Government or public authority is liable to meet the obligations arising from any funds that are raised on behalf of that State Government or public authority by the Debt Agency.

(3) The Debt Agency must not carry out any function under this section if there is a conflict of interest with the obligations of the Debt Agency under this Part.

25 (4) The functions carried out under this section must be subject to a written agreement to this effect between the Debt Agency and the public authority or as the case may be the State Government.

(5) Unless excluded by the written agreement, the provisions of this Part will apply, with the necessary modifications, to the functions carried out under this section.

30 (6) For an agreement under this section to be valid, it must, —

- (a) require the Debt Agency to carry out, or provide technical assistance to enable the carrying out of, at least one of the functions provided under sections 354, 355(1) or 361; and

35 (b) be published.

(7) In this section, “technical assistance” means any advice, assistance or training pertaining to the functions under section 353(1)(a) and 353(1)(b).

**364.** (1) The Debt Agency may in writing call for such information or material as it determines necessary from the Central Government, a State Government or any public authority with which it has entered into an agreement, to carry out its functions under this Part.

Collection of  
information or  
material.

40



- (2) The Debt Agency must give reasonable time to the Central Government, State Government or public authority, as the case may be, to provide the information.
- (3) The information or material may relate to, –
- (a) public debt;
  - (b) contingent liabilities of the Central Government, a State Government or a public authority which the Debt Agency has entered into an agreement; 5
  - (c) cash balances of the Central Government, a State Government or a public authority with which the Debt Agency has entered into an agreement; and
  - (d) forecasts of daily cash flows and net cash requirements of the Central Government, a State Government or a public authority with which the Debt Agency has entered into an agreement. 10
- (4) The recipient of a request under sub-section (1) is bound to provide the information or material, if available with it, to the Debt Agency within the time-period mentioned by the Debt Agency.
- 365.** The Debt Agency must not raise funds or undertake transactions in financial markets on its own behalf. Bar on transactions.
- 366.** (1) The Central Government must pay such fees to the Debt Agency, for its services, as may be stipulated in the bye-laws referred to in sub-section (2). Fees.
- (2) The Debt Agency must, in consultation with the Central Government, make bye-laws to provide for the scale of fees payable in respect of the services rendered to the Central Government under this Act. 20
- (3) The Debt Agency must ensure that the fees are proportionate to the kind or scale of service rendered.
- (4) While levying fees, the bye-laws must take into account –
- (a) the financial requirements of the Debt Agency; and 25
  - (b) the costs associated with the service for which the fee is levied.
- (5) The State Government or public authority that avails of the services of the Debt Agency under section 363 must pay such fees as may be prescribed in the bye-laws or otherwise as may be agreed between the Debt Agency and the relevant State Government or public authority. 30
- (6) The Debt Agency may make bye-laws to provide for the scale of fees payable in respect of its services rendered under section 363.

## CHAPTER 88

### POWERS OF THE CENTRAL GOVERNMENT

- 367.** (1) The Central Government may issue to the Debt Agency, by an order in writing, directions on policy from time to time. Power of Central Government to issue directions.
- (2) The decision of the Central Government as to whether a direction is one of policy or not is final.
- (3) Before issuing any directions under this section, –

- (a) the Debt Agency must be given a reasonable opportunity to be heard to express its views; and
- (b) the Central Government must publish any views expressed by the Debt Agency in a manner best suited to bring them to the attention of the public, and consider the same.
- (4) The Debt Agency is bound by any directions issued under this section in the exercise of its powers or the performance of its functions.
- 368.** (1) The Central Government may, by notification, temporarily supersede the Debt Agency Board, if the Central Government is of the opinion that, –
- (a) on account of an emergency, the Debt Agency is unable to perform its functions; or
- (b) the Debt Agency has persistently defaulted either in complying with any direction issued by the Central Government under this Part or in the performance of its functions.
- (2) The notification must provide for the period of supersession, which may not exceed a period of one hundred and eighty days.
- (3) Before issuing the notification, the Central Government must, –
- (a) give a reasonable opportunity to the Debt Agency Board to make representations against the proposed supersession; and
- (b) consider the representations, if any, made by the Debt Agency Board.
- (4) Upon the publication of the notification, –
- (a) all the members of the Debt Agency Board will, as from the date of supersession, vacate their offices; and
- (b) all the powers and functions which may be exercised or performed by the Debt Agency, will, until the Debt Agency Board is reconstituted under section 3(1)(f), be exercised and performed by such person or persons as the Central Government may direct.
- (5) Before the period of supersession expires, the Central Government must take action towards reconstituting the Debt Agency Board.
- (6) The Central Government may reconstitute the Board of the Debt Agency by fresh appointments, and no person who vacated office under sub-section (4)(a) will be deemed disqualified for appointment.
- (7) The Central Government must, at the earliest, lay before each House of Parliament, the notification and a report of the action taken under this section and the circumstances leading to such action.

Power of Central Government to temporarily supersede Debt Agency in exigency.

## PART XVI

## OFFENCES

## CHAPTER 89

## OFFENCES UNDER THIS ACT

		Description of offences.
<b>369.</b>	(1) The punishment for –	
	(a) a Class A offence is a fine, or imprisonment of up to ten years, or both;	
	(b) a Class B offence is a fine, or imprisonment up to two years, or both; and	
	(c) a Class C offence is a fine.	
	(2) All offences under this Act are non-cognisable and compoundable.	
	(3) If any conduct is punishable under any other law, this Act will be in addition to and not in derogation of such law.	10
<b>370.</b>	(1) The Central Government may, for facilitating speedy trial of offences under this Act or disposing of applications made under section 81, by notification, –	Establishment of Special Courts.
	(a) establish one or more Special Courts; and	
	(b) designate one or more Sessions Courts as Special Courts.	15
	(2) A Special Court will comprise a single judge who must be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.	
	(3) A person will not be qualified for appointment as a judge of a Special Court unless he is immediately before such appointment holding the office of a Sessions Judge or an Additional Sessions Judge.	20
<b>371.</b>	(1) No criminal proceeding for any offence under this Act against any person may be initiated except by a complaint from the Regulator.	Institution of proceedings for offences.
	(2) Notwithstanding anything contained in the Criminal Procedure Code, an offence under this Act can be taken cognizance of and tried only by, –	25
	(a) a court not inferior to a Court of Session having jurisdiction over the area in which the offence is committed;	
	(b) the Special Court established for the area in which the offence is committed; or	
	(c) where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.	30
	(3) The Regulator may appoint an advocate to act as a public prosecutor for any offence committed under this Act.	
	(4) A prosecutor appointed by the Regulator under this section will be deemed to be a public prosecutor under the Criminal Procedure Code.	35
	(5) Save as otherwise provided in this Act, the provisions of the Criminal Procedure Code will apply to all proceedings before a Special Court, including proceedings for compounding.	

(6) The Central Government may make rules for the purpose of implementation of this section.

372. The High Court may, in relation to a Special Court within the local limits of its jurisdiction, exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Criminal Procedure Code, as if such Special Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.
373. (1) The following factors are to be taken into account while determining the appropriate period of imprisonment and fine for an offence –
- (a) the culpability of the person accused of committing the offence;
  - (b) the actual and intended gains made and loss caused;
  - (c) the harm caused to the financial system;
  - (d) mitigating factors; and
  - (e) the factors contained in sections 96(2)(b), 104(3)(b) and 96(2)(e).
- (2) The maximum amount of fine that may be imposed upon a person for an offence will be the higher of, –
- (a) three times the loss caused by the person; or
  - (b) three times the gain made by the person.
- (3) If the loss caused or the gain made by the person cannot be reasonably determined, the maximum fine that may be imposed is rupees one crore.
- (4) The prosecution of a person for any offence under this Act will not bar any enforcement action imposed on such persons, but any fine imposed for an offence may be reduced by any penalty paid to the Regulator for the same violation.
374. (1) Notwithstanding anything contained in the Criminal Procedure Code, any offence punishable under this Act may be compounded, –
- (a) after the Regulator has made a complaint for institution of criminal proceedings, by the the court in which the complaint has been made;
  - (b) where the Regulator has not made a complaint for institution of criminal proceedings, by a court having jurisdiction to try the offence.
- (2) The court may compound an offence only on payment by the person applying for compounding, of the specified fee, not exceeding the maximum fine which may be imposed in respect of that class of offences.
- (3) In deciding an application for compounding an offence, the court must have regard to the factors set out in section 104(3), to the extent applicable to the application for compounding.
- (4) Where the court compounds any offence, –
- (a) the court must give notice of such compounding to the Regulator;
  - (b) where the offence is compounded before the institution of criminal proceedings, the Regulator must not institute pursue any proceedings arising out of the cause of action in respect of which compounding has been effected; and

Appeal and revision.

Factors to be considered for punishment.

Compounding of offences.

- (c) where the offence is compounded after the institution of criminal proceedings, the person in relation to whom the offence is compounded is deemed to be discharged of the offence so compounded.
  - (5) The court must transfer any fee recovered under this section to the Consolidated Fund of India. 5
375. (1) The Regulator must specify the process it will follow in implementing the provisions of this Part. General procedures.
- (2) The Regulator must specify –
    - (a) the method it will apply in determining the fine to be imposed;
    - (b) the procedure 10

## PART XVII

FUNCTIONS, POWERS AND DUTIES OF THE  
TRIBUNAL

## CHAPTER 90

## TRIBUNAL MEMBERS

5

- 376.** The Central Government must appoint the Tribunal members in accordance with the provisions of this Chapter. Appointment of Tribunal members.
- 377.** (1) A person will qualify for appointment as the Presiding Officer only if such person is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court. Qualifications of Tribunal members.
- (2) Where a person with the qualifications set out in sub-section (1) is not available for appointment as the Presiding Officer, any person who has served for not less than seven years as a Judge of a High Court may be appointed as the Presiding Officer.
- (3) A person will qualify for appointment as a Judicial Member only if such person, –
- (a) has completed not less than seven years of service as a District Judge or its equivalent; or
- (b) is an advocate eligible for appointment as a High Court judge under Article 217 of the Constitution of India.
- (4) A person will qualify for appointment as a Tribunal member only if such person is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to finance with a qualification in law, finance, economics or accountancy and has experience in determining quasi-judicial matters.
- (5) A person must not be appointed as a Tribunal member within two years of retiring or resigning as a member or as an employee of a Financial Agency.
- (6) No Tribunal member can hold an executive position in any capacity whatsoever during his tenure as a Tribunal member.
- 378.** (1) The Central Government must appoint each Tribunal Member from a list of persons shortlisted by a selection committee. Selection of Tribunal members.
- (2) The Central Government must constitute the selection committee in accordance with Schedule 1.
- (3) The selection committee must follow the procedure laid down in Schedule 1.
- 379.** (1) A Tribunal Member will hold office until he reaches the age of seventy years. Conditions of service of Tribunal members.
- (2) The salary and other entitlements of the Presiding Officer will be the same as those of a judge of the Supreme Court.

- (3) The salary and other entitlements of all other Tribunal Members will be the same as those of a judge of a High Court.
- 380.** (1) A Tribunal member may resign by giving a notice of resignation to the Central Government. Resignation.
- (2) On receipt of a notice of resignation, the Central Government must forward a copy of such notice to the Chief Justice of India. 5
- (3) After giving the notice of resignation, the Tribunal Member, will continue to hold office until the earlier of –
- (a) the date the Central Government appoints a person to the post vacated by such resignation; or 10
- (b) the expiry of ninety days from the date the notice of resignation was received by the Central Government.
- 381.** (1) The Central Government may, with the concurrence of the Chief Justice of India, remove a Tribunal Member only on the grounds set out in section 22. Removal of Tribunal members.
- (2) The Central Government must follow the procedure set out in section 23 for the removal of a Tribunal Member. 15
- 382.** (1) The Central Government must fill a vacancy in the Tribunal within one hundred and eighty days from the date such vacancy arises. Casual vacancy.
- (2) Where there is a temporary vacancy in the office of the Presiding Officer, the Central Government may, in concurrence with the Chief Justice of India, nominate a Judicial Member as an officiating Presiding Officer for a period not exceeding ninety days. 20
- (3) If the Central Government does not comply with sub-section (1), it must –
- (a) make a report stating the reasons for such non-compliance within thirty days from the date on which the period under sub-section (1) on the reasons for the delay in the appointment; and 25
- (b) lay the report before both houses of Parliament immediately or if the Parliament is not in session at that time, in the immediately following session.

## CHAPTER 91

### JURISDICTION AND APPEALS

- 383.** (1) Unless otherwise provided in this Act, the Tribunal will have jurisdiction to hear appeals arising from – Jurisdiction of the Tribunal.
- (a) any order passed by a Financial Agency, an Infrastructure Institution or the Central Government under this Act; 30
- (b) an adjudication order passed by the Redress Agency; 35
- (c) the failure of the Regulator to remove a restriction or requirement imposed on a regulated person under section 181(5); and
- (d) any inaction on the part of the Regulator when it is under a legal obligation to act.

- (2) The Tribunal will have jurisdiction to entertain –
- (a) an application made by a Financial Agency seeking extension of time for disposal of an application under section 71; and
  - (b) an application made by the Central Government seeking extension of time for disposal of an application under section 243(7).
- (3) An appeal to the Tribunal must be made within sixty days –
- (a) of the receipt of the order by the appellant;
  - (b) of the date on which the appellant has remedied the deficiency which led to the imposition of the restriction or requirement under section 181(5);
  - (c) from the date on which the Regulator was under a legal obligation to take the action which it failed to take.
- (4) The Tribunal may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within sixty days, allow the appeal to be filed within a further period not exceeding thirty days.

15 **384.** (1) No civil court will have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal is empowered by or under this Act to determine.

Civil court not to have jurisdiction.

20 (2) No injunction will be granted by any court, tribunal or authority other than the Tribunal in respect of any action taken, or to be taken, in pursuance of any power conferred on the Tribunal by or under this Act.

**385.** (1) Any person aggrieved by an order of the Tribunal may file an appeal only on a question of law to the Supreme Court of India within a period of ninety days from the date of receipt of the order.

Appeal to Supreme Court.

25 (2) The Supreme Court may, if it is satisfied that such person was prevented by sufficient cause from filing the appeal within ninety days, allow an appeal to be filed within a further period not exceeding thirty days.

## CHAPTER 92

### POWERS AND PROCEDURE

30 **386.** (1) The Tribunal will have the same powers as are vested in a Civil Court under the Civil Procedure Code while trying a suit, in respect of the following matters, namely, –

Power of the Tribunal.

- (a) summoning and enforcing the attendance of any person and examining the person on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
- (h) any other matter as may be prescribed.



- (2) Every proceeding before the Tribunal will be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, 1860 (45 of 1860).
- (3) The Tribunal will be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Criminal Procedure Code. 5
- (4) Unless otherwise mentioned in the Act, in disposing an appeal the Tribunal may pass an order confirming, modifying or setting aside the order appealed against.
- (5) The Tribunal must attempt to dispose an appeal within a period of one hundred and eighty days from the date of filing of the appeal. 10
- 387.** (1) Notwithstanding anything contained in this Act, any proceedings pending before the Tribunal may be settled, with the approval of the Tribunal. Settlement of proceedings.
- (2) The procedure by which the Regulator and a person may arrive at a settlement will be governed by the provisions of section 104.
- (3) The Tribunal may approve a settlement only on being satisfied that the provisions of section 104 have been complied with. 15
- (4) If the Tribunal approves a settlement agreement in respect of an alleged violation, it must –
- (a) neither institute any proceedings for taking an enforcement action in respect of the same cause of action as is covered in the settlement agreement; 20
- (b) nor institute criminal proceedings against the person in respect of the same cause of action.
- 388.** (1) The Tribunal may levy such fees for the conduct of its proceedings as may be prescribed. Levy and collection of fees by the Tribunal. 25
- (2) The Central Government must prescribe the scale of fees that may be levied by the Tribunal for discharge of its functions.
- (3) In prescribing the fees, the Central Government must take into consideration the following factors, –
- (a) the requirement that the fees are not disproportionate to the costs likely to be incurred by the Tribunal in discharging the functions for which the fees are levied; 30
- (b) the financial requirements of the Tribunal; and
- (c) the recommendations made by the procedure committee.
- 389.** (1) The Tribunal will have the power to impose costs in disposing of any appeal. Costs. 35
- (2) The Central Government must prescribe rules on the imposition and quantum of costs which may be imposed by the Tribunal.
- 390.** (1) The Presiding Officer may constitute benches of the Tribunal at such locations and for such classes of proceedings as may be necessary. Allocation of matters.

- (2) Every bench of the Tribunal must comprise at least one Judicial Member, one of whom will preside over it, and such number of Technical Members as may be determined by the Presiding Officer.
- 5 (3) The Presiding Officer will be responsible for the allocation and listing of matters before the Tribunal and its benches.
- (4) While allocating matters to a bench of the Tribunal, the Presiding Officer may take into account the expertise of the Tribunal Members on that bench in the subject matter or the applicable laws.
- 10 **391.** (1) The Presiding Officer may constitute hearing centres of the Tribunal at such locations and for such classes of proceedings as may be necessary. Hearing centres.
- (2) The Tribunal must take steps to safeguard the integrity of a proceeding conducted through a hearing centre, including by issuing practice directions for this purpose.
- 15 **392.** (1) The Tribunal will not be bound by the procedure laid down in the Civil Procedure Code. Procedure of the Tribunal.
- (2) The proceedings of the Tribunal will be governed by, –
- (a) rules made by the Central Government; and
- (b) practice directions issued by the Presiding Officer, in respect of matters not governed by rules.
- 20 (3) The Central Government must prescribe rules governing the proceedings of the Tribunal taking into account the following principles, –
- (a) that the recommendations of the procedure committee are considered;
- (b) that the principles of natural justice are followed;
- 25 (c) that the proceedings are handled with fairness, reasonable speed and efficiency;
- (d) that the procedure allows the proceedings of the Tribunal to be conveniently conducted, if necessary, by electronic means where possible;
- (e) that the procedures are simple and clear; and
- (f) that the Tribunal is accessible.
- 30 (4) Subject to the rules prescribed by the Central Government, the Presiding Officer may issue practice directions governing the proceedings before the Tribunal taking into account the principles in sub-section (3).
- (5) The Tribunal must publish the rules and practice directions governing the proceedings before it.
- 35 **393.** (1) The Tribunal must have a procedure committee comprising, – Composition and function of procedure committee.
- (a) the Presiding Officer;
- (b) the Registrar; and
- (c) three experts in the field of law nominated by the Presiding Officer.
- (2) The procedure committee must periodically, –

- (a) review the rules and practice directions governing the proceedings of the Tribunal, taking into account the data generated by the functioning of the Tribunal;
    - (b) assess the impact of such rules and practice directions on the functioning of the Tribunal; and
    - (c) recommend to the Central Government –
      - (i) modifications to the rules governing proceedings before the Tribunal; and
      - (ii) the scale of fees which may be charged by the Tribunal under this Act.
  - (3) The Tribunal must publish the recommendations made by the procedure committee.
394. An appellant may appear before the Tribunal in person or authorise one or more of the following persons to present his case before the Tribunal –
- (a) where the appellant is a body corporate, any of its officers;
  - (b) an advocate as defined in the Advocates Act, 1961 (25 of 1961);
  - (c) a chartered accountant as defined in the Chartered Accountants Act, 1949 (38 of 1949);
  - (d) a company secretary as defined in the Company Secretaries Act, 1980 (56 of 1980); or
  - (e) a cost accountant as defined in the Cost and Works Accountants Act, 1959 (23 of 1959).
395. The provisions of the Limitation Act, 1963 (36 of 1963) will except to the extent provided in this Act apply to all proceedings before the Tribunal.
- CHAPTER 93  
ADMINISTRATION
396. (1) The Central Government must appoint a Registrar in consultation with the Presiding Officer to assist the Tribunal's administrative functions.
- (2) The Registrar will be subject to the superintendence and oversight of the Presiding Officer in the discharge of his functions under this Act.
- (3) The administrative functions of the Tribunal may be supported by a separate agency or body corporate approved by the Central Government in consultation with the Presiding Officer pursuant to an agreement.
397. (1) The Tribunal must develop systems and procedures to ensure that the functions of the Tribunal are discharged through electronic systems.
- (2) The Tribunal must develop systems to, –
- (a) enable submission of documents through electronic means;
  - (b) schedule hearings of the Tribunal in an efficient manner;
  - (c) enable recording of evidence through electronic means;
  - (d) enable parties to present their cases through electronic means; and

- (e) enable public viewing of proceedings including by way of transmission of hearings through electronic means.

- 398.** (1) The Presiding Officer may in consultation with the Central Government appoint staff to assist the Tribunal in the effective discharge of its functions. Staff of the Tribunal.
- 5 (2) The Central Government may in consultation with the Presiding Officer determine the salaries, allowances and terms and conditions of service of such staff.
- 399.** (1) The Tribunal must constitute a fund, to which the following amounts may be credited – Fund of the Tribunal.
- 10 (a) all fees received by the Tribunal;
- (b) all funds received by the Tribunal from the Regulators pursuant to section 400; and
- (c) all funds provided to the Tribunal by the Central Government;
- (2) The fund must be applied for meeting the following expenses, –
- 15 (a) the salaries, allowances and other remuneration of Tribunal members, the Registrar and other staff of the Tribunal; and
- (b) expenses incurred by the Tribunal for the discharge of its functions.
- 400.** (1) The Tribunal must at the end of each financial year prepare a report containing, – Finances of the Tribunal.
- 20 (a) details of the financial requirements of the Tribunal for the next financial year; and
- (b) a payment schedule stipulating the amount of funds that each Regulator must pay to the Tribunal and the timelines for the same.
- 25 (2) The Tribunal must forward a copy of the report to the Central Government not later than a month before the beginning of the next financial year and publish the same immediately.
- (3) The Central Government must forward the report to the Regulators.
- (4) Each Regulator must pay into an account designated for that purpose the amounts stipulated in the report in accordance with the payment schedule.
- 30 (5) In exceptional circumstances, the Presiding Officer may request the Central Government to provide funds to meet the financial requirements of the Tribunal.
- 401.** (1) The Presiding Officer must, in consultation with the Registrar, develop systems to accurately measure the administrative functioning of the Tribunal. Performance of the Tribunal.
- 35 (2) The Presiding Officer must, in consultation with the Registrar, create targets for measuring the performance of the administrative functioning for each financial year.
- (3) The systems and targets must, –
- (a) promote transparency;

- (b) be designed to provide an accurate representation of functioning of the Tribunal;
  - (c) provide objective methods of measurement, where possible;
  - (d) provide subjective methods of measurement where objective measurements are not possible; 5
  - (e) incorporate global best practices in measurement of functioning of tribunals and courts; and
  - (f) consider the requirements of individuals appearing before the Tribunal.
- (4) The Presiding Officer must review the systems once every three years to –
- (a) incorporate global best practices; 10
  - (b) update the systems of measurement; and
  - (c) include new metrics of measure of processes and functions.
- 402.** (1) The Tribunal must publish an annual report within ninety days from the end of every financial year. Annual report of the Tribunal.
- (2) The annual report must contain, – 15
- (a) the audited financial statements of the Tribunal;
  - (b) the results of measurement of the functioning of the Tribunal in accordance with section 401;
  - (c) the targets for the following financial year in accordance with section 401;
  - (d) the report under section 400(1); and 20
  - (e) all instances of the Tribunal not disposing the appeal within one hundred and eighty days.
- 403.** (1) The Tribunal must publish all orders passed by it immediately. Transparency of the Tribunal.
- (2) The rules and practice directions governing the proceedings of the Tribunal must contain provisions to ensure that the Tribunal functions in a transparent manner, and may include the requirement to, – 25
- (a) audio-visually record all the proceedings of the Tribunal;
  - (b) publish the records of the proceedings;
  - (c) publish such other information as may be necessary.
- (3) The Tribunal must maintain a website to – 30
- (a) publish all information that the Tribunal is obliged to publish under this Act; and
  - (b) provide material information about its functions.
- (4) All information published under sub-section (3) must be in an easily accessible and text-searchable format. 35
- (5) The Tribunal must review the quality of the website based on international best practices at least once every three years.
- (6) The Tribunal must, –
- (a) prepare a report containing the findings of the review under sub-section (5); and 40
  - (b) publish the report with the annual report for that year.
- (7) Any information not published on the website of the Tribunal as per the requirements of this section will be presumed to not have been published, for the purposes of this Act.

## PART XVIII

## MISCELLANEOUS

- 404.** All presumptions created under this Act will be rebuttable. Rebuttable presumptions.
- 405.** (1) Where a violation under this Act has been committed by a body corporate, every officer of the body corporate who at the time the violation was committed, was in charge of, and was responsible to, the body corporate for the conduct of the business of the body corporate, as well as the body corporate, will be liable for the commission of the violation. Violations by bodies corporate.
- (2) An officer of a body corporate will not be liable to be proceeded against for a violation committed by the body corporate under this Act, unless such violation is, –
- (a) shown to have been committed with the consent or connivance of that officer;
- (b) shown to have been committed with the knowledge of that officer, attributable to such officer due to the internal processes of the body corporate; or
- (c) attributable to the gross neglect on the part of the officer.
- (3) Any criminal proceedings or enforcement action against either the officer or the body corporate will not bar proceedings against the other.
- (4) In this section, “officer” includes director, member of the managing committee, chief executive, manager, secretary, individuals in control, and persons who purport to be officers with the knowledge of the body corporate.
- 406.** The members, officers, and employees of all Financial Agencies and the Tribunal, will be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860). Members, officers and employees of all Financial Agencies to be public servants.
- 407.** No suit, prosecution or other legal proceedings will lie against the Central Government or any Financial Agency or their members, officers, employees, for anything which is done, or intended to be done, in good faith done under this Act. Protection of action taken in good faith.
- 408.** The provisions of this Act are in addition to, and not in derogation of, the provisions of any other law for the time being in force. Application of other laws not barred.
- 409.** Nothing contained in any law or enactment in force, in relation to taxation, including the Wealth Tax Act, 1957 (27 of 1957) and the Income Tax Act, 1961 (43 of 1961), will make any Financial Agency or the Tribunal liable to pay wealth tax, income tax, service tax, or any other tax or duty with respect to its wealth, income, services, profits or gains. Exemption from tax.
- 410.** No Financial Agency will be placed in liquidation save by order of the Central Government, in such manner as it may direct. Liquidation.

411. (1) A person must not, either alone or with others, engage in any conduct for the purpose of avoiding or abusing, the provisions of this Act, unless such conduct is justified by a *bona fide* purpose. Prohibition on avoiding this Act.
- (2) Any person who violates sub-section (1) commits a Class C offence.
412. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, in consultation with the concerned Financial Agency or Tribunal, make provisions that appear to it to be necessary for removing the difficulty, through a notification. Power of Central Government to remove difficulties.
- (2) The Central Government must not notify any provision that is inconsistent with the provisions, intent or purpose of this Act. 10
- (3) The power of the Central Government to remove difficulties, as described in sub-section (1) will not extend to the removal of difficulties in the regulations, or bye-laws of any Financial Agency.
- (4) The power of the Central Government to issue orders under this section may be exercised at any time prior to the expiry of three years from the notification of the relevant provision. 15
- (5) The Central Government must lay every order made under this section before each House of Parliament, as soon as may be possible, after it is made.
- (6) The provisions of section 69 will apply to every order made under this section, as if such order were a rule made by the Central Government. 20

## CHAPTER 94

### TRANSITION PROVISIONS

413. (1) On and from the date notified by the Central Government under section 7, — Transfer and vesting of assets, liabilities, etc. in Financial Agencies.
- (a) any reference to the transferor regulatory agency in any law other than this Act or in any contract or other instrument will be deemed as a reference to the transferee regulatory agency named in the notification; 25
- (b) all properties and assets, movable and immovable, of or belonging to, the transferor regulatory agency will vest in the transferee regulatory agency;
- (c) all rights and liabilities of the transferor regulatory agency will stand vested in and transferred to, the transferee regulatory agency; 30
- (d) without prejudice to the generality of the foregoing —
- (i) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the transferor regulatory agency immediately before the date of the notification, for or in connection with the purpose of the said transferor regulatory agency will be deemed to have been incurred, entered into, or engaged to be done by, with or for, the transferee regulatory agency; 35
- (ii) all sums of money due to the transferor regulatory agency immediately before the date of that notification will be deemed to be due to the transferee regulatory agency; 40

- (iii) all suits and other legal proceedings instituted or which could have been instituted by or against the transferor regulatory agency immediately before the date of the notification may be continued or may be instituted by or against the transferee regulatory agency; and
- (iv) every employee holding any office under the transferor regulatory agency immediately before the date of the notification will hold his office in the transferee regulatory agency by the same tenure and upon the same terms and conditions of service as respects remuneration, leave and other allowances, as he would have held such office if the transferor regulatory agency had not been established and will continue to do so as an employee of the transferee regulatory agency or until the expiry of six months from that date if such employee opts not to be the employee of the transferee regulatory agency within such period.

(2) In this section —

- (a) “transferor regulatory agency” means the regulatory agency or body corporate from which the power to regulate the notified financial service or class of financial services is transferred to the transferee regulatory agency; and
- (b) “transferee regulatory agency” means the Financial Agency that is notified as the Financial Agency that will regulate the notified financial service or class of financial services with effect from the date of the notification.

Repeal and savings.

**414.** (1) The Central Government may notify the repeal of the legislation listed in the Schedule 4, in whole or in part from time to time along with a notification under section 1(4) or as the case may be under section 7.

(2) Notwithstanding such repeal, —

- (a) anything done or any action taken or purported to have been done or taken under the repealed legislation shall be deemed to have been done or taken under the corresponding provision of this Act;
- (b) any regulation, circular, direction or rule issued under the repealed legislation, will be cease to be valid after a period of one year from the date of such repeal, unless modified or replaced earlier by the relevant Financial Agency, in accordance with the provisions of this Act.



PART XIX

SCHEDULES

Schedule 1: **Selection committee***See section 17***Selection committee****(1) Constitution of selection committee**

- 5 (a) The Central Government will maintain a list of at least ten independent experts from the fields of finance, law, and economics who are available to serve as experts on the selection committee.
- (b) For the purposes of item (a), “independent” means independent of the Central Government, State Government, the Financial Agencies and the Tribunal.
- 10 (c) The selection committee will comprise, –  
     (i) a chairperson of the selection committee;  
     (ii) three independent experts; and  
     (iii) a variable member as defined in item (f) of this Paragraph.
- 15 (d) The chairperson will be, –  
     (i) a nominee of the Chief Justice of India, for the selection of the Presiding Officer and other Tribunal members; or  
     (ii) a nominee of the Central Government, in all other circumstances.
- (e) The chairperson of the selection committee must select the three independent experts from the list maintained under item (a).
- 20 (f) The variable member will be, –  
     (i) another nominee of the Chief Justice of India for the selection of the Presiding Officer and other Tribunal members;  
     (ii) a nominee of the Central Government for the selection of chairperson of a Financial Agency; or  
     (iii) the chairperson of the Financial Agency for selection of all other members of that Financial Agency.
- 25 (g) The Central Government must provide the selection committee with adequate resources to advertise the vacancies in the office for which selection is made and carry out the selection in an efficient manner.
- 30

**(2) Procedure to be followed by the selection committee**

- (a) The selection committee must make a document stating the procedure it will follow for selecting from candidates.
- (b) The procedure must be fair, transparent and efficient.
- 35 (c) The selection committee must advertise the vacancy and the procedure for selecting from candidates to attract the attention of suitable candidates.
- (d) The selection committee may consider candidates who have not applied after recording reasons for considering such candidates.
- (e) The selection committee may nominate up to two candidates for every vacancy for which it has been constituted.
- 40 (f) The selection committee must complete its selection procedure within ninety days of being constituted.

Schedule 2: **Procedure for meetings of boards***See section 27***Procedure for meetings of boards**

- (1) The board must meet as frequently and at such place as may be stipulated in the bye-laws. 5
- (2) The chairperson of the Financial Agency will chair meetings of the board and if the chairperson is not present, the person who has served as member for the longest period of time will chair the meeting, unless otherwise stipulated in the bye-laws.
- (3) If two or more members of a board request a meeting in writing, the chairperson must convene a meeting of that board within thirty days of such request, failing which the members seeking the meeting may convene the meeting without the chairperson after the lapse of the thirty day period. 10
- (4) Subject to at least one physical meeting in a year, the members may attend meetings of the board by suitable technological means without being physically present. 15
- (5) The quorum for a meeting of the board will be more than half of the total number of appointed members.
- (6) Each member must be given at least seven days prior written notice of a meeting. 20
- (7) In special circumstances, a shorter notice of a meeting may be given, and such circumstances must be clearly recorded at that meeting.
- (8) The secretary of the board will be responsible for keeping the records of every meeting of the board.
- (9) The records will be published by the Financial Agency within three weeks of each meeting. 25
- (10) Selected portions of records may be published with appropriate delay if such portions meet any of the following conditions, –
  - (a) they relate exclusively to the conduct of individuals with regard to the performance of their functions within the Financial Agency; 30
  - (b) they relate to information that has been obtained from a person in confidence, where such information is exempt from disclosure by that person under the Right to Information Act, 2005 (22 of 2005);
  - (c) they involve discussion of a particular instance of violation of laws or censuring any person; 35
  - (d) they disclose information about a particular investigation which is ongoing;
  - (e) they disclose techniques for investigation or inspection;
  - (f) they disclose information of a commercial nature relating to a financial service provider which has been obtained for regulatory purposes; or 40
  - (g) they deprive a person of a right to a fair and impartial adjudication.
- (11) The selected portions of records mentioned in item (9) must not be published if such portions meet any of the following conditions, –

- (a) they are likely to lead to systemic risk;
  - (b) they are likely to significantly frustrate implementation of an action proposed by the Financial Agency or its board, where such action has not been disclosed to the public; or
  - 5 (c) they involve discussion of any particular legal proceeding before a tribunal, court or arbitrator.
- (12) The publication of portions of records relating to a particular meeting may be delayed or prevented only if the board, in such meeting, –
  - (a) records the reason in respect of such portions of the records;
  - 10 (b) the majority of members present at the meeting vote in favour of such action for each portion of the records separately; and
  - (c) the vote of each member is recorded and published in accordance with item (9).
- 15 (13) Portions of records delayed for publication must be published by the Financial Agency within six months, or as soon as the reasons for their delay cease to be applicable, whichever is later.
- (14) In this Schedule, “records” mean the agenda, proposals, and decisions taken at the meeting, and includes the votes of each member.

**Schedule 3: System-wide measures**

*See section 324*

**System-wide measures**

- (1) The following system-wide measures will be the subject of the decisions of the Council under section 324 – 5
- (a) a counter-cyclical capital buffer seeking to address pro-cyclical effects in the financial system;
  - (b) time-varying limit on the ratio between loan value and the value of collateral for specified sectors;
  - (c) time-varying limit on the ratio between debt repayment and the income of the borrower for specified sectors. 10

**Schedule 4: Repeal of other laws**

*See section 414*

**Repeal of other laws**

- (1) The Securities Contracts (Regulation) Act, 1956 (42 of 1956)
- 5 (2) The Securities and Exchange Board of India Act, 1992 (15 of 1992)
- (3) The Depositories Act, 1996 (22 of 1996)
- (4) The Public Debt Act, 1944 (18 of 1944)
- (5) The Government Securities Act, 2006 (38 of 2006)
- (6) The Reserve Bank of India Act, 1934 (2 of 1934)
- 10 (7) The Insurance Act, 1938 (4 of 1938)
- (8) The Banking Regulation Act, 1949 (10 of 1949)
- (9) The Forward Contracts (Regulation) Act, 1952 (74 of 1952)
- (10) The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970)
- 15 (11) The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980)
- (12) The Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961)
- (13) The Foreign Exchange Management Act, 1999 (42 of 1999)
- 20 (14) The Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)
- (15) The Payment and Settlement Systems Act, 2007 (51 of 2007)
- (16) The Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013)
- 25 (17) The National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981)
- (18) The National Housing Bank Act, 1987 (53 of 1987)
- (19) The Small Industries Development Bank of India Act, 1989 (39 of 1989)