

CORPORATE LAWS AND COMPLIANCE

FINAL

STUDY NOTES



The Institute of Cost Accountants of India

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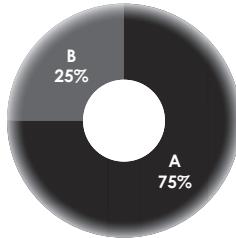
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Syllabus

PAPER 13: CORPORATE LAWS & COMPLIANCE (CLC)

Syllabus Structure

A	Corporate Laws	75%
B	Corporate Governance and Responsibilities	25%



ASSESSMENT STRATEGY

There will be written examination paper of three hours

OBJECTIVES

To gain an expert knowledge of Corporate functions in the context of Companies Act & related Corporate Laws. To be able to assess whether strategies and the organization is in compliance with established regulatory framework.

Learning Aims

The syllabus aims to test the student's ability to:

- Understand the principles of Corporate Laws relevant for compliance and decision-making
- Analyze and interpret the impact of allied laws
- Evaluate the essence of Corporate Governance for effective implementation
- Demonstrate the role of a Corporate in socio-economic development

Skill set required

Level C: Requiring skill levels of knowledge, comprehension, application, analysis, synthesis and evaluation.

Section A : Corporate Laws	75%
1. The Companies Act, 2013 (as amended from time to time) –rules, regulations prescribed there under with special reference to: (a) Company formation and conversion (b) Procedure for alteration of Memorandum and Articles (c) Procedure for Issue of Shares and Securities (d) Investment and loans (e) Audits under Companies Act (f) Dividends (g) Board of Directors (h) Board Meetings and Procedures (i) Inspection and investigation (j) Prevention of oppression and mismanagement (k) Revival and rehabilitation of sick industrial companies (l) Corporate winding up and dissolution (m) Companies incorporated outside India (n) Offences and penalties (o) E-governance	

2. Laws and Procedures for Corporate Restructuring	
3. SEBI Laws and Regulations	
4. The Competition Act, 2002 and its role in Corporate Governance	
5. Laws related to Banking Sector	
6. Laws related to Insurance Sector	
7. Laws related to Power Sector	
Section B : Corporate Governance and Responsibilities	25%
8. Corporate Governance	
9. Social, Environmental and Economic Responsibilities of Business	

SECTION A: CORPORATE LAWS [75 MARKS]

1. The Companies Act, 2013 (as amended from time to time) – rules, regulations prescribed there under with special reference to:

- (a) Company formation and conversion
 - (i) Incorporation of private companies, public companies, company limited by guarantee and unlimited companies and their conversions/reconversion/re-registration
 - (ii) Nidhi Companies, Mutual Benefit Funds and Producer Companies – concept, formation, membership, functioning, dissolution
 - (iii) Formation of "Not-for-Profit" making companies
 - (iv) Procedure relating to Foreign Companies Carrying on Business in India
- (b) Procedure for alteration of Memorandum and Articles
 - (i) Alteration of various clauses of memorandum
 - (ii) Effects of alteration
- (c) Procedure for Issue of Shares and Securities
 - (i) Shares – public issue, Rights Issue, Bonus Shares, Issue of Shares at Par / Premium / Discount; issue of shares on preferential or private placement basis
 - (ii) Issue of Sweat Equity Shares, Employees Stock Option Scheme (ESOPs), Employees Stock Purchase Scheme (ESPS), Shares with differential voting rights
 - (iii) Issue and redemption of preference shares
 - (iv) Alteration of share capital – forfeiture of shares, reissue of forfeited shares, increase, consolidation, conversion and re-conversion into stock, subdivision, cancellation and surrender of shares
 - (v) Buy back of shares
 - (vi) Reduction of share capital
 - (vii) Issue of debentures and bonds, creation of security and debenture redemption reserve, redemption of debentures, conversion of debentures into shares
 - (viii) Transfer and transmission
- (d) Investment and loans
 - (i) Procedure for inter-corporate loans, investments, giving off guarantee and security
 - (ii) Acceptance of deposits, renewal, repayment, default and remedies
- (e) Audits under Companies Act
 - (i) CARO
 - (ii) Statutory Cost Auditor's and Statutory Financial Auditors – appointment, resignation, removal, qualification, disqualification, rights, duties and liabilities
 - (iii) Companies (Cost Accounting Record) Rules, 2011 and Companies (Cost Audit Report) Rules, 2011 (To be substituted by relevant Rules of 2014)
- (f) Dividends
 - (i) Profits and ascertainment of divisible profits
 - (ii) Declaration and payment of dividend
 - (iii) Unpaid and unclaimed dividend – treatment and transfer to Investor Education and Protection Fund
- (g) Board of Directors
 - (i) Directors and Managerial Personnel – appointment, reappointment, resignation, removal
 - (ii) Payment of remuneration to Directors and managerial personnel and disclosures thereof
 - (iii) Power, Managerial remuneration
 - (iv) Obtaining DIN

- (v) Compensation for loss of office
- (vi) Waiver of recovery of remuneration
- (vii) Making loans to Directors, Disclosure of interest of a Director, Holding of Office or Place of Profit by a Director/relative
- (viii) Interested Directors
- (h) Board Meetings and Procedures
 - (i) Board Meetings, Minutes and Registers
 - (ii) Powers of the Board
 - (iii) Corporate Governance & Audit Committee
 - (iv) Duties and Liabilities of Directors
 - (iv) Powers related to – political contributions, sole selling agent, loans to Directors, Interested Directors, Office or Place of Profit
- (i) Inspection and investigation
- (j) Prevention of oppression and mismanagement
 - (i) Majority Rule but Minority Protection
 - (ii) Prevention of Oppression and Mismanagement
- (k) Revival and rehabilitation of sick industrial companies
- (l) Corporate winding up and dissolution – issues related to winding up, powers of the Court, Official Liquidator
 - (i) Reconstruction under Members' Voluntary Winding up
 - (ii) Reconstruction under Creditors' Voluntary Winding up
 - (iii) Reconstruction by arranging with Creditors in Voluntary Winding up
- (m) Companies incorporated outside India
- (n) Offences and penalties
- (o) E-governance

2. Laws and Procedures of Corporate Restructuring leading to:

- (a) Mergers; Amalgamations, Takeovers / Acquisitions, Joint Ventures, LLPs, Corporate restructure, Demerger, Reorganization through compromise or an arrangement
- (b) Reconstruction Vs. Amalgamation
- (c) Sale of undertaking of the Company
- (d) Acquiring Shares in another company
- (e) Compulsory Amalgamation in public interest

3. SEBI Laws and Regulations:

- (a) The Securities and Exchange Board of India Act, 1992 – Rules, Regulations and Guidelines issued there under
- (b) The Securities Contracts (Regulation) Act, 1956
- (c) SEBI (Issue of Capital and Disclosure Regulations), 2009
- (d) Clause 49
- (e) Substantial Acquisition of Shares and Takeover Regulations

4. The Competition Act, 2002 and its role in Corporate Governance

- (a) Competition – Meaning, objectives, extent and applicability
- (b) Competition Commission of India
- (c) Areas affecting competition
- (d) MRTP Act vs. Competition Act
- (e) Other matters
- (f) Competition Act, 2002 and Corporate Governance

5. Laws related to Banking Sector:

- (a) The Banking Regulation Act, 1949;
- (b) The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- (c) The Prevention of Money Laundering Act, 2002 – Role of Cost Accountants in Anti-Money Laundering (AML) Audits to check tax evasion and transfer of funds.
- (d) The Foreign Exchange Management Act, 1999

6. Laws related to Insurance Sector:

- (a) The Insurance Act, 1938;
- (b) The Insurance Regulatory and Development Authority Act, 1999

7. Laws related to Power Sector:

- (a) The Indian Electricity Act, 1910
- (b) Role of Central Electricity Regulatory Commission (CERC)

SECTION B: CORPORATE GOVERNANCE AND RESPONSIBILITIES [25 MARKS]

8. Corporate Governance

- (a) Overview-Issues and Concepts
- (b) Corporate Governance Practices/Codes in India, UK, Japan, Germany and USA
- (c) Corporate governance in family business
- (d) Corporate governance in state-owned business – the MOU system

9. Social, Environmental and Economic Responsibilities of Business.

- (a) National Voluntary Guidelines on Social, environmental and Economic Responsibilities of Business
- (b) Corporate Social Responsibility – Nature of activities; Evaluation of CSR projects
- (c) Whole life costing- assessment of socio-economic impact of strategic and operational decisions of business.

List of Amended Sections under respective Acts

Name of the Act	Sections
Companies Act, 2013	• 2(68) Modified
	• 2(71) Modified
	• 9 Modified
	• 11 Omitted
	• 12 Modified
	• 22 Modified
	• 46 Modified
	• 76A Inserted
	• 123 Modified
	• 124 Modified
	• 134(c) a Inserted
	• 136 Modified
	• 143 Modified
	• 177 Modified
	• 185(c) Inserted
	• 185(d) Inserted
	• 188 Modified
	• 212 Modified
	• 223 Modified
	• 248(b) Omitted
Securities Contracts (Regulation) Act, 1956	• 435 Modified
	• 436 Modified
	• 462(2) Modified
	• 462(3) Inserted
	• 462(4) Inserted
	• 2(ac) Modified
	• 2(bb) Inserted
	• 2(bc) Inserted

SEBI (Issue of Capital and Disclosure Regulation), 2009	• Regulation 10	Modified
	• Regulation 12	Modified
	• Regulation 58	Modified
	• Regulation 60	Modified
	• Regulation 65	Modified
	• Regulation 106W	Inserted
	• Regulation 106X	Inserted
	• Regulation 106Y	Inserted
	• Regulation 106Z	Inserted
	• Regulation 106ZA	Inserted
SEBI (Issue of Capital and Disclosure Regulation), 2009	• Regulation 106ZB	Inserted
	• Regulation 106ZC	Inserted
	• Regulation 106ZE	Inserted
	• Regulation 106ZF	Inserted
SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011	• Regulation 1	Modified
	• Regulation 10	Modified
The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002	• 2(c)	Modified
	• 5	Modified
	• 9	Modified
	• 13	Modified
	• 14	Modified
	• 18C	Inserted
	• 23	Modified
	• 26A	Inserted
	• 30	Modified
	• 31A	Inserted
Prevention of Money Laundering Act, 2012	• 2(fa)	Inserted
	• 2(ha)	Inserted
	• 2(ia)	Inserted
	• 2(ib)	Inserted
	• 2(ja)	Omitted
	• 2(l)	Modified
	• 2(n)	Modified
	• 2(q)	Modified
	• 2(ra)	Modified
	• 2(sa)	Inserted
	• 2(sb)	Inserted
	• 2(sc)	Inserted
	• 2(v)	Modified

Prevention of Money Laundering Act, 2012	• 2(va)	Inserted
	• 2(wa)	Inserted
	• 3	Modified
	• 4	Modified
	• 5	Modified
	• 8	Modified
	• 9	Modified
	• 10	Modified
	• 12	Modified
	• 13	Modified
	• 24	Modified
	• 26	Modified
	• 2(1)	Modified
	• 2(1A)	Modified
	• 2(5A)	Omitted
	• 2(6C)	Inserted
	• 2(7A)	Modified
	• 2(8)	Omitted
	• 2(8A)	Modified
	• 2(9)	Modified
	• 2(10)	Modified
	• 2(11)	Modified
	• 2(12)	Omitted
	• 2(13)	Omitted
	• 2(15)	Omitted
	• 2(16)	Modified
	• 2(16A)	Inserted
	• 2(16B)	Inserted
	• 2(16C)	Inserted
	• 2(17)	Omitted
The Insurance Act, 1938	• 2E	Omitted
	• 3	Modified
	• 3A	Modified
	• 4	Modified
	• 5	Modified
	• 6	Modified
	• 6A	Modified
	• 6AA	Omitted
	• 6B	Modified

The Insurance Act, 1938

• 6C	Omitted
• 7	Omitted
• 8	Omitted
• 9	Omitted
• 10	Modified
• 11	Modified
• 12	Modified
• 13	Modified
• 14	Modified
• 15	Modified
• 16	Omitted
• 17	Omitted
• 17A	Omitted
• 20	Modified
• 21	Modified
• 22	Modified
• 27	Modified
• 27A	Modified
• 27B	Modified
• 27C	Modified
• 27D	Modified
• 28	Modified
• 28A	Replaced
• 28B	Replaced
• 29	Modified
• 30	Modified
• 31	Modified
• 31A	Modified
• 31B	Modified
• 32	Omitted
• 32A	Modified
• 32B	Modified
• 32D	Inserted
• 33	Modified
• 34B	Modified
• 34C	Modified
• 34G	Omitted
• 34H	Modified
• 35	Modified

The Insurance Act, 1938	• 36	Modified
	• 37A	Modified
	• 38	Modified
	• 39	Modified
	• 40	Modified
	• 40A	Omitted
	• 40B	Modified
	• 40C	Modified
	• 41	Modified
	• 48A	Modified
	• 49	Modified
	• 52	Modified
	• 52A	Modified
	• 52BB	Modified
	• 52D	Modified
	• 52E	Modified
	• 52F	Modified
	• 52G	Modified
	• 52H	Omitted
	• 52 I	Omitted
	• 52J	Omitted
	• 52K	Omitted
	• 52L	Omitted
	• 52M	Omitted
	• 52N	Omitted
	• 53	Modified
	• 58	Modified
	• 59	Omitted
	• 64A	Omitted
	• 64B	Omitted
	• 64C	Modified
	• 64D	Modified
IRDA Act, 1999	• 2(1)(b)	Modified
	• 2(1)(f)	Modified
	• 3	Modified
	• 16	Modified

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Study Note - 1

THE COMPANIES ACT, 2013



This Study Note includes

- 1.1 Incorporation of Company and Matters Incidental Thereto**
- 1.2 Prospectus and Allotment of Securities**
- 1.3 Private Placement**
- 1.4 Share Capital and Debentures**
- 1.5 Acceptance of Deposits by Companies**
- 1.6 Declaration and Payment of Dividend**
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- 1.12 Inspection, Inquiry and Investigation**
- 1.13 Removal of Names of Companies from the Register of Companies**
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- 1.16 Companies Authorised to Register under this Act**
- 1.17 Companies Incorporated Outside India**
- 1.18 Registration Offices and Fees**
- 1.19 NIDHIS**
- 1.20 Special Courts**
- 1.21 Miscellaneous**
- 1.22 Incorporation of Producer Companies and other matters**

SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION [Section 1]

- (1) This Act may be called the Companies Act, 2013.
- (2) It extends to the whole of India.
- (3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
- (4) The provisions of this Act shall apply to—
 - (a) companies incorporated under this Act or under any previous company law;
 - (b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;

- (c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
- (d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
- (e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and
- (f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

Definitions [Section 2]

In this Act, unless the context otherwise requires,—

- (1) "Abridged Prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf;
- (2) "Accounting Standards" means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133;
- (3) "Alter" or "Alteration" includes the making of additions, omissions and substitutions;
- (4) "Appellate Tribunal" means the National Company Law Appellate Tribunal constituted under section 410;
- (5) "Articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act;
- (6) "Associate Company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.— For the purposes of this clause, "significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement;

- (7) "Auditing Standards" means the standards of auditing or any addendum thereto for companies or class of companies referred to in sub-section (10) of section 143;
- (8) "Authorised Capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;
- (9) "Banking Company" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;
- (10) "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company;
- (11) "Body Corporate" or "Corporation" includes a company incorporated outside India, but does not include—
 - (i) a co-operative society registered under any law relating to co-operative societies; and
 - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;
- (12) "Book and Paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;
- (13) "Books of Account" includes records maintained in respect of—
 - (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;



- (ii) all sales and purchases of goods and services by the company;
 - (iii) the assets and liabilities of the company; and
 - (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
- (14) "Branch Office", in relation to a company, means any establishment described as such by the company;
- (15) "Called-up capital" means such part of the capital, which has been called for payment;
- (16) "Charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;
- (17) "Chartered Accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;
- (18) "Chief Executive Officer" means an officer of a company, who has been designated as such by it;
- (19) "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;
- (20) "Company" means a company incorporated under this Act or under any previous company law;
- (21) "Company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;
- (22) "Company limited by shares" means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;
- (23) "Company Liquidator", in so far as it relates to the winding up of a company, means a person appointed by—
 - (a) the Tribunal in case of winding up by the Tribunal; or
 - (b) the company or creditors in case of voluntary winding up, as a Company Liquidator from a panel of professionals maintained by the Central Government under sub-section (2) of section 275;
- (24) "Company Secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;
- (25) "Company Secretary in practice" means a company secretary who is deemed to be in practice under sub-section (2) of section 2 of the Company Secretaries Act, 1980;
- (26) "Contributory" means a person liable to contribute towards the assets of the company in the event of its being wound up.
- Explanation.—** For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory;
- (27) "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- (28) "Cost Accountant" means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959;

(29) "Court" means—

- (i) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);
- (ii) the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;
- (iii) the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;
- (iv) the Special Court established under section 435;
- (v) any Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law;

(30) "Debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

(31) "Deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;

(32) "Depository" means a depository as defined in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996;

(33) "Derivative" means the derivative as defined in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(34) "Director" means a director appointed to the Board of a company;

(35) "Dividend" includes any interim dividend;

(36) "Document" includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;

(37) "Employees' Stock Option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

(38) "Expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;

(39) "Financial Institution" includes a scheduled bank, and any other financial institution defined or notified under the Reserve Bank of India Act, 1934;

(40) "Financial Statement" in relation to a company, includes—

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):



Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;

- (41) "Financial Year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;

- (42) "Foreign Company" means any company or body corporate incorporated outside India which—
(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.

- (43) "Free Reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that—

- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;

- (44) "Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;

- (45) "Government Company" means any company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

- (46) "Holding Company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;

- (47) "Independent Director" means an independent director referred to in sub-section (5) of section 149;

- (48) "Indian Depository Receipt" means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts;

- (49) "Interested Director" means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company;

- (50) "Issued Capital" means such capital as the company issues from time to time for subscription;

- (51) "Key Managerial Personnel", in relation to a company, means—
(i) the Chief Executive Officer or the managing director or the manager;
(ii) the Company Secretary;
(iii) the Whole-time Director;
(iv) the Chief Financial Officer; and
(v) such other officer as may be prescribed;
- (52) "Listed Company" means a company which has any of its securities listed on any recognised stock exchange;
- (53) "Manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;
- (54) "Managing Director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.
- Explanation.—** For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;
- (55) "Member", in relation to a company, means—
(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;
- (56) "Memorandum" means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;
- (57) "Net Worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;
- (58) "Notification" means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;
- (59) "Officer" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;
- (60) "Officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of



imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director;
- (ii) key managerial personnel;
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

- (61) "Official Liquidator" means an Official Liquidator appointed under sub-section (1) of section 359;
- (62) "One Person Company" means a company which has only one person as a member;
- (63) "Ordinary or special resolution" means an ordinary resolution, or as the case may be, special resolution referred to in section 114;
- (64) "Paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;
- (65) "Postal Ballot" means voting by post or through any electronic mode;
- (66) "Prescribed" means prescribed by rules made under this Act;
- (67) "Previous Company Law" means any of the laws specified below:—
 - (i) Acts relating to companies in force before the Indian Companies Act, 1866;
 - (ii) the Indian Companies Act, 1866;
 - (iii) the Indian Companies Act, 1882;
 - (iv) the Indian Companies Act, 1913;
 - (v) the Registration of Transferred Companies Ordinance, 1942;
 - (vi) the Companies Act, 1956; and

(vii) any law corresponding to any of the aforesaid Acts or the Ordinances and in force—

- (A) in the merged territories or in a Part B State (other than the State of Jammu and Kashmir), or any part thereof, before the extension thereto of the Indian Companies Act, 1913; or
- (B) in the State of Jammu and Kashmir, or any part thereof, before the commencement of the Jammu and Kashmir (Extension of Laws) Act, 1956, in so far as banking, insurance and

financial corporations are concerned, and before the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968, in so far as other corporations are concerned;

(viii) the Portuguese Commercial Code, in so far as it relates to sociedades anonimas; and

(ix) the Registration of Companies (Sikkim) Act, 1961;

(68) "Private Company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company;

(69) "Promoter" means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(70) "Prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate;

(71) "Public Company" means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

(72) "Public Financial Institution" means—

(i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956;



- (ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- (iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

- (A) it has been established or constituted by or under any Central or State Act; or
- (B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;

(73) "Recognised Stock Exchange" means a recognised stock exchange as defined in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(74) "Register of companies" means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

(75) "Registrar" means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;

(76) "Related party", with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager is a member or director;
- (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—

- (A) a holding, subsidiary or an associate company of such company; or
- (B) a subsidiary of a holding company to which it is also a subsidiary;

(ix) such other person as may be prescribed;

(77) "Relative", with reference to any person, means anyone who is related to another, if—

- (i) they are members of a Hindu Undivided Family;
- (ii) they are husband and wife; or
- (iii) one person is related to the other in such manner as may be prescribed;

- (78) "Remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961;
- (79) "Schedule" means a Schedule annexed to this Act;
- (80) "Scheduled Bank" means the scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934;
- (81) "Securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- (82) "Securities and Exchange Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;
- (83) "Serious Fraud Investigation Office(SFIO)" means the office referred to in section 211;
- (84) "Share" means a share in the share capital of a company and includes stock;
- (85) "Small company" means a company, other than a public company,—
 - (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
 - (ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

- (86) "Subscribed Capital" means such part of the capital which is for the time being subscribed by the members of a company;
- (87) "Subsidiary Company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—
 - (i) controls the composition of the Board of Directors; or
 - (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.— For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression "company" includes any body corporate;
- (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;



General Circular No. 20/2013

Clarification with regard to holding of shares or exercising power in a fiduciary capacity - Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013.

It is hereby clarified that the shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

General Circular No. 24/2014

Clarification with regard to holding of shares in a fiduciary capacity by associate company under section 2(6) of the Companies Act, 2013.

In continuation of the General circular No. 20/2013 dated 27/12/2013, it is clarified that the shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under section 2(6) of the Companies Act, 2013.

General Circular No. 23/2014

Clarification relating to incorporation of a company i.e. company Incorporated outside India.

It is clarified that there is no bar in the new Act for a company incorporated outside India to incorporate a subsidiary either as a public company or a private company. An existing company, being a subsidiary of a company incorporated outside India, registered under the Companies Act, 1956, either as private company or a public company by virtue of section 4(7) of that Act, will continue as a private company or public company as the case may be, without any change in the incorporation status of such company.

- (88) "Sweat Equity Shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
- (89) "Total voting power", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes;
- (90) "Tribunal" means the National Company Law Tribunal constituted under section 408;
- (91) "Turnover" means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;
- (92) "Unlimited company" means a company not having any limit on the liability of its members;
- (93) "Voting right" means the right of a member of a company to vote in any meeting of the company or by means of postal ballot;
- (94) "Whole-time director" includes a director in the whole-time employment of the company;
- (95) words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in those Acts.

Some other Definitions

In exercise of the powers conferred under sub-clause (ix) of clause (76), sub-clause (iii) of clause (77) of section 2, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013, the Central Government has issued following definitions under the rules as notified by Notification G.S.R 238 (E) dated 31st March, 2014 -

Definitions

- (1) In these rules, unless the context otherwise requires,—
- (a) "Act" means the Companies Act, 2013 ;
 - (b) "Certifying Authority" for the purpose of Digital Signature Certificate means a person who has been granted a licence to issue a Digital Signature Certificate under section 24 of the Information Technology Act, 2000 and the Certified Filing Center (CFC) under the Act;
 - (c) "Digital Signature" means the digital signature as defined under clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000;
 - (d) "Digital Signature Certificate" means a Digital Signature Certificate as defined under clause (q) of subsection (1) of section 2 of the Information Technology Act, 2000;
 - (e) "Director Identification Number" (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company;

Provided that the Director Identification Number (DIN) obtained by the individuals prior to the notification of these rules shall be the DIN for the purpose of the Companies Act, 2013:

Provided further that "Director Identification Number" (DIN) includes the Designated Partnership Identification Number (DPIN) issued under section 7 of the Limited Liability Partnership Act, 2008 and the rules made thereunder;

- (f) "e-Form" means a form in the electronic form as prescribed under the Act or the rules made thereunder and notified by the Central Government under the Act;
- (g) "Electronic Mail" means the message sent, received or forwarded in digital form using any electronic communication mechanism that the message so sent, received or forwarded is storable and retrievable;
- (h) "Electronic Mode", for the purposes of clause (42) of section 2 of the Act, means carrying out electronically based, whether main server is installed in India or not, including, but not limited to -
 - (i) business to business and business to consumer transactions, data interchange and other digital supply transactions;
 - (ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
 - (iii) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
 - (iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
 - (v) all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

- (i) "Electronic Record" means the electronic record as defined under clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000;
- (j) "Electronic Registry" means an electronic repository or storage system of the Central Government in which the information or documents are received, stored, protected and preserved in electronic form;



- (k) "Executive Director" means a whole time director as defined in clause (94) of section 2 of the Act;
- (l) "Fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;
- (m) "Form" means a form set forth in the Act or the rules made thereunder which shall be used for the matter to which it relates;
- (n) "Pre-fill" means the automated process of data input by the computer system from the database maintained in electronic registry of the Central Government;
- (o) "Registrar's Front Office" means an office maintained by the Central Government or an agency authorised by it to facilitate e-filing of documents into the electronic registry and their inspection and viewing;
- (p) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;
- (q) "Section" means the section of the Act;
- (r) "Total Share Capital", for the purposes of clause (6) and clause (87) of section 2, means the aggregate of the -
- paid-up equity share capital; and
 - convertible preference share capital;
- (s) For the purposes of clause (d) of sub-section (1) of Section 164 and clause (f) of sub-section (1) of section 167 of the Act, "or otherwise" means any offence in respect of which he has been convicted by a Court under this Act or the Companies Act, 1956;
- (2) The words and expressions used in these rules but not defined and defined in the Act or in (i) the Securities Contracts (Regulation) Act, 1956 or (ii) the Securities and Exchange Board of India Act, 1992 or (iii) the Depositories Act, 1996 or (iv) the Information Technology Act, 2000 or rules and regulations made thereunder shall have the meanings respectively assigned to them under the Act or those Acts.
- (3) **Related party** - For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director other than independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.
- (4) **List of relatives in terms of clause (77) of section 2** - A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-
- Father: Provided that the term "Father" includes step-father.
 - Mother: Provided that the term "Mother" includes the step-mother.
 - Son: Provided that the term "Son" includes the step-son.
 - Son's wife.
 - Daughter.
 - Daughter's husband.
 - Brother: Provided that the term "Brother" includes the step-brother;
 - Sister: Provided that the term "Sister" includes the step-sister.

1.1 INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

e = e-Form & P = Physical Form

FORM NO./ FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
INC-1 e	Application for reservation of Name	4(4)	8,9	1.19
INC-2 e	One Person Company - Application for Incorporation	3(1), 7(1)	4,10,12,15	1.15, 1.23
INC-3 e	One Person Company -Nominee Consent Form	3(1)	4(2), (3), (4), (5), (6)	1.15
INC-4 e	One Person Company - Change in Member/ Nominee	3(1)	4(4), (5), (6)	1.15
INC-5 e	One Person Company - Intimation of Exceeding threshold	—	6(4)	—
INC-6 e	One Person Company - Application for Conversion	18	7(4)	1.35
INC-7 e	Application for Incorporation of Company (Other than OPC)	7(1)	10, 12, 14, 15	1.23
INC-8 P	Declaration	7(1)(b)	14	1.23
INC-9 P	Affidavit	7(1)(c)	15	1.23
INC-10 P	Form for verification of Signature of Subscribers	—	16(1)(q)	—
INC-11 P	Certificate of Incorporation	7(2)	8	1.23
INC-12 e	Application for grant of License under section 8	8(1), 8(5)	19,20	1.25
INC-13 P	Memorandum of Association	—	19(2)	—
INC-14 P	Declaration	7(1)(b)	19(3)(b)	1.23
INC-15 P	Declaration	—	19(3)(d)	—
INC-16 P	License under section 8(1) of the Companies Act, 2013	—	20	—
INC-17 P	License under section 8(5) of the Companies Act, 2013	—	20	—
INC-18 e	Application to Regional Director for conversion of section 8 company into company of any other kind	8(4)(ii)	21(3)	1.25
INC-19 P	Notice	—	22	—
INC-20 e	Intimation to Registrar of revocation/ surrender of license under section 8	8(4), 8(6)	23	1.25
INC-21 e	Declaration prior to the commencement of business or exercising borrowing powers	11(1)(a)	24	1.28
INC-22 e	Notice of situation or change of situation of Registered office	12(2), (4)	25,27	1.28,1.29
INC-23 e	Application to the Regional Director for approval to shift the Registered Office from one State to another State or from jurisdiction of one Registrar to another Registrar within the same State.	12(5), 13(4)	28,30	1.29, 1.32



INC-24	e	Application for approval of Central Government for change of name	13(2)	29(2)	1.32
INC-25	P	Certificate of Incorporation pursuant to change of Name	—	29	—
INC-26	P	Advertisement to be published in the newspaper for License for existing companies	—	30	—
INC-27	e	Conversion of public company into private company or private company into public company	14	33	1.33
INC-28	e	Notice of Order of the Court or any other competent authority	—	—	—

1.1.1 Formation of Company [Section 3]

- (1) A company may be formed for any lawful purpose by—
- (a) seven or more persons, where the company to be formed is to be a public company;
 - (b) two or more persons, where the company to be formed is to be a private company; or
 - (c) one person, where the company to be formed is to be One Person Company that is to say, a private company,

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

Provided that the memorandum of One Person Company shall indicate the name of the other person, with his prior written consent in the prescribed form, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.

Provided further that such other person may withdraw his consent in such manner as may be prescribed.

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed.

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed.

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

- (2) A company formed under sub-section (1) may be either—
- (a) a company limited by shares; or
 - (b) a company limited by guarantee; or
 - (c) an unlimited company.

1.1.2 Nomination by the Subscriber or Member of One Person Company

The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person in the prescribed form, who shall, in the event of the subscriber's

death or his incapacity to contract, become the member of that One Person Company and the written consent of such person shall also be filed with the Registrar at the time of incorporation of the One Person Company along with its memorandum and articles.

The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company.

Provided that the sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated.

Provided also that the member of One Person Company may at any time change the name of such other person by giving notice in such manner as may be prescribed.

Provided also that it shall be the duty of the member of One Person Company to intimate the company the change, if any, in the name of the other person nominated by him by indicating in the memorandum or otherwise within such time and in such manner as may be prescribed, and the company shall intimate the Registrar any such change within such time and in such manner as may be prescribed:

Provided also that any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

1.1.3 Features of Incorporation of an One Person Company

- (1) Only a natural person who is an Indian citizen and resident in India-
 - (a) shall be eligible to incorporate a One Person Company;
 - (b) shall be a nominee for the sole member of a One Person Company.

Explanation.- The term “resident in India” means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

- (2) No person shall be eligible to incorporate more than a One Person Company or become nominee in more than one such company.
- (3) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the eligibility criteria specified in sub rule (2) within a period of one hundred and eighty days.
- (4) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.
- (5) Such Company cannot be incorporated or converted into a company under section 8 of the Act.
- (6) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
- (7) No such company can convert voluntarily into any kind of company unless two years have expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

1.1.4 Effects of Failure to Comply with the Provision

If One Person Company or any officer of such company contravenes the provisions relating to incorporation of One Person Company, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.



1.1.5 One Person Company to Convert itself into a Public Company or a Private Company in Certain cases

- (i) Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.
- (ii) Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.
- (iii) The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
- (iv) The One Person Company shall within period of sixty days from the date of applicability of point (1), give a notice to the Registrar in Form No. INC. 5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in point (1).

Explanation.— “Relevant Period” means the period of immediately preceding three consecutive financial years;

- (v) If One Person Company or any officer of the One Person Company contravenes the provisions as stated above, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.
- (vi) A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

1.1.6 Conversion of Private Company into One Person Company

- (i) A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.
- (ii) Before passing such resolution, the company shall obtain No objection in writing from members and creditors.
- (iii) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14.
- (iv) The company shall file an application in Form No. INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-
 - (a) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;

- (b) the list of members and list of creditors;
 - (c) the latest Audited Balance Sheet and the Profit and Loss Account; and
 - (d) the copy of No Objection letter of secured creditors.
- (v) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

1.1.7 Memorandum [Section 4]

- (1) The memorandum of a company shall state—
 - (a) the name of the company with the last word "Limited" in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company:
Provided that nothing above shall apply to a company registered under section 8;
 - (b) the State in which the registered office of the company is to be situated;
 - (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;
 - (d) the liability of members of the company, whether limited or unlimited, and also state,—
 - (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
 - (ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—
 - (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
 - (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves;
 - (e) in the case of a company having a share capital,—
 - (i) the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
 - (ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;
 - (f) in the case of One Person Company, the name of the person who, in the event of death of the subscriber, shall become the member of the company.
- (2) The name stated in the memorandum shall not—
 - (a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
 - (b) be such that its use by the company—
 - (i) will constitute an offence under any law for the time being in force; or
 - (ii) is undesirable in the opinion of the Central Government.
- (3) Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains—
 - (a) any word or expression which is likely to give the impression that the company is in any way



connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or

- (b) such word or expression, as may be prescribed,

unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

- (4) A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the reservation of a name set out in the application as—
- (a) the name of the proposed company; or
 - (b) the name to which the company proposes to change its name.
- (5) (i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.
- (ii) Where after reservation of name under clause (i), it is found that name was applied by furnishing wrong or incorrect information, then,—
- (a) if the company has not been incorporated, the reserved name shall be cancelled and the person making application under sub-section (4) shall be liable to a penalty which may extend to one lakh rupees;
 - (b) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—
 - (i) either direct the company to change its name within a period of three months, after passing an ordinary resolution;
 - (ii) take action for striking off the name of the company from the register of companies; or
 - (iii) make a petition for winding up of the company.
- (6) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.
- (7) Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

1.18 Articles [Section 5]

- (1) The articles of a company shall contain the regulations for management of the Articles. company.
- (2) The articles shall also contain such matters, as may be prescribed:
Provided that nothing prescribed in this sub-section shall be deemed to prevent a company from including such additional matters in its articles as may be considered necessary for its management.
- (3) The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
- (4) The provisions for entrenchment referred to in sub-section (3) shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

- (5) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
- (6) The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.
- (7) A company may adopt all or any of the regulations contained in the model articles applicable to such company.
- (8) In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.
- (9) Nothing in this section shall apply to the articles of a company registered under any previous company law unless amended under this Act.

1.1.9 Act to Override Memorandum, Articles, etc. [Section 6]

Save as otherwise expressly provided in this Act—

- (a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
- (b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

1.1.10 Affidavit from Subscribers and First Directors

The affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in **Form No.INC.9**.

1.1.11 Signing of Memorandum and Articles

The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:-

- (1) The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that "I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in".
- (2) Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.
- (3) Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.
- (4) Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized



in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership: Provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

- (5) Where subscriber to the memorandum is a foreign national residing outside India-
- (a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.
 - (b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.
 - (c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 or in any Act amending the same;
 - (d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

Explanation.— For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

1.1.12 Particulars of Every Subscriber to be filed with the Registrar at the time of Incorporation

- (1) The following particulars of every subscriber to the memorandum shall be filed with the Registrar-
- (a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:
 - (b) Father's/Mother's/ name:
 - (c) Nationality:
 - (d) Date of Birth:
 - (e) Place of Birth (District and State):
 - (f) Educational qualification:
 - (g) Occupation:
 - (h) Income-tax permanent account number:
 - (i) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses :
 - (j) Email id of Subscriber;
 - (k) Phone No. of Subscriber;
 - (l) Fax no. of Subscriber (optional)

Explanation.- information related to (i) to (l) shall be of the individual subscriber and not of the professional engaged in the incorporation of the company;

- (m) Proof of Identity:
- For Indian Nationals:
 - PAN Card (mandatory) and any one of the following
 - Voter's identity card
 - Passport copy
 - Driving License copy
 - Unique Identification Number (UIN)
 - For Foreign nationals and Non Resident Indians
 - Passport
 - (n) Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill:
Provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old;
 - (o) Proof of nationality in case the subscriber is a foreign national.
 - (p) If the subscriber is already a director or promoter of a company(s), the particulars relating to-
 - (i) Name of the company;
 - (ii) Corporate Identity Number;
 - (iii) Whether interested as a director or promoter;
 - (q) the specimen signature and latest photograph duly verified by the banker or notary shall be in the prescribed Form No.INC.10.
 - (2) Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar -
 - (a) Corporate Identity Number of the Company or Registration number of the body corporate, if any
 - (b) GLN, if any;
 - (c) the name of the body corporate
 - (d) the registered office address or principal place of business;
 - (e) E-mail Id;
 - (f) if the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum;
 - (g) if the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;
 - (h) the particulars as specified above for subscribers in terms of clause (e) of sub- section (1) of section 7 for the person subscribing for body corporate;



- (i) in case of foreign bodies corporate, the details relating to-
 - (i) the copy of certificate of incorporation of the foreign body corporate; and
 - (ii) the registered office address.

1.1.13 Incorporation of Companies [Section 7]

- (1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:-
 - (a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
 - (b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;
 - (c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
 - (d) the address for correspondence till its registered office is established;
 - (e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;
 - (f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and
 - (g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.
- (2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all the documents and information referred to in that sub section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.
- (3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate.
- (4) The company shall maintain and preserve at its registered office copies of all documents and information as originally filed under sub-section (1) till its dissolution under this Act.
- (5) If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447.

- (6) Without prejudice to the provisions of sub-section (5) where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first directors of the company and the persons making declaration under clause (b) of subsection (1) shall each be liable for action under section 447.
- (7) Without prejudice to the provisions of sub-section (6), where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—
- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
 - (b) direct that liability of the members shall be unlimited; or
 - (c) direct removal of the name of the company from the register of companies; or
 - (d) pass an order for the winding up of the company; or
 - (e) pass such other orders as it may deem fit:
- Provided that before making any order under this sub-section,—
- (i) the company shall be given a reasonable opportunity of being heard in the matter; and
 - (ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

1.1.14 Application for Incorporation of Companies

An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in Form No.INC.2 (for One Person Company) and Form no. INC.7 (other than One Person Company) along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company.

General Circular No. 16/2014

Applicability of PAN Requirement for Foreign Nationals –

In continuation of the General Circular No. 12/2014 dated 22.05.2014 regards the above subject, it is clarified that the provisions of the said Circular are applicable to a Foreign National who is a subscriber/promoter at the time of incorporation of the Company.

In case the said subscriber/promoter, does not possess Permanent Account Number (PAN), he/she shall furnish a declaration in the prescribed proforma, as an attachment to the Incorporation Form (INC -7).

Further, it is clarified that, in case of a Resident Director of the proposed company he/she shall be required to submit PAN details at the time of incorporation.

1.1.15 Declaration by Professionals

For the purposes of clause (b) of sub-section (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. INC.8. Explanation (i) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section 1 of section 2 of the Chartered Accountants Act, 1949 (ii) "Cost Accountant" means a cost



accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and (iii) "company secretary" means a "company secretary" or "secretary" means as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980.

1.1.16 Formation of Companies with Charitable Objects, etc. [Section 8]

- (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—
 - (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
 - (b) intends to apply its profits, if any, or other income in promoting its objects; and
 - (c) intends to prohibit the payment of any dividend to its members, the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.
- (2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.
- (3) A firm may be a member of the company registered under this section.
- (4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.
(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.
- (5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.
- (6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly.

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

Provided further that a copy of every such order shall be given to the Registrar.

- (7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

- (8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.
- (9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.
- (10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.
- (11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both.

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

1.1.17 License Under Section 8 for Existing Companies

A limited company registered under this Act or under any previous company law, with any of the objects specified in clause (a) of sub-section (1) of section 8 and the restrictions and prohibitions as mentioned respectively in clause (b) and (c) of that sub-section, and which is desirous of being registered under section 8, without the addition to its name of the word "Limited" or as the case may be, the words "Private Limited", shall make an application in Form No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a licence under sub-section (5) of section 8.

The licence shall be in Form No.INC.16. or Form No.INC.17, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.

The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

1.1.18 Submission of Documents

The application shall be accompanied by the following documents, namely:-

- (i) the memorandum and articles of association of the company;
- (ii) the declaration as given in Form No.INC.14 by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made there under and that all the requirements of the Act and the rules made there under relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;



- (iii) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (a) the financial statements, (b) the Board's reports, and (c) the audit reports, relating to existing companies
- (iv) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
- (v) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
- (vi) the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and
- (vii) a declaration by each of the persons making the application in Form No.INC.15.

1.1.19 Conditions for Conversion of a Company Registered Under Section 8 into a Company of any other kind

- (i) A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.
- (ii) The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely:-
 - (a) the date of incorporation of the company;
 - (b) the principal objects of the company as set out in the memorandum of association;
 - (c) the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;
 - (d) if the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;
 - (e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.;
 - (f) details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.
- (iii) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No.MGT.14 along with the fee.
- (iv) The company shall file an application in Form No.INC.18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned in sub-rule (2) of rule 22 of Companies (Incorporation) Rules, 2014.
- (v) A copy of the application with annexure as filed with the Regional Director shall also be filed with the Registrar.

1.1.20 Intimation to Registrar of Revocation of License Issued Under Section 8

Where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in Form No.INC.20 along with the fee to convert its status and change of name accordingly.

1.1.21 Effect of Registration [Section 9]

From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

1.1.22 Effect of Memorandum and Articles [Section 10]

- (1) Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.
- (2) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

1.1.23 Commencement of Business, etc. [Section 11]

Omitted vide Companies (Amendment) Act, 2015

1.1.24 Registered Office of Company [Section 12]

- (1) A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
- (2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.
- (3) Every company shall—
 - (a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;
 - (b) have its name engraved in legible characters on its seal, if any;
 - (c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
 - (d) have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed:

Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years as required under clauses (a) and (c):

Provided further that the words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.



- (4) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.
- (5) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed,—
- in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and
 - in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company.
- Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner.
- (6) The confirmation referred to in sub-section (5) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.
- (7) The certificate referred to in sub-section (6) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of subsection (5) have been complied with and the change shall take effect from the date of the certificate.
- (8) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees lakh rupees.

1.1.25 Shifting of Registered Office within the same State

- An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form no.INC.23 along with the fee.
- The company shall, not less than one month before filing any application with the Regional Director for the change of registered office.—
 - publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district; and
 - serve individual notice on each debenture holder, depositor and creditor of the company, clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice.

Provided that in case no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be deemed to have given his consent to the change of registered office proposed in the application.

Provided further that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

- (iii) The confirmation referred to in sub-section (5) of section 12 shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

1.1.26 Shifting of Registered Office from One State or Union Territory to Another State

- (i) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in Form No. INC.23 along with the fee and shall be accompanied by the following documents, namely:-
- (a) a copy of the memorandum and articles of association;
 - (b) a copy of the notice convening the general meeting along with relevant Explanatory Statement;
 - (c) a copy of the special resolution sanctioning the alteration by the members of the company;
 - (d) a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;
 - (e) an affidavit verifying the application;
 - (f) the list of creditors and debenture holders entitled to object to the application;
 - (g) an affidavit verifying the list of creditors;
 - (h) the document relating to payment of application fee;
 - (i) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.
- (ii) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-
- (a) the names and address of every creditor and debenture holder of the company;
 - (b) the nature and respective amounts due to them in respect of debts, claims or liabilities:
- Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.
- (iii) There shall also be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.
- (iv) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.



- (v) There shall also be attached to the application a copy of the acknowledgement of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.
- (vi) The company shall at least fourteen days before the date of hearing-
 - (a) advertise the application in the Form No.INC.26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;
 - (b) serve, by registered post with acknowledgement due, individual notice(s), to the effect set out in clause (a) on each debenture-holder and creditor of the company; and
 - (c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.
- (vii) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.
- (viii) Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.
- (ix) Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.
- (x) The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper.

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

1.1.27 Alteration of Memorandum [Section 13]

- (1) Save as provided in section 61, a company may, by a special resolution and Alteration of after complying with the procedure specified in this section, alter the provisions of its memorandum.
- (2) Any change in the name of a company shall be subject to the provisions of sub sections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing.

Provided that no such approval shall be necessary where the only change in the name of the company is the deletion there from, or addition thereto, of the word "Private", consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.

- (3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

- (4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.
- (5) The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.
- (6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar—
 - (a) the special resolution passed by the company under sub-section (1);
 - (b) the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.
- (7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.
- (8) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—
 - (i) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;
 - (ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
- (9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section.
- (10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.
- (11) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

1.1.28 Alteration of Memorandum by Change of Name

An application shall be filed in Form No.INC.24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No.INC.25 shall be issued to the company consequent upon change of name.

The change of name shall not be allowed to a company which has defaulted in filing its annual returns or financial statements or any document due for filing with the Registrar or which has defaulted in repayment of matured deposits or debentures or interest on deposits or debentures.



1.1.29 Alteration of Articles [Section 14]

- (1) A company may, by a special resolution, alter its articles including alterations having the effect of conversion of—
- a private company into a public company; or
 - a public company into a private company.

Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company.

Provided further that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

- (2) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.
- (3) Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.

1.1.30 Alteration of Articles

For effecting the conversion of a private company into a public company or vice versa, the application shall be filed in Form No. INC.27 with fee.

A copy of order of the competent authority approving the alteration, shall be filed with the Registrar in Form No. INC.27 with fee together with the printed copy of the altered articles within fifteen days of the receipt of the order from the Central Government.

1.1.31 Alteration of Memorandum or Articles to be noted in Every Copy [Section 15]

- (1) Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.
- (2) If a company makes any default in complying with the provisions of sub-section (1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.

1.1.32 Rectification of Name of Company [Section 16]

- (1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—
- in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;
 - on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change

its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

- (2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.
- (3) If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.

1.1.33 Copies of Memorandum, Articles, etc., to be given to Members [Section 17]

- (1) A company shall, on being so requested by a member, send to him within seven days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:—
 - (a) the memorandum;
 - (b) the articles; and
 - (c) every agreement and every resolution referred to in sub-section (1) of section 117, if and in so far as they have not been embodied in the memorandum or articles.
- (2) If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

1.1.34 Change of Objects for which Money is Raised through Prospectus

Where the company has raised money from public through prospectus and has any unutilised amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars, namely:-

- (a) the total money received;
- (b) the total money utilized for the objects stated in the prospectus;
- (c) the unutilized amount out of the money so raised through prospectus,
- (d) the particulars of the proposed alteration or change in the objects;
- (e) the justification for the alteration or change in the objects;
- (f) the amount proposed to be utilised for the new objects;
- (g) the estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
- (h) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution;
- (i) the place from where any interested person may obtain a copy of the notice of resolution to be passed.

The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with the dispatch of postal ballot notices to shareholders. The notice shall also be placed on the website of the company, if any.



1.1.35 Conversion of Companies already Registered [Section 18]

- (1) A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of the act.
- (2) Where the conversion is required to be done under this section, the Registrar shall on an application made by the company, after satisfying himself that the provisions as applicable to the transaction applicable for registration of companies have been complied with, close the former registration of the company and after registering the documents referred to in sub-section (1), issue a certificate of incorporation in the same manner as its first registration.
- (3) The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

1.1.36 Subsidiary Company not to hold Shares in its Holding Company [Section 19]

- (1) No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that nothing in this sub-section shall apply to a case—

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

Provided further that the subsidiary company referred to in the preceding proviso shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said proviso.

- (2) The reference in this section to the shares of a holding company which is a company limited by guarantee or an unlimited company, not having a share capital, shall be construed as a reference to the interest of its members, whatever be the form of interest.

1.1.37 Service of Documents [Section 20]

- (1) A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.

Provided that where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

- (2) Save as provided in this Act or the rules made there under for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.

Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

1.1.38 Authentication of Documents, Proceedings and Contracts [Section 21]

Save as otherwise provided in this Act,—

- (a) a document or proceeding requiring authentication by a company; or
- (b) contracts made by or on behalf of a company,

may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf.

1.1.39 Execution of Bills of Exchange, etc. [Section 22]

- (1) A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.
- (2) A company may, by writing under its common seal, if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

Provided that in case a company does not have a common seal, the authorization under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

- (3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company and have the effect as if it were made under its common seal.

1.2 PROSPECTUS AND ALLOTMENT OF SECURITIES

PART - I

Public Offer

FORM NO. / FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
PAS-1	P	Advertisement giving details of notice of special resolutions for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued	27(1)	7(2)	1.44
PAS-2	e	Information Memorandum	31(2)	10	1.45
PAS-3	e	Return of Allotment	39(4), 42(9)	12, 14	1.49, 1.51
PAS-4	P	Private placement offer letter	42	14(1)	1.50
PAS-5	P	Record of a private placement offer to be kept by the company	42(7)	14(3)	1.51



1.2.1 Public Officer and Private Placement [Section 23]

- (1) A public company may issue securities—
 - (a) to public through prospectus; or
 - (b) through private placement; or
 - (c) through a rights issue or a bonus issue and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.
- (2) A private company may issue securities—
 - (a) by way of rights issue or bonus issue; or
 - (b) through private placement.

Explanation.—For the purposes of this Chapter, “public offer” includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

1.2.2 Power of Securities and Exchange Board to Regulate Issue and Transfer of Securities, etc. [Section 24]

- (1) The provisions contained in Chapter III, Chapter IV and in section 127 shall,—
 - (a) in so far as they relate to—
 - (i) issue and transfer of securities; and
 - (ii) non-payment of dividend,
 - (b) in any other case, be administered by the Central Government.

Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

- (2) The Securities and Exchange Board shall, in respect of matters specified in sub-section (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992.

1.2.3 Document Containing offer of Securities for Sale to be Deemed Prospectus [Section 25]

- (1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in sub sections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.
- (2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale

to the public if it is shown—

- (a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
 - (b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.
- (3) Section 26 as applied by this section shall have effect as if—
- (i) it required a prospectus to state in addition to the matters required by that section to be stated in a prospectus—
 - (a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and
 - (b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;
 - (ii) the persons making the offer were persons named in a prospectus as directors of a company.
- (4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

1.2.4 Matters to be Stated in Prospectus [Section 26]

- (1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—
- (a) state the following information, namely:—
 - (i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;
 - (ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;
 - (iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;
 - (iv) details about underwriting of the issue;
 - (v) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;
 - (vi) the authority for the issue and the details of the resolution passed there for;
 - (vii) procedure and time schedule for allotment and issue of securities;
 - (viii) capital structure of the company in the prescribed manner;
 - (ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
 - (x) main objects and present business of the company and its location, schedule of implementation of the project;



- (xi) particulars relating to—
- (A) management perception of risk factors specific to the project;
 - (B) gestation period of the project;
 - (C) extent of progress made in the project;
 - (D) deadlines for completion of the project; and
 - (E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;
- (xii) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
- (xiii) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and
- (xiv) disclosures in such manner as may be prescribed about sources of promoter's contribution.
- (b) set out the following reports for the purposes of the financial information, namely:—
- (i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;
 - (ii) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed
Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;
 - (iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:
Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and
 - (iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;
- (c) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under; and
- (d) state such other matters and set out such other reports, as may be prescribed.
- (2) Nothing in sub-section (1) shall apply—
- (a) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has

a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or

- (b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.
- (3) Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

Explanation.— The date indicated in the prospectus shall be deemed to be the date of its publication.

- (4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.
- (5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.
- (6) Every prospectus issued under sub-section (1) shall, on the face of it,—
 - (a) state that a copy has been delivered for registration to the Registrar as required under sub-section (4); and
 - (b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.
- (7) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.
- (8) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).
- (9) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

1.2.5 Information Relating to Capital Structure of the Company Stated in Prospectus

The capital structure of the company shall be presented in the following manner, namely:—

- (i) (a) the authorised, issued, subscribed and paid up capital (number of securities, description and aggregate nominal value);
 - (b) the size of the present issue;
 - (c) the paid up capital
 - (A) after the issue;
 - (B) after conversion of convertible instruments (if applicable);
 - (d) the share premium account (before and after the issue);



- (ii) the details of the existing share capital of the issuer company in a tabular form, indicating therein with regard to each allotment, the date of allotment, the number of shares allotted, the face value of the shares allotted, the price and the form of consideration.

Provided that in the case of an initial public offer of an existing company, the details regarding individual allotment shall be given from the date of incorporation of the issuer and in the case of a listed issuer company, the details shall be given for five years immediately preceding the date of filing of the prospectus.

Provided that the issuer company shall also disclose the number and price at which each of the allotments were made in the last two years preceding the date of the prospectus separately indicating the allotments made for considerations other than cash and the details of the consideration in each case.

1.2.6 Information relating to details of Directors of the Company Stated in Prospectus

The details of directors including their appointment and remuneration, and particulars of the nature and extent of their interests in the company shall be disclosed in the following manner, namely:—

- (i) the name, designation, Director Identification Number (DIN), age, address, period of directorship, details of other directorships;
- (ii) the remuneration payable or paid to the director by the issuer company, its subsidiary and associate company; shareholding of the director in the company including any stock options; shareholding in subsidiaries and associate companies; appointment of any relatives to an office or place of profit;
- (iii) the full particulars of the nature and extent of interest, if any, of every director:
 - (a) in the promotion of the issuer company; or
 - (b) in any immoveable property acquired by the issuer company in the two years preceding the date of the Prospectus or any immoveable property proposed to be acquired by it.
- (iv) where the interest of such a director consists in being a member of a firm or company, the nature and extent of his interest in the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to help him qualify as a director, or otherwise for services rendered by him or by the firm or company, in connection with the promotion or formation of the issuer company shall be disclosed.

1.2.7 Information relating to Sources of Promoter's Contribution Stated in Prospectus

The sources of promoters' contribution, if any, shall be disclosed in the following manner, namely:—

- (i) the total shareholding of the promoters, clearly stating the name of the promoter, nature of issue, date of allotment, number of shares, face value, issue price or consideration, source of funds contributed, date when the shares were made fully paid up, percentage of the total pre and post issue capital;
- (ii) the proceeds out of the sale of shares of the company and shares of its subsidiary companies previously held by each of the promoters;
- (iii) the disclosure for sources of promoters contribution shall also include the particulars of name, address and the amount so raised as loan, financial assistance etc , if any, by promoters for making such contributions and in case of own sources, complete details thereof.

1.2.8 Other Matters and Reports to be Stated in the Prospectus

The prospectus shall include the following other matters and reports, namely:—

- (1) If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be

applied directly or indirectly—

- (a) in the purchase of any business; or
- (b) in the purchase of an interest in any business and by reason of that purchase, or anything to be done in consequence thereof, or in connection therewith; the company shall become entitled to an interest in either the capital or profits and losses or both, in such business exceeding fifty per cent. thereof, a report made by a chartered accountant (who shall be named in the prospectus) upon—
 - (i) the profits or losses of the business for each of the five financial years immediately preceding the date of the issue of the prospectus ; and
 - (ii) the assets and liabilities of the business as on the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus;
- (c) in purchase or acquisition of any immoveable property including indirect acquisition of immoveable property for which advances have been paid to even third parties, disclosures regarding—
 - (i) the names, addresses, descriptions and occupations of the vendors;
 - (ii) the amount paid or payable in cash, to the vendor and, where there is more than one vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;
 - (iii) the nature of the title or interest in such property proposed to be acquired by the company; and
 - (iv) the particulars of every transaction relating to the property, completed within the two preceding years, in which any vendor of the property or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(2) (a) If -

- (i) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or are to be applied directly or indirectly and in any manner resulting in the acquisition by the company of shares in any other body corporate; and
- (ii) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate shall become a subsidiary of the company, a report shall be made by a Chartered Accountant (who shall be named in the prospectus) upon -
 - (A) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and
 - (B) the assets and liabilities of the other body corporate as on the last date to which its accounts were made up.

(b) The said report shall -

- (i) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the issuer company and what allowance would have been required to be made, in relation to assets and liabilities so dealt with for the holders of the balance shares, if the issuer company had at all material times held the shares proposed to be acquired; and



- (ii) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner as provided in sub-clause (ii) of clause (a).
- (3) The matters relating to terms and conditions of the term loans including re-scheduling, prepayment, penalty, default.
- (4) The aggregate number of securities of the issuer company and its subsidiary companies purchased or sold by the promoter group and by the directors of the company which is a promoter of the issuer company and by the directors of the issuer company and their relatives within six months immediately preceding the date of filing the prospectus with the Registrar of Companies shall be disclosed.
- (5) The matters relating to -
- (A) Material contracts;
 - (B) Other material contracts;
 - (C) Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of subscription list.
- (6) The related party transactions entered during the last five financial years immediately preceding the issue of prospectus as under -
- (a) all transactions with related parties with respect to giving of loans or, guarantees, providing securities in connection with loans made, or investments made ;
 - (b) all other transactions which are material to the issuer company or the related party, or any transactions that are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the issuer company or any of its parent companies was a party.
- Provided that the disclosures for related party transactions for the period prior to notification of these rules shall be to the extent of disclosure requirements as per the Companies Act, 1956 and the relevant accounting standards prevailing at the said time.
- (7) The summary of reservations or qualifications or adverse remarks of auditors in the last five financial years immediately preceding the year of issue of prospectus and of their impact on the financial statements and financial position of the company and the corrective steps taken and proposed to be taken by the company for each of the said reservations or qualifications or adverse remarks.
- (8) The details of any inquiry, inspections or investigations initiated or conducted under the Companies Act or any previous companies law in the last five years immediately preceding the year of issue of prospectus in the case of company and all of its subsidiaries; and if there were any prosecutions filed (whether pending or not); fines imposed or compounding of offences done in the last five years immediately preceding the year of the prospectus for the company and all of its subsidiaries.
- (9) The details of acts of material frauds committed against the company in the last five years, if any, and if so, the action taken by the company.
- (10) A fact sheet shall be included at the beginning of the prospectus which shall contain -
- (a) the type of offer document ("Red Herring Prospectus" or "Shelf Prospectus" or "Prospectus").
 - (b) the name of the issuer company, date and place of its incorporation, its logo, address of its registered office, its telephone number, fax number, details of contact person, website address, e-mail address;
 - (c) the names of the promoters of the issuer company;
 - (d) the nature, number, price and amount of securities offered and issue size, as may be applicable;

- (e) the aggregate amount proposed to be raised through all the stages of offers of specified securities made through the shelf prospectus;
- (f) the name, logo and address of the registrar to the issue, along with its telephone number, fax number, website address and e-mail address;
- (g) the issue schedule -
 - (i) date of opening of the issue;
 - (ii) date of closing of the issue;
 - (iii) date of earliest closing of the issue, if any.
- (h) the credit rating, if applicable;
- (i) all the grades obtained for the initial public offer;
- (j) the name(s) of the recognised stock exchanges where the securities are proposed to be listed;
- (k) the details about eligible investors;
- (l) coupon rate, coupon payment frequency, redemption date, redemption amount and details of debenture trustee in case of debt securities.

1.2.9 Variation in Terms of Contract or Objects in Prospectus [Section 27]

- (1) A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution.

Provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation.

Provided further that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

- (2) The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

1.2.10 Offer of Sale of Shares by Certain Members of Company [Section 28]

- (1) Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.
- (2) Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made there under as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.
- (3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.



1.2.11 Public Offer of Securities to be in Dematerialised Form [Section 29]

- (1) Notwithstanding anything contained in any other provisions of this Act,—
- (a) every company making public offer; and
 - (b) such other class or classes of public companies as may be prescribed,
- shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
- (2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

1.2.12 Advertisement of Prospectus [Section 30]

Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and the names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure.

1.2.13 Shelf Prospectus [Section 31]

- (1) Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
- (2) A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

- (3) Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Explanation.—For the purposes of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

1.2.14 Red Herring Prospectus [Section 32]

- (1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
- (2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.
- (3) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

- (4) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Explanation.—For the purposes of this section, the expression “red herring prospectus” means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

1.2.15 Issue of Application Forms for Securities [Section 33]

- (1) No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:
Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—
- (a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
 - (b) in relation to securities which were not offered to the public.
- (2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.
- (3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

1.2.16 Refund of Application Money

- (1) If the stated minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum.
- (2) The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.

1.2.17 Return of Allotment

- (i) Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form PAS-3, along with the fee as specified in the Companies (Registration Offices and Fees) Rules, 2014.
- (ii) There shall be attached to the Form PAS-3 a list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the Form PAS-3 as being complete and correct as per the records of the company.
- (iii) In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the Form PAS-3 a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with any contract of sale if relating to a property or an asset, or a contract for services or other consideration.
- (iv) Where a contract referred to in sub-rule (3) of rule 12 of Companies (Prospectus and Allotment of Securities) Rules, 2014 is not reduced to writing, the company shall furnish along with the Form PAS-3 complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under section 31 of the Indian Stamp Act, 1899.



- (v) A report of a registered valuer in respect of valuation of the consideration shall also be attached along with the contract as mentioned in sub-rule (3) and sub-rule (4).
- (vi) In the case of issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS-3.
- (vii) In case the shares have been issued in pursuance of clause (c) of sub-section (1) of section 62 by a company other than a listed company whose equity shares or convertible preference shares are listed on any recognised stock exchange, there shall be attached to Form PAS-3, the valuation report of the registered valuer.

Explanation.— Pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.

1.2.18 Payment of Commission

A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions, namely:

- (a) the payment of such commission shall be authorized in the company's articles of association;
- (b) the commission may be paid out of proceeds of the issue or the profit of the company or both;
- (c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;
- (d) the prospectus of the company shall disclose —
 - (i) the name of the underwriters;
 - (ii) the rate and amount of the commission payable to the underwriter; and
 - (iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
- (e) there shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
- (f) a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

1.2.19 Criminal Liability for Mis-Statements in Prospectus [Section 34]

Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under section 447.

Provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

1.2.20 Civil Liability for Mis-Statements in Prospectus [Section 35]

- (1) Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who—

- (a) is a director of the company at the time of the issue of the prospectus;
- (b) has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
- (c) is a promoter of the company;
- (d) has authorised the issue of the prospectus; and
- (e) is an expert referred to in sub-section (5) of section 26,

shall, without prejudice to any punishment to which any person may be liable under section 36, be liable to pay compensation to every person who has sustained such loss or damage.

(2) No person shall be liable under sub-section (1), if he proves—

- (a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
- (b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

(3) Notwithstanding anything contained in this section, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

1.2.21 Punishment for Fraudulently Inducing Persons to Invest Money [Section 36]

Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

- (a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
 - (b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
 - (c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution,
- shall be liable for action under section 447.

1.2.22 Action by Affected Persons [Section 37]

A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

1.2.23 Punishment for Personation for Acquisition, etc., of Securities [Section 38]

(1) Any person who—

- (a) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or
- (b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or



- (c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name,

shall be liable for action under section 447.

- (2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.
- (3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.
- (4) The amount received through disgorgement or disposal of securities under subsection (3) shall be credited to the Investor Education and Protection Fund.

1.2.24 Allotment of Securities by Company [Section 39]

- (1) No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.
- (2) The amount payable on application on every security shall not be less than five per cent. of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.
- (3) If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.
- (4) Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.
- (5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

1.2.25 Securities to be Dealt with in Stock Exchanges [Section 40]

- (1) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.
- (2) Where a prospectus states that an application under sub-section (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.
- (3) All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—
 - (a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or
 - (b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.
- (4) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

- (5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.
- (6) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

1.2.26 Global Depository Receipt [Section 41]

A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions as may be prescribed.

1.3 PRIVATE PLACEMENT

1.3.1 Offer or Invitation for Subscription of Securities on Private Placement [Section 42]

- (1) Without prejudice to the provisions of section 26, a company may, subject to the provisions of this section, make private placement through issue of a private placement offer letter.
- (2) Subject to sub-section (1), the offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, [excluding qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62], in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed.

Explanation I.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Explanation II.—For the purposes of this section, the expression—

- (i) “qualified institutional buyer” means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 as amended from time to time.
- (ii) “private placement” means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.
- (3) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.
- (4) Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.
- (5) All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
- (6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the



application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day.

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

- (7) All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter.
- (8) No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.
- (9) Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.
- (10) If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

1.4 SHARE CAPITAL AND DEBENTURES

e = e-Form & P = Physical Form

FORM NO./ FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
SH-1 P	Share Certificate	46(3)	5(2)	1.55
SH-2 P	Register of Renewed and Duplicate Share Certificates	46(3)	6(3)(a)	1.55
SH-3 P	Register of Sweat Equity Shares	54	8(14)	1.59
SH-4 P	Securities Transfer Form	56	11(1)	1.61
SH-5 P	Notice for transfer of partly paid securities	56(3)	11(3)	1.61
SH-6 P	Register of Employee Stock Options	62(l)(b)	12(10)	1.70
SH-7 e	Notice to Registrar of any alteration of share capital	64(1)	15	1.71
SH-8 e	Letter of Offer	68	17(2)	1.74
SH-9 e	Declaration of Solvency	68(6)	17(3)	1.75
SH-10 P	Register of Shares or Other Securities bought back	68(9)	17(12)	1.75
SH-11 e	Return in respect of buy-back of securities	68(10)	17(13)	1.75
SH-12 P	Debenture Trust Deed	71(13)	11	1.79
SH-13 P	Nomination Form	72	19(1)	1.80
SH-14 P	Cancellation or Variation of Nomination	72(3)	19(9)	1.80
SH-15 P	Certificate of Compliance in respect of buy back of securities	—	17(14)	—

1.4.1 Kinds of Share Capital [Section 43]

The share capital of a company limited by shares shall be of two kinds, namely:—

- (a) equity share capital—
 - (i) with voting rights; or
 - (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and
- (b) preference share capital.

Provided that nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.

Explanation.—For the purposes of this section,—

- (i) “equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital;
- (ii) “preference share capital”, with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—
 - (a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
 - (b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;
- (iii) capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—
 - (a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;
 - (b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

1.4.2 Equity Shares with Differential Rights

- (1) No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:—

- (a) the articles of association of the company authorizes the issue of shares with differential rights;
- (b) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.

Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;

- (c) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;



- (d) the company having consistent track record of distributable profits for the last three years;
 - (e) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
 - (f) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
 - (g) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
 - (h) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.
- (2) The explanatory statement to be annexed to the notice of the general meeting in pursuance of section 102 or of a postal ballot in pursuance of section 110 shall contain the following particulars, namely:-
- (a) the total number of shares to be issued with differential rights;
 - (b) the details of the differential rights ;
 - (c) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;
 - (d) the reasons or justification for the issue;
 - (e) the price at which such shares are proposed to be issued either at par or at premium;
 - (f) the basis on which the price has been arrived at;
 - (g) (i) in case of private placement or preferential issue-
 - (a) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;
 - (b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;
 - (ii) in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;
 - (h) the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
 - (i) the scale or proportion in which the voting rights of such class or type of shares shall vary;
 - (j) the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;
 - (k) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;

- (I) the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.
- (3) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.
- (4) The Board of Directors shall, inter alia, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details, namely:-
 - (a) the total number of shares allotted with differential rights;
 - (b) the details of the differential rights relating to voting rights and dividends;
 - (c) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
 - (d) the price at which such shares have been issued;
 - (e) the particulars of promoters, directors or key managerial personnel to whom such shares are issued;
 - (f) the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;
 - (g) the diluted Earning Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;
 - (h) the pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of rule 4.
- (5) The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.
- (6) Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

Explanation.- For the purposes of this rule it is hereby clarified that equity shares with differential rights issued by any company under the provisions of the Companies Act, 1956 and the rules made thereunder, shall continue to be regulated under such provisions and rules.

1.4.3 Nature of Shares or Debentures [Section 44]

The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

1.4.4 Numbering of Shares [Section 45]

Every share in a company having a share capital shall be distinguished by its distinctive number.

Provided that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

1.4.5 Certificate of Shares [Section 46]

- (1) A certificate, issued under the common seal if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.
- (2) A duplicate certificate of shares may be issued, if such certificate —
 - (a) is proved to have been lost or destroyed; or



- (b) has been defaced, mutilated or torn and is surrendered to the company.
- (3) The manner of issue of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed.
- (4) Where a share is held in depository form, the record of the depository is the *prima facie* evidence of the interest of the beneficial owner.
- (5) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.

1.4.6 Certificate of Shares (Where Shares are not in DEMAT Form)

- (1) Where a company issues any share capital, no certificate of any share or shares held in the company shall be issued, except-
- (a) in pursuance of a resolution passed by the Board; and
- (b) on surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares.

Provided that if the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit.

- (2) Every certificate of share or shares shall be in Form No. SH.1 or as near thereto as possible and shall specify the name(s) of the person(s) in whose favor the certificate is issued, the shares to which it relates and the amount paid-up thereon.
- (3) Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by-
- (a) two directors duly authorized by the Board of Directors of the company for the purpose or the committee of the Board, if so authorized by the Board; and
- (b) the secretary or any person authorised by the Board for the purpose.

Provided that, in companies wherein a Company Secretary is appointed under the provisions of the Act, he shall be deemed to be authorised for the purpose of this rule.

Provided further that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director.

Provided also that, in case of a One Person Company, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose.

Explanation.- For the purposes of this sub-rule, a director shall be deemed to have signed the share certificate if his signature is printed thereon as a facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, or digitally signed, but not by means of a rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.

- (4) The particulars of every share certificate issued in accordance with sub-rule (1) shall be entered in the Register of Members maintained in accordance with the provisions of section 88 along with the name(s) of person(s) to whom it has been issued, indicating the date of issue.

General Circular No. 19/2014

Clarifications on Rules Prescribed under the Companies Act, 2013 -Matters relating to share capital and debentures- reg.

Share Transfer Forms Executed before 1st April, 2014:

It is clarified that since transaction relating to transfer of shares is a contract between two or more persons/shareholders, any share transfer form executed before 1st April, 2014 and submitted to the company concerned within the period prescribed under relevant section of the Companies Act, 1956 needs to be accepted by the companies for registration of transfers. In case any such share transfer form, executed prior to 1st April, 2014, is not submitted within the prescribed period under the Companies Act, 1956, the concerned company may get itself satisfied suitably with regard to justification of delay in submission etc. In case a company decides not to accept the share transfer form, it shall convey the reasons for such non-acceptance within time provided under section 56(4) (c) of the Act.

1.4.7 Issue of Renewed or Duplicate Share Certificate

- (1) the certificate of any share or shares shall not be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out, or where the pages on the reverse for recording transfers have been duly utilised, unless the certificate in lieu of which it is issued is surrendered to the company.

Provided that the company may charge such fee as the Board thinks fit, not exceeding fifty rupees per certificate issued on splitting or consolidation of share certificate(s) or in replacement of share certificate(s) that are defaced, mutilated, torn or old, decrepit or worn out.

- (a) Where a certificate is issued in any of the circumstances specified in this sub-rule, it shall be stated on the face of it and be recorded in the Register maintained for the purpose, that it is "Issued in lieu of share certificate No..... sub-divided/replaced/on consolidation" and also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government:
- (b) A company may replace all the existing certificates by new certificates upon sub-division or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered subject to compliance with clause (a) of sub-rule (1) rule 5, sub-rule (2) of rule 5 and sub-rule (3) of rule 5.
- (2) (a) The duplicate share certificate shall be not issued in lieu of those that are lost or destroyed, without the prior consent of the Board and without payment of such fees as the Board thinks fit, not exceeding rupees fifty per certificate and on such reasonable terms, such as furnishing supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating the evidence produced:
- (b) Where a certificate is issued in any of the circumstances specified in this sub-rule, it shall be stated prominently on the face of it and be recorded in the Register maintained for the purpose, that it is "duplicate issued in lieu of share certificate No..... ". and the word "duplicate" shall be stamped or printed prominently on the face of the share certificate:
- (c) In case unlisted companies, the duplicate share certificates shall be issued within a period of three months and in case of listed companies such certificate shall be issued within fifteen days, from the date of submission of complete documents with the company respectively.



- (3) (a) The particulars of every share certificate issued in accordance with sub-rules (1) and (2) shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in Form No. SH.2 indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued, and the necessary changes indicated in the Register of Members by suitable cross-references in the "Remarks" column.
- (b) The register shall be kept at the registered office of the company or at such other place where the Register of Members is kept and it shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.
- (c) All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by the company secretary or such other person as may be authorised by the Board for the purposes of sealing and signing the share certificate under the provisions of sub-rule (3) of rule 5.

General Circular No. 19/2014

Clarifications on Rules prescribed under the Companies Act, 2013 -Matters relating to share capital and debentures- reg.

Delegation of Powers by Board Under Rule 6(2)(a):

It is clarified that a committee of director may exercise the powers of the Board provided under rule 6(2)(a) of Companies (Share Capital and Debentures) Rules, 2014 with regard to issue of duplicate share certificates subject to any regulations imposed by the Board in this regard.

1.4.8 Voting Rights [Section 47]

- (1) Subject to the provisions of section 43 and sub-section (2) of section 50,—
- (a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and
- (b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.
- (2) Every member of a company limited by shares and holding any preference share capital therein shall, in respect of such capital, have a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company.

Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.

Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

1.4.9 Variation of Shareholders' Rights [Section 48]

- (1) Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

- (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
- (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

- (2) Where the holders of not less than ten per cent. of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

- (3) The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.
- (4) The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.
- (5) Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

1.4.10 Calls on Shares of Same Class to be Made on Uniform Basis [Section 49]

Where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

Explanation.—For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class.

1.4.11 Company to Accept Unpaid Share Capital, Although not Called Up [Section 50]

- (1) A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.
- (2) A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up.

1.4.12 Payment of Dividend in Proportion to amount Paid-Up [Section 51]

A company may, if so authorised by its articles, pay dividends in proportion to the amount paid-up on each share.

1.4.13 Application of Premiums received on Issue of Shares [Section 52]

- (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.



- (2) Notwithstanding anything contained in sub-section (1), the securities premium account may be applied by the company—
- towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
 - in writing off the preliminary expenses of the company;
 - in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
 - in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
 - for the purchase of its own shares or other securities under section 68.
- (3) The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—
- in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
 - in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
 - for the purchase of its own shares or other securities under section 68.

1.4.14 Prohibition on Issue of Shares at Discount [Section 53]

- Except as provided in section 54, a company shall not issue shares at a discount.
- Any share issued by a company at a discounted price shall be void.
- Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

1.4.15 Issue of Sweat Equity Shares [Section 54]

- Notwithstanding anything contained in section 53, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:—
 - the issue is authorised by a special resolution passed by the company;
 - the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
 - not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and
 - where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.
- The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank pari passu with other equity shareholders.

1.4.16 Disclosure Requirement in Director's Report in relation to Issue of Sweat Equity Shares

The Board of Directors shall disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:-

- (i) the class of director or employee to whom sweat equity shares were issued;
- (ii) the class of shares issued as Sweat Equity Shares;
- (iii) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them , if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital;
- (iv) the reasons or justification for the issue;
- (v) the principal terms and conditions for issue of sweat equity shares, including pricing formula;
- (vi) the total number of shares arising as a result of issue of sweat equity shares;
- (vii) the percentage of the sweat equity shares of the total post issued and paid up share capital;
- (viii) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;
- (ix) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

1.4.17 Issue and Redemption of Preference Shares [Section 55]

- (1) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable.
- (2) A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.

Provided that a company may issue preference shares for a period exceeding twenty years for infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders.

Provided further that -

- (a) Out of the profits of the company or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;
- (b) Redeemed of fully paid share only;
- (c) If redeemed out of the profits of the company, then a sum equal to the nominal amount of the shares to be redeemed, transfer to the Capital Redemption Reserve Account; and
- (d) (i) in case of a companies on which provision of section 133 is apply, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed.

If premium is payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

- (ii) in a case not falling under sub-clause (i) above, if the premium is payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.



- (3) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

Explanation.—For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

- (4) The capital redemption reserve account may be applied by the company for issue of fully paid bonus shares.

Explanation.—For the purposes of sub-section (2), the term “infrastructure projects” means the infrastructure projects specified in Schedule VI.

1.4.18 Issue and Redemption of Preference Shares by Company in Infrastructural Projects

A company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

1.4.19 Transfer and Transmission of Securities [Section 56]

- (1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

Provided that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

- (2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.
- (3) Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.
- (4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted —
- (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;

- (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares;
- (c) within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2), in the case of a transfer or transmission of securities;
- (d) within a period of six months from the date of allotment in the case of any allotment of debenture.

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

- (5) The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.
- (6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
- (7) Without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447.

1.4.20 Instrument of Transfer

- (1) An instrument of transfer of securities held in physical form shall be in Form No.SH. 4 and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution.
- (2) In the case of a company not having share capital, provisions of sub-rule (1) shall apply as if the references therein to securities were references instead to the interest of the member in the company.
- (3) A company shall not register a transfer of partly paid shares, unless the company has given a notice in Form No. SH. 5 to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice.

1.4.21 Issue of Employee Stock Options

A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employees' stock option (hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:-

- (1) the issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.

Explanation: For the purposes of clause (b) of sub-section (1) of section 62 and this rule "Employee" means-

- (a) a permanent employee of the company who has been working in India or outside India; or
- (b) a director of the company, whether a whole time director or not but excluding an independent director; or
- (c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include-



- (i) an employee who is a promoter or a person belonging to the promoter group; or
 - (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.
- (2) The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution-
- (a) the total number of stock options to be granted;
 - (b) identification of classes of employees entitled to participate in the Employees Stock Option Scheme;
 - (c) the appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;
 - (d) the requirements of vesting and period of vesting;
 - (e) the maximum period within which the options shall be vested;
 - (f) the exercise price or the formula for arriving at the same;
 - (g) the exercise period and process of exercise;
 - (h) the Lock-in period, if any ;
 - (i) the maximum number of options to be granted per employee and in aggregate;
 - (j) the method which the company shall use to value its options;
 - (k) the conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;
 - (l) the specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and
 - (m) a statement to the effect that the company shall comply with the applicable accounting standards .
- (3) The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.
- (4) The approval of shareholders by way of separate resolution shall be obtained by the company in case of-
- (a) grant of option to employees of subsidiary or holding company; or
 - (b) grant of option to identified employees, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.
- (5) (a) The company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interests of the option holders.
- (b) The notice for passing special resolution for variation of terms of Employees Stock Option Scheme shall disclose full of the variation, the rationale therefor, and the details of the employees who are beneficiaries of such variation.
- (6) (a) There shall be a minimum period of one year between the grant of options and vesting of option:

Provided that in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option

Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;

- (b) The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.
 - (c) The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.
- (7) The amount, if any, payable by the employees, at the time of grant of option-
- (a) may be forfeited by the company if the option is not exercised by the employees within the exercise period; or
 - (b) the amount may be refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme.
- (8) (a) The option granted to employees shall not be transferable to any other person.
- (b) The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
- (c) Subject to clause (d), no person other than the employees to whom the option is granted shall be entitled to exercise the option.
- (d) In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.
- (e) In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.
- (f) In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.
- (9) The Board of directors, shall, inter alia, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme:
- (a) options granted;
 - (b) options vested;
 - (c) options exercised;
 - (d) the total number of shares arising as a result of exercise of option;
 - (e) options lapsed;
 - (f) the exercise price;
 - (g) variation of terms of options;
 - (h) money realized by exercise of options;
 - (i) total number of options in force;
 - (j) employee wise details of options granted to-
 - (i) key managerial personnel;



- (ii) any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year.
 - (iii) identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;
- (10) (a) The company shall maintain a Register of Employee Stock Options in Form No. SH.6 and shall forthwith enter therein the particulars of option granted under clause (b) of sub-section (1) of section 62.
- (b) The Register of Employee Stock Options shall be maintained at the registered office of the company or such other place as the Board may decide.
- (c) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.
- (11) Where the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued; in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

1.4.22 Issue of Shares on Preferential Basis

- (1) For the purposes of clause (c) of sub-section (1) of section 62, If authorized by a special resolution passed in a general meeting, shares may be issued by any company in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62 and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act:

Provided that the price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.

Explanation.- For the purposes of this rule,

- (i) the expression 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities;
 - (ii) the expression, "shares or other securities" means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.
- (2) Where the preferential offer of shares or other securities is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the Securities and Exchange Board, and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements, namely:-
- (a) the issue is authorized by its articles of association;
 - (b) the issue has been authorized by a special resolution of the members;
 - (c) the securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.
 - (d) The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act:

- (i) the objects of the issue;
 - (ii) the total number of shares or other securities to be issued;
 - (iii) the price or price band at/within which the allotment is proposed;
 - (iv) basis on which the price has been arrived at along with report of the registered valuer;
 - (v) relevant date with reference to which the price has been arrived at;
 - (vi) the class or classes of persons to whom the allotment is proposed to be made;
 - (vii) intention of promoters, directors or key managerial personnel to subscribe to the offer;
 - (viii) the proposed time within which the allotment shall be completed;
 - (ix) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
 - (x) the change in control, if any, in the company that would occur consequent to the preferential offer;
 - (xi) the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
 - (xii) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
- (xiii) The pre issue and post issue shareholding pattern of the company in the following format-

Sr. No.	Category	Pre Issue		Post Issue	
		No. of Shares held	% of share holding	No. of shares held	% of share holding
A	Promoters' holding :				
1	Indian :				
	Individual				
	Bodies Corporate				
		Sub Total			
2	Foreign Promoters				
		Sub Total (A)			
B	Non-Promoters' holding :				
1.	Institutional Investors				
2.	Non-Institution :				
	Private Corporate Bodies				
	Directors and Relatives				
	Indian Public				
	Others (Including NRIs)				
	Sub Total(B)				
	GRAND TOTAL				



- (e) the allotment of securities on a preferential basis made pursuant to the special resolution passed pursuant to sub-rule (2)(b) shall be completed within a period of twelve months from the date of passing of the special resolution.
- (f) if the allotment of securities is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.
- (g) the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer;
- (h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act;
- (i) where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;
- (j) where the preferential offer of shares is made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company-
 - (i) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
 - (ii) where clause (i) is not applicable, it shall be expensed as provided in the accounting standards.

Explanation.- For the purposes of these rules, it is hereby clarified that, till a registered valuer is appointed in accordance with the provisions of the Act, the valuation report shall be made by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent Chartered Accountant in practice having a minimum experience of ten years".

- (3) The price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer."

1.4.23 Punishment for Personation of Shareholders [Section 57]

If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

1.4.24 Refusal of Registration and Appeal against Refusal [Section 58]

- (1) If a private company limited by shares refuses, whether in pursuance of any power of the company under its articles or otherwise, to register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

- (2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable.
Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.
- (3) The transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.
- (4) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.
- (5) The Tribunal, while dealing with an appeal made under sub-section (3) or subsection (4), may, after hearing the parties, either dismiss the appeal, or by order—
 - (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
 - (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.
- (6) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

1.4.25 Rectification of Register of Members [Section 59]

- (1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.
- (2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.
- (3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.
- (4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.



- (5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

1.4.26 Publication of Authorized, Subscribed and Paid-Up Capital [Section 60]

- (1) Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.
- (2) If any default is made in complying with the requirements of sub-section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.

1.4.27 Power of Limited Company to Alter its Share Capital [Section 61]

- (1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—
 - (a) increase its authorised share capital by such amount as it thinks expedient;
 - (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:
Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
 - (c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
 - (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.
- (2) The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital.

1.4.28 Further Issue of Share Capital [Section 62]

- (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—
 - (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—
 - (i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
 - (ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed

to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

- (iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;
 - (b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; or
 - (c) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.
- (2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.
- (3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company.

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

- (4) Notwithstanding anything contained in sub-section (3), where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.

Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

- (5) In determining the terms and conditions of conversion under sub-section (4), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.
- (6) Where the Government has, by an order made under sub-section (4), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (4) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

1.4.29 Issue of Bonus Shares [Section 63]

- (1) A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—



- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

- (2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), unless—
 - (a) it is authorised by its articles;
 - (b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
 - (c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
 - (d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
 - (e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
 - (f) it complies with such conditions as may be prescribed.
- (3) The bonus shares shall not be issued in lieu of dividend.

1.4.30 Notice to be given to Registrar for Alteration of Share Capital [Section 64]

- (1) Where—
 - (a) a company alters its share capital in any manner specified in sub-section (1) of section 61;
 - (b) an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or
 - (c) a company redeems any redeemable preference shares,the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.
- (2) If a company and any officer of the company who is in default contravenes the provisions of sub-section (1), it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

1.4.31 Unlimited Company to Provide for Reserve Share Capital on Conversion into Limited Company [Section 65]

An unlimited company having a share capital may, by a resolution for registration as a limited company under this Act, do either or both of the following things, namely—

- (a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- (b) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

1.4.32 Reduction of Share Capital [Section 66]

- (1) Subject to confirmation by the Tribunal on an application by the company, a company limited by

shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

- (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
- (b) either with or without extinguishing or reducing liability on any of its shares,—
 - (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
 - (ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

- (2) The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice.

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

- (3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

- (4) The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.

- (5) The company shall deliver a certified copy of the order of the Tribunal under subsection (3) and of a minute approved by the Tribunal showing—

- (a) the amount of share capital;
- (b) the number of shares into which it is to be divided;
- (c) the amount of each share; and
- (d) the amount, if any, at the date of registration deemed to be paid-up on each share,

to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

- (6) Nothing in this section shall apply to buy-back of its own securities by a company under section 68.

- (7) A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

- (8) Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the



company is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim,—

- (a) every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and
- (b) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(9) Nothing in sub-section (8) shall affect the rights of the contributories among themselves.

(10) If any officer of the company—

- (a) knowingly conceals the name of any creditor entitled to object to the reduction;
- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be liable under section 447.

(11) If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

1.4.33 Restrictions on Purchase by Company or giving of Loans by it for Purchase of its Shares [Section 67]

- (1) No company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.
- (2) No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.
- (3) Nothing in sub-section (2) shall apply to—
 - (a) the lending of money by a banking company in the ordinary course of its business;
 - (b) the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;
 - (c) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

Provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

(4) Nothing in this section shall affect the right of a company to redeem any preference shares issued by it under this Act or under any previous company law.

- (5) If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

1.4.34 Power of Company to Purchase its Own Securities [Section 68]

- (1) Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2), a company may purchase its own shares or other specified securities hereinafter referred to as buy-back) out of—
- (a) its free reserves;
 - (b) the securities premium account; or
 - (c) the proceeds of the issue of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

- (2) No company shall purchase its own shares or other specified securities under sub-section (1), unless—
- (a) the buy-back is authorised by its articles;
 - (b) a special resolution has been passed at a general meeting of the company authorising the buy-back.

Provided that nothing contained in this clause shall apply to a case where—

- (i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and
- (ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
- (c) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company:

Provided that in respect of the buy-back of equity shares in any financial year, the reference to twenty-five per cent. in this clause shall be construed with respect to its total paid-up equity capital in that financial year;

- (d) the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves:

Provided that the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

- (e) all the shares or other specified securities for buy-back are fully paid-up;
- (f) the buy-back of the shares or other specified securities listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and
- (g) the buy-back in respect of shares or other specified securities other than those specified in clause (f) is in accordance with such rules as may be prescribed:

Provided that no offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.



- (3) The notice of the meeting at which the special resolution is proposed to be passed under clause (b) of sub-section (2) shall be accompanied by an explanatory statement stating—
- a full and complete disclosure of all material facts;
 - the necessity for the buy-back;
 - the class of shares or securities intended to be purchased under the buy-back;
 - the amount to be invested under the buy-back; and
 - the time-limit for completion of buy-back.
- (4) Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under clause (b) of sub-section (2).
- (5) The buy-back under sub-section (1) may be—
- from the existing shareholders or security holders on a proportionate basis;
 - from the open market;
 - by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.
- (6) Where a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution under clause (b) of sub-section (2) or a resolution under item (ii) of the proviso thereto, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board, a declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board.
- Provided that no declaration of solvency shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.
- (7) Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.
- (8) Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.
- (9) Where a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.
- (10) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.

Provided that no return shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

- (11) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation I.—For the purposes of this section and section 70, “specified securities” includes employees’ stock option or other securities as may be notified by the Central Government from time to time.

Explanation II.—For the purposes of this section, “free reserves” includes securities premium account.

1.4.35 Disclosure Requirements relating to Buy-Back of Shares or Other Securities in Explanatory Statement to be Annexed to the Notice of the General Meeting

The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 in relation to buy-back of shares or other securities by the private companies and unlisted public companies shall contain the following disclosures, namely:-

- (a) the date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company;
- (b) the objective of the buy-back;
- (c) the class of shares or other securities intended to be purchased under the buy-back;
- (d) the number of securities that the company proposes to buy-back;
- (e) the method to be adopted for the buy-back;
- (f) the price at which the buy-back of shares or other securities shall be made;
- (g) the basis of arriving at the buy-back price;
- (h) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
- (i) the time-limit for the completion of buy-back;
- (j)
 - (i) the aggregate shareholding of the promoters and of the directors of the promoter, where the promoter is a company and of the directors and key managerial personnel as on the date of the notice convening the general meeting;
 - (ii) the aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (i) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;
 - (iii) the maximum and minimum price at which purchases and sales referred to in sub-clause (ii) were made along with the relevant date;
- (k) if the persons mentioned in sub-clause (i) of clause (j) intend to tender their shares for buy-back –
 - (i) the quantum of shares proposed to be tendered;
 - (ii) the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition;
- (l) a confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference



shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company;

- (m) a confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
 - (i) that immediately following the date on which the general meeting is convened there shall be no grounds on which the company could be found unable to pay its debts;
 - (ii) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and
 - (iii) the directors have taken into account the liabilities(including prospective and contingent liabilities), as if the company were being wound up under the provisions of the Companies Act, 2013.
- (n) a report addressed to the Board of directors by the company's auditors stating that-
 - (i) they have inquired into the company's state of affairs;
 - (ii) the amount of the permissible capital payment for the securities in question is in their view properly determined;
 - (iii) that the audited accounts on the basis of which calculation with reference to buy back is done is not more than six months old from the date of offer document; and
 - (iv) the Board of directors have formed the opinion as specified in clause (m) on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.

1.4.36 Transfer of Certain Sums to Capital Redemption Reserve Account [Section 69]

- (1) Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.
- (2) The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

1.4.37 Prohibition for Buy-Back in Certain Circumstances [Section 70]

- (1) No company shall directly or indirectly purchase its own shares or other specified securities –
 - (a) through any subsidiary company including its own subsidiary companies;
 - (b) through any investment company or group of investment companies; or
 - (c) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company.

Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

- (2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

1.4.38 Debenture [Section 71]

- (1) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption.

Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.
- (2) No company shall issue any debentures carrying any voting rights.
- (3) Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.
- (4) Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.
- (5) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.
- (6) A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.
- (7) Any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee therefrom, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion.

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.
- (8) A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.
- (9) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.
- (10) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.
- (11) If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.
- (12) A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.



- (13) The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.

1.4.39 Issue of Secured Debenture

The company shall not issue secured debentures, unless it complies with the following conditions, namely:-

- (a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue.

Provided that the following classes of companies may issue secured debentures for a period exceeding ten years but not exceeding thirty years,

- (i) Companies engaged in setting up of infrastructure projects;
 - (ii) 'Infrastructure Finance Companies' as defined in clause (viiia) of sub-direction (1) of direction 2 of Non-Banking Financial (Non-deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;
 - (iii) 'Infrastructure Debt Fund Non-Banking Financial companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011".
- (b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
- (c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders ; and
- (d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on-
- (i) any specific movable property of the company (not being in the nature of pledge); or
 - (ii) any specific immovable property wherever situate, or any interest therein.

1.4.40 Creation of Debenture Redemption Reserve

The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below-

- (a) the Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;
- (b) the company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:-
- (i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.
 - (ii) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment) Act, 1997 and for Housing Finance Companies registered with the National Housing Bank, 'the adequacy' of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

- (iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of debentures.
- (c) every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:-
- (i) in deposits with any scheduled bank, free from any charge or lien;
 - (ii) in unencumbered securities of the Central Government or of any State Government;
 - (iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;
 - (iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882;
 - (v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above:
- Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen per cent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;
- (d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
- (e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

1.4.41 Power to Nominate [Section 72]

- (1) Every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.
- (2) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.
- (3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.
- (4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.



1.5 ACCEPTANCE OF DEPOSITS BY COMPANIES

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
DPT-1 P	Circular in the Form of advertisement inviting deposits	73(2)(a), 76	4(1), 4(2)	1.81,1.86
DPT-2 P	Deposit Trust Deed	—	7(2)	—
DPT-3 P	Return of deposits	—	16	—
DPT-4 P	Statement regarding deposits existing on the commencement of the Act	—	20	—

1.5.1 Prohibition Acceptance of Deposits from Public [Section 73]

- (1) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter.

Provided that nothing in this sub-section shall apply to a banking company and non-banking financial company as defined in the Reserve Bank of India Act, 1934 and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

- (2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely:—

- issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
- depositing such sum which shall not be less than fifteen per cent. of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
- providing such deposit insurance in such manner and to such extent as may be prescribed;
- certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and
- providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

- (3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

- (4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.
- (5) The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

1.5.2 Terms and Conditions of Acceptance of Deposits by Companies

- (1) On and from the commencement of these rules,—
 - (a) no company referred to in sub-section (2) of section 73 and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit.

Provided that a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that—

 - (i) such deposits shall not exceed ten per cent, of the aggregate of the paid up share capital and free reserves of the company, and
 - (ii) such deposits are repayable not earlier than three months from the date of such deposits or renewal thereof.
- (2) Where depositors so desire, deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor".
- (3) No company referred to in sub-section (2) of section 73 shall accept or renew any deposit from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds twenty five per cent, of the aggregate of the paid-up share capital and free reserves of the company.
- (4) No eligible company shall accept or renew—
 - (a) any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent, of the aggregate of the paid-up share capital and free reserves of the company;
 - (b) any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal exceeds twenty-five per cent, of aggregate of the paid-up share capital and free reserves of the company.
- (5) No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent, of the aggregate of its paid up share capital and free reserves of the company.
- (6) No company referred to in sub-section (2) of section 73 or any eligible company shall invite or accept or renew any deposit in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.

Explanation:- For the purposes of this sub-rule, it is hereby clarified that the person who is authorised, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured shall only be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these rules.



- (7) The company shall not reserve to itself either directly or indirectly a right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.

1.5.3 Manner and Extent of Deposit Insurance

- (1) Every company referred to in sub-section (2) of section 73 and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be.

Provided that the companies may accept the deposits without deposit insurance contract till the 31st March, 2015.

- (2) The deposit insurance contract shall specifically provide that in case the company defaults in repayment of principal amount and interest thereon, the depositor shall be entitled to the repayment of principal amount of deposits and the interest thereon by the insurer up to the aggregate monetary ceiling as specified in the contract.

Provided that in the case of any deposit and interest not exceeding twenty thousand rupees, the deposit insurance contract shall provide for payment of the full amount of the deposit and interest and in the case of any deposit and the interest thereon in excess of twenty thousand rupees, the deposit insurance contract shall provide for payment of an amount not less than twenty thousand rupees for each depositor.

- (3) The amount of insurance premium paid on the insurance of such deposits shall be borne by the company itself and shall not be recovered from the depositors by deducting the same from the principal amount or interest payable thereon.

- (4) If any default is made by the company in complying with the terms and conditions of the deposit insurance contract which makes the insurance cover ineffective, the company shall either rectify the default immediately or enter into a fresh contract within thirty days and in case of non-compliance, the amount of deposits covered under the deposit insurance contract and interest payable thereon shall be repaid within the next fifteen days and if such a company does not repay the amount of deposits within said fifteen days it shall pay fifteen per cent, interest per annum for the period of delay and shall be treated as having defaulted and shall be liable to be punished in accordance with the provisions of the Act.

1.5.4 Creation of Security

- (1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company inviting secured deposits shall provide for security by way of a charge on its assets as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall not be less than the amount remaining unsecured by the deposit insurance.

Provided that in the case of deposits which are secured by the charge on the assets referred to in Schedule III of the Act excluding intangible assets, the amount of such deposits and the interest payable thereon shall not exceed the market value of such assets as assessed by a registered valuer.

Explanation. I - For the purposes of this sub-rule it is clarified that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.

- (2) The security (not being in the nature of a pledge) for deposits as specified in sub-rule (1) shall be created in favour of a trustee for the depositors on:
- specific movable property of the company, or
 - specific immovable property of the company wherever situated, or any interest therein.

1.5.5 Appointment of Trustee for Depositors

- (1) No company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits:
- Provided that a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.
- (2) The company shall execute a deposit trust deed in Form DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.
- (3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee -
- (a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
 - (b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
 - (c) has any material pecuniary relationship with the company;
 - (d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
 - (e) is related to any person specified in clause (a) above.
- (4) No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.
- Provided that in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

1.5.6 Duties of Trustees

It shall be the duty of every trustee for depositors to-

- (a) ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon;
- (b) satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;
- (c) ensure that the company does not commit any breach of covenants and provisions of the trust deed;
- (d) take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits;
- (e) take steps to call a meeting of the holders of depositors as and when such meeting is required to be held;
- (f) supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;
- (g) do such acts as are necessary in the event the security becomes enforceable;
- (h) carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances.

1.5.7 Meeting of Depositors

The trustee for depositors shall call a meeting of all the depositors on-

- (a) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;



- (b) the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.

1.5.8 Repayment of Deposits, etc., Accepted before Commencement of this Act [Section 74]

- (1) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—
- file, within a period of three months from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and
 - repay within one year from such commencement or from the date on which such payments are due, whichever is earlier.
- (2) The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.
- (3) If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

1.5.9 Maintenance of Liquid Assets and Creation of Deposit Repayment Reserve Account

Every company referred to in sub-section (2) of section 73 and every eligible company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the said sub-section with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits.

Provided that the amount remaining deposited shall not at any time fall below fifteen per cent, of the amount of deposits maturing, until the end of the current financial year and the next financial year.

1.5.10 Registers of Deposits

- (1) Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:—
- name, address and PAN of the depositor/s;
 - particulars of guardian, in case of a minor;
 - particulars of the nominee;
 - deposit receipt number;
 - date and the amount of each deposit;
 - duration of the deposit and the date on which each deposit is repayable;
 - rate of interest or such deposits to be payable to the depositor;
 - due date for payment of interest;
 - mandate and instructions for payment of interest and for non-deduction of tax at source, if any;

- (j) date or dates on which the payment of interest shall be made;
 - (k) details of deposit insurance including extent of deposit insurance;
 - (l) particulars of security or charge created for repayment of deposits;
 - (m) any other relevant particulars;
- (2) The entries specified in sub-rule (1) shall be made within seven days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose.
- (3) The register referred to in sub-rule (1) shall be preserved in good order for a period of not less than eight years from the financial year in which the latest entry is made in the register.

1.5.11 Damages for Fraud [Section 75]

- (1) Where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in sub section (3) of that section and liability under section 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.
- (2) Any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

1.5.12 Acceptance of Deposits from Public by Certain Companies [Section 76]

- (1) Notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.
Provided that such a company shall be required to obtain the rating (including its net worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.
Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.
- (2) The provisions of this Chapter shall, mutatis mutandis, apply to the acceptance of deposits from public under this section.

1.5.13 Punishment for contravention of section 73 or section 76 [Section 76A]

Where a company accepts or invites or allows or cause any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73, -

- (a) The company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees, and



- (b) Every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

1.6 DECLARATION AND PAYMENT OF DIVIDEND

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
DIV- 5 P	Statement of amounts credited to investor education and protection fund	—	—	—

1.6.1 Declaration of Dividend [Section 123]

- (1) No dividend shall be declared or paid by a company for any financial year except—
- out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both; or
 - out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf.

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

- (2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.
- (3) The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

- (4) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

- (5) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash. Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company. Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.
- (6) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

Summary at Glance

- Dividend can be declared out of the current year profit or accumulated profit arrived after providing depreciation or out of both; or Dividend can also be declared out of money provided by the Central Government or a State Government for the payment of dividend;
- Before the declaration of any dividend in any financial year, transfer such percentage of profits for that financial year as it may consider appropriate to the reserves of the company;
- Interim dividend subject to surplus in P/L account;
- Deposit amount of dividend in scheduled bank in separate account within 5 days;
- Dividend to be paid to registered shareholder only;
- Mode of payment – by cheque or warrant or in any electronic mode;
- No dividend can be declared during violation of provision of section 73 & 74.

1.6.2 Declaration of Dividend Out of Reserves

In the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the fulfillment of the following conditions, namely:—

- (1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year. Provided that this sub-rule shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.
- (2) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
- (3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- (4) The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.
- (5) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company of the current year.

1.6.3 Unpaid Dividend Account [Section 124]

- (1) Where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.
- (2) The company shall, within a period of ninety days of making any transfer of an amount under sub-section (1) to the Unpaid Dividend Account, prepare a statement containing the names, their last



known addresses and the unpaid dividend to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

- (3) If any default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.
 - (4) Any person claiming to be entitled to any money transferred under sub-section (1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.
 - (5) Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Fund established under sub-section (1) of section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.
 - (6) All shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed.
Provided that any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.
- Explanation** – For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund
- (7) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Summary at Glance

- Where any dividend has not been paid or claimed within thirty days, then within seven days transfer the total amount of the dividend in any schedule bank in Unpaid Dividend Account;
- After making transfer of any amount in Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company;
- If default is made in transferring the any amount, then interest @12% p.a. is payable;
- Person entitle for unpaid dividend may apply to the company for payment of money claim;
- Any money unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued to Investor Education and Protection Fund.
- Default

Company - ₹5 lakhs to ₹25 lakhs

Every Officer – punishable with fine ₹1 lakhs to ₹5 lakhs.

1.6.4 Investor Education and Protection Fund [Section 125]

- (1) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

(2) There shall be credited to the Fund—

- (a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
- (b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
- (c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;
- (d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act;
- (e) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
- (f) the interest or other income received out of investments made from the Fund;
- (g) the amount received under sub-section (4) of section 38;
- (h) the application money received by companies for allotment of any securities and due for refund;
- (i) matured deposits with companies other than banking companies;
- (j) matured debentures with companies;
- (k) interest accrued on the amounts referred to in clauses (h) to (j);
- (l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- (m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- (n) such other amount as may be prescribed.

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

(3) The Fund shall be utilised for—

- (a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- (b) promotion of investors' education, awareness and protection;
- (c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
- (d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
- (e) any other purpose incidental thereto,

in accordance with such rules as may be prescribed.

Provided that the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the Fund in respect of such claims in accordance with rules made under this section.



Explanation.—The disgorged amount refers to the amount received through disgorgement or disposal of securities.

- (4) Any person claiming to be entitled to the amount referred in sub-section (2) may apply to the authority constituted under sub-section (5) for the payment of the money claimed.
- (5) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.
- (6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.
- (7) The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.
- (8) The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.
- (9) It shall be competent for the authority constituted under sub-section (5) to spend money out of the Fund for carrying out the objects specified in sub-section (3).
- (10) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.
- (11) The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

1.6.5 Right to Dividend, Rights Shares and Bonus Shares to be held in abeyance pending Registration of Transfer of Shares [Section 126]

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—

- (a) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and
- (b) keep in abeyance in relation to such shares, any offer of rights shares under clause (a) of sub-section (1) of section 62 and any issue of fully paid-up bonus shares in pursuance of first proviso to sub-section (5) of section 123.

1.6.6 Punishment for Failure to Distribute Dividends [Section 127]

Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

Provided that no offence under this section shall be deemed to have been committed:—

- (a) where the dividend could not be paid by reason of the operation of any law;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- (c) where there is a dispute regarding the right to receive the dividend;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

1.7 ACCOUNTS OF COMPANIES

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
AOC-1 P	Statement containing salient features of the financial statement of subsidiaries/ associate companies/joint ventures	129(3)	5	1.94
AOC-2 P	Form for disclosure of particulars of contracts/ arrangements entered into by the company with related parties referred to in sub-section (1) of section 188 of the Companies Act, 2013 including certain arms length transactions under third proviso thereto	134(3)(h)	8(2)	1.99
AOC-3 P	Statement containing salient features of Balance Sheet and Profit and Loss Account	136(1)	10	1.108
AOC-4 P	Form for filing financial statement and other documents with the Registrar	137	12(1)	1.109

1.7.1 Books of Account, etc., to be Kept by Company [Section 128]

- (1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place.

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

- (2) Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).



- (3) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed.

Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors.

- (4) Where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.
- (5) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order.

Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

- (6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Summary at Glance

- Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement;
- Such books shall be kept on accrual basis and according to the double entry system of accounting;
- In case of branch office in India or outside India, it shall be sufficient if periodically summarized returns are sent by the branch office to the registered office;
- All books of accounts shall be open for inspection by any director of the company;
- Books of accounts shall be kept for not less than 8 years or where the company had been in existence for a period of less than 8 years, all the preceding years;
- Contravention of the provision of this act by managing director, the whole time director in charge of the finance, the Chief Financial Officer or any other person of the company charged by the board with the duty of complying with the duty provision of this section, punishable with imprisonment upto 1 year or with fine not less than ₹50,000 to ₹5,00,000.

1.7.2 Financial Statement [Section 129]

- (1) The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.

Provided that the items contained in such financial statements shall be in accordance with the accounting standards.

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company.

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

- (a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;
 - (b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;
 - (c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;
 - (d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.
- (2) At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.

- (3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2).

Provided that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form as may be prescribed.

Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

Explanation. For the purposes of this sub-section, the word “subsidiary” shall include associate company and joint venture.

- (4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in sub-section (3).
- (5) Without prejudice to sub-section (1), where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation.
- (6) The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.
- (7) If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Explanation. For the purposes of this section, except where the context otherwise requires, any reference to the financial statement shall include any notes annexed to or forming part of such financial statement, giving information required to be given and allowed to be given in the form of such notes under this Act.



Summary at Glance

- Financial statements of the company shall comply with the accounting standards;
- Provision of sub-section (1) shall not be apply to any insurance or banking company or any company engaged in the generation or supply of electricity;
- At every annual general meeting, financial statement shall discussed;
- If the company has one or more subsidiaries, the holding company should prepared consolidated financial statement along with stand alone financial statement;
- All subsidiary company shall prepared financial statement in same form or manner as prepared by holding company;
- Act applicable to standalone financial statement relating to preparation, adoption and audit of the financial statements are also apply to consolidated financial statements;
- where the financial statements of a company do not comply with the accounting standards referred to in sub-section (1), the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation;
- The Central Government may exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder.

1.7.3 Re-Opening of Accounts on Court's or Tribunal's Orders [Section 130]

- (1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—
- (i) the relevant earlier accounts were prepared in a fraudulent manner; or
 - (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.

Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section.

- (2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.

1.7.4 Voluntary Revision of Financial Statements or Board's Report [Section 131]

- (1) If it appears to the directors of a company that—
- (a) the financial statement of the company; or
 - (b) the report of the Board,

do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar.

Provided that the Tribunal shall give notice to the Central Government and the Income-tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section.

Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year.

Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

- (2) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—
 - (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
 - (b) the making of any necessary consequential alteration.
- (3) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—
 - (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
 - (b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
 - (c) require the directors to take such steps as may be prescribed.

1.7.5 Constitution of National Financial Reporting Authority [Section 132]

- (1) The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.
- (2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—
 - (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
 - (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
 - (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
 - (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
- (3) The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed.

Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed.

Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment.

Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related



consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

- (4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

- (a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949.

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

- (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

- (i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
- (iv) issuing commissions for examination of witnesses or documents;

- (c) where professional or other misconduct is proved, have the power to make order for—

- (A) imposing penalty of—

- (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
- (II) not less than ten lakh rupees, but which may extend to ten times of the fees received, in case of firms;

- (B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

Explanation. For the purposes of his sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

- (5) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before the Appellate Authority constituted under sub-section (6) in such manner as may be prescribed.
- (6) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority.
- (7) The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority shall be such as may be prescribed.

- (8) The fee for filing the appeal shall be such as may be prescribed.
- (9) The officer authorised by the Appellate Authority shall prepare in such form and at such time as may be prescribed its annual report giving a full account of its activities and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament.
- (10) The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.
- (11) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.
- (12) The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.
- (13) The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.
- (14) The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.
- (15) The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

1.7.6 Central Government to prescribe Accounting Standards [Section 133]

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

1.7.7 Financial Statement, Board's Report, etc. [Section 134]

- (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.
- (2) The auditors' report shall be attached to every financial statement.
- (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—
 - (a) the extract of the annual return as provided under sub-section (3) of section 92;
 - (b) number of meetings of the Board;



- (c) Directors' Responsibility Statement;
- (ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government.
- (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
- (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
- (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
- (i) by the auditor in his report; and
- (ii) by the company secretary in practice in his secretarial audit report;
- (g) particulars of loans, guarantees or investments under section 186;
- (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;
- (i) the state of the company's affairs;
- (j) the amounts, if any, which it proposes to carry to any reserves;
- (k) the amount, if any, which it recommends should be paid by way of dividend;
- (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
- (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
- (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
- (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
- (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;
- (q) such other matters as may be prescribed.
- (4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
- (5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that—
- (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

- (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (d) the directors had prepared the annual accounts on a going concern basis; and
- (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation.— For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
- (6) The Board's report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.
- (7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of—
 - (a) any notes annexed to or forming part of such financial statement;
 - (b) the auditor's report; and
 - (c) the Board's report referred to in sub-section (3).
- (8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

General Circular No. 05/2014

To make things absolutely clear it is hereby notified that the financial statements (and documents required to be attached thereto), auditors report and Board's report in respect of financial years that commenced earlier than 1st April, 2014 shall be governed by the relevant provisions/ Schedules/ rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1st April, 2014, the provisions of the new Act shall apply.

1.7.8 Matters to be included in Board's Report

- (1) The Board's Report shall be prepared based on the stand alone financial statements of the company and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.
- (2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.
- (3) The report of the Board shall contain the following information and details, namely:-



(A) Conservation of Energy-

- (i) the steps taken or impact on conservation of energy;
- (ii) the steps taken by the company for utilising alternate sources of energy;
- (iii) the capital investment on energy conservation equipments;

(B) Technology Absorption-

- (i) the efforts made towards technology absorption;
- (ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
- (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-
 - (a) the details of technology imported;
 - (b) the year of import;
 - (c) whether the technology been fully absorbed;
 - (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and
- (iv) the expenditure incurred on Research and Development.

(C) Foreign Exchange Earnings and Outgo-

The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

- (4) Every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
- (5) In addition to the information and details specified in sub-rule (4), the report of the Board shall also contain –
 - (i) the financial summary or highlights;
 - (ii) the change in the nature of business, if any;
 - (iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
 - (iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
 - (v) the details relating to deposits, covered under Chapter V of the Act,-
 - (a) accepted during the year;
 - (b) remained unpaid or unclaimed as at the end of the year;
 - (c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-
 - (i) at the beginning of the year;
 - (ii) maximum during the year;
 - (iii) at the end of the year;
 - (vi) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;

- (vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;
- (viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

1.7.9 Manner of Circulation of Financial Statements in Certain Cases

In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent-

- (a) by electronic mode to such members whose shareholding is in dematerialised format and whose email IDs are registered with Depository for communication purposes;
- (b) where Shareholding is held otherwise than by dematerialised format, to such members who have positively consented in writing for receiving by electronic mode; and
- (c) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

1.7.10 Corporate Social Responsibility [Section 135]

- (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
- (3) The Corporate Social Responsibility Committee shall,—
 - (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
 - (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
 - (c) monitor the Corporate Social Responsibility Policy of the company from time to time.
- (4) The Board of every company referred to in sub-section (1) shall,—
 - (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
 - (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.
- (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section "average net profit" shall be calculated in accordance with the provisions of section 198.



Summary at Glance

- Company having
 - Net Worth \geq ₹500 Crores, or
 - Turnover \geq ₹1,000 Crores, or
 - Net Profit \geq ₹5 Crores
- Constitute a Corporate Social Responsibility (CSR) Committee of the Board consisting at least 3 directors, out of which at least one director shall be an independent director;
- CSR Committee shall make CSR policy which shall indicate the activities to be undertaken, recommend the amount of expenditure to be incurred and monitor the CSR policy;
- The Board shall approve CSR policy and disclose contents of such policy in its report;
- Company should spend atleast 2% of average net profit of the company made during the three immediately preceding financial years as per the policy;
- If fails to spend such amount, the board shall, in its report specify the reason for not spending the amount.

General Circular No. 21/2014

Clarifications with respect to representations received in the Ministry on Corporate Social Responsibility (herein after referred as ('CSR') are as under:-

- (i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.
- (ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.
- (iii) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.
- (iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.
- (v) "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.
- (vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.
- (vii) 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.
- (viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

Annexure Referred to at para (i) of General Circular No. 21/2014 dated 18.06.2014

Sl. No.	Additional items requested to be included in Schedule VII or to be clarified as already being covered under Schedule VII of the Act	Whether covered under Schedule VII of the Act
1.	<p>Promotion of Road Safety through CSR:</p> <ul style="list-style-type: none"> (i) (a) Promotion of Education, "Education the masses and Promotion of Road Safety awareness in all facets of road usage. (b) Drivers' training, (c) Training to enforcement personnel, (d) Safety traffic engineering and awareness through print, audio and visual media" should be included. <p>(ii) Social Business projects: "giving medical and Legal aid, treatment to road accident victims" should be included.</p>	<ul style="list-style-type: none"> (a) Schedule VII (ii) under "Promoting education". (b) For drivers training etc. Schedule VII (ii) under "vocational skills". (c) It is establishment functions of government (cannot be covered). (d) Schedule VII (ii) under "promoting education". <p>(ii) Schedule VII (i) under 'promoting health care including preventive health care'.</p>
2.	Provisions for aids and appliances to the differently- able persons - 'Request for inclusion'	Schedule VII (i) under 'promoting health care including preventive health care.'
3.	<p>The company contemplates of setting up ARTIIC (Applied Research Training and Innovation Centre) at Nasik. Centre will cover the following aspects as CSR initiatives for the benefit of the predominately rural farming community:</p> <ul style="list-style-type: none"> (a) Capacity building for farmers covering best sustainable farm management practices. (b) Training Agriculture Labour on skill development. (c) Doing our own research on the field for individual crops to find out the most cost optimum and Agri-ecological sustainable farm practices. (Applied research) with a focus on water management. (d) To do Product Life Cycle analysis from the soil conservation point of view. 	<p>Item no. (ii) of Schedule VII under the head of "promoting education" and "vocational skills" and "rural development".</p> <ul style="list-style-type: none"> (a) "Vocational skill" livelihood enhancement projects. (b) "Vocational skill" (c) 'Ecological balance; 'maintaining quality of soil, air and water' (d) "Conservation of natural resource" and 'maintaining quality of soil, air and water';



4.	To make "Consumer Protection Services" eligible under CSR. (Reference received by Dr. V.G. Patel, Chairman of Consumer Education and Research Centre). (i) Providing effective consumer grievance redressal mechanism. (ii) Protecting consumer's health and safety, sustainable consumption, consumer service, support and complaint resolution. (iii) Consumer protection activities. (iv) Consumer Rights to be mandated. (v) all consumer protection programs and activities" on the same lines as Rural Development, Education etc.	Consumer education and awareness can be covered under Schedule VII (ii) "promoting education".
5.	(a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would qualify as "promoting education" and hence eligible for compliance of companies with Corporate Social Responsibility. (b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as "protection of national heritage, art and culture, including restoration of buildings and sites of historical importance" and hence eligible for compliance of companies with CSR.	Conservation and renovation of school buildings and classrooms relates to CSR activities under Schedule VII as "promoting education".
6.	Non Academic Technopark TBI not located within an academic Institution but approved and supported by Department of Science and technology.	Schedule VII (ii) under "promoting education", if approved by Department of Science and Technology.
7.	Disaster Relief	Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example, (i) Medical aid can be covered under 'promoting health care including preventive health care.' (ii) food supply can be covered under eradicating hunger, poverty and malnutrition. (iii) supply of clean water can be covered under 'sanitation and making available safe drinking water'.

8.	Trauma care around highways in case of road accidents.	Under 'health care'.
9.	Clarity on "rural development projects"	Any project meant for the development of rural India will be covered under this.
10.	Supplementing of Govt. schemes like mid-day meal by corporate through additional nutrition would qualify under Schedule VII.	Yes. Under Schedule VII, item no. (i) under 'poverty and malnutrition'.
11.	Research and Studies in the areas specified in Schedule VII.	Yes, under the respective areas of items defined in Schedule VII. Otherwise under 'promoting education'.
12.	Capacity building of government officials and elected representatives – both in the area of PPPs and urban infrastructure.	No.
13.	Sustainable urban development and urban public transport systems	Not covered.
14.	Enabling access to, or improving the delivery of, public health systems be considered under the head "preventive healthcare" or "measures for reducing inequalities faced by socially & economically backward groups"?	Can be covered under both the heads of "healthcare" or "measures for reducing inequalities faced by socially & economically backward groups", depending on the context.
15.	Likewise, could slum re-development or EWS housing be covered under "measures for reducing inequalities faced by socially & economically backward groups"?	Yes.
16.	Renewable energy projects	Under 'Environmental sustainability, ecological balance and conservation of natural resources',
17.	(i) are the initiatives mentioned in Schedule VII exhaustive? (ii) Incase a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count (as per 2 (c) (ii) of the Final Rules, they will count)?	(i) & (ii) Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the schedule.
18.	US-India Physicians Exchange Program – broadly speaking, this would be program that provides for the professional exchange of physicians between India and the United States.	No.

1.7.11 Other aspects of Corporate Social Responsibility

Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act.



Every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years shall not be required to -

- (a) constitute a CSR Committee; and
- (b) comply with the provisions contained in sub-section (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135.

1.7.12 Computation of Net Profit

"Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely :-

- (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.

Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, shall not be required to be re-calculated in accordance with the provisions of the Act.

Provided further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of subsection (1) of section 381 read with section 198 of the Act.

1.7.13 CSR Activities

- (1) The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.
- (2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise.

Provided that—

- (i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;
- (ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.
- (3) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these rules.
- (4) Subject to provisions of sub-section (5) of section 135 of the Act, the CSR projects or programs' or activities undertaken in India only shall amount to CSR Expenditure.
- (5) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act. 892 GI/w-v.
- (6) Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure including expenditure on administrative overheads shall not exceed five percent, of total CSR expenditure of the company in one financial year.

- (7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

1.7.14 CSR Committees

- (1) The companies mentioned in the rule 3 shall constitute CSR Committee as under.-
- (i) an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;
 - (ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;
 - (iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 3 80 of the Act and another person shall be nominated by the foreign company.
- (2) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

1.7.15 CSR Policy

- (1) The CSR Policy of the company shall, inter-alia, include the following, namely :-
- (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
 - (b) monitoring process of such projects or programs.
- Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.
- Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.
- (2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

1.7.16 CSR Expenditure

CSR expenditure shall include all expenditure including contribution to corpus, for projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

1.7.17 Right of Member to Copies of Audited Financial Statement [Section 136]

- (1) Without prejudice to the provisions of section 101, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting.

Provided that in the case of a listed company, the provisions of this sub-section shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of twenty-one days before the date of the meeting and a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the



company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting unless the shareholders ask for full financial statements.

Provided further that the Central Government may prescribe the manner of circulation of financial statements of companies having such net worth and turnover as may be prescribed.

Provided also that a listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.

Provided also that every company having a subsidiary or subsidiaries shall,—

- (a) place separate audited accounts in respect of each of its subsidiary on its website, if any;
- (b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

- (2) A company shall allow every member or trustee of the holder of any debentures issued by the company to inspect the documents stated under sub-section (1) at its registered office during business hours.
- (3) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

In case of Section 8 Companies in sub section (1) of section 136, for the words "twenty one days", the words "fourteen days" shall be substituted

1.7.18 Copy of Financial Statement to be Filed with Registrar [Section 137]

- (1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403.

Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403.

Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year.

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

- (2) Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general

meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under section 403.

- (3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

Summary at a Glance

- A copy of the financial statement, including consolidated financial statement shall be file with the Registrar within 30 days of the date of annual general meeting with such fees or additional fees as may be prescribed;
- One Person Company shall file a copy of the financial statements duly adopted by its member within one hundred eighty days from the closure of the financial year;
- Where the annual general meeting of a company for any year has not been held, the financial statements duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held with such fees or additional fees as may be prescribed;
- If a company fails to file the copy of the financial statements before the expiry of the period specified in section 403, the company shall be punishable with fine of ₹100 per day during which the failure continues but which shall not be more than ₹10 lakhs and the managing director and the Chief Financial Officer of the company or any other director as may be prescribed shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than ₹1 lakhs but which may extend to ₹5 lakhs, or with both.

1.7.19 Internal Audit [Section 138]

- (1) Such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.
- (2) The Central Government may, by rules, prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board.

1.7.20 Companies required to appoint internal Auditor

- (1) The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-
 - (a) every listed company;
 - (b) every unlisted public company having-
 - (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or (ii) turnover of two hundred crore rupees or more during the preceding financial year; or
 - (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one



hundred crore rupees or more at any point of time during the preceding financial year; or

- (iii) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and
- (c) every private company having-
- (i) turnover of two hundred crore rupees or more during the preceding financial year; or
- (ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year:

Provided that an existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within six months of commencement of such section.

Explanation.- For the purposes of this rule –

- (i) the internal auditor may or may not be an employee of the company;
- (ii) the term “Chartered Accountant” shall mean a Chartered Accountant whether engaged in practice or not.

- (2) The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

1.8 AUDIT AND AUDITORS

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
ADT-1 P	Notice of appointment of auditor by the company	—	4(2)	—
ADT-2 P	Application for removal of auditor(s) from his/ their office before expiry of term	—	7(1)	—
ADT-3 P	Notice of Resignation by the Auditor	—	8	—
ADT-4 P	Report to the Central Government	—	13(4)	—

1.8.1 Appointment of Auditors [Section 139]

- (1) Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed.

Provided that the company shall place the matter relating to such appointment for ratification by members at every annual general meeting.

Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor.

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Provided also that the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

Explanation.— For the purposes of this Chapter, “appointment” includes re-appointment.

- (2) No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—
(a) an individual as auditor for more than one term of five consecutive years; and
(b) an audit firm as auditor for more than two terms of five consecutive years:

Provided that—

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
(ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.

Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Provided also that every company, existing on or before the commencement of this Act which is required to comply with provisions of this sub-section, shall comply with the requirements of this sub-section within three years from the date of commencement of this Act.

Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

- (3) Subject to the provisions of this Act, members of a company may resolve to provide that—
(a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
(b) the audit shall be conducted by more than one auditor.
- (4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).

Explanation.— For the purposes of this Chapter, the word “firm” shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

- (5) Notwithstanding anything contained in sub-section (1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.
- (6) Notwithstanding anything contained in sub-section (1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.



- (7) Notwithstanding anything contained in sub-section (1) or sub-section (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, the first auditor shall be appointed by the Comptroller and Auditor-General of India within sixty days from the date of registration of the company and in case the Comptroller and Auditor-General of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and in the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.
- (8) Any casual vacancy in the office of an auditor shall—
- in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;
 - in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor-General of India within thirty days.
- Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.
- (9) Subject to the provisions of sub-section (1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if—
- he is not disqualified for re-appointment;
 - he has not given the company a notice in writing of his unwillingness to be re-appointed; and
 - a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.
- (10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.
- (11) Where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

Summary at Glance

First Auditor

- First auditor of the company, other than a Government company, shall be appointed by the BOD within 30 days from the date of registration of the company;
- If BOD fails to appoint, by the member of the company within 90 days at an extraordinary general meeting appoint the first auditor;
- In case of Government company, first auditor shall be appointed by CAG within 60 days from the date of registration;
- If CAG fails to appoint, by the BOD of the company within next 30 days;
- If again BOD fails to appoint the first auditor of the company, by the member of the company within 60 days at an extraordinary general meeting;
- Tenure of the first auditor of the company in both the above cases till the conclusion of the first annual general meeting;

Subsequent Auditor

- At the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting;
- Before such appointment, the written consent of the auditor to such appointment and a certificate from him shall be in accordance with the condition as may be prescribed;
- Within 15 days of the meeting the company shall file a notice of such appointment with the registrar;
- No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—
 - (a) an individual as auditor for more than one term of five consecutive years; and
 - (b) an audit firm as auditor for more than two terms of five consecutive years:

Cooling Period

- (i) an individual auditor who has completed his term under clause (a) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (ii) an audit firm which has completed its term under clause (b), shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term.
- At the time of rotation of auditors, incoming audit firms/ auditor having common partner/s with the erstwhile audit firm shall not be eligible for appointment;
- Firm shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008;
- In the case of Government company, CAG in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of the company within a period of 180 days from the commencement of the financial year who shall hold the office till the conclusion of the AGM;

Re-appointment

- A retiring auditor may be re-appointed at an annual general meeting, if—
 - (a) he is not disqualified for re-appointment;
 - (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and
 - (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed;
- Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company;
- Where provision of section 177 is applied, all appointments, including the filling of a casual vacancy of an auditor shall be made after taking into account the recommendations of such committee.



General Circular No. 33/2014

Clarification with Regard to Applicability of Provisions of Section 139(5) and 139(7) of the Companies Act, 2013

1. it is clarified that the new Act does not alter the position with regard to audit of such deemed Government companies through C&AG and thus such companies are covered under sub-section (5) and (7) of section 139 of the New Act.
2. Clarification has also been sought about the manner in which the information about incorporation of a company subject to audit by an auditor to be appointed by the C&AG is to be communicated to the C&AG for the purpose of appointment of first auditors under section 139(7) of the New Act. It is hereby clarified that such responsibility rests with both, the Government concerned and the relevant company. To avoid any confusion it is further clarified that it will primarily be the responsibility of the company concerned to intimate to the C&AG about its incorporation along with name, location of registered office, capital structure of such a company immediately on its incorporation. It is also incumbent on such a company to share such intimation to the relevant Government so that such Government may also send a suitable request to the C&AG.

1.8.2 Class of Companies

For the purposes of sub-section (2) of section 139, the class of companies shall mean the following classes of companies excluding one person companies and small companies:-

- (a) all unlisted public companies having paid up share capital of rupees ten crore or more;
- (b) all private limited companies having paid up share capital of rupees twenty crore or more;
- (c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

1.8.3 Manner of Rotation of Auditors by the Companies on Expiry of their Term

- (1) The Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent.
- (2) Where a company is required to constitute an Audit Committee, the Board shall consider the recommendation of such committee, and in other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.
- (3) For the purpose of the rotation of auditors-
 - (i) in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be;
 - (ii) the incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms.

Explanation. I - For the purposes of these rules the term "same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

Explanation. II - For the purpose of rotation of auditors,-

- (a) a break in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation;
- (b) if a partner, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Illustration Explaining Rotation in Case of Individual Auditor**Illustration 1.**

Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years
1 year	4 years	5 years

Note:

1. Individual auditor shall include other individuals or firms whose name or trade mark or brand is used by such individual, if any.
2. Consecutive years shall mean all the preceding financial years for which the individual auditor has been the auditor until there has been a break by five years or more.

Illustration Explaining Rotation in Case of Audit Firm**Illustration 2.**

Number of consecutive years for which an audit firm has been functioning as auditor in the same company [in the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II
I	II	III
10 years (or more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 year	9 years	10 years

Note:

1. Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.
2. Consecutive years shall mean all the preceding financial years for which the firm has been the auditor until there has been a break by five years or more.



- (4) Where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

1.8.4 Removal, Resignation of Auditor and giving of Special Notice [Section 140]

- (1) The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard.

- (2) The auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-section (5) of section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

- (3) If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

- (4) (i) Special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139.

- (ii) On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

- (iii) Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—

- (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

- (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,

and if a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.

Provided that if a copy of representation is not sent as aforesaid, a copy thereof shall be filed with the Registrar.

Provided further that if the Tribunal is satisfied on an application either of the company or of any other aggrieved person that the rights conferred by this sub-section are being abused by the auditor, then, the copy of the representation may not be sent and the representation need not be read out at the meeting.

- (5) Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly

or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

Provided that if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

Provided further that an auditor, whether individual or firm, against whom final order has been passed by the Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of five years from the date of passing of the order and the auditor shall also be liable for action under section 447.

Explanation I.—It is hereby clarified that the case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

Explanation II.—For the purposes of this Chapter the word “auditor” includes a firm of auditors.

Summary at Glance

Removal

- By a special resolution of the company and after obtaining the previous approval of the central Government, the auditor appointed under section 139 may be removed from his office before the expiry of his term;

Resignation

- The auditor shall file within 30 days from the date of resignation, a statement in prescribed form with the company and the registrar;
- In case of Government company, the auditor shall send such statement with the CAG, indicating the reason and other facts with regards to his resignation;
- If fails to comply with sub-section (2), punishable with fine not less than ₹50,000 but may extend to ₹5,00,000;

Special notice

- Special notice for resolution at an annual general meeting for appointment of auditor other than a retiring auditor;
- On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor;
- Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,—
 - (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company,
- If a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may require that the representation shall be read out at the meeting.



1.8.5 Eligibility, Qualifications and Disqualifications of Auditors [Section 141]

- (1) A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant.
Provided that a firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of a company.
- (2) Where a firm including a limited liability partnership is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.
- (3) The following persons shall not be eligible for appointment as an auditor of a company, namely:—
- (a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
 - (b) an officer or employee of the company;
 - (c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
 - (d) a person who, or his relative or partner—
 - (i) is holding any security or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;
 - (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or
 - (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;
 - (e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;
 - (f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;
 - (g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;
 - (h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;
 - (i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144.
- (4) Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned in sub-section (3) after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a casual vacancy in the office of the auditor.

1.8.6 Remuneration of Auditors [Section 142]

- (1) The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein.
Provided that the Board may fix remuneration of the first auditor appointed by it.

- (2) The remuneration under sub-section (1) shall, in addition to the fee payable to an auditor, include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

1.8.7 Powers and Duties of Auditors and Auditing Standards [Section 143]

- (1) Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:—
- (a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
 - (b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
 - (c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;
 - (d) whether loans and advances made by the company have been shown as deposits;
 - (e) whether personal expenses have been charged to revenue account;
 - (f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

- (2) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.
- (3) The auditor's report shall also state—
- (a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;
 - (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
 - (c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;



- (d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
 - (e) whether, in his opinion, the financial statements comply with the accounting standards;
 - (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
 - (g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
 - (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
 - (i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls;
 - (j) such other matters as may be prescribed.
- (4) Where any of the matters required to be included in the audit report under this section is answered in the negative or with a qualification, the report shall state the reasons therefor.
- (5) In the case of a Government company, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of section 139 and direct such auditor the manner in which the accounts of the Government company are required to be audited and thereupon the auditor so appointed shall submit a copy of the audit report to the Comptroller and Auditor-General of India which, among other things, include the directions, if any, issued by the Comptroller and Auditor-General of India, the action taken thereon and its impact on the accounts and financial statement of the company.
- (6) The Comptroller and Auditor-General of India shall within sixty days from the date of receipt of the audit report under sub-section (5) have a right to,—
- (a) conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorise in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General of India may direct; and
 - (b) comment upon or supplement such audit report.
- Provided that any comments given by the Comptroller and Auditor-General of India upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under sub section (1) of section 136 and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.
- (7) Without prejudice to the provisions of this Chapter, the Comptroller and Auditor- General of India may, in case of any company covered under sub-section (5) or sub-section (7) of section 139, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company and the provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.
- (8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the

company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed.

Provided that the branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

- (9) Every auditor shall comply with the auditing standards.
- (10) The Central Government may prescribe the standards of auditing or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.
- (11) The Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein.
- (12) Notwithstanding anything contained in this section, if an auditor of a company in the course of the performance of his duties as auditor, has reason to believe that an offence of fraud involving such amount or amounts as may be prescribed, is being or has been committed in the company by its officers or employees, the auditor shall report the matter to the Central Government within such time and in such manner as may be prescribed.

Provided that in case of a fraud involving lesser than the specified amount, the auditor shall report the matter to the audit committee constituted under section 177 or to the Board in other cases within such time and in such manner as may be prescribed.

Provided further that the companies, whose auditors have reported frauds under this sub-section to the audit committee or the Board but not reported to the Central Government, shall disclose the details about such frauds in the Board's report in such manner as may be prescribed.
- (13) No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub-section (12) if it is done in good faith.
- (14) The provisions of this section shall mutatis mutandis apply to—
 - (a) the cost accountant in practice conducting cost audit under section 148; or
 - (b) the company secretary in practice conducting secretarial audit under section 204.
- (15) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

1.8.8 Other Matters to be included in Auditor's Report

The auditor's report shall also include their views and comments on the following matters, namely:-

- (a) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;
- (b) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;
- (c) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.



1.8.9 Duties and Powers of the Company's Auditor with reference to the Audit of the Branch and the Branch Auditor

- (1) For the purposes of sub-section (8) of section 143, the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.
- (2) The branch auditor shall submit his report to the company's auditor.
- (3) The provisions of sub-section (12) of section 143 read with rule 12 hereunder regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

1.8.10 Reporting of Frauds by Auditor

- (1) For the purpose of sub-section (12) of section 143, in case the auditor has sufficient reason to believe that an offence involving fraud, is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than sixty days of his knowledge and after following the procedure indicated herein below.
 - (i) auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within forty-five days;
 - (ii) on receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days of receipt of such reply or observations;
 - (iii) in case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.
- (2) The report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an e-mail in confirmation of the same.
- (3) The report shall be on the letter-head of the auditor containing postal address, e-mail address and contact number and be signed by the auditor with his seal and shall indicate his Membership Number.
- (4) The report shall be in the form of a statement as specified in Form ADT-4.
- (5) The provision of this rule shall also, mutatis mutandis, to a cost auditor and a secretarial auditor during the performance of his duties under section 148 and section 204 respectively.

1.8.11 Auditor not to render Certain Services [Section 144]

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case maybe, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:—

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;

- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed.

Provided that an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section before the closure of the first financial year after the date of such commencement.

Explanation.—For the purposes of this sub-section, the term “directly or indirectly” shall include rendering of services by the auditor,—

- (i) in case of auditor being an individual, either himself or through his relative or any other person connected or associated with such individual or through any other entity, whatsoever, in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual;
- (ii) in case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity, whatsoever, in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.

1.8.12 Auditor to Sign Audit Reports, etc. [Section 145]

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141, and the qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

1.8.13 Auditors to attend General Meeting [Section 146]

All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

1.8.14 Punishment for Contravention [Section 147]

- (1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.
- (2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

- (3) Where an auditor has been convicted under sub-section (2), he shall be liable to—
 - (i) refund the remuneration received by him to the company; and
 - (ii) pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.



- (4) The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons under clause (ii) of sub-section (3) and such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.
- (5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

1.8.15 Central Government to Specify Audit of Items of Cost in respect of Certain Companies [Section 148]

- (1) Notwithstanding anything contained in this Chapter, the Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to other items of cost as may be prescribed shall also be included in the books of account kept by that class of companies.

Provided that the Central Government shall, before issuing such order in respect of any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act.

- (2) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.
- (3) The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed.

Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records.

Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards.

Explanation.— For the purposes of this sub-section, the expression "cost auditing standards" mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

- (4) An audit conducted under this section shall be in addition to the audit conducted under section 143.
- (5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company.

Provided that the report on the audit of cost records shall be submitted by the cost accountant in practice to the Board of Directors of the company.

- (6) A company shall within thirty days from the date of receipt of a copy of the cost audit report prepared in pursuance of a direction under sub-section (2) furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein.

- (7) If, after considering the cost audit report referred to under this section and the information and explanation furnished by the company under sub-section (6), the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.
- (8) If any default is made in complying with the provisions of this section,—
 - (a) the company and every officer of the company who is in default shall be punishable in the manner as provided in sub-section (1) of section 147;
 - (b) the cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

1.8.16 Remuneration of the Cost Auditor

For the purpose of sub-section (3) of section 148,—

- (a) in the case of companies which are required to constitute an audit committee—
 - (i) the Board shall appoint an individual, who is a cost accountant in practice, or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;
 - (ii) the remuneration recommended by the Audit Committee under (i) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders;
- (b) in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant in practice or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

1.9 APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
DIR-1	P	Application for inclusion of name in the databank of Independent directors	150	6(4)	1.131
DIR-2	P	Consent to act as a director of company	152(5)	8	1.134
DIR-3	e	Application for Allotment of Director Identification Number	153	Rule 10 of Limited Liability Partnership, Rules, 2009	1.135
DIR-4	P	Verification of Applicant for Application for DIN	153	9(3)(a)(iv)	1.135
DIR-5	P	Application for Surrender of Director Identification Number	153	11(f)	1.135
DIR-6	e	Intimation of change in particulars of Director to be given to the Central Government	—	12(1)	



DIR-7	P	Verification of Applicant for change in DIN particulars	—	12(1)(i)	—
DIR- 8	P	Intimation by Director	164(2)	14(1)	1.140
DIR-9	P	Report by company to Registrar	164(2)	14(2)	1.140
DIR 10	P	Form of Application for removal of disqualification of directors	164(2)	14(5)	1.140
DIR-11	e	Notice of resignation of a director to the Registrar	168(1)	16	1.142
DIR-12	e	Particulars of appointment of directors and the key managerial personnel and the changes among them	7(1) (c), 168, 170(2)	17	1.23, 1.142, 1.143

1.9.1 Company to have Board of Directors [Section 149]

- (1) Every company shall have a Board of Directors consisting of individuals as directors and shall have—
 - (a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and
 - (b) a maximum of fifteen directors.

Provided that a company may appoint more than fifteen directors after passing a special resolution.

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.
- (2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).
- (3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.
- (4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Explanation.— For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

- (5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).
- (6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,—
 - (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
 - (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
 - (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
 - (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
 - (e) who, neither himself nor any of his relatives—
 - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
 - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
 - (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
 - (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or
 - (f) who possesses such other qualifications as may be prescribed.
- (7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

Explanation.— For the purposes of this section, “nominee director” means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

- (8) The company and independent directors shall abide by the provisions specified in Schedule IV.
- (9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
- (10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
- (11) Notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director.
Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.



Explanation.— For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(12) Notwithstanding anything contained in this Act,—

- (i) an independent director;
- (ii) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

(13) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

Summary at Glance

(1) Minimum no. of Directors

Public Company	: 3 directors
Private Company	: 2 directors
One Person Company	: 1 director

(2) Maximum no. of Directors : 15 directors

A company may appoint more than 15 directors after passing a special resolution.

(3) Such class or classes of companies as may be prescribed, shall have at least 1 woman director.

Every company existing on or before the date of commencement of this Act shall within 1 year from the date of commencement of the Act has been provided to comply with the provision of sub-Section(1).

(4) Every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

(5) Independent Director

- (i) In every listed company = 1/3 of the total number of directors;
- (ii) An independent director means a director other than a managing director or a whole-time director or a nominee director;
- (iii) At the first meeting of the board or first meeting of the board of any financial year, give a declaration that he meets the criteria of independence;
- (iv) An independent director shall not be entitled to any stock option, remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members;
- (v) An independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company;
- (vi) No independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director;
- (vii) Provision relating to retirement of directors by rotation shall not be applicable to appointment of independent directors.

General Circular No. 25/2014

Clarification on Applicability of Requirement for Resident Director

- (i) It is clarified that the residency requirement¹ would be reckoned from the date of commencement of section 149 of the Act i.e. 1st April, 2014. The first ,previous calendar year, for compliance with these provisions would, therefore, be Calendar year 2014. The period to be taken into account for compliance with these provisions will be the remaining period of calendar year 2014 (i.e. 1st April to 31st December). Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar year 2014, shall exceed 136 days.
- (ii) Regarding newly incorporated companies it is clarified that companies incorporated between 1.4.2014 to 30.9.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation. Companies incorporated after 30.9.2014 need to have the resident director from the date of incorporation itself.

1.9.2 Woman Director on the Board

The following class of companies shall appoint at least one woman director-

- (i) every listed company;
- (ii) every other public company having -
 - (a) paid-up share capital of one hundred crore rupees or more; or
 - (b) turnover of three hundred crore rupees or more.

Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation.

Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation.- For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

1.9.3 Number of Independent Directors

The following class or classes of companies shall have at least two directors as independent directors -

- (i) the Public Companies having paid up share capital often crore rupees or more; or
- (ii) the Public Companies having turnover of one hundred crore rupees or more; or
- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.

Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.



Explanation.— For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

1.9.4 Manner of Selection of Independent Directors and Maintenance of Databank of Independent Directors [Section 150]

(1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors.

Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.

(2) The appointment of independent director shall be approved by the company in general meeting as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

(3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.

(4) The Central Government may prescribe the manner and procedure of selection of independent directors who fulfill the qualifications and requirements specified under section 149.

General Circular No. 14/2014

Matters relating to appointment and qualifications of directors and Independent Directors - reg.

Clarifications on the following points are hereby given:-

(i) Section 149(6)(c): "Pecuniary Interest in Certain transactions" :

(a) This provision inter alia requires that an Independent Director (ID) should have no 'pecuniary relationship' with the company concerned or its holding/ subsidiary/ associate company and certain other categories specified therein during the current and last two preceding financial years. Clarifications have been sought whether a transaction entered into by an 'ID' with the company concerned at par with any member of the general public and at the same price as is payable/paid by such member of public would attract the bar of 'pecuniary relationship' under section 149(6)(c). The matter has been examined and it is hereby clarified that in view of the provisions of section 188 which take away transactions in the ordinary course of business at arm's length price from the purview of related party transactions, an 'ID' will not be said to have 'pecuniary relationship' under section 149(6)(c) in such cases.

(b) Whether receipt of remuneration, (in accordance with the provisions of the Act) by an ID' from a company would be considered as having pecuniary interest while considering his appointment in the holding company, subsidiary company or associate company of such company.

The matter has been examined in consultation with SEBI and it is clarified that 'pecuniary relationship' provided in section 149(6)(c) of the Act does not include receipt of remuneration, from one or more companies, by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission approved by the members, in accordance with the provisions of the Act.

(ii) Section 149: Appointment of "IPs" :

Clarification has been sought if IDs' appointed prior to April 1, 2014 may continue and complete their remaining tenure, under the provisions of the Companies Act, 1956 or they should demit office and be re-appointed (should the company so decide) in accordance with the provisions of the new Act.

The matter has been examined in the light of the relevant provisions of the Act, particularly section 149(5) and 149(10) & (11). Explanation to section 149(11) clearly provides that any tenure of an ID' on the date of commencement of the Act shall not be counted for his appointment/holding office of director under the Act. In view of the transitional period of one year provided under section 149(5), it is hereby clarified that it would be necessary that if it is intended to appoint existing 'IDs' under the new Act, such appointment shall be made expressly under section 149(10)/(11) read with Schedule IV of the Act within one year from 1st April, 2014, subject to compliance with eligibility and other prescribed conditions.

(iii) Section 149(10)7(11) - Appointment of IDs' for less than 5 years:

Clarification has been sought as to whether it would be possible to appoint an individual as an ID for a period less than five years.

It is clarified that section 149(10) of the Act provides for a term of "upto five consecutive years" for an 'ID'. As such while appointment of an 'ID' for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10) of the Act. Further, under section 149(11) of the Act, no person can hold office of 'ID' for more than 'two consecutive terms'. Such a person shall have to demit office after two consecutive terms even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case the person completing 'consecutive terms of less than ten years' shall be eligible for appointment only after the expiry of the requisite cooling-off period of three years.

(iv) Appointment of 'IDs' through letter of appointment:

With reference to Para IV(4) of Schedule IV of the Act (Code for IDs) which requires appointment of IDs' to be formalized through a letter of appointment, clarification has been sought if such requirement would also be applicable for appointment of existing 'IDs'?

The matter has been examined. In view of the specific provisions of Schedule IV, appointment of 'IDs' under the new Act would need to be formalized through a letter of appointment.

1.9.5 Appointment of Director Elected by Small Shareholders [Section 151]

A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

Explanation.— For the purposes of this section "small shareholders" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

1.9.6 Small Shareholders' Director

- (1) A listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholder's director elected by the small shareholders.

Provided that nothing in this sub-rule shall prevent a listed company to opt to have a director representing small shareholders suo - motu and in such a case the provisions of sub-rule (2) shall not apply for appointment of such director.

- (2) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signatures verifying the name, address, shares held and folio



number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

Provided that if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

- (3) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating —
 - (a) his Director Identification Number;
 - (b) that he is not disqualified to become a director under the Act; and
 - (c) his consent to act as a director of the company
- (4) Such director shall be considered as an independent director subject to, his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.
- (5) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that—
 - (a) such director shall not be liable to retire by rotation;
 - (b) such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
 - (c) on the expiry of the tenure, such director shall not be eligible for re-appointment.
- (6) A person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.
- (7) A person appointed as small shareholders' director shall vacate the office if—
 - (a) the director incurs any of the disqualifications specified in section 164;
 - (b) the office of the director becomes vacant in pursuance of section 167;
 - (c) the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.
- (8) No person shall hold the position of small shareholders' director in more than two companies at the same time.

Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.
- (9) A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

1.9.7 Appointment of Directors [Section 152]

- (1) Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.
- (2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.
- (3) No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.

(4) Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act.

(5) A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed.

Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

(6) (a) Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company shall—

(i) be persons whose period of office is liable to determination by retirement of directors by rotation; and

(ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

(b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

(c) At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

(d) The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

(e) At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.

Explanation.— For the purposes of this sub-section, "total number of directors" shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.

(7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

(b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

(i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;

(ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;

(iii) he is not qualified or is disqualified for appointment;

(iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or



(v) section 162 is applicable to the case.

Explanation: For the purposes of this section and section 160, the expression "retiring director" means a director retiring by rotation.

1.9.8 Consent to Act as Director

Every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company a consent in writing to act as such in Form DIR-2.

Provided that the company shall, within thirty days of the appointment of a director, file such consent with the Registrar in Form DIR-12 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

1.9.9 Application for Allotment of Director Identification Number [Section 153]

Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

1.9.10 Form and Manner of Application for Allotment of Director Identification Number

- (I) Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3, to the Central Government for the allotment of a Director Identification Number (DIN) along with such fees as provided in the Companies (Registration Offices and Fees) Rules, 2014.
- (2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.
- (3) (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars sought therein and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically—
 - (i) photograph;
 - (ii) proof of identity;
 - (iii) proof of residence;
 - (iv) verification by the applicant for applying for allotment of DIN in Form DIR-4; and
 - (v) specimen signature duly verified.
(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by -
 - (i) a chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or
 - (ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed as director.

1.9.11 Allotment of Director Identification Number [Section 154]

The Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number to an applicant in such manner as may be prescribed.

1.9.12 Manner of Allotment of DIN

- (1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.

- (2) After generation of the provisional DIN, the Central Government shall process the applications received for allotment of DIN under sub-rule (2) of rule 9, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.
- (3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email.

Provided that the Central Government shall -

- (a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;
 - (b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and
 - (c) inform the applicant either by way of letter by post or electronically or in any other mode.
- (4) In case of rejection or invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded nor adjusted with any other application.
 - (5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.
 - (6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

1.9.13 Prohibition to Obtain more than one Director Identification Number [Section 155]

No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number.

1.9.14 Director to intimate Director Identification Number [Section 156]

Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

1.9.15 Company to inform Director Identification Number to Registrar [Section 157]

- (1) Every company shall, within fifteen days of the receipt of intimation under section 156, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees as may be prescribed or with such additional fees as may be prescribed within the time specified under section 403 and every such intimation shall be furnished in such form and manner as may be prescribed.
- (2) If a company fails to furnish Director Identification Number under sub-section (1), before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.



1.9.16 Obligation to Indicate Director Identification Number [Section 158]

Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

1.9.17 Cancellation or Surrender or Deactivation of DIN

The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case —

- (a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;
- (b) the DIN was obtained in a wrongful manner or by fraudulent means;
- (c) of the death of the concerned individual;
- (d) the concerned individual has been declared as a person of unsound mind by a competent Court;
- (e) if the concerned individual has been adjudicated an insolvent:

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

- (f) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN.

Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.

Explanation: For the purposes of clause (b) -

- (i) the term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation;
- (ii) the term "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government.

1.9.18 Intimation of Changes in Particulars Specified in DIN Application

- (1) Every individual who has been allotted a Director Identification Number under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely:-
 - (i) the applicant shall download Form DIR-6 from the portal and fill in the relevant changes, attach copy of the proof of the changed particulars and verification in the Form DIR-7 all of which shall be scanned and submitted electronically;
 - (ii) the form shall be digitally signed by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice;
 - (iii) the applicant shall submit the Form DIR-6;
- (2) The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a

letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

- (3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.
- (4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

1.9.19 Punishment for Contravention [Section 159]

If any individual or director of a company, contravenes any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

1.9.20 Right of Persons other than Retiring Directors to Stand for Directorship [Section 160]

- (1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent. of total valid votes cast either on show of hands or on poll on such resolution.
- (2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.

1.9.21 Appointment of Additional Director, Alternate Director and Nominee Director [Section 161]

- (1) The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.
- (2) The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India.

Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

- (3) Subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.



- (4) In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

1.9.22 Appointment of Directors to be Voted Individually [Section 162]

- (1) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.
- (2) A resolution moved in contravention of sub-section (1) shall be void, whether or not any objection was taken when it was moved.
- (3) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

1.9.23 Notice of Candidature of a Person for Directorship

The company shall, at least seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office -

- (1) by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and
- (2) by placing notice of such candidature or intention on the website of the company, if any.

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than seven days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

1.9.24 Option to Adopt Principle of Proportional Representation for Appointment of Directors [Section 163]

Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

1.9.25 Disqualifications for Appointment of Director [Section 164]

- (1) A person shall not be eligible for appointment as a director of a company, if —
 - (a) he is of unsound mind and stands so declared by a competent court;
 - (b) he is an undischarged insolvent;
 - (c) he has applied to be adjudicated as an insolvent and his application is pending;
 - (d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

- (e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
 - (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
 - (g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
 - (h) he has not complied with sub-section (3) of section 152.
- (2) No person who is or has been a director of a company which—
- (a) has not filed financial statements or annual returns for any continuous period of three financial years; or
 - (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,
- shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.
- (3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).
- Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect—
- (i) for thirty days from the date of conviction or order of disqualification;
 - (ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or
 - (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off.

1.9.26 Number of Directorships [Section 165]

- (1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time.
- Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.
- Explanation.—** For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.
- (2) Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.
- (3) Any person holding office as director in companies more than the limits as specified in sub-section (1), immediately before the commencement of this Act shall, within a period of one year from such commencement,—
- (a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director;
 - (b) resign his office as director in the other remaining companies; and



- (c) intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.
- (4) Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned.
- (5) No such person shall act as director in more than the specified number of companies,—
 - (a) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (b) of sub-section (3); or
 - (b) after the expiry of one year from the commencement of this Act,
whichever is earlier.
- (6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.

1.9.27 Duties of Directors [Section 166]

- (1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.
- (2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- (3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- (4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- (5) A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- (6) A director of a company shall not assign his office and any assignment so made shall be void.
- (7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

1.9.28 Vacation of Office of Director [Section 167]

- (1) The office of a director shall become vacant in case—
 - (a) he incurs any of the disqualifications specified in section 164;
 - (b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
 - (c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
 - (d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
 - (e) he becomes disqualified by an order of a court or the Tribunal;
 - (f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months.

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

- (g) he is removed in pursuance of the provisions of this Act;
 - (h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.
- (2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.
- (3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.
- (4) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

1.9.29 Resignation of Director [Section 168]

- (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

- (2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.
- Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.
- (3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

1.9.30 Removal of Directors [Section 169]

- (1) A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

- (2) A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.
- (3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.



(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

- (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
- (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company),

and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

(6) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.

(7) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act.

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors.

(8) Nothing in this section shall be taken—

- (a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or
- (b) as derogating from any power to remove a director under other provisions of this Act.

1.9.31 Register of Directors and Key Managerial Personnel and their Shareholding [Section 170]

(1) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

(2) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within thirty days of any change taking place.

1.9.32 Particulars of Register of Directors and Key Managerial Personnel

(1) Every company shall keep at its registered office a register of its directors and key managerial personnel containing the following particulars, namely:

- (a) Director Identification Number (optional for key managerial personnel);
 - (b) present name and surname in full;
 - (c) any former name or surname in full;
 - (d) father's name, mother's name and spouse's name(if married) and surnames in full;
 - (e) date of birth;
 - (f) residential address (present as well as permanent);
 - (g) nationality (including the nationality of origin, if different);
 - (h) occupation;
 - (i) date of the board resolution in which the appointment was made;
 - (j) date of appointment and reappointment in the company;
 - (k) date of cessation of office and reasons therefor;
 - (l) office of director or key managerial personnel held or relinquished in any other body corporate;
 - (m) membership number of the Institute of Company Secretaries of India in case of Company Secretary, if applicable; and
 - (n) Permanent Account Number (mandatory for key managerial personnel if not having DIN);
- (2) In addition to the details of the directors or key managerial personnel, the company shall also include in the aforesaid Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to-
- (a) the number, description and nominal value of securities;
 - (b) the date of acquisition and the price or other consideration paid;
 - (c) date of disposal and price and other consideration received;
 - (d) cumulative balance and number of securities held after each transaction;
 - (e) mode of acquisition of securities;
 - (f) mode of holding - physical or in dematerialized form; and
 - (g) whether securities have been pledged or any encumbrance has been created on the securities.

1.9.33 Members' Right to Inspect [Section 171]

- (1) The register kept under sub-section (1) of section 170,—
 - (a) shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within thirty days; and
 - (b) shall also be kept open for inspection at every annual general meeting of the company and shall be made accessible to any person attending the meeting.
- (2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.

1.9.34 Punishment [Section 172]

If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.



1.10 MEETINGS OF BOARD AND ITS POWERS

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
MBP- 1	P	Notice of interest by director	184(1)	9(1)	1.157
MBP- 2	P	Register of loans, guarantee, security and acquisition made by the company	186(9)	12(1)	1.159
MBP- 3	P	Register of investments not held in its own name by the company	187(3)	14(1)	1.160
MBP- 4	P	Register of contracts with related party and contracts and bodies etc. in which directors are interested	189(1)	16(1)	1.162

1.10.1 Meetings of Board [Section 173]

- (1) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board.

Provided that the Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

- (2) The participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

Provided that the Central Government may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.

- (3) A meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Provided that a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

Provided further that in case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

- (4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

- (5) A One Person Company, small company and dormant company shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.

Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its Board of Directors.

1.10.2 Meetings of Board through Video Conferencing or Other Audio Visual Means

A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

- (1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.
- (2) The Chairperson of the meeting and the company secretary, if any, shall take due and reasonable care-
 - (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
 - (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
 - (c) to record proceedings and prepare the minutes of the meeting;
 - (d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
 - (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
 - (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

- (3) (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
 - (b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
 - (c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company.
 - (d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.
 - (e) The director, who desire, to participate may intimate his intention of participation through the electronic mode at the beginning of the calendar year and such declaration shall be valid for one calendar year.
 - (f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.
- (4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-
 - (a) name;



- (b) the location from where he is participating;
 - (c) that he has received the agenda and all the relevant material for the meeting; and
 - (d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);
- (5) (a) After the roll call, the Chairperson or the Company Secretary shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.
- Explanation:** A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.
- (b) The Chairperson shall ensure that the required quorum is present throughout the meeting.
- (6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting, shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.
- (7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.
- (8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.
- (b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or Company Secretary shall request for a repeat or reiteration by the Director.
- (9) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.
- (10) From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, Company Secretary and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.
- (11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority.
- (b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.
- (12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.
- (b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.
- (c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation: For the purposes of this rule, "video conferencing or other audio visual means" means audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

1.10.3 Matters not to be Dealt with in a Meeting through Video Conferencing or Other Audio Visual Means

The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of financial statements including consolidated financial statement, if any, to be approved by the Board under sub-section (1) of section 134 of the Act; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

1.10.4 Quorum for Meetings of Board [Section 174]

- (1) The quorum for a meeting of the Board of Directors of a company shall be one- third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.
- (2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.
- (3) Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

Explanation.—For the purposes of this sub-section, "interested director" means a director within the meaning of sub-section (2) of section 184.

- (4) Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

Explanation.— For the purposes of this section,—

- (i) any fraction of a number shall be rounded off as one;
- (ii) "total strength" shall not include directors whose places are vacant.

1.10.5 Passing of Resolution by Circulation [Section 175]

- (1) No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution.



Provided that, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

- (2) A resolution under sub-section (1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

General Circular No. 32/2014

Clarification on Transitional Period for Resolutions Passed Under the Companies Act, 1956.

It is clarified that resolutions approved or passed by companies under relevant applicable provisions of the Old Act during the period from 1st September, 2013 to 31st March, 2014, can be implemented, in accordance with provisions of the Old Act, notwithstanding the repeal of the relevant provision subject to the conditions (a) that the implementation of the resolution actually commenced before 1st April, 2014 and (b) that this transitional arrangement will be available upto expiry of one year from the passing of the resolution or six months from the commencement of the corresponding provision in New Act whichever is later. It is also clarified that any amendment of the resolution must be in accordance with the relevant provision of the New Act.

1.10.6 Special Resolution

- (1) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under section 186, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

Explanation: For the purpose of this sub-rule, it is clarified that it would sufficient compliance if such special resolution is passed within one year from the date of notification of this section.

- (2) A resolution passed at a general meeting in terms of sub-section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquisition under sub section (2) of section 186 shall specify the total amount up to which the Board of Directors are authorised to give such loan or guarantee, to provide such security or make such acquisition.

Provided, that the company shall disclose to the members in the financial statement the full particulars in accordance with the provision of sub-section (4) of section 186.

1.10.7 Defects in Appointment of Directors not to Invalidate Actions taken [Section 176]

No act done by a person as a director shall be deemed to be invalid, notwithstanding that it was subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company.

Provided that nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.

1.10.8 Committees of the Board

The Board of directors of every listed companies and the following classes of companies shall constitute an Audit Committee and a Nomination and Remuneration Committee of the Board-

- (i) all public companies with a paid up capital of ten crore rupees or more;
- (ii) all public companies having turnover of one hundred crore rupees or more;
- (iii) all public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Explanation.— The paid up share capital or turnover or outstanding loans, or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited Financial Statements shall be taken into account for the purposes.

Provided that public companies covered under this rule which were not required to constitute Audit Committee under section 292A of the Companies Act, 1956 shall constitute their Audit Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier.

Provided further that public companies covered as above shall constitute their Nomination and Remuneration Committee within one year from the commencement of these rules or appointment of independent directors by them, whichever is earlier.

1.10.9 Audit Committee [Section 177]

- (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
- (2) The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.
- (3) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).
- (4) Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include,—
 - (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 - (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
 - (iii) examination of the financial statement and the auditors' report thereon;
 - (iv) approval or any subsequent modification of transactions of the company with related parties;

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed.
 - (v) scrutiny of inter-corporate loans and investments;
 - (vi) valuation of undertakings or assets of the company, wherever it is necessary;
 - (vii) evaluation of internal financial controls and risk management systems;
 - (viii) monitoring the end use of funds raised through public offers and related matters.
- (5) The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and may also discuss any related issues with the internal and statutory auditors and the management of the company.
- (6) The Audit Committee shall have authority to investigate into any matter in relation to the items specified in sub-section (4) or referred to it by the Board and for this purpose shall have power to obtain professional advice from external sources and have full access to information contained in the records of the company.
- (7) The auditors of a company and the key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.



- (8) The Board's report under sub-section (3) of section 134 shall disclose the composition of an Audit Committee and where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report along with the reasons therefor.
- (9) Every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed.
- (10) The vigil mechanism under sub-section (9) shall provide for adequate safeguards against victimisation of persons who use such mechanism and make provision for direct access to the chairperson of the Audit Committee in appropriate or exceptional cases.
- Provided that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

1.10.10 Nomination and Remuneration Committee and Stakeholders Relationship Committee [Section 178]

- (1) The Board of Directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors.
- Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.
- (2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.
- (3) The Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.
- (4) The Nomination and Remuneration Committee shall, while formulating the policy under sub-section (3) ensure that—
- the level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully;
 - relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
 - remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.
- Provided that such policy shall be disclosed in the Board's report.

- (5) The Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.
- (6) The Stakeholders Relationship Committee shall consider and resolve the grievances of security holders of the company.
- (7) The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

- (8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Provided that non-consideration of resolution of any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

Explanation.—The expression “senior management” means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.

1.10.11 Establishment of Vigil Mechanism

- (1) Every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances-
- (a) the Companies which accept deposits from the public;
 - (b) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.
- (2) The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.
- (3) In case of other companies, the Board of directors shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.
- (4) The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.
- (5) In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

1.10.12 Powers of Board [Section 179]

- (1) The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do.

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting.

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

- (2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.



- (3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—
- (a) to make calls on shareholders in respect of money unpaid on their shares;
 - (b) to authorise buy-back of securities under section 68;
 - (c) to issue securities, including debentures, whether in or outside India;
 - (d) to borrow monies;
 - (e) to invest the funds of the company;
 - (f) to grant loans or give guarantee or provide security in respect of loans;
 - (g) to approve financial statement and the Board's report;
 - (h) to diversify the business of the company;
 - (i) to approve amalgamation, merger or reconstruction;
 - (j) to take over a company or acquire a controlling or substantial stake in another company;
 - (k) any other matter which may be prescribed.

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I.—Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

- (4) Nothing in this section shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board of any of the powers specified in this section.

1.10.13 Other Powers of Board

In addition to the powers specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the Board of Directors only by means of resolutions passed at meetings of the Board.-

- (1) to make political contributions;
- (2) to appoint or remove key managerial personnel (KMP);
- (3) to take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
- (4) to appoint internal auditors and secretarial auditor;

- (5) to take note of the disclosure of director's interest and shareholding;
- (6) to buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid up share capital and free reserves of the investee company;
- (7) to invite or accept or renew public deposits and related matters;
- (8) to review or change the terms and conditions of public deposit;
- (9) to approve quarterly, half yearly and annual financial statements or financial results as the case may be.

1.10.14 Restrictions on powers of Board [Section 180]

- (1) The Board of Directors of a company shall exercise the following powers only with the consent of the company by a special resolution, namely:—
 - (a) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.

Explanation.—For the purposes of this clause,—

- (i) “undertaking” shall mean an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;
- (ii) the expression “substantially the whole of the undertaking” in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;
- (b) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- (c) to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause.

Explanation.— For the purposes of this clause, the expression “temporary loans” means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature;

- (d) to remit, or give time for the repayment of, any debt due from a director.
- (2) Every special resolution passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall specify the total amount up to which monies may be borrowed by the Board of Directors.
- (3) Nothing contained in clause (a) of sub-section (1) shall affect—
 - (a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or



- (b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.
- (4) Any special resolution passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions.
- Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.
- (5) No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause had been exceeded.

General Circular No. 15/2013

Clarification on the Notification Dated 12.9.2013 -

In respect of requirements of special resolution under Section 180 of the "said Act" as against ordinary resolution required by the Companies Act 1956, if notice for any such general meeting was issued prior to 12.9.2013, then such resolution may be in accordance with the requirement of the Companies Act 1956.

General Circular no. 04/2014

It is hereby clarified that the resolution passed under section 293 of the Companies Act, 1956 prior to 12.09.2013 with reference to borrowings (subject to the limits prescribed) and / or creation of security on assets of the company will be regarded as sufficient compliance of the requirements of section 180 of the Companies Act, 2013 for a period of one year from the date of notification of section 180 of the Act i.e. one year from 12.9.2013.

1.10.15 Company to Contribute to bona fide and Charitable Funds, Etc. [Section 181]

The Board of Directors of a company may contribute to bona fide charitable and other funds.

Provided that prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceed five per cent. of its average net profits for the three immediately preceding financial years.

1.10.16 Prohibitions and Restrictions regarding Political Contributions [Section 182]

- (1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party.

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent. of its average net profits during the three immediately preceding financial years.

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

- (2) Without prejudice to the generality of the provisions of sub-section (1),—
- (a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time

at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

- (b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—
 - (i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
 - (ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.
- (3) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party to which such amount has been contributed.
- (4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.— For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951.

Circular No. 19/2013

It is hereby clarified as under:

- (i) Companies contributing any amount or amounts to an ‘Electoral Trust Company’ for contributing to a political party or parties are not required to make disclosures required under section 182(3) of Companies Act 2013. It will suffice if the Accounts of the company disclose the amount released to an Electoral Trust Company.
- (ii) Companies contributing any amount or amounts directly to a political party or parties will be required to make the disclosures laid down in section 192(3) of the Companies Act, 2013.
- (iii) Electoral Trust companies will be required to disclose all amounts received by them from other companies/sources in their Books of Accounts and also disclose the amount or amounts contributed by them to a political party or parties as required by section 182(3) of Companies Act, 2013.

1.10.17 Power of Board and Other Persons to make Contributions to National Defence Fund, Etc. [Section 183]

- (1) The Board of Directors of any company or any person or authority exercising the powers of the Board of Directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence.
- (2) Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to in sub-section (1) during the financial year to which the amount relates.



1.10.18 Disclosure of Interest by Director [Section 184]

- (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.
- (2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—
 - (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
 - (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.
- (3) A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.
- (4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, or with both.
- (5) Nothing in this section—
 - (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
 - (b) shall apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company.

1.10.19 Loan to Directors, Etc. [Section 185]

- (1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

Provided that nothing contained in this sub-section shall apply to—

- (a) the giving of any loan to a managing or whole-time director—
 - (i) as a part of the conditions of service extended by the company to all its employees; or
 - (ii) pursuant to any scheme approved by the members by a special resolution; or

- (b) a company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the bank rate declared by the Reserve Bank of India.

Explanation.— For the purposes of this section, the expression "to any other person in whom director is interested" means—

- (a) any director of the lending company, or of a company which is its holding company or any partner or relative of any such director;
 - (b) any firm in which any such director or relative is a partner;
 - (c) any private company of which any such director is a director or member;
 - (d) anybody corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
 - (e) anybody corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
- (c) any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or
- (d) any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company.

Provided that the loans made under clauses (c) and (d) are utilized by the subsidiary company for its principal business activities.

- (2) If any loan is advanced or a guarantee or security is given or provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

1.10.20 Loan and Investment by Company [Section 186]

- (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies.

Provided that the provisions of this sub-section shall not affect,—

- (i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
- (ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

- (2) No company shall directly or indirectly —

- (a) give any loan to any person or other body corporate;
- (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.



- (3) Where the giving of any loan or guarantee or providing any security or the acquisition under sub-section (2) exceeds the limits specified in that sub-section, prior approval by means of a special resolution passed at a general meeting shall be necessary.
- (4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.
- (5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.
- Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.
- (6) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.
- (7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.
- (8) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.
- (9) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.
- (10) The register referred to in sub-section (9) shall be kept at the registered office of the company and—
- shall be open to inspection at such office; and
 - extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.
- (11) Nothing contained in this section, except sub-section (1), shall apply—
- to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;
 - to any acquisition—
 - made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.
Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;
 - made by a company whose principal business is the acquisition of securities;
 - of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.
- (12) The Central Government may make rules for the purposes of this section.

- (13) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Explanation.—For the purposes of this section,—

- (a) the expression "investment company" means a company whose principal business is the acquisition of shares, debentures or other securities;
- (b) the expression "infrastructure facilities" means the facilities specified in Schedule VI.

General Circular No. 15/2014

Clarification Regarding Maintaining Register in new Format [Sub-section (9) of Section 186]

It is hereby clarified that register maintained by companies pursuant to sub-section (5) of Section 372A of Companies Act, 1956 may continue as per requirements under these provisions and the new format prescribed vide Form MBP2 shall be used for particulars entered in such registers on and from 1.4.2014.

1.10.21 Investments of Company to be held in its Own Name [Section 187]

- (1) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name.

Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

- (2) Nothing in this section shall be deemed to prevent a company—

- (a) from depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or
- (b) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof.

Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a scheduled bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry of that period, have the shares or securities re-transferred to it from the State Bank of India or the scheduled bank or, as the case may be, again hold the shares or securities in its own name; or

- (c) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;
- (d) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

- (3) Where in pursuance of clause (d) of sub-section (2), any shares or securities in which investments have been made by a company are not held by it in its own name, the company shall maintain a register which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

- (4) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh



rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

1.10.22 Related Party Transactions [Section 188]

- (1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—
- (a) sale, purchase or supply of any goods or materials;
 - (b) selling or otherwise disposing of, or buying, property of any kind;
 - (c) leasing of property of any kind;
 - (d) availing or rendering of any services;
 - (e) appointment of any agent for purchase or sale of goods, materials, services or property;
 - (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
 - (g) underwriting the subscription of any securities or derivatives thereof, of the company.

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution.

Provided further that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Explanation.— In this sub-section,—

- (a) the expression "office or place of profit" means any office or place—
 - (i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
 - (ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
 - (b) the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.
- (2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.

- (3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.
- (4) Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.
- (5) Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,—
 - (i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and
 - (ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

General Circular No. 30/2014

Clarification on Matters Relating to Related Party

1. Scope of Second Proviso to Section 188(1):

Second proviso to sub-section (1) of section 188 requires that no member of the company shall vote on a special resolution to approve the contract or arrangement (referred to in the first proviso), if such a member is a related party. It is clarified that 'related party' referred to in the second proviso has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed. Thus, the term 'related party' in the above context refers only to such related party as may be a related party in the context of the contract or arrangement for which the said special resolution is being passed.

2. Applicability of Section 188 to Corporate Restructuring, Amalgamations etc.:

It is clarified that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.

3. Requirement of Fresh Approvals for Past Contracts Under Section 188:

Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with.

1.10.23 Register of Contracts or Arrangements in which Directors are Interested [Section 189]

- (1) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.
- (2) Every director or key managerial personnel shall, within a period of thirty days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which



are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.

- (3) The register referred to in sub-section (1) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.
- (4) The register to be kept under this section shall also be produced at the commencement of every annual general meeting of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.
- (5) Nothing contained in sub-section (1) shall apply to any contract or arrangement—
 - (a) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed five lakh rupees in the aggregate in any year; or
 - (b) by a banking company for the collection of bills in the ordinary course of its business.
- (6) Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.

1.10.24 Contract of Employment with Managing or Whole-Time Directors [Section 190]

- (1) Every company shall keep at its registered office,—
 - (a) where a contract of service with a managing or whole-time director is in writing, a copy of the contract; or
 - (b) where such a contract is not in writing, a written memorandum setting out its terms.
- (2) The copies of the contract or the memorandum kept under sub-section (1) shall be open to inspection by any member of the company without payment of fee.
- (3) If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.
- (4) The provisions of this section shall not apply to a private company.

1.10.25 Payment to Director for Loss of Office, etc., in Connection with Transfer of Undertaking, Property or Shares [Section 191]

- (1) No director of a company shall, in connection with—
 - (a) the transfer of the whole or any part of any undertaking or property of the company; or
 - (b) the transfer to any person of all or any of the shares in a company being a transfer resulting from—
 - (i) an offer made to the general body of shareholders;
 - (ii) an offer made by or on behalf of some other body corporate with a view to a company becoming a subsidiary company of such body corporate or a subsidiary company of its holding company;
 - (iii) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or
 - (iv) any other offer which is conditional on acceptance to a given extent, receive any payment by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property, or from the transferees of shares or from any

other person, not being such company, unless particulars as may be prescribed with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.

- (2) Nothing in sub-section (1) shall affect any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement subject to limits or priorities, as may be prescribed.
- (3) If the payment under sub-section (1) or sub-section (2) is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.
- (4) Where a director of a company receives payment of any amount in contravention of sub-section (1) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.
- (5) If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
- (6) Nothing in this section shall be taken to prejudice the operation of any law requiring disclosure to be made with respect to any payment received under this section or such other like payments made to a director.

1.10.26 Restriction on Non-Cash Transactions involving Directors [Section 192]

- (1) No company shall enter into an arrangement by which—
 - (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
 - (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.
- (2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.
- (3) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless—
 - (a) the restitution of any money or other consideration which is the subject-matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
 - (b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

1.10.27 Contract by One Person Company. [Section 193]

- (1) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the Board of Directors of the company held next after entering into contract.

Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.



- (2) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board of Directors under sub-section (1) within a period of fifteen days of the date of approval by the Board of Directors.

1.10.28 Prohibition on Forward Dealings in Securities of Company by Director or key Managerial Personnel [Section 194]

- (1) No director of a company or any of its key managerial personnel shall buy in the company, or in its holding, subsidiary or associate company—
- a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or
 - a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.
- (2) If a director or any key managerial personnel of the company contravenes the provisions of sub-section (1), such director or key managerial personnel shall be punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.
- (3) Where a director or other key managerial personnel acquires any securities in contravention of sub-section (1), he shall, subject to the provisions contained in sub-section (2), be liable to surrender the same to the company and the company shall not register the securities so acquired in his name in the register, and if they are in dematerialised form, it shall inform the depository not to record such acquisition and such securities, in both the cases, shall continue to remain in the names of the transferors.

Explanation: For the purposes of this section, “relevant shares” and “relevant debentures” mean shares and debentures of the company in which the concerned person is a whole-time director or other key managerial personnel or shares and debentures of its holding and subsidiary companies.

1.10.29 Prohibition on Insider Trading of Securities [Section 195]

- (1) No person including any director or key managerial personnel of a company shall enter into insider trading.
- Provided that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment or under any law.

Explanation: For the purposes of this section,—

- “insider trading” means—
 - an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or
 - an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person;
 - “price-sensitive information” means any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.
- (2) If any person contravenes the provisions of this section, he shall be punishable with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.

1.11 APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
MR. 1 e	Return of appointment of key managerial personnel	196,197 and Sch. V	3	1.166,1.167 & 1.357
MR. 2 e	Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors	196,197, 200, 201(1), 203(1) and Sch. V	7	1.166,1.167, 1172,1.173, 1.174 & 1.357
MR.3 P	Secretarial Audit Report	204(1)	9	1.175

1.11.1 Appointment of Managing Director, Whole-time Director or Manager [Section 196]

- (1) No company shall appoint or employ at the same time a managing director and a manager.
- (2) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time.

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.
- (3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —
 - (a) is below the age of twenty-one years or has attained the age of seventy years.

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;
 - (b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
 - (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
 - (d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.
- (4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule.

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.
- (5) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.



1.11.2 Filing of Return of Appointment

A company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) within sixty days of the appointment, with the Registrar in Form No. **MR.1** along with such fee as may be specified for this purpose.

1.11.3 Overall Maximum Managerial Remuneration and Managerial Remuneration in case of Absence or Inadequacy of Profits [Section 197]

- (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V.

Provided further that, except with the approval of the company in general meeting,—

- (i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;

- (ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
(A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;
(B) three per cent. of the net profits in any other case.

- (2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).
- (3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government.
- (4) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and 5 the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

- (a) the services rendered are of a professional nature; and
(b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

- (5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.
- Provided that the amount of such fees shall not exceed the amount as may be prescribed.
- Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.
- (6) A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.
- (7) Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
- (8) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.
- (9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.
- (10) The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless permitted by the Central Government.
- (11) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.
- (12) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.
- (13) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel.
- Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.
- (14) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.
- (15) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.



1.11.4 Sitting Fees

A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof.

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

1.11.5 Disclosure in Board's Report

(1) Every listed company shall disclose in the Board's report-

- (i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;
- (ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;
- (iii) the percentage increase in the median remuneration of employees in the financial year;
- (iv) the number of permanent employees on the rolls of company;
- (v) the explanation on the relationship between average increase in remuneration and company performance;
- (vi) comparison of the remuneration of the Key Managerial Personnel against the performance of the company;
- (vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;
- (viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;
- (ix) comparison of the each remuneration of the Key Managerial Personnel against the performance of the company;
- (x) the key parameters for any variable component of remuneration availed by the directors;
- (xi) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; and
- (xii) affirmation that the remuneration is as per the remuneration policy of the company.

Explanation.— For the purposes of this rule.-

- (i) the expression "median" means the numerical value separating the higher half of a population from the lower half and the median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one;
 - (ii) if there is an even number of observations, the median shall be the average of the two middle values.
- (2) The board's report shall include a statement showing the name of every employee of the company, who-

- (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;
 - (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;
 - (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.
- (3) The statement referred to in sub-rule (2) shall also indicate -
- (i) designation of the employee;
 - (ii) remuneration received;
 - (iii) nature of employment, whether contractual or otherwise;
 - (iv) qualifications and experience of the employee;
 - (v) date of commencement of employment;
 - (vi) the age of such employee;
 - (vii) the last employment held by such employee before joining the company;
 - (viii) the percentage of equity shares held by the employee in the company within the meaning of clause (iii) of sub-rule (2) above; and
 - (ix) whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager.

Provided that the particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, as may be decided by the Board, shall not be circulated to the members in the Board's report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports.

Provided Further that such particulars shall be made available to any shareholder on a specific request made by him in writing before the date of such Annual General Meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders and such particulars shall be made available by the company within three days from the date of receipt of such request from shareholders.

Provided Also that in case of request received even after the date of completion of Annual General Meeting, such particulars shall be made available to the shareholders within seven days from the date of receipt of such request.

1.11.6 Calculation of Profits [Section 198]

- (1) In computing the net profits of a company in any financial year for the purpose of section 197,—
 - (a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and
 - (b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.
- (2) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.



- (3) In making the computation aforesaid, credit shall not be given for the following sums, namely:—
- (a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;
 - (b) profits on sales by the company of forfeited shares;
 - (c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;
 - (d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets.
- Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value;
- (e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
- (4) In making the computation aforesaid, the following sums shall be deducted, namely:—
- (a) all the usual working charges;
 - (b) directors' remuneration;
 - (c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
 - (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;
 - (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;
 - (f) interest on debentures issued by the company;
 - (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;
 - (h) interest on unsecured loans and advances;
 - (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;
 - (j) outgoings inclusive of contributions made under section 181;
 - (k) depreciation to the extent specified in section 123;
 - (l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;
 - (m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;
 - (n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);
 - (o) debts considered bad and written off or adjusted during the year of account.

- (5) In making the computation aforesaid, the following sums shall not be deducted, namely:—
- (a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);
 - (b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);
 - (c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;
 - (d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

1.11.7 Recovery of Remuneration in Certain Cases [Section 199]

Without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.

1.11.8 Central Government or Company to Fix Limit with Regard to Remuneration [Section 200]

Notwithstanding anything contained in this Chapter, the Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government or the company shall have regard to—

- (a) the financial position of the company;
- (b) the remuneration or commission drawn by the individual concerned in any other capacity;
- (c) the remuneration or commission drawn by him from any other company;
- (d) professional qualifications and experience of the individual concerned;
- (e) such other matters as may be prescribed.

1.11.9 Applications to the Central Government

The Central Government or the company shall have regard to the following matters, namely:-

- (1) the Financial and operating performance of the company during the three preceding financial years.
- (2) the relationship between remuneration and performance.
- (3) the principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.
- (4) whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.



- (5) the securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

1.11.10 Fees

- (1) Every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. **MR. 2** and shall be accompanied by fee as may be specified for the purpose.
- (2) The companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the following conditions namely:-
 - (i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee, if any, and while doing so record in writing the clear reason and justification for payment of remuneration beyond the said limit;
 - (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon preference shares and dividend on preference shares for a continuous period of thirty days in the preceding financial year before the date of payment to such managerial personnel;
 - (iii) the approval of shareholders by way of a special resolution at a general meeting of the company for payment of remuneration for a period not exceeding three years;
 - (iv) a statement along-with a notice calling the general meeting referred to clause (iii) of sub-rule (2) above, shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit;
 - (v) the company has filed Balance Sheet and Annual Return which are due to be filed with the Registrar of Companies.
- (3) Every such application seeking approval shall be made to the Central Government within a period of ninety days from the date of such appointment.

1.11.11 Forms of and Procedure in Relation to, Certain Applications [Section 201]

- (1) Every application made to the Central Government under this Chapter shall be in such form as may be prescribed.
- (2) (a) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.
(b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.
(c) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

1.11.12 Compensation for Loss of Office of Managing or Whole-Time Director or Manager [Section 202]

- (1) A company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.
- (2) No payment shall be made under sub-section (1) in the following cases, namely:—
 - (a) where the director resigns from his office as a result of the reconstruction of the company, or

of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

- (b) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;
 - (c) where the office of the director is vacated under sub-section (1) of section 167;
 - (d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;
 - (e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and
 - (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.
- (3) Any payment made to a managing or whole-time director or manager in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period.
- Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.
- (4) Nothing in this section shall be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.

1.11.13 Appointment of Key Managerial Personnel [Section 203]

- (1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—
- (i) managing director, or Chief Executive Officer or manager and in their absence, personnel. a whole-time director;
 - (ii) Company secretary; and
 - (iii) Chief Financial Officer .

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) the articles of such a company provide otherwise; or
- (b) the company does not carry multiple businesses.

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.



- (2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.
- (3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.
- Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board.
- Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel.
- Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.
- (4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.
- (5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

As per the Notification F. N. 1/5/2013-CL-V dated 25th July, 2014, in exercise of the powers conferred by the second proviso to sub-section (1) of section 203 of the Companies Act, 2013, the Central Government hereby notifies that public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of section 203 of the said Act.

Explanation: For the purposes of this notification, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

1.11.14 Appointment of Company Secretaries in Companies not Covered Under Rule 8 [Rule 8A]

A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary.

1.11.15 Secretarial Audit for Bigger Companies [Section 204]

- (1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.
- (2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.
- (3) The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).

- (4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

1.11.16 Secretarial Audit Report

- (1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under—
(a) every public company having a paid-up share capital of fifty crore rupees or more; or
(b) every public company having a turnover of two hundred fifty crore rupees or more.
- (2) The format of the Secretarial Audit Report shall be in Form No.MR.3.

1.11.17 Functions of Company Secretary [Section 205]

- (1) The functions of the company secretary shall include,—
(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
(b) to ensure that the company complies with the applicable secretarial standards;
(c) to discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.

- (2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.

1.11.18 Duties of Company Secretary

The duties of Company Secretary shall also discharge, the following duties, namely:-

- (1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
- (2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
- (3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
- (4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- (5) to assist the Board in the conduct of the affairs of the company;
- (6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- (7) to discharge such other duties as have been specified under the Act or rules; and
- (8) such other duties as may be assigned by the Board from time to time.



1.12 INSPECTION, INQUIRY AND INVESTIGATION

1.12.1 Power to call for Information, Inspect books and Conduct Inquiries [Section 206]

- (1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—
 - (a) to furnish in writing such information or explanation; or
 - (b) to produce such documents, within such reasonable time, as may be specified in the notice.
- (2) On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar.

Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

- (3) If no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice.

Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

- (4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard.

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section.

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

- (5) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.
- (6) The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies.

- (7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.

1.12.2 Conduct of Inspection and Inquiry [Section 207]

- (1) Where a Registrar or inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.
- (2) The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,—
 - (a) make or cause to be made copies of books of account and other books and papers; or
 - (b) place or cause to be placed any marks of identification in such books in token of the inspection having been made.
- (3) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—
 - (a) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;
 - (b) summoning and enforcing the attendance of persons and examining them on oath; and
 - (c) inspection of any books, registers and other documents of the company at any place.
- (4) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
(ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

1.12.3 Report on Inspection Made [Section 208]

The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

1.12.4 Search and Seizure [Section 209]

- (1) Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or company secretary in practice if the company has not appointed a company secretary, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,—



- (a) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and
- (b) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.
- (2) The Registrar or inspector shall return the books and papers seized under subsection (1), as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized.
- Provided that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again.
- Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.
- (3) The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, mutatis mutandis, to every search and seizure made under this section.

1.12.5 Investigation into Affairs of Company [Section 210]

- (1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—
- (a) on the receipt of a report of the Registrar or inspector under section 208;
- (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or
- (c) in public interest, it may order an investigation into the affairs of the company.
- (2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.
- (3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.

1.12.6 Security

- (1) The Central Government may before appointing an inspector under sub-section (3) of Section 210, require the applicant to give a security not exceeding twenty-five thousand rupees for payment of the costs and expenses of investigation as per the criteria given below—

S. No	Turnover as per previous year balance sheet (₹)	Amount of security (₹)
1	Turnover up to ₹ 50 crore	₹ 10,000
2	Turnover more than ₹ 50 crore and up to ₹ 200 crore	₹ 15,000
3	Turnover more than ₹ 200 crore	₹ 25,000

- (2) The security shall be refunded to the applicant if the investigation results in prosecution.

1.12.7 Establishment of Serious Fraud Investigation Office [Section 211]

- (1) The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company.

Provided that until the Serious Fraud Investigation Office is established under subsection (1), the Serious Fraud Investigation Office set-up by the Central Government in terms of the Government

of India Resolution No. 45011/16/2003-Adm-I, dated the 2nd July, 2003 shall be deemed to be the Serious Fraud Investigation Office for the purpose of this section.

- (2) The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in,—
 - (i) banking;
 - (ii) corporate affairs;
 - (iii) taxation;
 - (iv) forensic audit;
 - (v) capital market;
 - (vi) information technology;
 - (vii) law; or
 - (viii) such other fields as may be prescribed.
- (3) The Central Government shall, by notification, appoint a Director in the Serious Fraud Investigation Office, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.
- (4) The Central Government may appoint such experts and other officers and employees in the Serious Fraud Investigation Office as it considers necessary for the efficient discharge of its functions under this Act.
- (5) The terms and conditions of service of Director, experts, and other officers and employees of the Serious Fraud Investigation Office shall be such as may be prescribed.

1.12.8 Appointment of Persons having Expertise in Various Fields

The Central Government may appoint persons having expertise in the fields of investigations, cyber forensics, financial accounting, management accounting, cost accounting and any other fields as may be necessary for the efficient discharge of Serious Fraud Investigation Office (SFIO) functions under the Act.

1.12.9 Terms and Condition of Service

The terms and conditions of service of Director, experts and other officers and employees of the Serious Fraud Investigation Office under sub-section (5) of Section 211 shall be as under—

- (a) the terms and conditions of appointment of Director shall be governed by the deputation rules under the Central Staffing Scheme of Government of India;
- (b) the terms and conditions of service of experts from the Central Government or the State Government or Union territory Government, Public Sector Undertaking, Autonomous Bodies and such other organizations shall be as per the recruitment rules which may be duly notified by the Central Government under article 309 of the Constitution of India;
- (c) the terms and conditions of service of other officers and employees from the Central Government or the State Government or Union Territory Government, Public Sector Undertaking, Autonomous Bodies and such other organizations shall be as per the recruitment rules which may be duly notified by the Central Government under article 309 of the Constitution of India;
- (d) the Central Government may appoint experts or consultants or other professionals or professional firms on contractual basis as per the Scheme of engagement of experts or consultants which may be duly approved by the Central Government.



1.12.10 Investigation into Affairs of Company by Serious Fraud Investigation Office [Section 212]

- (1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—
 - (a) on receipt of a report of the Registrar or inspector under section 208;
 - (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;
 - (c) in the public interest; or
 - (d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.
- (2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.
- (3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.
- (4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.
- (5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.
- (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offence covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
 - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs.

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by—

- (i) the Director, Serious Fraud Investigation Office; or
- (ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

- (7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.
- (8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
- (9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.
- (10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction.
Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.
- (11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.
- (12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.
- (13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.
- (14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.
- (15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.
- (16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.
- (17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;
(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.



1.12.11 Investigation into Company's Affairs in Other Cases [Section 213]

The Tribunal may,—

(a) on an application made by—

- (i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or
- (ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital,

and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;
- (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or
- (iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

Provided that if after investigation it is proved that—

- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or
- (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,

then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

1.12.12 Security for Payment of Costs and Expenses of Investigation [Section 214]

Where an investigation is ordered by the Central Government in pursuance of clause (b) of sub-section (1) of section 210, or in pursuance of an order made by the Tribunal under section 213, the Central Government may before appointing an inspector under sub section (3) of section 210 or clause (b) of section 213, require the applicant to give such security not exceeding twenty-five thousand rupees as may be prescribed, as it may think fit, for payment of the costs and expenses of the investigation and such security shall be refunded to the applicant if the investigation results in prosecution.

1.12.13 Firm, body Corporate or Association not to be Appointed as Inspector [Section 215]

No firm, body corporate or other association shall be appointed as an inspector.

1.12.14 Investigation of Ownership of Company [Section 216]

- (1) Where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—
 - (a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or
 - (b) who are or have been able to control or to materially influence the policy of the company.
- (2) Without prejudice to its powers under sub-section (1), the Central Government shall appoint one or more inspectors under that sub-section, if the Tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes specified in sub-section (1).
- (3) While appointing an inspector under sub-section (1), the Central Government may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.
- (4) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation.

1.12.15 Procedure, Powers, etc., of Inspectors [Section 217]

- (1) It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—
 - (a) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and
 - (b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.
- (2) The inspector may require any body corporate, other than a body corporate referred to in sub-section (1), to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.
- (3) The inspector shall not keep in his custody any books and papers produced under sub-section (1) or sub-section (2) for more than one hundred and eighty days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced.

Provided that the books and papers may be called for by the inspector if they are needed again for a further period of one hundred and eighty days by an order in writing.



- (4) An inspector may examine on oath—
(a) any of the persons referred to in sub-section (1); and
(b) with the prior approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally.
- Provided that in case of an investigation under section 212, the prior approval of Director, Serious Fraud Investigation Office shall be sufficient under clause (b).
- (5) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—
- (a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;
(b) summoning and enforcing the attendance of persons and examining them on oath; and
(c) inspection of any books, registers and other documents of the company at any place.
- (6) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
(ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.
- (7) The notes of any examination under sub-section (4) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.
- (8) If any person fails without reasonable cause or refuses—
(a) to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty under sub-section (1) or sub-section (2) to produce;
(b) to furnish any information which is his duty under sub-section (2) to furnish;
(c) to appear before the inspector personally when required to do so under subsection (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or
(d) to sign the notes of any examination referred to in sub-section (7), he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.
- (9) The officers of the Central Government, State Government, police or statutory authority shall provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require.
- (10) The Central Government may enter into an agreement with the Government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State and may, by notification, render the application of

this Chapter in relation to a foreign State with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State.

- (11) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 if, in the course of an investigation into the affairs of the company, an application is made to the competent court in India by the inspector stating that evidence is, or may be, available in a country or place outside India, such court may issue a letter of request to a court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request.

Provided that the letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation.

- (12) Upon receipt of a letter of request from a court or an authority in a country or place outside India, competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, the Central Government may, if it thinks fit, forward such letter of request to the court concerned, which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act and the inspector shall submit the report to such court within thirty days or such extended time as the court may allow for further action.

Provided that the evidence taken or collected under this sub-section or authenticated copies thereof or the things so collected shall be forwarded by the court, to the Central Government for transmission, in such manner as the Central Government may deem fit, to the court or the authority in country or place outside India which had issued the letter of request.

1.12.16 Protection of Employees during Investigation [Section 218]

- (1) Notwithstanding anything contained in any other law for the time being in force, if—
- during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person under section 210, section 212, section 213 or section 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, under section 216; or
 - during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI,

such company, other body corporate or person proposes—

- to discharge or suspend any employee; or
- to punish him, whether by dismissal, removal, reduction in rank or otherwise; or
- to change the terms of employment to his disadvantage,

the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to



the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.

- (2) If the company, other body corporate or person concerned does not receive within thirty days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.
- (3) If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.
- (4) The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.
- (5) For the removal of doubts, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

1.12.17 Power of Inspector to Conduct Investigation into Affairs of Related Companies, etc. [Section 219]

If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of—

- (a) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;
- (b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;
- (c) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or
- (d) any person who is or has at any relevant time been the company's managing director or manager or employee,

he shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

1.12.18 Seizure of Documents by Inspector [Section 220]

- (1) Where in the course of an investigation under this Chapter, the inspector has reasonable grounds to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may—
 - (a) enter, with such assistance as may be required, the place or places where such books and papers are kept in such manner as may be required; and
 - (b) seize books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the purposes of his investigation.
- (2) The inspector shall keep in his custody the books and papers seized under this section for such a period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the

managing director or the manager or any other person from whose custody or power they were seized.

Provided that the inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such manner as he considers necessary.

- (3) The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply mutatis mutandis to every search or seizure made under this section.

1.12.19 Freezing of Assets of Company on Inquiry and Investigation [Section 221]

- (1) Where it appears to the Tribunal, on a reference made to it by the Central Government or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (1) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.
- (2) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

1.12.20 Imposition of Restrictions upon Securities [Section 222]

- (1) Where it appears to the Tribunal, in connection with any investigation under section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.
- (2) Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

1.12.21 Inspector's Report [Section 223]

- (1) An inspector appointed under this Chapter may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.
- (2) Every report made under sub-section (1) shall be in writing or printed as the Central Government may direct.
- (3) A copy of the report made under sub-section (1) may be obtained by making an application in this regard to the Central Government.



- (4) The report of any inspector appointed under this Chapter shall be authenticated either—
- by the seal, if any, of the company whose affairs have been investigated; or
 - by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
- (5) Nothing in this section shall apply to the report referred to in section 212.

1.12.22 Actions to be taken in Pursuance of Inspector's Report [Section 224]

- If, from an inspector's report, made under section 223, it appears to the Central Government that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable, the Central Government may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the Central Government the necessary assistance in connection with the prosecution.
- If any company or other body corporate is liable to be wound up under this Act and it appears to the Central Government from any such report made under section 223 that it is expedient so to do by reason of any such circumstances as are referred to in section 213, the Central Government may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the Central Government in this behalf—
 - a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;
 - an application under section 241; or
 - both.
- If from any such report as aforesaid, it appears to the Central Government that proceedings ought, in the public interest, to be brought by the company or anybody corporate whose affairs have been investigated under this Chapter—
 - for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or
 - for the recovery of any property of such company or body corporate which has been misappropriated or wrongfully retained, the Central Government may itself bring proceedings for winding up in the name of such company or body corporate.
- The Central Government, shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (3).
- Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

1.12.23 Expenses of Investigation [Section 225]

- The expenses of, and incidental to, an investigation by an inspector appointed by the Central Government under this Chapter other than expenses of inspection under section 214 shall be

defrayed in the first instance by the Central Government, but shall be reimbursed by the following persons to the extent mentioned below, namely:—

- (a) any person who is convicted on a prosecution instituted, or who is ordered to pay damages or restore any property in proceedings brought, under section 224, to the extent that he may in the same proceedings be ordered to pay the said expenses as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;
 - (b) any company or body corporate in whose name proceedings are brought as aforesaid, to the extent of the amount or value of any sums or property recovered by it as a result of such proceedings;
 - (c) unless, as a result of the investigation, a prosecution is instituted under section 224,—
 - (i) any company, body corporate, managing director or manager dealt with by the report of the inspector; and
 - (ii) the applicants for the investigation, where the inspector was appointed under section 213, to such extent as the Central Government may direct.
- (2) Any amount for which a company or body corporate is liable under clause (b) of sub-section (1) shall be a first charge on the sums or property mentioned in that clause.

1.12.24 Voluntary Winding Up of Company, etc., not to stop Investigation Proceedings [Section 226]

An investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

- (a) an application has been made under section 241;
- (b) the company has passed a special resolution for voluntary winding up; or
- (c) any other proceeding for the winding up of the company is pending before the Tribunal.

Provided that where a winding up order is passed by the Tribunal in a proceeding referred to in clause (c), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit.

Provided further that nothing in the winding up order shall absolve any director or other employee of the company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector.

1.12.25 Legal Advisers and Bankers not to Disclose Certain Information [Section 227]

Nothing in this Chapter shall require the disclosure to the Tribunal or to the Central Government or to the Registrar or to an inspector appointed by the Central Government—

- (a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by the bankers of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.

1.12.26 Investigation, etc., of Foreign Companies [Section 228]

The provisions of this Chapter shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies.

1.12.27 Penalty for Furnishing False Statement, Mutilation, Destruction of Documents [Section 229]

Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body



corporate which is also under investigation,—

- (a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;
- (b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or
- (c) provides an explanation which is false or which he knows to be false, he shall be punishable for fraud in the manner as provided in section 447.

1.13 REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

1.13.1 Power of Registrar to Remove Name of Company from Register of Companies [Section 248]

- (1) Where the Registrar has reasonable cause to believe that—
 - (a) a company has failed to commence its business within one year of its incorporation; or
 - (b) Omitted vide Companies (Amendment) Act, 2015.
 - (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

- (2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner.

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

- (3) Nothing in sub-section (2) shall apply to a company registered under section 8.
- (4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.
- (5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.
- (6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company.

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

- (7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.
- (8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

1.13.2 Restrictions on making Application Under Section 248 in Certain Situations [Section 249]

- (1) An application under sub-section (2) of section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—
 - (a) has changed its name or shifted its registered office from one State to another;
 - (b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
 - (c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;
 - (d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
 - (e) is being wound up under Chapter XX, whether voluntarily or by the Tribunal.
- (2) If a company files an application under sub-section (2) of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.
- (3) An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

1.13.3 Effect of Company Notified as Dissolved [Section 250]

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

1.13.4 Fraudulent Application for Removal of Name [Section 251]

- (1) Where it is found that an application by a company under sub-section (2) of section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—
 - (a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and
 - (b) be punishable for fraud in the manner as provided in section 447.
- (2) Without prejudice to the provisions contained in sub-section (1), the Registrar may also recommend prosecution of the persons responsible for the filing of an application under sub-section (2) of section 248.



1.13.5 Appeal to Tribunal [Section 252]

- (1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies.

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned.

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

- (2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.
- (3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

1.14 REVIVAL AND REHABILITATION OF SICK COMPANIES

1.14.1 Determination of Sickness [Section 253]

- (1) Where on a demand by the secured creditors of a company representing fifty per cent. or more of its outstanding amount of debt, the company has failed to pay the debt within a period of thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors, any secured creditor may file an application to the Tribunal in the prescribed manner along with the relevant evidence for such default, non-repayment or failure to offer security or compound it, for a determination that the company be declared as a sick company.
- (2) The applicant under sub-section (1) may, along with an application under that subsection or at any stage of the proceedings thereafter, make an application for the stay of any proceeding for the winding up of the company or for execution, distress or the like against any property and assets of the company or for the appointment of a receiver in respect thereof and that no suit for the recovery of any money or for the enforcement of any security against the company shall lie or be proceeded with.
- (3) The Tribunal may pass an order in respect of an application under sub-section (2) which shall be operative for a period of one hundred and twenty days.

- (4) The company referred to in sub-section (1) may also file an application to the Tribunal on one or more of the grounds specified in sub-sections (1) and (2) above.
- (5) Without prejudice to the provisions of sub-sections (1) to (4), the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any company has become, for the purposes of this Act, a sick company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company.

Provided that a reference shall not be made under this sub-section in respect of any company by—

 - (a) the Government of any State unless all or any of the undertakings belonging to such company are situated in such State;
 - (b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.
- (6) Where an application under sub-section (1) or sub-section (4) has been filed,—
 - (a) the company shall not dispose of or otherwise enter into any obligation with regard to, its properties or assets except as required in the normal course of business;
 - (b) the Board of Directors shall not take any steps likely to prejudice the interests of the creditors.
- (7) The Tribunal shall, within a period of sixty days of the receipt of an application under sub-section (1) or sub-section (4), determine whether the company is a sick company or not.

Provided that no such determination shall be made in respect of an application under sub-section (1) unless the company has been given notice of the application and a reasonable opportunity to reply to the notice within thirty days of the receipt thereof.
- (8) If the Tribunal is satisfied that a company has become a sick company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make the repayment of its debts referred to in sub-section (1) within a reasonable time.
- (9) If the Tribunal deems fit under sub-section (8) that it is practicable for a sick company to pay its debts referred to in that sub-section within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make repayment of the debt.

1.14.2 Application for Revival and Rehabilitation [Section 254]

- (1) On the determination of a company as a sick company by the Tribunal under section 253, any secured creditor of that company or the company may make an application to the Tribunal for the determination of the measures that may be adopted with respect to the revival and rehabilitation of such company.

Provided that in case any reference had been made before the Tribunal and a scheme for revival and rehabilitation submitted, such reference shall abate if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Provided further that no reference shall be made under this section if the secured creditors representing three-fourths in value of the amount outstanding against financial assistance disbursed to the borrower have taken measures to recover their secured debt under sub-section



(4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Provided also that where the financial assets of the sick company had been acquired by any securitisation company or reconstruction company under sub-section (1) of section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, no such application shall be made without the consent of securitization company or reconstruction company which has acquired such assets.

- (2) An application under sub-section (1) shall be accompanied by—
 - (a) audited financial statements of the company relating to the immediately preceding financial year;
 - (b) such particulars and documents, duly authenticated in such manner, along with such fees as may be prescribed; and
 - (c) a draft scheme of revival and rehabilitation of the company in such manner as may be prescribed.

Provided that where the sick company has no draft scheme of revival and rehabilitation to offer, it shall file a declaration to that effect along with the application.

- (3) An application under sub-section (1) shall be made to the Tribunal within a period of sixty days from the date of determination of the company as a sick company by the Tribunal under section 253.

1.14.3 Exclusion of certain time in Computing Period of Limitation [Section 255]

Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company for which an application has been made to the Tribunal under sub-section (1) of section 253, for a determination to be declared as a sick company or at any stage thereafter, the period during which the stay order as provided under sub-section (3) of section 253, was applicable shall be excluded.

1.14.4 Appointment of Interim Administrator [Section 256]

- (1) On the receipt of an application under section 254, the Tribunal shall, not later than seven days from such receipt,—
 - (a) fix a date for hearing not later than ninety days from date of its receipt;
 - (b) appoint an interim administrator to convene a meeting of creditors of the company in accordance with the provisions of section 257 to be held not later than forty-five days from receipt of the order of the Tribunal appointing him to consider whether on the basis of the particulars and documents furnished with the application made under section 254, the draft scheme, if any, filed along with such application or otherwise and any other material available, it is possible to revive and rehabilitate the sick company and such other matters, which the interim administrator may consider necessary for the purpose and to submit his report to the Tribunal within sixty days from the date of the order.

Provided that where no draft scheme is filed by the company and a declaration has been made to that effect by the Board of Directors, the Tribunal may direct the interim administrator to take over the management of the company; and

- (c) issue such other directions to the interim administrator as the Tribunal may consider necessary to protect and preserve the assets of the sick company and for its proper management.

- (2) Where an interim administrator has been directed to take over the management of the company, the directors and the management of the company shall extend all possible assistance and cooperation to the interim administrator to manage the affairs of the company.

1.14.5 Committee of Creditors [Section 257]

- (1) The interim administrator shall appoint a committee of creditors with such number of members as he may determine, but not exceeding seven, and as far as possible a representative each of every class of creditors should be represented in that committee.
- (2) The holding of the meeting of the committee of creditors and the procedure to be followed at such meetings, including the appointment of its chairperson, shall be decided by the interim administrator.
- (3) The interim administrator may direct any promoter, director or any key managerial personnel to attend any meeting of the committee of creditors and to furnish such information as may be considered necessary by the interim administrator.

1.14.6 Order of Tribunal [Section 258]

On the date of hearing fixed by the Tribunal and on consideration of the report of the interim administrator filed under sub-section (1) of section 256, if the Tribunal is satisfied that the creditors representing three-fourths in value of the amount outstanding against the sick company present and voting have resolved that—

- (a) it is not possible to revive and rehabilitate such company, the Tribunal shall record such opinion and order that the proceedings for the winding up of the company be initiated; or
- (b) by adopting certain measures the sick company may be revived and rehabilitated, the Tribunal shall appoint a company administrator for the company and cause such administrator to prepare a scheme of revival and rehabilitation of the sick company.

Provided that the Tribunal may, if it thinks fit, appoint an interim administrator as the company administrator.

1.14.7 Appointment of Administrator [Section 259]

- (1) The interim administrator or the company administrator, as the case may be, shall be appointed by the Tribunal from a databank maintained by the Central Government or any institute or agency authorised by the Central Government in a manner as may be prescribed consisting of the names of company secretaries, chartered accountants, cost accountants and such other professionals as may, by notification, be specified by the Central Government.
- (2) The terms and conditions of the appointment of interim and company administrators shall be such as may be ordered by the Tribunal.
- (3) The Tribunal may direct the company administrator to take over the assets or management of the company and for the purpose of assisting him in the management of the company, the company administrator may, with the approval of the Tribunal, engage the services of suitable expert or experts.

1.14.8 Powers and Duties of Company Administrator [Section 260]

- (1) The company administrator shall perform such functions as the Tribunal may direct.
- (2) Without prejudice to the provisions of sub-section (1), the company administrator may cause to be prepared with respect to the company—
 - (a) a complete inventory of—
 - (i) all assets and liabilities of whatever nature;



- (ii) all books of account, registers, maps, plans, records, documents of title and all other documents of whatever nature;
- (b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;
- (c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of any industrial undertaking of the company or for the fixation of the lease rent or share exchange ratio;
- (d) an estimate of the reserve price, lease rent or share exchange ratio;
- (e) proforma accounts of the company, where no up-to-date audited accounts are available; and
- (f) a list of workmen of the company and their dues referred to in sub-section (3) of section 325.

1.14.9 Scheme of Revival and Rehabilitation [Section 261]

- (1) The company administrator shall prepare or cause to be prepared a scheme of revival and rehabilitation of the sick company after considering the draft scheme filed along with the application under section 254.
- (2) A scheme prepared in relation to any sick company under sub-section (1) may provide for any one or more of the following measures, namely:—
 - (a) the financial reconstruction of the sick company;
 - (b) the proper management of the sick company by any change in, or by taking over, the management of such company;
 - (c) the amalgamation of—
 - (i) the sick company with any other company; or
 - (ii) any other company with the sick company;
 - (d) takeover of the sick company by a solvent company;
 - (e) the sale or lease of a part or whole of any asset or business of the sick company;
 - (f) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;
 - (g) such other preventive, ameliorative and remedial measures as may be appropriate;
 - (h) repayment or rescheduling or restructuring of the debts or obligations of the sick company to any of its creditors or class of creditors;
 - (i) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (h).

1.14.10 Sanction of Scheme [Section 262]

- (1) The scheme prepared by the company administrator under section 261 shall be placed before the creditors of the sick company in a meeting convened for their approval by the company administrator within the period of sixty days from his appointment, which may be extended by the Tribunal up to a period not exceeding one hundred twenty days.
- (2) The company administrator shall convene separate meetings of secured and unsecured creditors of the sick company and if the scheme is approved by the unsecured creditors representing one-fourth in value of the amount owed by the company to such creditors and the secured creditors, representing three-fourths in value of the amount outstanding against financial assistance disbursed by such creditors to the sick company, the company administrator shall submit the scheme before the Tribunal for sanctioning the scheme.

Provided that where the scheme relates to amalgamation of the sick company with any other company, such scheme shall, in addition to the approval of the creditors of the sick company under this sub-section, be laid before the general meeting of both the companies for approval by their respective shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of that company.

- (3) (i) The scheme prepared by the company administrator shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick company and the company administrator and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify.
(ii) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.
(iii) The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick company and the company administrator and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies.
- (4) On the receipt of the scheme under sub-section (3), the Tribunal shall within sixty days therefrom, after satisfying that the scheme had been validly approved in accordance with this section, pass an order sanctioning such scheme.
- (5) Where a sanctioned scheme provides for the transfer of any property or liability of the sick company to any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick company.
- (6) The Tribunal may review any sanctioned scheme and make such modifications, as it may deem fit, or may by order in writing direct company administrator, to prepare a fresh scheme providing for such measures as the company administrator may consider necessary.
- (7) The sanction accorded by the Tribunal under sub-section (4) shall be conclusive evidence that all the requirements of the scheme relating to the reconstruction or amalgamation or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Tribunal to be a true copy thereof shall in all legal proceedings be admitted as evidence.
- (8) A copy of the sanctioned scheme referred to in sub-section (4) shall be filed with the Registrar by the sick company within a period of thirty days from the date of receipt of a copy thereof.

1.14.11 Scheme to be Binding [Section 263]

On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick company and the transferee company or, as the case may be, the other company and also on the employees, shareholders, creditors and guarantors of the said companies.

1.14.12 Implementation of Scheme [Section 264]

- (1) The Tribunal shall, for the purpose of effective implementation of the scheme, have power to enforce, modify or terminate any contract or agreement or any obligation pursuant to such agreement or contract entered into by the company with any other person.



- (2) The Tribunal may, if it deems necessary or expedient so to do, by order in writing, authorise the company administrator appointed under section 259 to implement a sanctioned scheme till its successful implementation on such terms and conditions as may be specified in the order and may for that purpose require him to file periodic reports on the implementation of the sanctioned scheme.
- (3) Where the whole or substantial assets of the undertaking of the sick company are sold under a sanctioned scheme, the sale proceeds shall be applied towards implementation of the scheme in such manner as the Tribunal may direct.
- Provided that debtors and creditors shall have the power to scrutinise and make an appeal for review of the value before final order of fixing value.
- (4) Where it is difficult to implement the scheme for any reason or the scheme fails due to non-implementation of obligations under the scheme by the parties concerned, the company administrator authorised to implement the scheme and where there is no such administrator, the company, the secured creditors, or the transferee company in a case of amalgamation, may make an application before the Tribunal for modification of the scheme or to declare the scheme as failed and that the company may be wound up.
- (5) The Tribunal shall, within thirty days of presentation of an application under sub-section (4), pass an order for modification of the scheme or, as the case may be, declaring the scheme as failed and pass an order for the winding up of the company if three-fourths in value of the secured creditors consent to the modification of the scheme or winding up of the company.
- (6) Where an application under sub-section (4) has been made before the Tribunal and such application is pending before it, such application shall abate, if the secured creditors representing not less than three-fourths in value of the amount outstanding against financial assistance disbursed to the sick company have taken any measures to recover their secured debt under sub-section (4) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

1.14.13 Winding up of Company on Report of Company Administrator [Section 265]

- (1) If the scheme is not approved by the creditors in the manner specified in sub-section (2) of section 262, the company administrator shall submit a report to the Tribunal within fifteen days and the Tribunal shall order for the winding up of the sick company.
- (2) On the passing of an order under sub-section (1), the Tribunal shall conduct the proceedings for winding up of the sick company in accordance with the provisions of Chapter XX.

1.14.14 Power of Tribunal to assess damages against Delinquent Directors, etc. [Section 266]

- (1) If, in the course of the scrutiny or implementation of any scheme or proposal including the draft scheme or proposal, it appears to the Tribunal that any person who has taken part in the promotion, formation or management of the sick company or its undertaking, including any director, manager, officer or employee of the sick company who are or have been in employment of such company,—
- (a) has misappropriated or retained, or become liable or accountable for, any money or property of the sick company; or
- (b) has been guilty of any misfeasance, malfeasance, non-feasance or breach of trust in relation to the sick company,

it may, by order, direct him to repay or restore the money or property, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance, malfeasance, non-feasance or breach of trust as the Tribunal thinks just and proper.

Provided that such direction by the Tribunal shall be without prejudice to any other legal action that may be taken against the person including any punishment for fraud in the manner as provided in section 447.

- (2) If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than the purposes of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall, by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, for a maximum period of ten years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director, by whatever name called, or to disqualify the said director, promoter, manager from being appointed as a director in any company registered under this Act for a maximum period of six years.
- (3) No order shall be made by the Tribunal under this section against any person unless such person has been given a reasonable opportunity of being heard.

1.14.15 Punishment for Certain Offences [Section 267]

Whoever violates the provisions of this Chapter or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence before the Tribunal or the Appellate Tribunal or attempts to tamper with the records of reference or appeal filed under this Act, he shall be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to ten lakh rupees.

1.14.16 Bar of Jurisdiction [Section 268]

No appeal shall lie in any court or other authority and no civil court shall have any jurisdiction in respect of any matter in respect of which the Tribunal or the Appellate Tribunal is empowered by or under this Chapter and no injunction shall be granted by any court or other authority in respect of any action taken or proposed to be taken in pursuance of any power conferred by or under this Chapter.

1.14.17 Rehabilitation and Insolvency Fund [Section 269]

- (1) There shall be formed a Fund to be called the Rehabilitation and Insolvency Fund for the purposes of rehabilitation, revival and liquidation of the sick companies.
- (2) There shall be credited to the Fund—
 - (a) the grants made by the Central Government for the purposes of the Fund;
 - (b) the amount deposited by the companies as contribution to the Fund;
 - (c) the amount given to the Fund from any other source; and
 - (d) the income from investment of the amount in the Fund.
- (3) A company which has contributed any amount to the Fund shall, in the event of proceedings initiated in respect of such company under this Chapter or Chapter XX, may make an application to the Tribunal for withdrawal of funds not exceeding the amount contributed by it, for making payments to workmen, protecting the assets of the company or meeting the incidental costs during proceedings.
- (4) The Fund shall be managed by an administrator to be appointed by the Central Government in such manner as may be prescribed.



1.15 WINDING UP

1.15.1 Modes of Winding Up [Section 270]

- (1) The winding up of a company may be either—
 - (a) by the Tribunal; or
 - (b) voluntary.
- (2) Notwithstanding anything contained in any other Act, the provisions of this Act with respect to winding up shall apply to the winding up of a company in any of the modes specified under sub-section (1).

1.15.2 Circumstances in which Company may be Wound Up by Tribunal [Section 271]

- (1) A company may, on a petition under section 272, be wound up by the Tribunal,—
 - (a) if the company is unable to pay its debts;
 - (b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
 - (c) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
 - (d) if the Tribunal has ordered the winding up of the company under Chapter XIX;
 - (e) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
 - (f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
 - (g) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.
- (2) A company shall be deemed to be unable to pay its debts,—
 - (a) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty-one days after the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor;
 - (b) if any execution or other process issued on a decree or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or
 - (c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.

1.15.3 Petition for Winding Up [Section 272]

- (1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

- (a) the company;
 - (b) any creditor or creditors, including any contingent or prospective creditor or creditors;
 - (c) any contributory or contributories;
 - (d) all or any of the persons specified in clauses (a), (b) and (c) together;
 - (e) the Registrar;
 - (f) any person authorised by the Central Government in that behalf; or
 - (g) in a case falling under clause (c) of sub-section (1) of section 271, by the Central Government or a State Government.
- (2) A secured creditor, the holder of any debentures, whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures shall be deemed to be creditors within the meaning of clause (b) of sub-section (1).
- (3) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.
- (4) The Registrar shall be entitled to present a petition for winding up under subsection (1) on any of the grounds specified in sub-section (1) of section 271, except on the grounds specified in clause (b), clause (d) or clause (g) of that sub-section.
- Provided that the Registrar shall not present a petition on the ground that the company is unable to pay its debts unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 210 that the company is unable to pay its debts.
- Provided further that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition.
- Provided also that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.
- (5) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.
- (6) Before a petition for winding up of a company presented by a contingent or prospective creditor is admitted, the leave of the Tribunal shall be obtained for the admission of the petition and such leave shall not be granted, unless in the opinion of the Tribunal there is a *prima facie* case for the winding up of the company and until such security for costs has been given as the Tribunal thinks reasonable.
- (7) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

1.15.4 Powers of Tribunal [Section 273]

- (1) The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:—
- (a) dismiss it, with or without costs;
 - (b) make any interim order as it thinks fit;



- (c) appoint a provisional liquidator of the company till the making of a winding up order;
- (d) make an order for the winding up of the company with or without costs; or
- (e) any other order as it thinks fit.

Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition.

Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice.

Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

- (2) Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

1.15.5 Directions for Filing Statement of Affairs [Section 274]

- (1) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed.

Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances.

Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

- (2) A company, which fails to file the statement of affairs as referred to in sub-section (1), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment under sub-section (4).
- (3) The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (d) of sub-section (1) of section 273, shall, within a period of thirty days of such order, submit, at the cost of the company, the books of account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.
- (4) If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.
- (5) The complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorised by the Tribunal.

1.15.6 Company Liquidators and their Appointments [Section 275]

- (1) For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained under sub-section (2) as the Company Liquidator.

- (2) The provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate having such chartered accountants, advocates, company secretaries, cost accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be prescribed and having at least ten years' experience in company matters.
- (3) Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.
- (4) The Central Government may remove the name of any person or firm or body corporate from the panel maintained under sub-section (2) on the grounds of misconduct, fraud, misfeasance, breach of duties or professional incompetence.
Provided that the Central Government before removing him or it from the panel shall give him or it a reasonable opportunity of being heard.
- (5) The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.
- (6) On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.
- (7) While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

1.15.7 Removal and Replacement of Liquidator [Section 276]

- (1) The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—
 - (a) misconduct;
 - (b) fraud or misfeasance;
 - (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
 - (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
 - (e) conflict of interest or lack of independence during the term of his appointment that would justify removal.
- (2) In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.
- (3) Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.
- (4) The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.



1.15.8 Intimation to Company Liquidator, Provisional Liquidator and Registrar [Section 277]

- (1) Where the Tribunal makes an order for appointment of provisional liquidator or for the winding up of a company, it shall, within a period not exceeding seven days from the date of passing of the order, cause intimation thereof to be sent to the Company Liquidator or provisional liquidator, as the case may be, and the Registrar.
- (2) On receipt of the copy of order of appointment of provisional liquidator or winding up order, the Registrar shall make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made and in the case of a listed company, the Registrar shall intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where the securities of the company are listed.
- (3) The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.
- (4) Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in sub-section (5) and such winding up committee shall comprise of the following persons, namely:—
 - (i) Official Liquidator attached to the Tribunal;
 - (ii) nominee of secured creditors; and
 - (iii) a professional nominated by the Tribunal.
- (5) The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:—
 - (i) taking over assets;
 - (ii) examination of the statement of affairs;
 - (iii) recovery of property, cash or any other assets of the company including benefits derived there from;
 - (iv) review of audit reports and accounts of the company;
 - (v) sale of assets;
 - (vi) finalisation of list of creditors and contributories;
 - (vii) compromise, abandonment and settlement of claims;
 - (viii) payment of dividends, if any; and
 - (ix) any other function, as the Tribunal may direct from time to time.
- (6) The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.
- (7) The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.
- (8) The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

1.15.9 Effect of Winding Up Order [Section 278]

The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.

1.15.10 Stay of Suits, etc., on Winding Up Order [Section 279]

- (1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.
Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.
- (2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

1.15.11 Jurisdiction of Tribunal [Section 280]

The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company, including claims by or against any of its branches in India;
- (c) any application made under section 233;
- (d) any scheme submitted under section 262;
- (e) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company,

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.

1.15.12 Submission of Report by Company Liquidator [Section 281]

- (1) Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:—
 - (a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company.
Provided that the valuation of the assets shall be obtained from registered valuers for this purpose;
 - (b) amount of capital issued, subscribed and paid-up;
 - (c) the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;
 - (d) the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;
 - (e) guarantees, if any, extended by the company;
 - (f) list of contributories and dues, if any, payable by them and details of any unpaid call;
 - (g) details of trade marks and intellectual properties, if any, owned by the company;



- (h) details of subsisting contracts, joint ventures and collaborations, if any;
 - (i) details of holding and subsidiary companies, if any;
 - (j) details of legal cases filed by or against the company; and
 - (k) any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.
- (2) The Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof and any other matters which, in his opinion, it is desirable to bring to the notice of the Tribunal.
- (3) The Company Liquidator shall also make a report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximising the value of the assets of the company.
- (4) The Company Liquidator may also, if he thinks fit, make any further report or reports.
- (5) Any person describing himself in writing to be a creditor or a contributory of the company shall be entitled by himself or by his agent at all reasonable times to inspect the report submitted in accordance with this section and take copies thereof or extracts there from on payment of the prescribed fees.

1.15.13 Directions of Tribunal on Report of Company Liquidator [Section 282]

- (1) The Tribunal shall, on consideration of the report of the Company Liquidator, fix a time limit within which the entire proceedings shall be completed and the company be dissolved.
Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, that it will not be advantageous or economical to continue the proceedings, revise the time limit within which the entire proceedings shall be completed and the company be dissolved.
- (2) The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, order sale of the company as a going concern or its assets or part thereof.
Provided that the Tribunal may, where it considers fit, appoint a sale committee comprising such creditors, promoters and officers of the company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.
- (3) Where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210, and on consideration of the report of such investigation it may pass order and give directions under sections 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.
- (4) The Tribunal may order for taking such steps and measures, as may be necessary, to protect, preserve or enhance the value of the assets of the company.
- (5) The Tribunal may pass such other order or give such other directions as it considers fit.

1.15.14 Custody of Company's Properties [Section 283]

- (1) Where a winding up order has been made or where a provisional liquidator has been appointed, the Company Liquidator or the provisional liquidator, as the case may be, shall, on the order of

the Tribunal, forthwith take into his or its custody or control all the property, effects and actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.

- (2) Notwithstanding anything contained in sub-section (1), all the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company.
- (3) On an application by the Company Liquidator or otherwise, the Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the Company Liquidator, any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.

1.15.15 Promoters, Directors, etc., to Co-Operate with Company Liquidator [Section 284]

- (1) The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the Company Liquidator in discharge of his functions and duties.
- (2) Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

1.15.16 Settlement of list of Contributories and Application of Assets [Section 285]

- (1) As soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories, cause rectification of register of members in all cases where rectification is required in pursuance of this Act and shall cause the assets of the company to be applied for the discharge of its liability.

Provided that where it appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of contributories.

- (2) In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.
- (3) While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—
 - (a) a person who has been a member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up;
 - (b) a person who has been a member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
 - (c) no person who has been a member shall be liable to contribute unless it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
 - (d) in the case of a company limited by shares, no contribution shall be required from any person, who is or has been a member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;



- (e) in the case of a company limited by guarantee, no contribution shall be required from any person, who is or has been a member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up but if the company has a share capital, such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him as if the company were a company limited by shares.

1.15.17 Obligations of Directors and Managers [Section 286]

In the case of a limited company, any person who is or has been a director or manager, whose liability is unlimited under the provisions of this Act, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company.

Provided that —

- (a) a person who has been a director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) a person who has been a director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Tribunal deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

1.15.18 Advisory Committee [Section 287]

- (1) The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.
- (2) The advisory committee appointed by the Tribunal shall consist of not more than twelve members, being creditors and contributories of the company or such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.
- (3) The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the advisory committee.
- (4) The advisory committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.
- (5) The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the advisory committee shall be such as may be prescribed.
- (6) The meeting of advisory committee shall be chaired by the Company Liquidator.

1.15.19 Submission of Periodical Reports to Tribunal [Section 288]

- (1) The Company Liquidator shall make periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company in such form and manner as may be prescribed.
- (2) The Tribunal may, on an application by the Company Liquidator, review the orders made by it and make such modifications as it thinks fit.

1.15.20 Power of Tribunal on Application for Stay of Winding Up [Section 289]

- (1) The Tribunal may, at any time after making a winding up order, on an application of promoter, shareholders or creditors or any other interested person, if satisfied, make an order that it is just and fair that an opportunity to revive and rehabilitate the company be provided staying the proceedings for such time but not exceeding one hundred and eighty days and on such terms and conditions as it thinks fit.
Provided that an order under this sub-section shall be made by the Tribunal only when the application is accompanied with a scheme for rehabilitation.
- (2) The Tribunal may, while passing the order under sub-section (1), require the applicant to furnish such security as to costs as it considers fit.
- (3) Where an order under sub-section (1) is passed by the Tribunal, the provisions of Chapter XIX shall be followed in respect of the consideration and sanction of the scheme of revival of the company.
- (4) Without prejudice to the provisions of sub-section (1), the Tribunal may at any time after making a winding up order, on an application of the Company Liquidator, make an order staying the winding up proceedings or any part thereof, for such time and on such terms and conditions as it thinks fit.
- (5) The Tribunal may, before making an order, under this section, require the Company Liquidator to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.
- (6) A copy of every order made under this section shall forthwith be forwarded by the Company Liquidator to the Registrar who shall make an endorsement of the order in his books and records relating to the company.

1.15.21 Powers and Duties of Company Liquidator [Section 290]

- (1) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power—
 - (a) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;
 - (b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal;
 - (c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;
 - (d) to sell the whole of the undertaking of the company as a going concern;
 - (e) to raise any money required on the security of the assets of the company;
 - (f) to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;
 - (g) to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;
 - (h) to inspect the records and returns of the company on the files of the Registrar or any other authority;
 - (i) to prove rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;



- (j) to draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
 - (k) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself;
 - (l) to obtain any 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 company, appoint an agent to do any business which the Company Liquidator is unable to do himself;
 - (m) 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,—
 - (i) for winding up of the company;
 - (ii) for distribution of assets;
 - (iii) in discharge of his duties and obligations and functions as Company Liquidator; and
 - (n) to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.
- (2) The exercise of powers by the Company Liquidator under sub-section (1) shall be subject to the overall control of the Tribunal.
- (3) Notwithstanding the provisions of sub-section (1), the Company Liquidator shall perform such other duties as the Tribunal may specify in this behalf.

1.15.22 Provision for Professional Assistance to Company Liquidator [Section 291]

- (1) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this Act.
- (2) Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

1.15.23 Exercise and Control of Company Liquidator's Powers [Section 292]

- (1) Subject to the provisions of this Act, the Company Liquidator shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by the resolution of the creditors or contributories at any general meeting or by the advisory committee.
- (2) Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the advisory committee.
- (3) The Company Liquidator—
 - (a) may summon meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes; and
 - (b) shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

- (4) Any person aggrieved by any act or decision of the Company Liquidator may apply to the Tribunal, and the Tribunal may confirm, reverse or modify the act or decision complained of and make such further order as it thinks just and proper in the circumstances.

1.15.24 Books to be kept by Company Liquidator [Section 293]

- (1) The Company Liquidator shall keep proper books in such manner, as may be prescribed, in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.
- (2) Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.

1.15.25 Audit of Company Liquidator's Accounts [Section 294]

- (1) The Company Liquidator shall maintain proper and regular books of account including accounts of receipts and payments made by him in such form and manner as may be prescribed.
- (2) The Company Liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Tribunal an account of the receipts and payments as such liquidator in the prescribed form in duplicate, which shall be verified by a declaration in such form and manner as may be prescribed.
- (3) The Tribunal shall cause the accounts to be audited in such manner as it thinks fit, and for the purpose of the audit, the Company Liquidator shall furnish to the Tribunal with such vouchers and information as the Tribunal may require, and the Tribunal may, at any time, require the production of, and inspect, any books of account kept by the Company Liquidator.
- (4) When the accounts of the company have been audited, one copy thereof shall be filed by the Company Liquidator with the Tribunal, and the other copy shall be delivered to the Registrar which shall be open to inspection by any creditor, contributory or person interested.
- (5) Where an account referred to in sub-section (4) relates to a Government company, the Company Liquidator shall forward a copy thereof—
 - (a) to the Central Government, if that Government is a member of the Government company; or
 - (b) to any State Government, if that Government is a member of the Government company; or
 - (c) to the Central Government and any State Government, if both the Governments are members of the Government company.
- (6) The Company Liquidator shall cause the accounts when audited, or a summary thereof, to be printed, and shall send a printed copy of the accounts or summary thereof by post to every creditor and every contributory.

Provided that the Tribunal may dispense with the compliance of the provisions of this sub-section in any case it deems fit.

1.15.26 Payment of Debts by Contributory and Extent of Set-Off [Section 295]

- (1) The Tribunal may, at any time after passing of a winding up order, pass an order requiring any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.
- (2) The Tribunal, in making an order, under sub-section (1), may,—
 - (a) in the case of an unlimited company, allow to the contributory, by way of set-off, any money due to him or to the estate which he represents, from the company, on any independent



dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and

- (b) in the case of a limited company, allow to any director or manager whose liability is unlimited, or to his estate, such set-off.
- (3) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

1.15.27 Power of Tribunal to Make Calls [Section 296]

The Tribunal may, at any time after the passing of a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,—

- (a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and
- (b) make an order for payment of any calls so made.

1.15.28 Adjustment of rights of Contributories [Section 297]

The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

1.15.29 Power to Order Costs [Section 298]

The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority inter se as the Tribunal thinks just and proper.

1.15.30 Power to Summon Persons Suspected of having Property of Company, etc. [Section 299]

- (1) The Tribunal may, at any time after the appointment of a provisional liquidator or the passing of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Tribunal thinks to be capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.
- (2) The Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories or on affidavit and may, in the first case, reduce his answers to writing and require him to sign them.
- (3) The Tribunal may require any officer or person so summoned to produce any books and papers relating to the company in his custody or power, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the Tribunal shall have power to determine all questions relating to that lien.
- (4) The Tribunal may direct the liquidator to file before it a report in respect of debt or property of the company in possession of other persons.
- (5) If the Tribunal finds that—
 - (a) a person is indebted to the company, the Tribunal may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in such manner as the Tribunal may consider just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Tribunal thinks fit, with or without costs of the examination;

- (b) a person is in possession of any property belonging to the company, the Tribunal may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as the Tribunal may consider just.
- (6) If any officer or person so summoned fails to appear before the Tribunal at the time appointed without a reasonable cause, the Tribunal may impose an appropriate cost.
- (7) Every order made under sub-section (5) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908.
- (8) Any person making any payment or delivery in pursuance of an order made under sub-section (5) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.

1.15.31 Power to Order Examination of Promoters, Directors, etc. [Section 300]

- (1) Where an order has been made for the winding up of a company by the Tribunal, and the Company Liquidator has made a report to the Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the company since its formation, the Tribunal may, after considering the report, direct that such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.
- (2) The Company Liquidator shall take part in the examination, and for that purpose he or it may, if specially authorised by the Tribunal in that behalf, employ such legal assistance as may be sanctioned by the Tribunal.
- (3) The person shall be examined on oath and shall answer all such questions as the Tribunal may put, or allow to be put, to him.
- (4) A person ordered to be examined under this section—
 - (a) shall, before his examination, be furnished at his own cost with a copy of the report of the Company Liquidator; and
 - (b) may at his own cost employ chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 432, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him.
- (5) If any such person applies to the Tribunal to be exculpated from any charges made or suggested against him, it shall be the duty of the Company Liquidator to appear on the hearing of such application and call the attention of the Tribunal to any matters which appear to the Company Liquidator to be relevant.
- (6) If the Tribunal, after considering any evidence given or hearing witnesses called by the Company Liquidator, allows the application made under sub-section (5), the Tribunal may order payment to the applicant of such costs as it may think fit.
- (7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, a copy be supplied to him and may thereafter be used in evidence against him, and shall be open to inspection by any creditor or contributory at all reasonable times.
- (8) The Tribunal may, if it thinks fit, adjourn the examination from time to time.
- (9) An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.



- (10) The powers of the Tribunal under this section as to the conduct of the examination, but not as to costs, may be exercised by the person or authority before whom the examination is held in pursuance of sub-section (9).

1.15.32 Arrest of Person trying to Leave India Abscond [Section 301]

At any time either before or after passing a winding up order, if the Tribunal is satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause—

- (a) the contributory to be detained until such time as the Tribunal may order; and
- (b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.

1.15.33 Dissolution of Company by Tribunal [Section 302]

- (1) When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.
- (2) The Tribunal shall on an application filed by the Company Liquidator under sub-section (1) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (3) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.
- (4) If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

1.15.34 Appeals from Orders made before Commencement of Act [Section 303]

Nothing in this Chapter shall affect the operation or enforcement of any order made by any Court in any proceedings for the winding up of a company immediately before the commencement of this Act and an appeal against such order shall be filed before such of Act. authority competent to hear such appeals before such commencement.

1.15.35 Circumstances in which Company may be Wound Up Voluntarily [Section 304]

A company may be wound up voluntarily,—

- (a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or
- (b) if the company passes a special resolution that the company be wound up voluntarily.

1.15.36 Declaration of Solvency in case of Proposal to Wind Up Voluntarily [Section 305]

- (1) Where it is proposed to wind up a company voluntarily, its director or directors, or in case the company has more than two directors, the majority of its directors, shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and they have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.

- (2) A declaration made under sub-section (1) shall have no effect for the purposes of this Act, unless—
 - (a) it is made within five weeks immediately preceding the date of the passing of the resolution for winding up the company and it is delivered to the Registrar for registration before that date;
 - (b) it contains a declaration that the company is not being wound up to defraud any person or persons;
 - (c) it is accompanied by a copy of the report of the auditors of the company prepared in accordance with the provisions of this Act, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on that date which would also contain a statement of the assets and liabilities of the company on that date; and
 - (d) where there are any assets of the company, it is accompanied by a report of the valuation of the assets of the company prepared by a registered valuer.
- (3) Where the company is wound up in pursuance of a resolution passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full, it shall be presumed, until the contrary is shown, that the director or directors did not have reasonable grounds for his or their opinion under sub-section (1).
- (4) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

1.15.37 Meeting of Creditors [Section 306]

- (1) The company shall along with the calling of meeting of the company at which the resolution for the voluntary winding up is to be proposed, cause a meeting of its creditors either on the same day or on the next day and shall cause a notice of such meeting to be sent by registered post to the creditors with the notice of the meeting of the company under section 304.
- (2) The Board of Directors of the company shall—
 - (a) cause to be presented a full statement of the position of the affairs of the company together with a list of creditors of the company, if any, copy of declaration under section 305 and the estimated amount of the claims before such meeting; and
 - (b) appoint one of the directors to preside at the meeting.
- (3) Where two-thirds in value of creditors of the company are of the opinion that—
 - (a) it is in the interest of all parties that the company be wound up voluntarily, the company shall be wound up voluntarily; or
 - (b) the company may not be able to pay for its debts in full from the proceeds of assets sold in voluntary winding up and pass a resolution that it shall be in the interest of all parties if the company is wound up by the Tribunal in accordance with the provisions of Part I of this Chapter, the company shall within fourteen days thereafter file an application before the Tribunal.
- (4) The notice of any resolution passed at a meeting of creditors in pursuance of this section shall be given by the company to the Registrar within ten days of the passing thereof.
- (5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and



the director of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees, or with both.

1.15.38 Publication of Resolution to Wind Up Voluntarily [Section 307]

- (1) Where a company has passed a resolution for voluntary winding up and a resolution under sub-section (3) of section 306 is passed, it shall within fourteen days of the passing of the resolution give notice of the resolution by advertisement in the Official Gazette and also in a newspaper which is in circulation in the district where the registered office or the principal office of the company is situate.
- (2) If a company contravenes the provisions of sub-section (1), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which such default continues.

1.15.39 Commencement of Voluntary Winding Up [Section 308]

A voluntary winding up shall be deemed to commence on the date of passing of the resolution for voluntary winding up under section 304.

1.15.40 Effect of Voluntary Winding Up [Section 309]

In the case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business except as far as required for the beneficial winding up of its business.

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.

1.15.41 Appointment of Company Liquidator [Section 310]

- (1) The company in its general meeting, where a resolution of voluntary winding up is passed, shall appoint a Company Liquidator from the panel prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of the company and recommend the fee to be paid to the Company Liquidator.
- (2) Where the creditors have passed a resolution for winding up the company under sub-section (3) of section 306, the appointment of the Company Liquidator under this section shall be effective only after it is approved by the majority of creditors in value of the company.

Provided that where such creditors do not approve the appointment of such Company Liquidator, creditors shall appoint another Company Liquidator.

- (3) The creditors while approving the appointment of Company Liquidator appointed by the company or appointing the Company Liquidator of their own choice, as the case may be, pass suitable resolution with regard to the fee of the Company Liquidator.
- (4) On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed form within seven days of the date of appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.

1.15.42 Power to Remove and fill Vacancy of Company Liquidator [Section 311]

- (1) A Company Liquidator appointed under section 310 may be removed by the company where his appointment has been made by the company and, by the creditors, where the appointment is approved or made by such creditors.
- (2) Where a Company Liquidator is sought to be removed under this section, he shall be given a notice in writing stating the grounds of removal from his office by the company or the creditors, as the case may be.

- (3) Where three-fourth members of the company or three-fourth of creditors in value, as the case may be, after consideration of the reply, if any, filed by the Company Liquidator, in their meeting decide to remove the Company Liquidator, he shall vacate his office.
- (4) If a vacancy occurs by death, resignation, removal or otherwise in the office of any Company Liquidator appointed under section 310, the company or the creditors, as the case may be, fill the vacancy in the manner specified in that section.

1.15.43 Notice of Appointment of Company Liquidator to be given to Registrar [Section 312]

- (1) The company shall give notice to the Registrar of the appointment of a Company Liquidator along with the name and particulars of the Company Liquidator, of every vacancy occurring in the office of Company Liquidator, and of the name of the Company Liquidator appointed to fill every such vacancy within ten days of such appointment or the occurrence of such vacancy.
- (2) If a company contravenes the provisions of sub-section (1), the company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which such default continues.

1.15.44 Cesser of Board's powers on Appointment of Company Liquidator [Section 313]

On the appointment of a Company Liquidator, all the powers of the Board of Directors and of the managing or whole-time directors and manager, if any, shall cease, except for the purpose of giving notice of such appointment of the Company Liquidator to the Registrar.

1.15.45 Powers and Duties of Company Liquidator in Voluntary Winding Up [Section 314]

- (1) The Company Liquidator shall perform such functions and discharge such duties as may be determined from time to time by the company or the creditors, as the case may be.
- (2) The Company Liquidator shall settle the list of contributories, which shall be prima facie evidence of the liability of the persons named therein to be contributories.
- (3) The Company Liquidator shall call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may consider necessary.
- (4) The Company Liquidator shall maintain regular and proper books of account in such form and in such manner as may be prescribed and the members and creditors and any officer authorised by the Central Government may inspect such books of account.
- (5) The Company Liquidator shall prepare quarterly statement of accounts in such form and manner as may be prescribed and file such statement of accounts duly audited within thirty days from the close of each quarter with the Registrar, failing which the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.
- (6) The Company Liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.
- (7) The Company Liquidator shall observe due care and diligence in the discharge of his duties.
- (8) If the Company Liquidator fails to comply with the provisions of this section except sub-section (5) he shall be punishable with fine which may extend to ten lakh rupees.

1.15.46 Appointment of Committees [Section 315]

Where there are no creditors of a company, such company in its general meeting and, where a meeting of creditors is held under section 306, such creditors, as the case may be, may appoint such committees as considered appropriate to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.



1.15.47 Company Liquidator to Submit Report on Progress of Winding Up [Section 316]

- (1) The Company Liquidator shall report quarterly on the progress of winding up of the company in such form and in such manner as may be prescribed to the members and creditors and shall also call a meeting of the members and the creditors as and when necessary but at least one meeting each of creditors and members in every quarter and apprise them of the progress of the winding up of the company in such form and in such manner as may be prescribed.
- (2) If the Company Liquidator fails to comply with the provisions of sub-section (1), he shall be punishable, in respect of each such failure, with fine which may extend to ten lakh rupees.

1.15.48 Report of Company Liquidator to Tribunal for Examination of Persons [Section 317]

- (1) Where the Company Liquidator is of the opinion that a fraud has been committed by any person in respect of the company, he shall immediately make a report to the Tribunal and the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210 and on consideration of the report of such investigation, the Tribunal may pass such order and give such directions under this Chapter as it may consider necessary including the direction that such person shall attend before the Tribunal on a day appointed by it for that purpose and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as officer thereof or otherwise.
- (2) The provisions of section 300 shall mutatis mutandis apply in relation to any examination directed under sub-section (1).

1.15.49 Final Meeting and Dissolution of Company [Section 318]

- (1) As soon as the affairs of a company are fully wound up, the Company Liquidator shall prepare a report of the winding up showing that the property and assets of the company have been disposed of and its debt fully discharged or discharged to the satisfaction of the creditors and thereafter call a general meeting of the company for the purpose of laying the final winding up accounts before it and giving any explanation therefore.
- (2) The meeting referred to in sub-section (1) shall be called by the Company Liquidator in such form and manner as may be prescribed.
- (3) If the majority of the members of the company after considering the report of the Company Liquidator are satisfied that the company shall be wound up, they may pass a resolution for its dissolution.
- (4) Within two weeks after the meeting, the Company Liquidator shall—
 - (a) send to the Registrar—
 - (i) a copy of the final winding up accounts of the company and shall make a return in respect of each meeting and of the date thereof; and
 - (ii) copies of the resolutions passed in the meetings; and
 - (b) file an application along with his report under sub-section (1) in such manner as may be prescribed along with the books and papers of the company relating to the winding up, before the Tribunal for passing an order of dissolution of the company.
- (5) If the Tribunal is satisfied, after considering the report of the Company Liquidator that the process of winding up has been just and fair, the Tribunal shall pass an order dissolving the company within sixty days of the receipt of the application under sub-section (4).
- (6) The Company Liquidator shall file a copy of the order under sub-section (5) with the Registrar within thirty days.
- (7) The Registrar, on receiving the copy of the order passed by the Tribunal under subsection (5), shall forthwith publish a notice in the Official Gazette that the company is dissolved.

- (8) If the Company Liquidator fails to comply with the provisions of this section, he shall be punishable with fine which may extend to one lakh rupees.

1.15.50 Power of Company Liquidator to Accept Shares, etc., as Consideration for Sale of Property of Company [Section 319]

(1) Where a company (the transferor company) is proposed to be, or is in the course of being, wound up voluntarily and the whole or any part of its business or property is proposed to be transferred or sold to another company (the transferee company), the Company Liquidator of the transferor company may, with the sanction of a special resolution of the company conferring on him either a general authority or an authority in respect of any particular arrangement,—

- (a) receive, by way of compensation wholly or in part for the transfer or sale of shares, policies, or other like interest in the transferee company, for distribution among the members of the transferor company; or
- (b) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interest or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.

Provided that no such arrangement shall be entered into without the consent of the secured creditors.

(2) Any transfer, sale or other arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) Any member of the transferor company who did not vote in favour of the special resolution and expresses his dissent therefrom in writing addressed to the Company Liquidator, and left at the registered office of the company within seven days after the passing of the resolution, may require the liquidator either—

- (a) to abstain from carrying the resolution into effect; or
- (b) to purchase his interest at a price to be determined by agreement or the registered valuer.

(4) If the Company Liquidator elects to purchase the member's interest, the purchase money, raised by him in such manner as may be determined by a special resolution, shall be paid before the company is dissolved.

1.15.51 Distribution of Property of Company [Section 320]

Subject to the provisions of this Act as to overriding preferential payments under section 326, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities pari passu and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

1.15.52 Arrangement when binding on Company and Creditors [Section 321]

- (1) Any arrangement other than the arrangement referred to in section 319 entered into between the company which is about to be, or is in the course of being wound up and its creditors shall be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by the creditors who hold three-fourths in value of the total amount due to all the creditors of the company.
- (2) Any creditor or contributory may, within three weeks from the completion of the arrangement, apply to the Tribunal and the Tribunal may thereupon amend, vary, confirm or set aside the arrangement.

1.15.53 Power to Apply to Tribunal to have Questions Determined, etc. [Section 322]

- (1) The Company Liquidator or any contributory or creditor may apply to the Tribunal—



- (a) to determine any question arising in the course of the winding up of a company; or
 - (b) to exercise as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Tribunal.
- (2) The Company Liquidator or any creditor or contributory may apply to the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.
- (3) The Tribunal, if satisfied on an application under sub-section (1) or sub-section (2) that the determination of the question or the required exercise of power or the order applied for will be just and fair, may allow the application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks fit.
- (4) A copy of an order staying the proceedings in the winding up, made under this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

1.15.54 Costs of Voluntary Winding UP [Section 323]

All costs, charges and expenses properly incurred in the winding up, including the fee of the Company Liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

1.15.55 Debts of All Descriptions to be Admitted to Proof [Section 324]

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

1.15.56 Application of Insolvency Rules in Winding Up of Insolvent Companies [Section 325]

- (1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to—
- (a) debts provable;
 - (b) the valuation of annuities and future and contingent liabilities; and
 - (c) the respective rights of secured and unsecured creditors,

as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent.

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts, opts to realise his security,—

- (i) the liquidator shall be entitled to represent the workmen and enforce such charge;
- (ii) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and
- (iii) so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 326.

- (2) All persons under sub-section (1) shall be entitled to prove and receive dividends out of the assets of the company under winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section.

Provided that if a secured creditor, instead of relinquishing his security and proving his debts, proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator, including a provisional liquidator, if any, for the preservation of the security before its realisation by the secured creditor.

Explanation.— For the purposes of this sub-section, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

- (3) For the purposes of this section, section 326 and section 327,—

- (a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947;
- (b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—
 - (i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947;
 - (ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;
 - (iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount 8 of 1923. due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;
 - (iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;
- (c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

Illustration.

The value of the security of a secured creditor of a company is ₹ 1,00,000. The total amount of the workmen's dues is ₹ 1,00,000. The amount of the debts due from the company to its secured creditors is ₹ 3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is ₹ 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is ₹ 25,000.



1.15.57 Overriding Preferential Payments [Section 326]

- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, in the winding up of a company,—
- (a) workmen's dues; and
 - (b) debts due to secured creditors to the extent such debts rank under clause (iii) of the proviso to sub-section (1) of section 325 pari passu with such dues,
- shall be paid in priority to all other debts.

Provided that in case of the winding up of a company, the sums towards wages or salary referred to in sub-clause (i) of clause (b) of sub-section (3) of section 325, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

- (2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that sub-section shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

1.15.58 Preferential Payments [Section 327]

- (1) In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts,—
- (a) all revenues, taxes, cesses and rates due from the company to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;
 - (b) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a period not exceeding four months within the twelve months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified;
 - (c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;
 - (d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amount due in respect of contributions payable during the period of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;
 - (e) unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company.

Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

- (f) all sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

- (g) the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.
- (2) Where any payment has been made to any employee of a company on account of wages or salary or accrued holiday remuneration, himself or, in the case of his death, to any other person claiming through him, out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been reduced by reason of the payment having been made.
- (3) The debts enumerated in this section shall—
 - (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
 - (b) so far as the assets of the company available for payment to general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.
- (4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.
- (5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given under this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof.
Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.
- (6) Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

Explanation.— For the purposes of this section,—

- (a) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment including any order made or direction given thereunder, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;
- (b) the expression "employee" does not include a workman; and
- (c) the expression "relevant date" means—
 - (i) in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date; and
 - (ii) in any other case, the date of the passing of the resolution for the voluntary winding up of the company.



1.15.59 Fraudulent Preference [Section 328]

- (1) Where a company has given preference to a person who is one of the creditors of the company or a surety or guarantor for any of the debts or other liabilities of the company, and the company does anything or suffers anything done which has the effect of putting that person into a position which, in the event of the company going into liquidation, will be better than the position he would have been in if that thing had not been done prior to six months of making winding up application, the Tribunal, if satisfied that, such transaction is a fraudulent preference may order as it may think fit for restoring the position to what it would have been if the company had not given that preference.
- (2) If the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within six months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

1.15.60 Transfers not in Good Faith to be Void [Section 329]

Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal or the passing of a resolution for voluntary winding up of the company, shall be void against the Company Liquidator.

1.15.61 Certain transfers to be Void [Section 330]

Any transfer or assignment by a company of all its properties or assets to trustees for the benefit of all its creditors shall be void.

1.15.62 Liabilities and Rights of Certain Persons Fraudulently Preferred [Section 331]

- (1) Where a company is being wound up and anything made, taken or done after the commencement of this Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.
- (2) The value of the interest of the person preferred under sub-section (1) shall be determined as at the date of the transaction constituting the fraudulent preference, as if the interest were free of all encumbrances other than those to which the mortgage or charge for the debt of the company was then subject.
- (3) On an application made to the Tribunal with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Tribunal shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose, may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.
- (4) The provisions of sub-section (3) shall apply mutatis mutandis in relation to transactions other than payment of money.

1.15.63 Effect of Floating Charge [Section 332]

Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up,

shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except for the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent. per annum or such other rate as may be notified by the Central Government in this behalf.

1.15.64 Disclaimer of Onerous Property [Section 333]

- (1) Where any part of the property of a company which is being wound up consists of—
 - (a) land of any tenure, burdened with onerous covenants;
 - (b) shares or stocks in companies;
 - (c) any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or
 - (d) unprofitable contracts,

the Company Liquidator may, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto or done anything in pursuance of the contract, with the leave of the Tribunal and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Tribunal, disclaim the property. Provided that where the Company Liquidator had not become aware of the existence of any such property within one month from the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Tribunal.
- (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the company in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights, interest or liabilities of any other person.
- (3) The Tribunal, before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Tribunal considers just and proper.
- (4) The Company Liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the Company Liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the Tribunal, give notice to the applicant that he intends to apply to the Tribunal for leave to disclaim, and in case the property is under a contract, if the Company Liquidator after such an application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.
- (5) The Tribunal may, on the application of any person who is, as against the Company Liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Tribunal considers just and proper, and any damages payable under the order to any such person may be proved by him as a debt in the winding up.
- (6) The Tribunal may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged under this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in,



or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Tribunal considers just and proper, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person named therein in that behalf without any conveyance or assignment for the purpose.

Provided that where the property disclaimed is of a leasehold nature, the Tribunal shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or
- (b) if the Tribunal thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Tribunal shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the covenants of the lessee in the lease, free and discharged from all estates, encumbrances and interests created therein by the company.

- (7) Any person affected by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of such effect, and may accordingly prove the amount as a debt in the winding up.

1.15.65 Transfers, etc., after Commencement of Winding Up to be Void [Section 334]

- (1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the Company Liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.
- (2) In the case of a winding up by the Tribunal, any disposition of the property, including actionable claims, of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Tribunal otherwise orders, be void.

1.15.66 Certain Attachments, Executions, etc., in Winding Up by Tribunal to be Void [Section 335]

- (1) Where any company is being wound up by the Tribunal,—
 - (a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or
 - (b) any sale held, without leave of the Tribunal of any of the properties or effects of the company, after such commencement, shall be void.
- (2) Nothing in this section shall apply to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

1.15.67 Offences by Officers of Companies in Liquidation [Section 336]

- (1) If any person, who is or has been an officer of a company which, at the time of the commission of the alleged offence, is being wound up, whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,—

- (a) does not, to the best of his knowledge and belief, fully and truly disclose to the Company Liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;
- (b) does not deliver up to the Company Liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control and which he is required by law to deliver up;
- (c) does not deliver up to the Company Liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;
- (d) within the twelve months immediately before the commencement of the winding up or at any time thereafter,—
 - (i) conceals any part of the property of the company to the value of one thousand rupees or more, or conceals any debt due to or from the company;
 - (ii) fraudulently removes any part of the property of the company to the value of one thousand rupees or more;
 - (iii) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;
 - (iv) makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company;
 - (v) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company;
 - (vi) by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;
 - (vii) under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or
 - (viii) pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing of the property is in the ordinary course of business of the company;
- (e) makes any material omission in any statement relating to the affairs of the company;
- (f) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the Company Liquidator thereof;
- (g) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- (h) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses; or
- (i) is guilty of any false representation or fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up,

he shall be punishable with imprisonment for a term which shall not be less than three years but



which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

Provided that it shall be a good defence if the accused proves that he had no intent to defraud or to conceal the true state of affairs of the company or to defeat the law.

- (2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (viii) of clause (d) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.

Explanation: For the purposes of this section, the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

1.15.68 Penalty for Frauds by Officers [Section 337]

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up,—

- (a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company;
- (b) with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date,

he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

1.15.69 Liability where Proper Accounts not Kept [Section 338]

- (1) Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.
- (2) For the purposes of sub-section (1), it shall be deemed that proper books of account have not been kept in the case of any company,—
 - (a) if such books of account as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid, have not been kept; and
 - (b) where the business of the company has involved dealings in goods, statements of the annual stock takings and, except in the case of goods sold by way of ordinary retail trade, of all goods sold and purchased, showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified, have not been kept.

1.15.70 Liability for Fraudulent Conduct of Business [Section 339]

- (1) If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is or has been a director, manager, or officer of the company or any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct.

Provided that on the hearing of an application under this sub-section, the Official Liquidator or the Company Liquidator, as the case may be, may himself give evidence or call witnesses.

- (2) Where the Tribunal makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration and, in particular,—
- (a) make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf;
 - (b) make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.
- (3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under section 447.
- (4) This section shall apply, notwithstanding that the person concerned may be punishable under any other law for the time being in force in respect of the matters on the ground of which the declaration is to be made.

Explanation.— For the purposes of this section,—

- (a) the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made;
- (b) the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

1.15.71 Power of Tribunal to assess damages against Delinquent Directors, etc. [Section 340]

- (1) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any person, who is or has been a director, manager, Company Liquidator or officer of the company—
- (a) has misappropriated, or retained, or become liable or accountable for, any money or property of the company; or
 - (b) has been guilty of any misfeasance or breach of trust in relation to the company,

the Tribunal may, on the application of the Official Liquidator, or the Company Liquidator, or of any creditor or contributory, made within the period specified in that behalf in sub-section (2), inquire into the conduct of the person, director, manager, Company Liquidator or officer aforesaid, and order him to repay or restore the money or property or any part thereof respectively, with interest



at such rate as the Tribunal considers just and proper, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal considers just and proper.

- (2) An application under sub-section (1) shall be made within five years from the date of the winding up order, or of the first appointment of the Company Liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.
- (3) This section shall apply, notwithstanding that the matter is one for which the person concerned may be criminally liable.

1.15.72 Liability Under Sections 339 and 340 to Extend to Partners or Directors in Firms or Companies [Section 341]

Where a declaration under section 339 or an order under section 340 is made in respect of a firm or body corporate, the Tribunal shall also have power to make a declaration under section 339, or pass an order under section 340, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

1.15.73 Prosecution of Delinquent Officers and Members of Company [Section 342]

- (1) If it appears to the Tribunal in the course of a winding up by the Tribunal, that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company, the Tribunal may, either on the application of any person interested in the winding up or suo - motu, direct the liquidator to prosecute the offender or to refer the matter to the Registrar.
- (2) If it appears to the Company Liquidator in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company under this Act, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the Company Liquidator and relating to the matter in question, as the Registrar may require.
- (3) Where any report is made under sub-section (2) to the Registrar,—
 - (a) if he thinks fit, he may apply to the Central Government for an order to make further inquiry into the affairs of the company by any person designated by him and for conferring on such person all the powers of investigation as are provided under this Act;
 - (b) if he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government, and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute prosecution.

Provided that no report shall be made by the Registrar under this clause without first giving the accused person a reasonable opportunity of making a statement in writing to the Registrar and of being heard thereon.
- (4) If it appears to the Tribunal in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the Company Liquidator to the Registrar under sub-section (2), the Tribunal may, on the application of any person interested in the winding up or suo motu, direct the Company Liquidator to make such a report, and on a report being made, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).
- (5) When any prosecution is instituted under this section, it shall be the duty of the liquidator and of every person, who is or has been an officer and agent of the company to give all assistance in connection with the prosecution which he is reasonably able to give.

Explanation.—For the purposes of this sub-section, the expression “agent”, in relation to a company, shall include any banker or legal adviser of the company and any person employed by the company as auditor.

- (6) If a person fails or neglects to give assistance required by sub-section (5), he shall be liable to pay fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

1.15.74 Company Liquidator to Exercise Certain Powers Subject to Sanction [Section 343]

- (1) The Company Liquidator may—
 - (a) with the sanction of the Tribunal, when the company is being wound up by the Tribunal; and
 - (b) with the sanction of a special resolution of the company and prior approval of the Tribunal, in the case of a voluntary winding up,—
 - (i) pay any class of creditors in full;
 - (ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or
 - (iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.
 - (2) Notwithstanding anything contained in sub-section (1), in the case of a winding up by the Tribunal, the Central Government may make rules to provide that the Company Liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be prescribed, exercise any of the powers referred to in sub-clause (ii) or sub-clause (iii) of clause (b) of sub-section (1) without the sanction of the Tribunal.
 - (3) Any creditor or contributory may apply in the manner prescribed to the Tribunal with respect to any exercise or proposed exercise of powers by the Company Liquidator under this section, and the Tribunal shall after giving a reasonable opportunity to such applicant and the Company Liquidator, pass such orders as it may think fit.

1.15.75 Statement that Company is in Liquidation [Section 344]

- (1) Where a company is being wound up, whether by the Tribunal or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a Company Liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.
- (2) If a company contravenes the provisions of sub-section (1), the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

1.15.76 Books and Papers of Company to be Evidence [Section 345]

Where a company is being wound up, all books and papers of the company and of the Company



Liquidator shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be recorded therein.

1.15.77 Inspection of Books and Papers by Creditors and Contributories [Section 346]

- (1) At any time after the making of an order for the winding up of a company by the Tribunal, any creditor or contributory of the company may inspect the books and papers of the company only in accordance with, and subject to such rules as may be prescribed.
- (2) Nothing contained in sub-section (1) shall exclude or restrict any rights conferred by any law for the time being in force—
 - (a) on the Central Government or a State Government;
 - (b) on any authority or officer thereof; or
 - (c) on any person acting under the authority of any such Government or of any such authority or officer.

1.15.78 Disposal of Books and Papers of Company [Section 347]

- (1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the Company Liquidator may be disposed of as follows:—
 - (a) in the case of winding up by the Tribunal, in such manner as the Tribunal directs; and
 - (b) in the case of voluntary winding up, in such manner as the company by special resolution with the prior approval of the creditors direct.
- (2) After the expiry of five years from the dissolution of the company, no responsibility shall devolve on the company, the Company Liquidator, or any person to whom the custody of the books and papers has been entrusted, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.
- (3) The Central Government may, by rules,—
 - (a) prevent for such period as it thinks proper the destruction of the books and papers of a company which has been wound up and of its Company Liquidator; and
 - (b) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the Tribunal from any order which may be made by the Central Government in the matter.
- (4) If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

1.15.79 Information as to Pending Liquidations [Section 348]

- (1) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,—
 - (a) in the case of a winding up by the Tribunal, with the Tribunal; and
 - (b) in the case of a voluntary winding up, with the Registrar.

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply.

- (2) When the statement is filed with the Tribunal under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.
- (3) Where a statement referred to in sub-section (1) relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof—
 - (a) to the Central Government, if that Government is a member of the Government company;
 - (b) to any State Government, if that Government is a member of the Government company; or
 - (c) to the Central Government and any State Government, if both the Governments are members of the Government company.
- (4) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement referred to in sub-section (1), and to receive a copy thereof or an extract there from.
- (5) Any person fraudulently stating himself to be a creditor or contributory under subsection (4) shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code, and shall, on the application of the Company Liquidator, be punishable accordingly.
- (6) If a Company Liquidator contravenes the provisions of this section, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.
- (7) If a Company Liquidator makes willful default in causing the statement referred to in sub-section (1) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

1.15.80 Official Liquidator to make Payments into Public Account of India [Section 349]

Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the monies received by him as Official Liquidator of any company, into the public account of India in the Reserve Bank of India.

1.15.81 Company Liquidator to Deposit Monies into Scheduled Bank [Section 350]

- (1) Every Company Liquidator of a company shall, in such manner and at such times as may be prescribed, deposit the monies received by him in his capacity as such in a scheduled bank to the credit of a special bank account opened by him in that behalf.

Provided that if the Tribunal considers that it is advantageous for the creditors or contributories or the company, it may permit the account to be opened in such other bank specified by it.
- (2) If any Company Liquidator at any time retains for more than ten days a sum exceeding five thousand rupees or such other amount as the Tribunal may, on the application of the Company Liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Tribunal, he shall—
 - (a) pay interest on the amount so retained in excess, at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Tribunal;
 - (b) be liable to pay any expenses occasioned by reason of his default; and
 - (c) also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, disallowed, or may also be removed from his office.



1.15.82 Liquidator not to Deposit Monies into Private Banking Account [Section 351]

Neither the Official Liquidator nor the Company Liquidator of a company shall deposit any monies received by him in his capacity as such into any private banking account.

1.15.83 Company Liquidation Dividend and Undistributed Assets Account [Section 352]

- (1) Where any company is being wound up and the liquidator has in his hands or under his control any money representing—
 - (a) dividends payable to any creditor but which had remained unpaid for six months after the date on which they were declared; or
 - (b) assets refundable to any contributory which have remained undistributed for six months after the date on which they become refundable,

the liquidator shall forthwith deposit the said money into a separate special account to be known as the Company Liquidation Dividend and Undistributed Assets Account maintained in a scheduled bank.

- (2) The liquidator shall, on the dissolution of the company, pay into the Company Liquidation Dividend and Undistributed Assets Account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.
- (3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to the Registrar, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.
- (4) The liquidator shall be entitled to a receipt from the scheduled bank for any money paid to it under sub-sections (1) and (2), and such receipt shall be an effectual discharge of the Company Liquidator in respect thereof.
- (5) Where a company is being wound up voluntarily, the Company Liquidator shall, when filing a statement in pursuance of sub-section (1) of section 348, indicate the sum of money which is payable under sub-sections (1) and (2) of this section during the six months preceding the date on which the said statement is prepared, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Company Liquidation Dividend and Undistributed Assets Account.
- (6) Any person claiming to be entitled to any money paid into the Company Liquidation Dividend and Undistributed Assets Account, whether paid in pursuance of this section or under the provisions of any previous company law may apply to the Registrar for payment thereof, and the Registrar, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due.

Provided that the Registrar shall settle the claim of such person within a period of sixty days from the date of receipt of such claim, failing which the Registrar shall make a report to the Regional Director giving reasons of such failure.

- (7) Any money paid into the Company Liquidation Dividend and Undistributed Assets Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government, but a claim to any money so transferred may be preferred under sub-section (6) and shall be dealt with as if such transfer had not been made and the order, if any, for payment on the claim will be treated as an order for refund of revenue.
- (8) Any liquidator retaining any money which should have been paid by him into the Company Liquidation Dividend and Undistributed Assets Account under this section shall—

- (a) pay interest on the amount so retained at the rate of twelve per cent. Per annum and also pay such penalty as may be determined by the Registrar.
Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause;
- (b) be liable to pay any expenses occasioned by reason of his default; and
- (c) where the winding up is by the Tribunal, also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, to be disallowed, and to be removed from his office by the Tribunal.

1.15.84 Liquidator to Make Returns, Etc. [Section 353]

- (1) If any Company Liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Tribunal may, on an application made to it by any contributory or creditor of the company or by the Registrar, make an order directing the Company Liquidator to make good the default within such time as may be specified in the order.
- (2) Any order under sub-section (1) may provide that all costs of, and incidental to, the application shall be borne by the Company Liquidator.
- (3) Nothing in this section shall prejudice the operation of any enactment imposing penalties on a Company Liquidator in respect of any such default as aforesaid.

1.15.85 Meetings to ascertain wishes of Creditors or Contributories [Section 354]

- (1) In all matters relating to the winding up of a company, the Tribunal may—
 - (a) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;
 - (b) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Tribunal may direct; and
 - (c) appoint a person to act as chairman of any such meeting and to report the result thereof to the Tribunal.
- (2) While ascertaining the wishes of creditors under sub-section (1), regard shall be had to the value of each debt of the creditor.
- (3) While ascertaining the wishes of contributories under sub-section (1), regard shall be had to the number of votes which may be cast by each contributory.

1.15.86 Court, Tribunal or Person, etc., before whom Affidavit may be Sworn [Section 355]

- (1) Any affidavit required to be sworn under the provisions, or for the purposes, of this Chapter may be sworn—
 - (a) in India before any court, tribunal, judge or person lawfully authorised to take and receive affidavits; and
 - (b) in any other country before any court, judge or person lawfully authorised to take and receive affidavits in that country or before an Indian diplomatic or consular officer.
- (2) All tribunals, judges, Justices, commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such court, tribunal, judge, person, diplomatic or consular officer, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Chapter.



1.15.87 Powers of Tribunal to Declare Dissolution of Company Void [Section 356]

- (1) Where a company has been dissolved, whether in pursuance of this Chapter or of section 232 or otherwise, the Tribunal may at any time within two years of the date of the dissolution, on application by the Company Liquidator of the company or by any other person who appears to the Tribunal to be interested, make an order, upon such terms as the Tribunal thinks fit, declaring the dissolution to be void, and thereupon such proceedings may be taken as if the company had not been dissolved.
- (2) It shall be the duty of the Company Liquidator or the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be punishable with fine which may extend to ten thousand rupees for every day during which the default continues.

1.15.88 Commencement of Winding Up by Tribunal [Section 357]

- (1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.
- (2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.

1.15.89 Exclusion of Certain Time in Computing Period of Limitation [Section 358]

Notwithstanding anything in the Limitation Act, 1963, or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the company to a period of one year immediately following the date of the winding up order shall be excluded.

1.15.90 Exclusion of Certain Time in Computing Period of Limitation [Section 359]

- (1) For the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many Official Liquidators, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator.
- (2) The liquidators appointed under sub-section (1) shall be whole-time officers of the Central Government.
- (3) The salary and other allowances of the Official Liquidator, Joint Official Liquidator, Deputy Official Liquidator and Assistant Official Liquidator shall be paid by the Central Government.

1.15.91 Powers and Functions of Official Liquidator [Section 360]

- (1) The Official Liquidator shall exercise such powers and perform such duties as the Central Government may prescribe.
- (2) Without prejudice to the provisions of sub-section (1), the Official Liquidator may—
 - (a) exercise all or any of the powers as may be exercised by a Company Liquidator under the provisions of this Act; and
 - (b) conduct inquiries or investigations, if directed by the Tribunal or the Central Government, in respect of matters arising out of winding up proceedings.

1.15.92 Summary Procedure for Liquidation [Section 361]

- (1) Where the company to be wound up under this Chapter,—
 - (i) has assets of book value not exceeding one crore rupees; and
 - (ii) belongs to such class or classes of companies as may be prescribed, the Central Government may order it to be wound up by summary procedure provided under this Part.
- (2) Where an order under sub-section (1) is made, the Central Government shall appoint the Official Liquidator as the liquidator of the company.
- (3) The Official Liquidator shall forthwith take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled.
- (4) The Official Liquidator shall, within thirty days of his appointment, submit a report to the Central Government in such manner and form, as may be prescribed, including a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the company or not.
- (5) On receipt of the report under sub-section (4), if the Central Government is satisfied that any fraud has been committed by the promoters, directors or any other officer of the company, it may direct further investigation into the affairs of the company and that a report shall be submitted within such time as may be specified.
- (6) After considering the investigation report under sub-section (5), the Central Government may order that winding up may be proceeded under Part I of this Chapter or under the provision of this Part.

1.15.93 Sale of Assets and Recovery of Debts due to Company [Section 362]

- (1) The Official Liquidator shall expeditiously dispose of all the assets whether movable or immovable within sixty days of his appointment.
- (2) The Official Liquidator shall serve a notice within thirty days of his appointment calling upon the debtors of the company or the contributors, as the case may be, to deposit within thirty days with him the amount payable to the company.
- (3) Where any debtor does not deposit the amount under sub-section (2), the Central Government may, on an application made to it by the Official Liquidator, pass such orders as it thinks fit.
- (4) The amount recovered under this section by the Official Liquidator shall be deposited in accordance with the provisions of section 349.

1.15.94 Settlement of Claims of Creditors by Official Liquidator [Section 363]

- (1) The Official Liquidator within thirty days of his appointment shall call upon the creditors of the company to prove their claims in such manner as may be prescribed, within thirty days of the receipt of such call.
- (2) The Official Liquidator shall prepare a list of claims of creditors in such manner as may be prescribed and each creditor shall be communicated of the claims accepted or rejected along with reasons to be recorded in writing.

1.15.95 Appeal by Creditor [Section 364]

- (1) Any creditor aggrieved by the decision of the Official Liquidator under section 363 may file an appeal before the Central Government within thirty days of such decision.
- (2) The Central Government may after calling the report from the Official Liquidator either dismiss the appeal or modify the decision of the Official Liquidator.
- (3) The Official Liquidator shall make payment to the creditors whose claims have been accepted.



- (4) The Central Government may, at any stage during settlement of claims, if considers necessary, refer the matter to the Tribunal for necessary orders.

1.15.96 Order of Dissolution of Company [Section 365]

- (1) The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report to—
 - (i) the Central Government, in case no reference was made to the Tribunal under sub-section (4) of section 364; and
 - (ii) in any other case, the Central Government and the Tribunal.
- (2) The Central Government, or as the case may be, the Tribunal on receipt of such report shall order that the company be dissolved.
- (3) Where an order is made under sub-section (2), the Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.

1.16 COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE	DESCRIPTION OF FORM		RELEVANT SECTION	RELEVANT RULE	PAGE NO.
URC. I	e	Application by a company for registration under section 366	366	21(1)	1.239
URC. 2	P	Advertisement giving notice about registration under Part I of Chapter XXI	374(b)	4(1)	1.243

1.16.1 Companies Capable of being Registered [Section 366]

- (1) For the purposes of this Part, the word "company" includes any partnership firm, limited liability partnership, cooperative society, society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.
- (2) With the exceptions and subject to the provisions contained in this section, any company formed, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise duly constituted according to law, and consisting of seven or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee, in such manner as may be prescribed and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up.

Provided that—

- (i) a company registered under the Indian Companies Act, 1882 or under the Indian Companies Act, 1913 or the Companies Act, 1956, shall not register in pursuance of this section;
- (ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other law for the time being in force, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;
- (iii) a company shall be registered in pursuance of this section as a company limited by shares only if it has a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons;

- (iv) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;
 - (v) where a company not having the liability of its members limited by any Act of Parliament or any other law for the time being in force is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;
 - (vi) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.
- (3) In computing any majority required for the purposes of sub-section (1), when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

1.16.2 Registration of Companies

- (1) For the purposes of sub-section (2) of section 366 of the Act, the provision of Chapter II relating to incorporation of company and matters incidental thereto shall be applicable mutatis mutandis for such registration.

Provided that there shall be seven or more members for the purposes of registration of a company.
- (2) A company after obtaining availability of name in terms of the provisions of section 4 of the Act, shall attach the required documents and information to the Registrar along with Form No. URC. 1 in the following manner, namely:—

(a) For Registration as a Company Limited by Shares :

- (i) A list showing the names, addresses, and occupations of all persons named therein as members with details of shares held by them respectively, showing separately shares allotted for consideration in cash and for consideration other than cash along with the source of consideration) and distinguishing, in cases where the shares are numbered, each share by its number, who on a day, not being more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership;
- (ii) a list showing the particulars of persons proposed as the first directors of the company, their names, including surnames or family names, the DIN, passport number (if any) with expiry date, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;
- (iii) an affidavit from each of the persons proposed as the first directors, that he is not disqualified to be a director under sub-section (1) of section 164 and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- (iv) a list containing the names and addresses of the Partners of the Limited Liability Partnership;
- (v) a copy of the Act of Parliament or other Indian law, deed of partnership, bye laws or other instrument constituting or regulating the company and duly verified in the manner provided in sub-rule (4)



- (vi) a statement specifying the following particulars:—
- (i) the nominal share capital of the company and the number of shares into which it is divided;
 - (ii) the number of shares taken and the amount paid on each share;
 - (iii) the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may require, as the last word or words thereof;
- (vii) written consent or No Objection Certificate from all the secured creditors of the applicant;
- (viii) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for registration under this part

(b) For Registration as a Company Limited by Guarantee or as an Unlimited Company:

- (i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were members of the company with proof of membership;
 - (ii) a list showing the particulars of persons proposed as the first directors of the company, their names, including surnames or family names, the DIN, passport number (if any) with expiry date, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;
 - (iii) an affidavit from each of the first directors, that he is not disqualified to be a director under sub-section (1) of section 164 and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
 - (iv) a list containing the names and addresses of the Partners of the Limited Liability Partnership;
 - (v) a copy of the Act of Parliament or other Indian law, bye-laws or other instrument constituting or regulating the company duly verified in the manner provided in rule (4); (vi) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount guarantee;
 - (vii) Written consent or No Objection Certificate from all the secured creditors of the applicant;
 - (viii) Written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for registration under this part.
- (3) An affidavit, duly notarized, from An affidavit, duly notarised, from all the members or partners providing that in the event of registration as a company under Part I of Chapter XXI of the Act, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as Limited Liability Partnership.
- (4) The list of members and directors and any other particulars relating to the company which are required to be delivered to the Registrar shall be duly verified by the declaration of any two or more proposed directors, or two or more designated partners of the Limited Liability Partnership.

1.16.3 Certificate of Registration of Existing Companies [Section 367]

On compliance with the requirements of this Chapter with respect to registration, and on payment of such fees, if any, as are payable under section 403, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

1.16.4 Vesting of Property on Registration [Section 368]

All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

1.16.5 Saving of Existing Liabilities [Section 369]

The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

1.16.6 Continuation of Pending Legal Proceedings [Section 370]

All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place.

Provided that execution shall not issue against the property or persons of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

1.16.7 Effect of Registration under this Part [Section 371]

- (1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.
- (2) All provisions contained in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.
- (3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:—
 - (a) Table F in Schedule I shall not apply unless and except in so far as it is adopted by special resolution;
 - (b) the provisions of this Act relating to the numbering of shares shall not apply to any company whose shares are not numbered;
 - (c) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;
 - (d) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.



- (4) The provisions of this Act with respect to—
- the registration of an unlimited company as a limited company;
 - the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called-up except in the event of winding up;
 - the power of a limited company to determine that a portion of its share capital shall not be capable of being called-up except in the event of winding up,
- shall apply, notwithstanding anything in any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.
- (5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.
- (6) None of the provisions of this Act (apart from those of section 242) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or any other law for the time being in force, or other instrument constituting or regulating the company.
- (7) In this section, the expression “instrument” includes deed of settlement, deed of partnership, or limited liability partnership.

1.16.8 Power of Court to Stay or Restrain Proceedings [Section 372]

The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

1.16.9 Suits Stayed on Winding Up Order [Section 373]

Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the Tribunal and except on such terms as the Tribunal may impose.

1.16.10 Obligations of Companies Registering under this Part [Section 374]

Every company which is seeking registration under this Part shall,—

- ensure that secured creditors of the company, prior to its registration under this Part, have either consented to or have given their no objection to company's registration under this Part;
- publish in a newspaper, advertisement one in English and one in vernacular language in such form as may be prescribed giving notice about registration under this Part, seeking objections and address them suitably;
- file an affidavit, duly notarised, from all the members or partners to provide that in the event of registration under this Part, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm, limited liability partnership, cooperative society, society or any other business entity, as the case may be.
- comply with such other conditions as may be prescribed.

1.16.11 Obligation of Companies Seeking Registration to Make Publication

- (1) For the purpose of clause (b) of section 374 of the Act, every 'company' seeking registration under the provision of Part I of Chapter XXI shall publish an advertisement about registration under the said Part, seeking objections, if any within twenty one clear days from the date of publication of notice and the said advertisement shall be in Form No.URC. 2, which shall be published in a newspaper and in English and in the principal vernacular language of the district in which Limited Liability Partnership is in existence and circulated in that district.
- (2) A copy of the notice, as published and the copy of the notice served on Registrar (LLP) along with proof of service, shall be attached with Form No.URC. 1.
- (3) The Registrar shall, after considering the application and the objections, if any, received by him within thirty days from the date of publication of advertisement, and after ensuring that the company has addressed the objections, suitably decide whether the registration should or should not be granted.
- (4) If the Registrar is satisfied on the basis of documents and information filed by the applicants, decides that the applicant should be registered, he shall issue a certificate of incorporation in Form No.INC.11.

1.16.12 Other Obligations of Companies Seeking Registration

For the purpose of clause (d) of section 374 of the Act,—

- (i) where a Limited Liability Partnership has obtained a certificate of registration under section 367, an intimation to this effect shall be given, within fifteen days of such registration to the concerned Registrar (LLP) under which it was originally registered, along with necessary documents or papers for its dissolution as Limited Liability Partnership;
- (ii) statement of accounts, prepared not later than fifteen days preceding the date of seeking registration and certified by the Auditor together with the Audited Financial Statements of the previous year, wherever applicable shall be attached with Form No.URC. 1.
Provided that if the assets of the existing company during the immediately preceding three years are revalued for the purpose of vesting of its assets with the company to be incorporated under this Act, the surplus arising out of such revaluation shall not be deemed to have been credited to the capital account or current account of partners.
- (iii) notice shall be given to the concerned Registrar (LLP) under which it was originally registered and shall require that objections, if any to be made by such concerned Registrar of Companies (LLP) to the Registrar, shall be made within a period of twenty-one days from the date of such notice, failing which it shall be presumed that they have no objection and the notice shall disclose the purpose and substance of matters in relation to objections;
- (iv) in case of the registration of Limited Liability Partnership into a company under these rules, a declaration by the said Limited Liability Partnership that it has filed all documents which are required to be filed under the Liability Partnership Act with the Registrar (LLP) and the declaration shall be attached with Form No. URC. 1;
- (v) a statement of proceedings, if any, by or against the Limited Liability Partnership which are pending in any court or any other Authority shall be attached with Form No. URC. 1.

1.16.13 Winding Up of Unregistered Companies [Section 375]

- (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, in such manner as may be prescribed, and all the provisions of this Act, with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections (2) to (4).



- (2) No unregistered company shall be wound up under this Act voluntarily.
- (3) An unregistered company may be wound up under the following circumstances, namely:—
 - (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b) if the company is unable to pay its debts;
 - (c) if the Tribunal is of opinion that it is just and equitable that the company should be wound up.
- (4) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts—
 - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Tribunal may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;
 - (b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character as a member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Tribunal may approve or direct, the company has not, within ten days after service of the notice,—
 - (i) paid, secured or compounded for the debt or demand;
 - (ii) procured the suit or other legal proceeding to be stayed; or
 - (iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;
 - (c) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;
 - (d) if it is otherwise proved to the satisfaction of the Tribunal that the company is unable to pay its debts.

Explanation.— For the purposes of this Part, the expression “unregistered company”—

- (a) shall not include—
 - (i) a railway company incorporated under any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom;
 - (ii) a company registered under this Act; or
 - (iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden, Pakistan immediately before the separation of that country from India; and
- (b) save as aforesaid, shall include any partnership firm, limited liability partnership or society or co-operative society, association or company consisting of more than seven members at the time when the petition for winding up the partnership firm, limited liability

partnership or society or co-operative society, association or company, as the case may be, is presented before the Tribunal.

1.16.14 Power to Wind Up Foreign Companies, Although Dissolved [Section 376]

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

1.16.15 Provisions of Chapter Cumulative [Section 377]

- (1) The provisions of this Part, with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the Tribunal.
- (2) The Tribunal or Official Liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Tribunal or Official Liquidator in winding up of companies formed and registered under this Act.

Provided that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

1.16.16 Saving and Construction of Enactments Conferring Power to Wind Up Partnership Firm, Association or Company, etc., in Certain Cases [Section 378]

Nothing in this Part, shall affect the operation of any enactment which provides for any partnership firm, limited liability partnership or society or co-operative society, association or company being wound up, or being wound up as a company or as an unregistered company, under the Companies Act, 1956, or any Act repealed by that Act.

Provided that references in any such enactment to any provision contained in the Companies Act, 1956 or in any Act repealed by that Act shall be read as references to the corresponding provision, if any, contained in this Act.

1.17 COMPANIES INCORPORATED OUTSIDE INDIA

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
FC. 1	e	Information to be filed by foreign company	380(1)(h)	3(3)	1.247
FC. 2	e	Return of alteration in the documents filed for registration by foreign company	380(3)	3(4)	1.247
FC. 3	e	Annual accounts along with the list of all principal places of business in India established by foreign company	381	6	1.248
FC. 4	e	Annual Return of a Foreign Company	384(2)	7	1.251
FC. 5	P	Nomination by IDR Holder	390	13(6)(c)	1.255

1.17.1 Application of Act to Foreign Companies [Section 379]

Where not less than fifty per cent. of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate,



such company shall comply with the provisions of this Chapter and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

1.17.2 Documents, etc., to be delivered to Registrar by Foreign Companies [Section 380]

- (1) Every foreign company shall, within thirty days of the establishment of its place of business in India, deliver to the Registrar for registration—
 - (a) a certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
 - (b) the full address of the registered or principal office of the company;
 - (c) a list of the directors and secretary of the company containing such particulars as may be prescribed;
 - (d) the name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
 - (e) the full address of the office of the company in India which is deemed to be its principal place of business in India;
 - (f) particulars of opening and closing of a place of business in India on earlier occasion or occasions;
 - (g) declaration that none of the directors of the company or the authorized representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
 - (h) any other information as may be prescribed.
- (2) Every foreign company existing at the commencement of this Act shall, if it has not delivered to the Registrar before such commencement, the documents and particulars specified in sub-section (1) of section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.
- (3) Where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within thirty days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

1.17.3 Particulars relating to Directors and Secretary to be Furnished to the Registrar by Foreign Companies

- (1) Every foreign company shall, within thirty days of establishment of its place of business in India, in addition to the particulars specified in sub-section (1) of section 380 of the Act, also deliver to the Registrar for registration, a list of directors and Secretary of such company.
- (2) The list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:-
 - (a) personal name and surname in full;
 - (b) any former name or names and surname or surnames in full;
 - (c) father's name or mother's name and spouse's name;
 - (d) date of birth;
 - (e) residential address;

- (f) nationality;
 - (g) if the present nationality is not the nationality of origin, his nationality of origin;
 - (h) passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
 - (i) income-tax permanent account number (PAN), if applicable;
 - (j) occupation, if any ;
 - (k) whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
 - (l) other directorship or directorships held by him;
 - (m) Membership Number (for Secretary only); and
 - (n) e-mail ID.
- (3) A foreign company shall, within a period of thirty days of the establishment of its place of business in India, file with the registrar Form FC-1 with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and with the documents required to be delivered for registration by a foreign company in accordance with the provisions of sub-section (1) of section 380 and the application shall also be supported with an attested copy of approval from the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorised representative of such foreign company that no such approval is required.
- (4) Where any alteration is made or occurs in the document delivered to the Registrar for registration under sub-section (1) of section 380, the foreign company shall file with the Registrar, a return in Form FC-2 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars of the alteration, within a period of thirty days from the date on which the alteration was made or occurred.

1.17.4 Accounts of Foreign Company [Section 381]

- (1) Every foreign company shall, in every calendar year,—
 - (a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents as may be prescribed; and
 - (b) deliver a copy of those documents to the Registrar.

Provided that the Central Government may, by notification, direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.
- (2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.
- (3) Every foreign company shall send to the Registrar along with the documents required to be delivered to him under sub-section (1), a copy of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (1) is made out.

1.17.5 Financial Statement of Foreign Company

- (1) Every foreign company shall prepare financial statement of its Indian business operations in



accordance with Schedule III or as near thereto as may be possible for each financial year including—

- (i) documents required to be annexed thereto in accordance with the provisions of Chapter IX of the Act i.e. Accounts of Companies ;
- (ii) documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country;

Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language.

Provided further that where the Central Government has exempted or specified different documents for any foreign company or a class of foreign companies, then documents as specified shall be submitted;

- (iii) Such other documents as may be required to be annexed or attached in accordance with sub-rule (2).

(2) Every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents;

namely:—

(a) Statement of related party transaction, which shall include—

- (i) name of the person in India which shall be deemed to be the related party within the meaning of clause (76) of section 2 of the Act of the foreign company or of any subsidiary or holding company of such foreign company or of any firm in which such foreign company or its subsidiary or holding company is a partner;
- (ii) nature of such relationship;
- (iii) description and nature of transaction;
- (iv) amount of such transaction during the year with opening, closing, highest and lowest balance during the year and provisions made (if any) in respect of such transactions;
- (v) reason of such transaction;
- (vi) material effect of such transaction on both the parties;
- (vii) amount written off or written back in respect of dues from or to the related parties;
- (viii) a declaration that such transactions were carried out at arms length basis; and
- (ix) any other details of the transaction necessary to understand the financial impact;

(b) Statement of repatriation of profits which shall include—

- (i) amount of profits repatriated during the year;
- (ii) recipients of the repatriation;
- (iii) form of repatriation;
- (iv) dates of repatriation;
- (v) details if repatriation made to a jurisdiction other than the residence of the beneficiary;
- (vi) mode of repatriation; and
- (vii) approval of the Reserve Bank of India or any other authority, if any.

- (c) Statement of transfer of funds (including dividends if any) which shall, in relation of any fund transfer between place of business of foreign company in India and any other related party of the foreign company outside India including its holding, subsidiary and associate company, include—
 - (i) date of such transfer;
 - (ii) amount of fund transferred or received;
 - (iii) mode of receipt or transfer of fund;
 - (iv) purpose of such receipt or transfer; and
 - (v) approval of Reserve Bank of India or any other authority, if any
- (3) The documents referred to in this rule shall be delivered to the Registrar within a period of six months of the close of the financial year of the foreign company to which the documents relate. Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

1.17.6 Audit of Accounts of foreign company

- (1) Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with the requirements of clause (a) of sub-section (1) of section 381 and rule 4, audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.

Explanation.— For the purposes of this sub-rule, the expressions "Chartered Accountant", "Firm" and limited liability partnership shall have the meanings respectively assigned to them under the Act and Limited Liability Partnership Act, 2008 (6 of 2009) respectively.

- (2) The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, mutatis mutandis, to the foreign company.

1.17.7 Display of Name, etc., of Foreign Company [Section 382]

Every foreign company shall—

- (a) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;
- (b) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, billheads and letter paper, and in all notices, and other official publications of the company; and
- (c) if the liability of the members of the company is limited, cause notice of that fact—
 - (i) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
 - (ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

1.17.8 List of Places of Business of Foreign Company

Every foreign company shall file with the Registrar, along with the financial statement, in Form FC.3 with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 a list of all the places of business established by the foreign company in India as on the date of balance sheet.



1.17.9 Service on Foreign Company [Section 383]

Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

1.17.10 Debentures, Annual Return, Registration of Charges, Books of Account and their Inspection [Section 384]

- (1) The provisions of section 71 shall apply mutatis mutandis to a foreign company.
- (2) The provisions of section 92 shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.
- (3) The provisions of section 128 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India, the books of account referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.
- (4) The provisions of Chapter VI shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.
- (5) The provisions of Chapter XIV shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

1.17.11 Fee for Registration of Documents [Section 385]

There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee, as may be prescribed.

1.17.12 Office where Documents to be Delivered and Fee for Registration of Documents

- (1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in Chapter XXII of the Act i.e. Companies Incorporated Outside India and these rules shall be construed accordingly.
- (2) The fee to be paid to the Registrar for registering any document relating to a foreign company shall be such as provided in the Companies (Registration Offices and Fees) Rules, 2014.
- (3) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

1.17.13 Certification

A copy of any charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of a Foreign company shall be duly certified to be a true copy in the manner given below -

- (1) If the company is incorporated in a country outside the Commonwealth-
 - (a) the copy aforesaid shall be certified as a true copy by-
 - (i) an official of the Government to whose custody the original is situated; or
 - (ii) a Notary (Public) of such Country; or
 - (iii) an officer of the company.

- (b) The signature or seal of the official referred to in sub-clause (i) of clause (a) or the certificate of the Notary (Public) referred to in sub-clause (ii) of clause (a) shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (XL of 1948), or where there is no such officer, by any of the officials mentioned in section 6 of the Commissioners of Oath Act, 1889 (52 and 53 Vic. C. 10), or in any relevant Act for the said purpose.
 - (c) The certificate of the officer of the company referred to in sub-clause (iii) of clause (a) shall be signed before a person having authority to administer an oath as provided under section 3 of the Diplomatic and Consular Officers (Oath and Fees) Act, 1948, or as the case may be, by section 3 of the Commissioners of Oath Act, 1889 and the status of the person administering the oath in the latter case being authenticated by any official specified in section 6 of the Commissioners of Oaths Act, 1889 or in any relevant Act for the said purpose.
- (2) If the company is incorporated in any part of the Commonwealth, the copy of the document shall be certified as a true copy by-
- (a) an official of the Government to whose custody the original of the document is committed; or
 - (b) a Notary (Public) in that part of the Commonwealth; or
 - (c) an officer of the company, on oath before a person having authority to administer an oath in that part of the Commonwealth.
- (3) Any altered document delivered to the Registrar should also be duly certified in the manner mentioned above.
- (a) If the Company is incorporated in a country falling outside the Commonwealth, but a party to the Hague Apostille Convention, 1961 the copy of the documents shall be certified as a true copy by an official of the Government to whose custody the original is committed and be duly apostillised in accordance with Hague Convention;
 - (b) a list of the directors and the secretary of the Company, if any, the name and address of persons resident in India, authorized to accept notice on behalf of the Company shall be duly notarized and be apostillised in the Country of their origin in accordance with Hague Convention;
 - (c) the signatures and address on the Memorandum of Association and proof of identity, where required, of foreign nationals seeking to register a company in India shall be notarized before the notary of the country of their origin and be duly apostillised in accordance with the said Hague Convention.

1.17.14 Authentication of Translated Documents

- (1) All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules.
- (2) Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any, of
 - (a) the official having custody of the original; or
 - (b) a Notary (Public) of the country (or part of the country) where the company is incorporated.

Provided that where the company is incorporated in a country outside the Commonwealth, the signature or seal of the person so certifying shall be authenticated by a diplomatic or consular officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths



and Fees) Act, 1948, or, where there is no such officer, by any of the officials mentioned in section 6, of the Commissioners of Oaths Act, 1889, or in any relevant Act for the said purpose.

- (3) Where such translation is made within India, it shall be authenticated by—
- (a) an advocate, attorney or pleader entitled to appear before any High Court; or
 - (b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

1.17.15 Interpretation [Section 386]

For the purposes of the foregoing provisions of this Chapter,—

- (a) the expression “certified” means certified in the prescribed manner to be a true copy or a correct translation;
- (b) the expression “director”, in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and
- (c) the expression “place of business” includes a share transfer or registration office.

1.17.16 Dating of Prospectus and Particulars to be Contained Therein [Section 387]

(1) No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and—

- (a) contains particulars with respect to the following matters, namely:—
 - (i) the instrument constituting or defining the constitution of the company;
 - (ii) the enactments or provisions by or under which the incorporation of the company was effected;
 - (iii) address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected;
 - (iv) the date on which and the country in which the company would be or was incorporated; and
 - (v) whether the company has established a place of business in India and, if so, the address of its principal office in India; and
- (b) states the matters specified under section 26.

Provided that sub-clauses (i), (ii) and (iii) of clause (a) of this sub-section shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

- (2) Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of sub-section (1), or purporting to impute him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.
- (3) No person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this Chapter and such issue does not contravene the provisions of section 388.

Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities.

(4) This section —

- (a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce in favour of other persons; and
- (b) except in so far as it requires a prospectus to be dated, to the issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange,

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section.

1.17.17 Documents to be Annexed to Prospectus

The following documents shall be annexed to the prospectus, namely: -

- (a) any consent to the issue of the prospectus required from any person as an expert;
- (b) a copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
- (c) a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding two years;
- (d) a copy of underwriting agreement; and
- (e) a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

1.17.18 Provision as to Expert's Consent and Allotment [Section 388]

- (1) No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India,—
 - (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or
 - (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of sections 33 and 40, so far as applicable.
- (2) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

1.17.19 Registration of Prospectus [Section 389]

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairperson



of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

1.17.20 Offer of Indian Depository Receipts [Section 390]

Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

- (a) the offer of Indian Depository Receipts;
- (b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;
- (c) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and
- (d) the manner of sale, transfer or transmission of Indian Depository Receipts, by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

1.17.21 Issue of Indian Depository Receipts (IDRs)

- (1) For the purposes of section 390, no company incorporated or to be incorporated outside India, whether the company has or has not established, or may or may not establish, any place of business in India (hereinafter in this rule called 'issuing company') shall make an issue of Indian Depository Receipts (IDRs) unless such company complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India.

Explanation.- For the purposes of this rule, the term "Indian Depository Receipt" (hereinafter referred to as '1DR') means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

- (2) The issuing company shall not issue IDRs unless
 - (a) its pre-issue paid-up capital and free reserves are at least US\$ 50 million and it has a minimum average market capitalization (during the last three years) in its parent country of at least US\$ 100 million;
 - (b) it has been continuously trading on a stock exchange in its parent or home country (the country of incorporation of such company) for at least three immediately preceding years;
 - (c) it has a track record of distributable profits in terms of section 123 of the Act, for at least three out of immediately preceding five years;
 - (d) It fulfills such other eligibility criteria as may be laid down by the Securities and Exchange Board of India from time to time in this behalf.
- (3) The issuing company shall follow the following procedure for making an issue of IDRs:
 - (a) the issuing company shall, where required, obtain the necessary approvals or exemptions from the appropriate authorities from the country of its incorporation under the relevant laws relating to issue of capital and ID'
 - (b) issuing company shall obtain prior written approval from the Securities and Exchange Board of India on an application made in this behalf for issue of IDRs along with the issue size.

- (c) an application under clause (b) shall be made to the Securities and Exchange Board of India (along with draft prospectus) at least ninety days prior to the opening date of the IDRs issue, in such form, along with such fee and furnishing such information as may be specified by the Securities and Exchange Board of India from time to time.

Provided that the issuing company shall also file with the Securities and Exchange Board of India, through a Merchant Banker, a due diligence report along with the application under clause (b) in the form specified by the Securities and Exchange Board of India.

- (d) the Securities and Exchange Board of India may, within a period of thirty days of receipt of an application under clause (c), call for such further information, and explanations, as it may deem necessary, for disposal of such application and shall dispose the application within a period of thirty days of receipt of further information or explanation.

Provided that if within a period of sixty days from the date of submission of application or draft prospectus, the Securities and Exchange Board of India specifies any changes to be made in the draft prospectus, the prospectus shall not be filed with the Securities and Exchange Board of India or Registrar of Companies unless such changes have been incorporated therein.

- (e) the issuing company shall on approval being granted by the Securities and Exchange Board of India to an application under clause (b), pay to the Securities and Exchange Board of India an issue fee as may be prescribed from time to time by the Securities and Exchange Board of India.

- (f) the issuing company shall file a prospectus, certified by two authorized signatories of the issuing company, one of whom shall be a whole-time director and other the Chief Financial Officers stating the particulars of the resolution of the Board by which it was approved with the Securities and Exchange Board of India and Registrar of Companies, New Delhi before such issue.

Provided that at the time of filing of said prospectus with the Registrar of Companies, New Delhi, a copy of approval granted by the Securities and Exchange Board of India and the statement of fees paid by the Issuing Company to the Securities and Exchange Board of India shall also be attached.

- (g) the prospectus to be filed with the Securities and Exchange Board of India and the Registrar of Companies, New Delhi shall contain the particulars as prescribed in sub-rule (8) and shall be signed by all the whole-time directors of the issuing company, and the Chief Financial Officer.

- (h) the issuing company shall appoint an overseas custodian bank, a Domestic Depository and a Merchant Banker for the purpose of issue of IDRs.

- (i) the issuing company may appoint underwriters registered with the Securities and Exchange Board of India to underwrite the issue of IDRs.

- (j) the issuing company shall deliver the underlying equity shares or cause them to be delivered to an Overseas Custodian Bank and the said bank shall authorize the domestic depository to issue IDRs.

- (k) the issuing company shall obtain in-principle listing permission from one or more stock exchanges having nationwide trading terminals in India.

Explanation- For the purposes of this rule,-

(i) "Domestic Depository" means custodian of securities registered with the Securities and Exchange Board of India and authorized by the issuing company to issue IDRs.

(ii) "Merchant Banker" means a Merchant Banker as defined in sub-regulation (cb) of regulation 2 of the Securities and Exchange Board (Merchant Bankers) Regulations, 1992.



- (iii) "Overseas Custodian Bank" means a banking company which is established in a country outside India and which acts as custodian for the equity shares of Issuing Company, against which IDRs are proposed to be issued by having a custodial arrangement or agreement with the Domestic Depository or by establishing a place of business in India.
- (4) The Merchant Banker to the issue of IDRs shall deliver for registration the following documents or information to the Securities and Exchange Board of India and Registrar of Companies at New Delhi, namely: -
- instrument constituting or defining the constitution of the issuing company;
 - the enactments or provisions having the force of law by or under which the incorporation of the Issuing company was effected, a copy of such provisions attested by an officer of the company be annexed;
 - if the issuing company has established place of business in India, address of its principal office in India;
 - if the issuing company does not establish a principal place of business in India, an address in India where the said instrument, enactments or provision or copies thereof are available for public inspection, and if these are not in English, a translation thereof certified by a key managerial personnel of the Issuing company shall be kept for public inspection;
 - a certified copy of the certificate of incorporation of the issuing company in the country in which it is incorporated;
 - the copies of the agreements entered into between the issuing company, the overseas custodian bank, the Domestic Depository, which shall inter alia specify the rights to be passed on to the IDR holders;
 - if any document or any portion thereof required to be filed with the Securities and Exchange Board of India or the Registrar of Companies is not in English language, a translation of that document or portion thereof in English, certified by a key managerial personnel of the company to be correct and attested by an authorized officer of the Embassy or Consulate of that country in India, shall be attached to each copy of the document.
- (5) (a) No application form for the securities of the issuing company shall be issued unless the form is accompanied by a memorandum containing the salient features of prospectus in the specified form.
- (b) An application form can be issued without the memorandum as specified in clause (a), if it is issued in connection with an invitation to enter into an underwriting agreement with respect to the IDRs.
- (c) The prospectus for subscription of IDRs of the Issuing company which includes a statement purporting to be made by an expert shall not be circulated, issued or distributed in India or abroad unless a statement that the expert has given his written consent to the issue thereof and has not withdrawn such consent before the delivery of a copy of the prospectus to the Securities and Exchange Board of India and the Registrar of Companies, New Delhi, appears on the prospectus.
- (d) The provisions of the Act shall apply for all liabilities for mis-statements in prospectus or punishment for fraudulently inducing persons to invest money in IDRs.
- (e) The person(s) responsible for issue of the prospectus shall not incur any liability by reason of any noncompliance with or contravention of any provision of this rule, if-
- as regards any matter not disclosed, he proves that he had no knowledge thereof; or
 - the contravention arose in respect of such matters which in the opinion of the Central Government or the Securities and Exchange Board of India were not material.

- (6) (a) A holder of IDRs may transfer the IDRs, may ask the Domestic Depository to redeem them or any person may seek reissuance of IDRs by conversion of underlying equity shares, subject to the provisions of the Foreign Exchange Management Act, 1999, the Securities and Exchange Board of India Act, 1992, or the rules, regulations or guidelines issued under these Acts, or any other law for the time being in force;
- (b) In case of redemption, Domestic Depository shall request the Overseas Custodian Bank to get the corresponding underlying equity shares released in favour of the holder of IDRs for being sold directly on behalf of holder of IDRs, or being transferred in the books of Issuing company in the name of holder of IDRs and a copy of such request shall be sent to the issuing company for information. (c) A holder of IDRs may, at any time, nominate a person to whom his IDRs shall vest in the event of his death and Form FC-5 may be used for this purpose.
- (7) (a) The repatriation of the proceeds of issue of IDRs shall be subject to laws for the time being in force relating to export of foreign exchange.
- (b) The number of underlying equity shares offered in a financial year through IDR offerings shall not exceed twenty five per cent of the post issue number of equity shares of the company.
- (c) Notwithstanding the denomination of securities of an Issuing company, the IDRs issued by it shall be denominated in Indian Rupees.
- (d) The IDRs issued under this Rule shall be listed on the recognized Stock Exchange(s) in India as specified in clause (k) of sub-rule (3) and such IDRs may be purchased, possessed and freely transferred by a person resident in India as defined in section 2(v) of the Foreign Exchange Management Act, 1999, subject to the provisions of the said Act.
- Provided that the IDRs issued by an Issuing company may be purchased, possessed and transferred by a person other than a person resident in India if such Issuing company obtains specific approval from Reserve Bank of India in this regard or complies with any policy or guidelines that may be issued by Reserve Bank of India on the subject matter;
- (e) Every issuing company shall comply with such continuous disclosure requirements as may be specified by the Securities and Exchange Board of India in this regard.
- (f) On the receipt of dividend or other corporate action on the IDRs as specified in the agreements between the Issuing company and the Domestic Depository, the Domestic Depository shall distribute them to the IDR holders in proportion to their holdings of IDRs.
- (8) The prospectus or letter of offer shall, inter alia, contain the following particulars, namely:-

(a) General Information-

- (i) Name and address of the registered office of the company;
- (ii) name and address of the Domestic Depository, the Overseas Custodian Bank with the address of its office in India, the Merchant Banker, the underwriter to the issue and any other intermediary which may be appointed in connection with the issue of IDRs;
- (iii) names and addresses of Stock Exchanges where applications are made or proposed to be made for listing of the IDRs;
- (iv) the provisions relating to punishment for fictitious applications;
- (v) statement or declaration for refund of excess subscription;
- (vi) declaration about issue of allotment letters or certificates or IDRs within the stipulated period;
- (vii) date of opening of issue;



- (viii) date of closing of issue;
 - (ix) date of earliest closing of the issue;
 - (x) declaration by the Merchant Banker with regard to adequacy of resources of underwriters to discharge their respective obligations, in case of being required to do so;
 - (xi) a statement by the Issuing company that all moneys received out of issue of IDRs shall be transferred to a separate domestic bank account, name and address of the bank and the nature and number of the account to which the amount shall be credited;
 - (xii) the details of proposed utilisation of the proceeds of the IDR issue.
- (b) Capital Structure of the Company-** The authorized, issued, subscribed and paid-up capital of the issuing company;
- (c) Terms of the Issue-**
- (i) rights of the IDR holders against the underlying securities;
 - (ii) details of availability of prospectus and forms, i.e., date, time, place etc;
 - (iii) amount and mode of payment seeking issue of IDRs; and
 - (iv) any special tax benefits for the Issuing company and holders of IDRs in India.
- (d) Particulars of Issue-**
- (i) the objects of the issue;
 - (ii) the cost of the Project, if any; and
 - (iii) the means of financing the projects, if any including contribution by promoters.
- (e) Company, Management and Project-**
- (i) the main objects, history and present business of the company;
 - (ii) the Promoters or parent group or owner group and their background.
- Provided that in case there are no identifiable promoters, the names, addresses and other particulars as may be specified by the Securities and Exchange Board of India of all the persons who hold five percent, or more equity share capital of the company shall be disclosed;
- (iii) the subsidiaries of the company, if any;
 - (iv) the particulars of the Management or Board (i.e. Name and complete address(es) of Directors, Manager, Managing Director or other principal officers of the company);
 - (v) the location of the project, if any;
 - (vi) the details of plant and machinery, infrastructure facilities, technology etc., where applicable;
 - (vii) the schedule of implementation of project and progress made so far, if applicable;
 - (viii) nature of product(s), consumer(s), industrial users;
 - (ix) the particulars of legal, financial and other defaults, if any;
 - (x) the risk factors to the issue as perceived; and
 - (xi) consent of the Merchant Bankers, Overseas Custodian Bank, the Domestic Depository and all other intermediaries associated with the issue of ID`
 - (xii) the information, as may be specified by the Securities and Exchange Board of India,

in respect of listing, trading record or history of the Issuing company on all the stock exchanges, whether situated in its parent country or elsewhere.

(f) Report-

(i) Where the law of a country, in which the Issuing company is incorporated, requires annual statutory audit of the accounts of the Issuing company, a report by the statutory auditor of the Issuing company, in such form as may be specified by the Securities and Exchange Board of India on -

- (A) the audited financial statements of the Issuing company in respect of three financial years immediately preceding the date of prospectus;
- (B) the interim audited financial statements in respect of the period ending on a date which is less than 180 days prior to the date of opening of the issue, if the gap between the ending date of the latest audited financial statements disclosed under clause (A) and the date of the opening of the issue is more than 180 days.

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is 180 days or less, the requirement under item (B) shall be deemed to be complied with, if a statement, as may be specified by the Securities and Exchange Board of India, in respect of material changes in the financial position of Issuing company for such gap is disclosed in the Prospectus.

Provided further that in case of an Issuing company which is a foreign bank incorporated outside India and which is regulated by a member of the Bank for International Settlements or a member of the International Organization of Securities Commissions which is a signatory to a Multilateral Memorandum of Understanding, the requirement under this paragraph, in respect of period beginning with last date of period for which the latest audited financial statements are made and the date of opening of the issue shall be satisfied, if the relevant financial statements are based on limited review report of such statutory auditor;

(ii) Where the law of the country, in which the Issuing company is incorporated, does not require annual statutory audit of the accounts of the Issuing company, a report, in such form as may be specified by the Securities And Exchange Board of India, certified by a Chartered Accountant in practice within the terms and meaning of the Chartered Accountants Act, 1949 on -

- (A) the financial statements of the Issuing company, in particular on the profits and losses for each of the three financial years immediately preceding the date of prospectus and upon the assets and liabilities of the Issuing company; and
- (B) the interim financial statements in respect of the period ending on a date which is less than one hundred and eighty days prior to the date of opening of the issue have to be included in report, if the gap between the ending date of the latest financial statements disclosed under item (A) and the date of the opening of the issue is more than one hundred and eighty days.

Provided that if the gap between such date of latest audited financial statements and the date of opening of issue is one hundred and eighty days or less, the requirement under item (B) shall be deemed to be complied with if a statement, as may be specified by the Securities And Exchange Board of India, in respect of changes in the financial position of Issuing company for such gap is disclosed in the Prospectus.

(iii) the gap between date of opening of issue and date of reports specified under sub-clauses (i) and (ii) shall not exceed one hundred and twenty days;



- (iv) If the proceeds of the IDR issue are used for investing in other body(ies) corporate, then following details of such body(ies) corporate shall be given—
(A) the Name and address(es) of the bodies corporate;
(B) the reports stated in sub-clauses (i) and (ii), as the case may be, in respect of such body (ies) corporate also."

(g) Other Information –

- (i) the Minimum subscription for the issue;
- (ii) the fees and expenses payable to the intermediaries involved in the issue of IDRs;
- (iii) the declaration with regard to compliance with the Foreign Exchange Management Act, 1999.

(h) Inspection of Documents-

The Place at which inspection of the offer documents, the financial statements and auditor's report thereof shall be allowed during the normal business hours; and

- (i) Any other information as specified by the Securities and Exchange Board of India or the Income-tax Authorities or the Reserve Bank of India or other regulatory authorities from time to time.

1.17.22 Application of Sections 34 to 36 and Chapter XX [Section 391]

- (1) The provisions of sections 34 to 36 (both inclusive) shall apply to—
 - (i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;
 - (ii) the issue of Indian Depository Receipts by a foreign company.
- (2) The provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India.

1.17.23 Punishment for Contravention [Section 392]

Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

1.17.24 Action for Improper use or Description as Foreign Company

If any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made there under, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made there under, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

1.17.25 Company's Failure to Comply with Provisions of this Chapter not to affect Validity of Contracts, etc. [Section 393]

Any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

1.18 REGISTRATION OFFICES AND FEES

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE	DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
GNL. 1 e	Form for filing an application with Registrar of Companies	—	12(2)	—
GNL. 2 e	Form for submission of documents with the Registrar	—	12(2)	—

1.18.1 Registration Offices [Section 396]

- (1) For the purposes of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under the rules made thereunder and for the purposes of registration of companies under this Act, the Central Government shall, by notification, establish such number of offices at such places as it thinks fit, specifying their jurisdiction.
- (2) The Central Government may appoint such Registrars, Additional, Joint, Deputy and Assistant Registrars as it considers necessary for the registration of companies and discharge of various functions under this Act, and the powers and duties that may be exercisable by such officers shall be such as may be prescribed.
- (3) The terms and conditions of service, including the salaries payable to persons appointed under sub-section (2), shall be such as may be prescribed.
- (4) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

1.18.2 Business Activity

Every company including foreign company which carries out its business through electronic mode, whether its main server is installed in India or outside India, which-

- (i) undertakes business to business and business to consumer transactions, data interchange or other digital supply transactions;
- (ii) offers to accept deposits or invites deposits or accepts deposits or subscriptions in securities, in India or from citizens of India;
- (iii) undertakes financial settlements, web based marketing, advisory and transactional services, database services or products, supply chain management;
- (iv) offers online services such as telemarketing, telecommuting, telemedicine, education and information research; or
- (v) undertakes any other related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise, shall be deemed to have carried out business in India.

1.18.3 Admissibility of Certain Documents as Evidence [Section 397]

Notwithstanding anything contained in any other law for the time being in force, any document reproducing or derived from returns and documents filed by a company with the Registrar on paper or in electronic form or stored on any electronic data storage device or computer readable media by the Registrar, and authenticated by the Registrar or any other officer empowered by the Central Government in such manner as may be prescribed, shall be deemed to be a document for the purposes



of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder without further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence is admissible.

1.18.4 Provisions Relating to Filing of Applications, Documents, Inspection, etc., in Electronic Form [Section 398]

- (1) Notwithstanding anything to the contrary contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may make rules so as to require from such date as may be prescribed in the rules that—
- (a) such applications, balance sheet, prospectus, return, declaration, memorandum, articles, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or the rules made thereunder, shall be filed in the electronic form and authenticated in such manner as may be prescribed;
 - (b) such document, notice, any communication or intimation, as may be required to be served or delivered under this Act, in the electronic form and authenticated in such manner as may be prescribed;
 - (c) such applications, balance sheet, prospectus, return, register, memorandum, articles, particulars of charges, or any other particulars or document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be prescribed;
 - (d) such inspection of the memorandum, articles, register, index, balance sheet, return or any other particulars or document maintained in the electronic form, as is otherwise available for inspection under this Act or the rules made thereunder, may be made by any person through the electronic form in such manner as may be prescribed;
 - (e) such fees, charges or other sums payable under this Act or the rules made thereunder shall be paid through the electronic form and in such manner as may be prescribed; and
 - (f) the Registrar shall register change of registered office, alteration of memorandum or articles, prospectus, issue certificate of incorporation, register such document, issue such certificate, record the notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or the rules made thereunder or perform duties or discharge functions or exercise powers under this Act or the rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar in the electronic form in such manner as may be prescribed.

Explanation.— For the removal of doubts, it is hereby clarified that the rules made under this section shall not relate to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or punishment therefor.

- (2) The Central Government may, by notification, frame a scheme to carry out the provisions of sub-section (1) through the electronic form.

1.18.5 Inspection, Production and Evidence of Documents kept by Registrar [Section 399]

- (1) Save as otherwise provided elsewhere in this Act, any person may—
- (a) inspect by electronic means any documents kept by the Registrar in accordance with the rules made, being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of such fees as may be prescribed;
 - (b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment in advance of such fees as may be prescribed.

Provided that the rights conferred by this sub-section shall be exercisable—

- (i) in relation to documents delivered to the Registrar with a prospectus in pursuance of section 26, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and
 - (ii) in relation to documents so delivered in pursuance of clause (b) of subsection (1) of section 388, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.
- (2) No process for compelling the production of any document kept by the Registrar shall issue from any court or the Tribunal except with the leave of that court or the Tribunal and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court or the Tribunal.
- (3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy by the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

1.18.6 Powers and Duties of Registrars

- (1) The Registrars shall exercise such powers and discharge such duties as are conferred on them by the Act or the rules made there under or delegated to them by the Central Government, wherever the power or duty has been conferred upon the Central Government by the Act or the rules made there under.
- (2) Whenever according to the Act, any function or duty is to be discharged by the Registrar, it shall, until the Central Government otherwise directs, be done by the Registrar, or in his absence, by such person as the Central Government may for the time being authorise.

Provided that in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such function or duty shall be discharged by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

1.18.7 Electronic Form to be Exclusive, Alternative or in addition to Physical Form [Section 400]

The Central Government may also provide in the rules made under section 398 and section 399 that the electronic form for the purposes specified in these sections shall be exclusive, or in the alternative or in addition to the physical form, therefor.

1.18.8 Vacation or Removal of Directors

- (1) In the event of vacation or removal of directors before approving or invalidating Form No DIR-12, the Registrar shall verify the documents as to correctness of contents and whether adequate supporting documents namely, copy of board resolution, copy of notices sent for calling board meeting or copy of minutes of board of directors reflecting voted for or against.
- (2) If the Registrar on verification of documents further finds that the company has violated any of the provisions of the Act or rules, he shall refer the matter to the Regional Director concerned, who shall enquire the matter by giving an opportunity to the person who has been removed or vacated as director and convey the decision of the matter to the Registrar within ninety days from the date of reference to him by the Registrar.

1.18.9 Procedure on Receipt of any Application or Form or Document Electronically

- (1) The Registrar shall examine or cause to be examined every application or e-Form or document required or authorised to be filed or delivered under the Act and rules made thereunder for approval, registration, taking on record or rectification by the Registrar, as the case may be.

Provided that save as otherwise provided in the Act, the Registrar shall take a decision on the



application, e-form or documents within thirty days from the date of its filing excluding the cases in which an approval of the Central Government or the Regional Director or any other competent authority is required.

Provided further that the e-Forms or documents identified as informative in nature and filed under Straight Through Process may be examined by the Registrar at any time on suo-motu or on receipt of any information or complaint from any source at any time after its filing.

Provided also that nothing contained in the first proviso shall affect the powers of the Registrar to call information or explanation in pursuance of section 206.

- (2) Where the Registrar, on examining any application or e-Form or document referred to in sub-rule (1), finds it necessary to call for further information or finds such application or e-form or document to be defective or incomplete in any respect, he shall give intimation of such information called for or defects or incompleteness, by e-mail on the last intimated e-mail address of the person or the company, which has filed such application or e-form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document within the period allowed under sub-rule (3).

Provided that in case the e-mail address of the person or the company in question is not available, the intimation shall be given by the Registrar by post at the last intimated registered office address of the company or the last intimated address of the person, as the case may be and the Registrar shall preserve the facts of the intimation in the electronic record.

- (3) Except as otherwise provided in the Act, the Registrar shall allow fifteen days' time to the person or company which has filed the application or e-Form or document under sub-rule (1) for furnishing further information or for rectification of the defects or incompleteness or for re-submission of such application or e-form or document.
- (4) In case where such further information called for has not been provided or has been furnished partially or defects or incompleteness has not been rectified or has been rectified partially or has not been rectified as required within the period allowed under sub-rule (3), the Registrar shall either reject or treat the application or e-form or document, as the case may be, as invalid in the electronic record, and shall inform the person or company, as the case may be, in the manner as specified in sub-rule (2).
- (5) Where any document has been recorded as invalid by the Registrar, the document may be rectified by the person or company only by fresh filing along with payment of fee and additional fee, as applicable at the time of fresh filing, without prejudice to any other liability under the Act.
- (6) In case the Registrar finds any e-form or document filed under Straight Through Process as defective or incomplete in any respect, at any time suo - motu or on receipt of information or compliant from any source at any time, he shall treat the e-form or document as defective in the electronic registry and shall also issue a notice pointing out the defects or incompleteness in the e-Form or document at the last intimated e-mail address of the person or the company which has filed the document, calling upon the person or company to file the e-Form or document afresh along with fee and additional fee, as applicable at the time of actual re-filing, after rectifying the defects or incompleteness within a period of thirty days from the date of the notice.

Provided that in case the e-mail address of the person or the company in question is not available, the intimation shall be given by the Registrar by post at the last intimated registered office address of the company or the last intimated address of the person, as the case may be and the Registrar shall preserve the facts of the intimation in the electronic record.

1.18.10 Provision of Value Added Services Through Electronic Form [Section 401]

The Central Government may provide such value added services through the electronic form and levy such fee thereon as may be prescribed.

1.18.11 Application of Provisions of Information Technology Act, 2000 [Section 402]

All the provisions of the Information Technology Act, 2000 relating to the electronic records, including the manner and format in which the electronic records shall be filed, in so far as they are not inconsistent with this Act, shall apply in relation to the records in electronic form specified under section 398.

1.18.12 Authentication of Documents

- (1) An electronic form shall be authenticated by authorised signatories using digital signature.
- (2) Where there is any change in directors or secretaries, the form relating to appointment of such directors or secretaries has to be filed by an continuing director or the secretary of the company.
- (3) The authorised signatory and the professional, if any, who certify e-form shall be responsible for the correctness of the contents of e-form and correctness of the enclosures attached with the electronic form.
- (4) Every person authorised for authentication of e-forms, documents or applications etc., which are required to be filed or delivered under the Act or rules made there under, shall obtain a digital signature certificate from the Certifying Authority for the purpose of such authentication and such certificate shall not be valid unless it is of class II or Class III specification under the Information Technology Act, 2000.
- (5) The electronic forms required to be filed under the Act or the rules thereunder shall be authenticated on behalf of the company by the Managing Director or Director or Secretary of the Company or other key managerial personnel.
- (6) Scanned image of documents shall be of original signed documents relevant to the e-forms or forms and the scanned document image shall not be left blank without bearing the actual signature of authorised person.
- (7) It shall be the sole responsibility of the person who is signing the form and professional who is certifying the form to ensure that all the required attachments relevant to the form have been attached completely and legibly as per provisions of the Act, and rules made thereunder to the forms or application or returns filed.
- (8) The documents or form or application filed may contain a power of attorney issued to an Advocate or Chartered Accountant or Cost Accountant or Company Secretary who is in whole time practice and to any others person supported by Board resolution to make representation to the registering or approving authority failing which a Director or key managerial personnel can make representation before such authority.
- (9) Where any instance of filing document, application or return etc, containing a false or misleading information or omission of material fact, requiring action under section 448 or section 449 is observed, the person shall be liable under section 448 and 449 of the Act.
- (10) Without prejudice to any other liability, in case of certification of any form, document, application or return under the Act containing wrong or false or misleading information or omission of material fact or attachments by the person, the Digital Signature Certificate shall be de-activated by the Central Government till a final decision is taken in this regard.
- (11) The Central Government shall set up and maintain for filing of electronic forms, documents and applications, and for viewing and inspection of documents in the electronic registry or for obtaining certified copies thereof-
 - (a) a website or portal to provide access to the electronic registry; and
 - (b) as many Registrar's Facilitation Offices as may be necessary and at such places and for such time as the Central Government may determine.



- (12) (a) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice, namely:-

INC-21, INC-22, INC-28, PAS-3, SH-7, CHG-1, CHG-4, CHG-9, MGT- 14, DIR-6, DIR-12, MR-1, MR-2, MSC-1, MSC-3, MSC-4, GNL-3, ADT-1, NDH-1, NDH-2, NDH-3;

- (b) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified in the following manner, namely:—
- (i) GNL-1 - optional pre-certification by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice;
 - (ii) DPT-3 - certification by Auditors of the company;
 - (iii) MGT-10-certification by a Company Secretary in whole-time practice;
 - (iv) AOC-4- certification by a Chartered Accountant in whole-time practice;
- (c) E-form DIR-3 shall be filed along with attestation of photograph, identity proof and proof of residence of the applicant by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice."

1.18.13 Fee for Filing, etc. [Section 403]

- (1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed.

Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed.

Provided further that any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in first proviso on payment of fee and additional fee specified under this section.

- (2) Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.

1.18.14 Fees, etc., to be credited into Public Account [Section 404]

All fees, charges and other sums received by any Registrar, Additional, Joint, Deputy or Assistant Registrar or any other officer of the Central Government in pursuance of any provision of this Act shall be paid into the public account of India in the Reserve Bank of India.

General Circular – 10/2014

Certification of E-forms/non e-forms under the Companies Act, 2013 by the Practicing Professionals

1. The Ministry has allowed registered Members of the professionals bodies (the ICAI, ICSI and the ICOAI) to authenticate correctness and integrity of documents being filed by them with the MCA in electronic mode.
2. The Companies (Registration Offices and Fees) Rules, 2014 Rule 10 of ibid the Registrar is to examine e-forms or non e-forms attached and filed with general forms on MCA portal viz. to verify whether all the requirements have been complied with and all the attachment to the forms have been duly scanned and attached in accordance with the requirement of above said rules.
3. Where any instance of filing of documents, application or return or petition etc. containing false or misleading information or omission of material fact or incomplete information is observed, the Regional Director or the Registrar as the case may be, shall conduct a quick inquiry against the professionals who certified the form and signatory thereof including an officer in default who appears prima facie responsible for submitting false or misleading or incorrect information pursuant to requirement of above said Rules; 15 days notice may be given for the purpose.
4. The Regional Director or the Registrar will submit his/her report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of the Ministry within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action u/s 447 and 448 of the Companies Act, 2013 wherever applicable and also regarding referral of the matter to the concerned professional Institute for initiating disciplinary proceedings.
5. The E-Gov cell of the Ministry shall process each case so referred and issue necessary instructions to the Regional Director/ Registrar of Companies for initiating action u/s 448 and 449 of the Act wherever prima facie cases have been made out. The E-Gov cell will thereafter refer such cases to the concerned Institute for conducting disciplinary proceedings against the errant member as well as debar the concerned professional from filing any document on the MCA portal in future.
6. The Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Gov Division, Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary E-Governance Division on or before 7th of every month as per the prescribed proforma (copy enclosed).

1.19 NIDHIS

e = e-Form & P = Physical Form

FORM NO. / FORM TYPE		DESCRIPTION OF FORM	RELEVANT SECTION	RELEVANT RULE	PAGE NO.
NDH 1	P	Return of Statutory Compliances	—	5(2)	—
NDH-2	P	Application for extension of Time	—	5(3)	—
NDH-3	P	Half yearly return	—	21	—

1.19.1 Power to Modify Act in its Application to Nidhis [Section 406]

- (1) In this section, "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.
- (2) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications



and adaptations as may be specified in that notification, to any Nidhi or Nidhis of any class or description as may be specified in that notification.

- (3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

1.19.2 Application

It apply to,—

- (a) every company which had been declared as a Nidhi or Mutual Benefit Society under sub-section (1) of Section 620A of the Companies Act, 1956;
- (b) every company functioning on the lines of a Nidhi company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under sub-Section (1) of Section 620A of the Companies Act, 1956; and
- (c) every company incorporated as a Nidhi pursuant to the provisions of Section 406 of the Act.

1.19.3 Definitions

- (1) In these rules, unless the context otherwise requires,—
 - (a) "Act" means the Companies Act, 2013 (18 of 2013);
 - (b) "Doubtful Asset" means a borrowing account which has remained a Non-performing asset for more than two years but less than three years;
 - (c) "Loss Asset" means a borrowing account which has remained a Non-performing asset for more than three years or where in the opinion of the Board, a shortfall in the recovery of the loan account is expected because the documents executed may become invalid if subjected to legal process or for any other reason;
 - (d) "Net Owned Funds" means the aggregate of paid up equity share capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet.

Provided that the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.

- (e) "Non-Performing Asset" means a borrowing account in respect of which interest income or instalment of loan towards re payment of principal amount has remained unrealised for twelve months;
 - (f) "Standard Asset" means the asset in respect of which no default in re-payment of principal or payment of interest has occurred or is perceived and which has neither shown signs of any problem relating to re-payment of principal sum or interest nor does it carry more than normal risk attached to the business;
 - (g) "Sub-Standard Asset" means a borrowing account which is a Non-performing asset.

Provided that reschedulement or renegotiation or rephasing of the loan installment or interest payment shall not change the classification of an asset unless the borrowing account has satisfactorily performed for at least twelve months after such reschedulement or renegotiation or rephasing.

- (2) Words and expressions used herein, but not defined in these rules and defined in the Act or in the Companies (Specification of definitions details) Rules, 2014 shall have the same meaning as assigned to them in the Act or in the said Rules.

1.19.4 Incorporation and Incidental Matters

- (1) A Nidhi to be incorporated under the Act shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees.
- (2) On and after the commencement of the Act, no Nidhi shall issue preference shares.
- (3) If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.
- (4) Except as provided under the proviso to sub-rule (e) to rule 6, no Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.
- (5) Every Company incorporated as a "Nidhi" shall have the last words 'Nidhi Limited' as part of its name.

1.19.5 Requirements for Minimum Number of Members, Net Owned Fund etc.,

- (1) Every Nidhi shall, within a period of one year from the commencement of these rules, ensure that it has—
 - (a) not less than two hundred members;
 - (b) Net Owned Funds of ten lakh rupees or more;
 - (c) unencumbered term deposits of not less than ten per cent of the outstanding deposits as specified in rule 14; and
 - (d) ratio of Net Owned Funds to deposits of not more than 1:20.
- (2) Within ninety days from the close of the first financial year after its incorporation and where applicable, the second financial year, Nidhi shall file a return of statutory compliances in Form NDH-1 along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 with the Registrar duly certified by a company secretary in practice or a chartered accountant in practice or a cost accountant in practice.
- (3) If a Nidhi is not complying with clauses (a) or (d) of sub-rule (1) above, it shall within thirty days from the close of the first financial year, apply to the Regional Director in Form **NDH-2** along with fee specified in Companies (Registration Offices and Fees) Rules, 2014 for extension of time and the Regional Director may consider the application and pass orders within thirty days of receipt of the application.

Explanation: For the purpose of this rule "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

- (4) If the failure to comply with sub-rule (1) of this rule extends beyond the second financial year, Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in sub-rule (1), besides being liable for penal consequences as provided in the Act.

1.19.6 General Restrictions or Prohibitions

No Nidhi shall—

- (a) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate;



- (b) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;
- (c) open any current account with its members;
- (d) acquire another company by purchase of securities or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi;

Explanation.— For the purposes of this sub-rule, “control” shall have the same meaning assigned to it in clause (27) of section 2 of the Act;

- (e) carry on any business other than the business of borrowing or lending in its own name.

Provided that Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

- (f) accept deposits from or lend to any person, other than its members;
- (g) pledge any of the assets lodged by its members as security;
- (h) take deposits from or lend money to any body corporate;
- (i) enter into any partnership arrangement in its borrowing or lending activities;
- (j) issue or cause to be issued any advertisement in any form for soliciting deposit.

Provided that private circulation of the details of fixed deposit Schemes among the members of the Nidhi carrying the words “for private circulation to members only” shall not be considered to be an advertisement for soliciting deposits.

- (k) pay any brokerage or incentive for mobilising deposits from members or for deployment of funds or for granting loans.

1.19.7 Share Capital and Allotment

- (1) Every Nidhi shall issue equity shares of the nominal value of not less than ten rupees each.

Provided that this requirement shall not apply to a company referred to in sub-rules (a) and (b) of rule 2.

- (2) No service charge shall be levied for issue of shares.

- (3) Every Nidhi shall allot to each deposit holder at least a minimum of ten equity shares or shares equivalent to one hundred rupees.

Provided that a savings account holder and a recurring deposit account holder shall hold at least one equity share of rupees ten.

1.19.8 Membership

- (1) A Nidhi shall not admit a body corporate or trust as a member.

- (2) Except as otherwise permitted under these rules, every Nidhi shall ensure that its membership is not reduced to less than two hundred members at any time.

- (3) A minor shall not be admitted as a member of Nidhi.

Provided that deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.

1.19.9 Net Owned Funds

Every Nidhi shall maintain Net Owned Funds (excluding the proceeds of any preference share capital) of not less than ten lakh rupees or such higher amount as the Central Government may specify from time to time.

1.19.10 Branches

- (1) A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding three financial years.
- (2) Subject to the provisions contained in sub-rule (1), a Nidhi may open up to three branches within the district.
- (3) If a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.
- (4) No Nidhi shall open branches or collection centres or offices or deposit centres, or by whatever name called outside the State where its registered office is situated.
- (5) No Nidhi shall open branches or collection centres or offices or deposit centres, or by whatever name called unless financial statement and annual return (up to date) are filed with the Registrar.
- (6) A Nidhi shall not close any branch unless it—
 - (a) publishes an advertisement in a newspaper in vernacular language in the place where it carries on business at least thirty days prior to such closure, informing the public about such closure;
 - (b) fixes a copy of such advertisement or a notice informing such closure of the branch on the notice board of Nidhi for a period of at least thirty days from the date on which advertisement was published under clause (a) ; and
 - (c) gives an intimation to the Registrar within thirty days of such closure.

1.19.11 Acceptance of Deposits by Nidhis

- (1) A Nidhis shall not accept deposits exceeding twenty times of its Net Owned Funds (NOF) as per its last audited financial statements.
- (2) In the case of companies covered under clauses (a) and (b) of rule 2 and existing on or before 26th July, 2001 and which have accepted deposits in excess of the aforesaid limits, the same shall be restored to the prescribed limit by increasing the Net Owned Funds position or alternatively by reducing the deposit according to the table given below.

TABLE

Ratio of Net Owned Funds to Deposits (as on 31.3. 2013)	Date by which the company has to achieve prescribed ceiling of 1:20
a) More than 1:20 but up to 1:35	By 31.3. 2015
b) More than 1:35 but up to 1:45	By 31.3. 2016
c) More than 1:45	By 31.3. 2017

- (3) The companies which are covered under the Table in sub-rule (2) above shall not accept fresh deposits or renew existing deposits if such acceptance or renewal leads to violation of the prescribed ratio.
- (4) The ratio specified in sub-rule (2) above shall also apply to incremental deposits.



1.19.12 Application Form for Deposit

- (1) Every application form for placing a deposit with a Nidhi shall contain the following particulars, namely:—
- (a) Name of Nidhi;
 - (b) Date of incorporation of Nidhi;
 - (c) The business carried on by Nidhi with details of branches, if any;
 - (d) Brief particulars of the management of Nidhi (name, addresses and occupation of the directors, including DIN);
 - (e) Net profits of Nidhi before and after making provision for tax for the preceding three financial years;
 - (f) Dividend declared by Nidhi during the preceding three financial years;
 - (g) Mode of repayment of the deposit;
 - (h) Maturity period of the deposit;
 - (i) Interest payable on the deposit;
 - (j) The rate of interest payable to the depositor in case the depositor withdraws the deposit prematurely;
 - (k) The terms and conditions subject to which the deposit may be accepted or renewed;
 - (l) A summary of the financials of the company as per the latest two audited financial statements as given below:
 - (i) Net Owned Funds
 - (ii) Deposits accepted
 - (iii) Deposits repaid
 - (iv) Deposits claimed but remaining unpaid
 - (v) Loans disbursed against—
 - (a) immovable property;
 - (b) deposits; and
 - (c) gold and jewellery
 - (vi) Profit before tax
 - (vii) Provision for tax
 - (viii) Profit after tax
 - (ix) Dividend per share
 - (m) any other special features or terms and conditions subject to which the deposit is accepted or renewed.
- (2) The application form shall also contain the following statements, namely:—
- (a) in case of Non-payment of the deposit or part thereof as per the terms and conditions of such deposit, the depositor may approach the Registrar of companies having jurisdiction over Nidhi;
 - (b) in case of any deficiency of Nidhi in servicing its depositors, the depositor may approach the National Consumers Disputes Redressal Forum, the State Consumers Disputes Redressal Forum or District Consumers Disputes Redressal Forum, as the case may be, for redressal of his relief;

- (c) a declaration by the Board of Directors to the effect that the financial position of Nidhi as disclosed and the representations made in the application form are true and correct and that Nidhi has complied with all the applicable rules;
 - (d) a statement to the effect that the Central Government does not undertake any responsibility for the financial soundness of Nidhi or for the correctness of any of the statement or the representations made or opinions expressed by Nidhi;
 - (e) the deposits accepted by Nidhi are not insured and the repayment of deposits is not guaranteed by either the Central Government or the Reserve Bank of India; and
 - (f) a verification clause by the depositor stating that he had read and understood the financial and other particulars furnished and representations made by Nidhi in his application form and after careful consideration he is making the deposit with Nidhi at his own risk and volition.
- (3) Every Nidhi shall obtain proper introduction of new depositors before opening their accounts or accepting their deposits and keep on its record the evidence on which it has relied upon for the purpose of such introduction.
- (4) For the purposes of introduction of depositors, a Nidhi shall obtain documentary evidence of the depositor in the form of proof of identity and address as under:
- (a) Proof of Identity (any one of the following)**
 - (i) Passport
 - (ii) Unique Identification Number
 - (iii) Income-tax PAN card
 - (iv) Elector Photo Identity Card
 - (v) Driving licence
 - (vi) Ration card
 - (b) Proof of Address (any one of the following)**
 - (i) Passport
 - (ii) Unique Identification Number
 - (iii) Elector Photo Identity Card
 - (iv) Driving licence
 - (v) Ration card
 - (vi) Telephone bill
 - (vii) Bank account statement
 - (viii) Electricity bill

(documents referred to serial numbers (vi), (vii) and (viii) above shall not be more than two months old)

1.19.13 Deposits

- (1) The fixed deposits shall be accepted for a minimum period of six months and a maximum period of sixty months.
- (2) Recurring deposits shall be accepted for a minimum period of twelve months and a maximum period of sixty months.
- (3) In case of recurring deposits relating to mortgage loans, the maximum period of recurring deposits shall correspond to the repayment period of such loans granted by Nidhi.
- (4) The maximum balance in a savings deposit account at any given time qualifying for interest shall not exceed one lakh rupees at any point of time and the rate of interest shall not exceed two per cent above the rate of interest payable on savings bank account by nationalised banks.



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- (5) A Nidhi may offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India which the Non-Banking Financial Companies can pay on their public deposits.
 - (6) A fixed deposit account or a recurring deposit account shall be foreclosed by the depositor subject to the following conditions, namely:—
 - (a) a Nidhi shall not repay any deposit within a period of three months from the date of its acceptance;
 - (b) where at the request of the depositor, a Nidhi repays any deposit after a period of three months, the depositor shall not be entitled to any interest up to six months from the date of deposit;
 - (c) where at the request of the depositor, a Nidhi makes repayment of a deposit before the expiry of the period for which such deposit was accepted by Nidhi, the rate of interest payable by Nidhi on such deposit shall be reduced by two per cent from the rate which Nidhi would have ordinarily paid, had the deposit been accepted for the period for which such deposit had run.

Provided that in the event of death of a depositor, the deposit may be repaid prematurely to the surviving depositor or depositors in the case of joint holding with survivor clause, or to the nominee or to legal heir with interest up to the date of repayment at the rate which the company would have ordinarily paid, had such deposit been accepted for the period for which such deposit had run.

1.19.14 Un-Encumbered Term Deposits

Every Nidhi shall invest and continue to keep invested, in unencumbered term deposits with a Scheduled commercial bank (other than a co-operative bank or a regional rural bank), or post office deposits in its own name an amount which shall not be less than ten per cent of the deposits outstanding at the close of business on the last working day of the second preceding month.

Provided that in cases of unforeseen commitments, temporary withdrawal may be permitted with the prior approval of the Regional Director for the purpose of repayment to depositors, subject to such conditions and time limit which may be specified by the Regional Director to ensure restoration of the prescribed limit of ten per cent.

1.19.15 Loans

- (1) A Nidhi shall provide loans only to its members.
- (2) The loans given by a Nidhi to a member shall be subject to the following limits, namely:
 - (a) two lakh rupees, where the total amount of deposits of such Nidhi from its members is less than two crore rupees;
 - (b) seven lakh fifty thousand rupees, where the total amount of deposits of such Nidhi from its members is more than two crore rupees but less than twenty crore rupees;
 - (c) twelve lakh rupees, where the total amount of deposits of such Nidhi from its members is more than twenty crore rupees but less than fifty crore rupees; and
 - (d) fifteen lakh rupees, where the total amount of deposits of such Nidhi from its members is more than fifty crore rupees.

Provided that where a Nidhi has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding fifty per cent of the maximum amounts of loans specified in clauses (a), (b), (c) or (d).

Provided further that a member shall not be eligible for any further loan if he has borrowed any earlier loan from the Nidhi and has defaulted in repayment of such loan.

- (3) For the purposes of sub-rule (2), the amount of deposits shall be calculated on the basis of the last audited annual financial statements.
- (4) A Nidhi shall give loans to its members only against the following securities, namely:—
 - (a) gold, silver and jewellery:

Provided that the re-payment period of such loan shall not exceed one year.
 - (b) immovable property:

Provided that the total loans against immovable property [excluding mortgage loans granted on the security of property by registered mortgage, being a registered mortgage under section 69 of the Transfer of Property Act, 1882 (IV of 1882)] shall not exceed fifty per cent of the overall loan outstanding on the date of approval by the board, the individual loan shall not exceed fifty per cent of the value of property offered as security and the period of repayment of such loan shall not exceed seven years.
 - (c) fixed deposit receipts, National Savings Certificates, other Government Securities and insurance policies.

Provided that such securities duly discharged shall be pledged with Nidhi and the maturity date of such securities shall not fall beyond the loan period or one year whichever is earlier.

Provided further that in the case of loan against fixed deposits, the period of loan shall not exceed the unexpired period of the fixed deposits.

1.19.16 Rate of Interest

The rate of interest to be charged on any loan given by a Nidhi shall not exceed seven and half per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method.

Provided that Nidhi shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rates of interest of all classes of loans shall be prominently displayed on the notice board at the registered office and each branch office of Nidhi.

1.19.17 Rules Relating to Directors

- (1) The Director shall be a member of Nidhi.
- (2) The Director of a Nidhi shall hold office for a term up to ten consecutive years on the Board of Nidhi.
- (3) The Director shall be eligible for re-appointment only after the expiration of two years of ceasing to be a Director.
- (4) Where the tenure of any Director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.
- (5) The person to be appointed as a Director shall comply with the requirements of sub-section (4) of Section 152 of the Act and shall not have been disqualified from appointment as provided in section 164 of the Act.

1.19.18 Dividend

A Nidhi shall not declare dividend exceeding twenty five per cent or such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions, namely:—

- (a) an equal amount is transferred to General Reserve;



- (b) there has been no default in repayment of matured deposits and interest; and
(c) it has complied with all the rules as applicable to Nidhis.

1.19.19 Auditor

- (1) No Nidhi shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.
(2) No Nidhi shall appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years.

Provided that an auditor (whether an individual or an audit firm) shall be eligible for subsequent appointment after the expiration of two years from the completion of his or its term.

Explanation: For the purposes of this proviso:

- (i) in case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of these rules shall be taken into account in calculating the period of five consecutive years or ten consecutive years, as the case may be;
(ii) appointment includes re-appointment.

1.19.20 Prudential Norms

- (1) Every Nidhi shall adhere to the prudential norms for revenue recognition and classification of assets in respect of mortgage loans or jewel loans as contained hereunder.
(2) Income including interest or any other charges on non-performing assets shall be recognised only when it is actually realised and any such income recognised before the asset became non-performing and which remains unrealised in a year shall be reversed in the profit and loss account of the immediately succeeding year.
(3) (a) In respect of mortgage loans, the classification of assets and the provisioning required shall be as under:

NATURE OF ASSET	PROVISION REQUIRED
Standard Asset	No provision
Sub-standard Asset	10% of the aggregate outstanding amount
Doubtful Asset	25% of the aggregate outstanding amount
Loss Asset	100% of the aggregate outstanding amount

Provided that a Nidhi may make provision for exceeding the percentage specific herein.

- (b) The estimated realisable value of the collateral security to which a Nidhi has valid recourse may be reduced from the aggregate outstanding amount, if the proceedings for the sale of the mortgaged property have been initiated in a court of law within the previous two years of the interest, income or instalment remaining unrealised.
(4) In case of companies which were incorporated on or before 26-07-2001, such companies shall make provisions in respect of loans disbursed and outstanding as on 31-03-2002 for income reversal and non-performing assets as per table given below:

For the year ended	Extent of provision
31-03-2015	Un-provided balance on equal basis over the three years as specified in the preceding column.
31-03-2016	
31-03-2017	

- (5) (a) The Notes on the financial statements of a year shall disclose—
(i) the total amount of provisions, if any, to be made on account of income reversal and non-performing assets remaining unrealised;
(ii) the cumulative amount provided till the previous year;
(iii) the amount provided in the current year; and
(iv) the balance amount to be provided.
(b) Such disclosure shall continue to be made until the entire amount to be provided has been provided for.
- (6) In respect of loans against gold or jewellery—
(a) the aggregate amount of loan outstanding against the security of gold or jewellery shall either be recovered or renewed within three months from the due date of repayment;
(b) if the loan is not recovered or renewed and the security is not sold within the aforesaid period of three months, the company shall make provision in the current year's financial statements to the extent of unrealised amount or the aggregate outstanding amount of loan including interest as applicable;
(c) no income shall be recognised on such loans outstanding after the expiry of the three months period specified in (a) above or sale of gold or jewellery, whichever is earlier; and
(d) the loan to value ratio shall not exceed 80 per cent.

Explanation.— For the purposes of this rule, the term 'loan to value ratio' means the ratio between the amount of loan given and the value of gold or jewellery against which such loan is given.

1.19.21 Filing of Half Yearly Return

Every company covered under rule 2 shall file half yearly return with the Registrar in Form NDH-3 along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within thirty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice or cost accountant in practice.

1.19.22 Auditor's Certificate

The Auditor of the company shall furnish a certificate every year to the effect that the company has complied with all the provisions contained in the rules and such certificate shall be annexed to the audit report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

1.19.23 Power to Enforce Compliance

- (1) For the purposes of enforcing compliance with these rules, the Registrar of companies may call for such information or returns from Nidhi as he deems necessary and may engage the services of chartered accountants, company secretaries in practice, cost accountants, or any firm thereof from time to time for assisting him in the discharge of his duties.
- (2) In respect of any Nidhi which has violated these rules or has failed to function in terms of the Memorandum and Articles of Association, the concerned Regional Director may appoint a Special Officer to take over the management of Nidhi and such Special Officer shall function as per the guidelines given by such Regional Director.

Provided that an opportunity of being heard shall be given to the concerned Nidhi by the Regional Director before appointing any Special Officer.

1.19.24 Penalty for Non-Compliance

If a company falling under rule 2 contravenes any of the provisions of the rules prescribed herein, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.



1.20 SPECIAL COURTS

1.20.1 Establishment of Special Courts [Section 435]

- (1) The Central Government may, for the purpose of providing speedy trial of offences punishable under this Act, with imprisonment of two years or more by notification, establish or designate as many Special Courts as may be necessary.

Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

- (2) A Special Court shall consist of a single judge who shall 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 shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

1.20.2 Offences Triable by Special Courts [Section 436]

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—
- (a) all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or 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;
 - (b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973, such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate.

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

- (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and
 - (d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.
- (2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years.

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed.

Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

1.20.3 Appeal and Revision [Section 437]

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

1.20.4 Application of Code to Proceedings before Special Court [Section 438]

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

1.20.5 Offences to be Non-Cognizable [Section 439]

- (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
- (2) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

Provided further that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, where the complainant under sub-section (2) is the Registrar or a person authorised by the Central Government, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.
- (4) The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

Explanation.— The liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (2).

1.20.6 Transitional Provisions [Section 440]

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973.

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.



1.20.7 Compounding of Certain Offences [Section 441]

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by—

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director or any officer authorised by the Central Government,

on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify.

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account.

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

(2) Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation.— For the purposes of this section,—

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) “Regional Director” means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(3) (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

(b) Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in

compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

- (5) Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.
- (6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—
 - (a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;
 - (b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.
- (7) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

1.20.8 Mediation and Conciliation Panel [Section 442]

- (1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.
- (2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).
- (3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo motu, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.
- (4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.
- (5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
- (6) Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

1.20.9 Power of Central Government to Appoint Company Prosecutors [Section 443]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may appoint generally, or for any case, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this



Act and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.

1.20.10 Appeal against Acquittal [Section 444]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may, in any case arising under this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

1.20.11 Compensation for Accusation without Reasonable Cause [Section 445]

The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply mutatis mutandis to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

1.20.12 Application of Fines [Section 446]

The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

General Circular No. 05/2014

Online Payment of Stamp Duty and Court fee Stamp for Issue of Certified Copies.

1. With a view to identify and improve the component causing delay in issue of certified copy the Ministry has enabled payment of Stamp Duty as well as Court Fee online through MCA portal. This would enable the respective ROCs to send the certified documents without awaiting for physical stamp papers and any formal application (with Court Fee Stamp) in this regard.
2. Amount of Court Fee shall be added to the MCA fee calculated by the system for getting Certified Copies. This would be based on the State in which the registered office of the company is situated. Court Fee would be added per SRN irrespective of number of documents applied for.
3. Stamp duty for obtaining certified true copy would also be paid electronically through the system as per the existing process. The Stamp Duty would be calculated based on document, number of copies requested and the State wherein the registered office of the company is situated. Separate SRN will be generated for payment of Stamp Duty.
4. After the application is completely processed; an acknowledgement for stamp duty payment shall be generated separately. The same to be appended to the certified copy of the document. The certified copy of the documents requested shall be sent to the stakeholder by the jurisdictional Registrar of Companies within 15 days by post. The Copies would be sent at the address of applicant mentioned in the challan.
5. The Registrar of company shall ensure that the corresponding amount of court fee stamp is pasted against the record of despatch of certified copy or the print out of the challan for payment of MCA fee. The court fee stamp paid by ROC will be booked as Office expenses.

1.21 MISCELLANEOUS**e = e-Form & P = Physical Form**

FORM NO. / FORM TYPE	DESCRIPTION OF FORM		RELEVANT SECTION	RELEVANT RULE	PAGE NO.
MSC 1	e	Application to Registrar for obtaining the status of dormant company	455(1)	3	1.286
MSC2	P	Certificate of status of a Dormant Company	455(2)	4	1.286
MSC3	e	Return of Dormant Companies	455(5)	7,8	1.286
MSC-4	e	Application for seeking status of active company	455(5)	8	1.286
MSC-5	P	Certificate of status of an active company	455(5)	8(2)	1.286

1.21.1 Punishment for Fraud [Section 447]

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation: For the purposes of this section—

- (i) “fraud” in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

1.21.2 Punishment for False Statement [Section 448]

Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 447.

1.21.3 Punishment for False Evidence [Section 449]

Save as otherwise provided in this Act, if any person intentionally gives false evidence—

- (a) upon any examination on oath or solemn affirmation, authorised under this Act; or
- (b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, he shall be punishable



with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

1.21.4 Punishment Where no Specific Penalty or Punishment is Provided [Section 450]

If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

1.21.5 Punishment in Case of Repeated Default [Section 451]

If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

1.21.6 Punishment for Wrongful Withholding of Property [Section 452]

- (1) If any officer or employee of a company—
 - (a) wrongfully obtains possession of any property, including cash of the company; or
 - (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

- (2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

1.21.7 Punishment for Improper use of “Limited” or “Private Limited” [Section 453]

If any person or persons trade or carry on business under any name or title, of which the word “Limited” or the words “Private Limited” or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.

1.21.8 Adjudication of Penalties [Section 454]

- (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as may be prescribed.
- (2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).
- (3) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act.

- (4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.
- (5) Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an appeal to the Regional Director having jurisdiction in the matter.
- (6) Every appeal under sub-section (5) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed.
- (7) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.
- (8) (i) Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.
(ii) Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

1.21.9 Dormant Company [Section 455]

- (1) Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation.— For the purposes of this section,—

- (i) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;
- (ii) “significant accounting transaction” means any transaction other than—
 - (a) payment of fees by a company to the Registrar;
 - (b) payments made by it to fulfil the requirements of this Act or any other law;
 - (c) allotment of shares to fulfil the requirements of this Act; and
 - (d) payments for maintenance of its office and records.
- (2) The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.
- (3) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.
- (4) In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
- (5) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.
- (6) The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.



1.21.10 Application for Obtaining Status of Dormant Company

For the purposes of sub-section (1) of section 455, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

Provided that a company shall be eligible to apply under this rule only, if-

- (i) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;
- (ii) no prosecution has been initiated and pending against the company under any law;
- (iii) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;
- (iv) the company is not having any outstanding loan, whether secured or unsecured:
Provided that if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1;
- (v) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;
- (vi) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;
- (vii) the company has not defaulted in the payment of workmen's dues;
- (viii) the securities of the company are not listed on any stock exchange within or outside India.

1.21.11 Certificate of Status of Dormant Company

The Registrar shall, after considering the application filed in Form MSC-1, issue a certificate in Form **MSC-2** allowing the status of a Dormant Company to the applicant.

1.21.12 Register of Dormant Companies

The Register maintained under the portal maintained by the Ministry of Corporate Affairs on its website www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

1.21.13 Minimum Number of Directors for Dormant Company

A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company.

Provided that the provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.

1.21.14 Return of Dormant Companies

A dormant company shall file a "Return of Dormant Company" annually, inter-alia, indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year.

Provided that the company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

1.21.15 Application for Seeking Status of an Active Company

- (1) An application, under sub-section (5) of section 455, for obtaining the status of an active company shall be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed. Provided that the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive five years.
- (2) The Registrar shall, after considering the application filed under sub-rule (1), issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.
- (3) Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, under sub-rule (1) of this rule, for obtaining the status of an active company.
- (4) Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

1.21.16 Protection of Action taken in Good Faith [Section 456]

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer, of any report, paper or proceedings.

1.21.17 Non-Disclosure of Information in Certain Cases [Section 457]

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of the Government or any other person shall not be compelled to disclose to any court, Tribunal or other authority, the source from where he got any information which—

- (a) has led the Central Government to order an investigation under section 210; or
- (b) is or has been material or relevant in connection with such investigation.

1.21.18 Delegation by Central Government of its Powers and Functions [Section 458]

- (1) The Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification.

Provided that the powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to Securities and Exchange Board for listed companies or the companies which intend to get their securities listed and in such case, any officer authorised by the Securities and Exchange Board shall have the power to file a complaint in the court of competent jurisdiction.

- (2) A copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

As per Notification No. S.O.1354(E) dated 21st May, 2014 the Central Government hereby delegates the powers and functions of the Central Government in respect of allotment of Director Identification Number under Sections 153 and 154 of the said Act to the Regional Director, Joint Director, Deputy Director or Assistant Director posted in the office of Regional Director at Noida.



As per the Notification No. S.O. 1352(E) the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmadabad, Hyderabad and Shillong, the power and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if in its opinion such a course of action is necessary in the public interest, namely :—

- (a) clause (i) of sub-section (4) of Section 8 (for alteration of memorandum in case of conversion into another kind of company);
- (b) sub-section (6) of Section 8;
- (c) sub-sections (4) and (5) of Section 13;
- (d) Section 16;
- (e) Section 87;
- (f) sub-section (3) of Section 111;
- (g) sub-section (1) of Section 140; and
- (h) proviso (i) to sub-section (1) of Section 399.

As per the Notification No. S.O. 1353(E) the Central Government hereby delegates to the Registrar of Companies, the power and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers and functions under the said sections, if in its opinion, such a course of action is necessary in the public interest, namely:—

- (a) sub-section (2) of Section 4;
- (b) sub-section (1) of Section 8;
- (c) clause (i) of sub-section (4) of Section 8, except for alteration of memorandum in case of conversion into another kind of company;
- (d) sub-section (5) of Section 8; and
- (e) sub-section (2) of Section 13.

1.21.19 Powers of Central Government or Tribunal to Accord Approval, etc., Subject to Conditions and to Prescribe Fees on Applications [Section 459]

- (1) Where the Central Government or the Tribunal is required or authorised by any provision of this Act—
 - (a) to accord approval, sanction, consent, confirmation or recognition to, or in relation to, any matter; or
 - (b) to give any direction in relation to any matter; or
 - (c) to grant any exemption in relation to any matter,then, the Central Government or the Tribunal may in the absence of anything to the contrary contained in that provision or any other provision of this Act, accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of a contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.
- (2) Save as otherwise provided in this Act, every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of this Act—
 - (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or

- (b) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or
 - (c) in respect of any other matter,
- shall be accompanied by such fees as may be prescribed.

Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by different classes of companies.

1.21.20 Condonation of Delay in Certain Cases [Section 460]

Notwithstanding anything contained in this Act,—

- (a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay; and
- (b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

1.21.21 Annual Report by Central Government [Section 461]

The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before each House of Parliament within one year of the close of the year to which the report relates.

1.21.22 Power to Exempt Class or Classes of Companies from Provisions of this Act [Section 462]

- (1) The Central Government may in the public interest, by notification direct that any of the provisions of this Act,—
 - (a) shall not apply to such class or classes of companies; or
 - (b) shall apply to the class or classes of companies with such exceptions, modifications and adaptations as may be specified in the notification.
- (2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.
- (3) In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prorogued or adjourned for more than four consecutive days.
- (4) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

1.21.23 Power of Court to Grant Relief in Certain Cases [Section 463]

- (1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit.

Provided that in a criminal proceeding under this sub-section, the court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

- (2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust,



he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

- (3) No court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

1.21.24 Prohibition of association or partnership of persons exceeding certain number [Section 464]

- (1) No association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:

Provided that the number of persons which may be prescribed under this sub-section shall not exceed one hundred.

- (2) Nothing in sub-section (1) shall apply to—

- a Hindu undivided family carrying on any business; or
- an association or partnership, if it is formed by professionals who are governed by special Acts.

- (3) Every member of an association or partnership carrying on business in contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

1.21.25 Repeal of certain enactments and savings [Section 465]

- (1) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed.

Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.

Provided further that until a date is notified by the Central Government under subsection (1) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed.

Provided also that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

- (2) Notwithstanding the repeal under sub-section (1) of the repealed enactments,—

- anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

- subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution

- passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act;
- (c) any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments;
 - (d) any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act;
 - (e) any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored;
 - (f) the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act;
 - (g) the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act;
 - (h) all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act;
 - (i) any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court;
 - (j) any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and
 - (k) any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal.
- (3) The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 were also a Central Act.

1.21.26 Dissolution of Company Law Board and consequential provisions [Section 466]

- (1) Notwithstanding anything contained in section 465, the Board of Company Law Administration constituted under the Companies Act, 1956 (hereafter in this section referred to as the Company Law Board) shall stand dissolved on the constitution of the Tribunal and the Appellate Tribunal:
Provided that until the Tribunal and the Appellate Tribunal is constituted, the Chairman, Vice-Chairman and Members of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal, who fulfil the qualifications and requirements provided under this Act regarding appointment as President or Chairperson or Member of the Tribunal or the Appellate Tribunal, shall function as President, Chairperson or Member of the Tribunal or the Appellate Tribunal:
Provided further that every officer or other employee, who had been appointed on deputation basis to the Company Law Board, shall, on such dissolution,—
 - (i) become officer or employee of the Tribunal or the Appellate Tribunal, if he fulfils the qualifications and requirements under this Act; and



- (ii) stand reverted to his parent cadre, Ministry or Department, in any other case.

Provided also that every officer and the other employee of the Company Law Board, employed on regular basis by that Board, shall become, on and from such dissolution the officer and other employee, respectively, of the Tribunal or the Appellate Tribunal with the same rights and privileges as to pension, gratuity and other like benefits as would have been admissible to him if he had continued to serve that Board and shall continue to do so unless and until his employment in the Tribunal or the Appellate Tribunal is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Tribunal or the Appellate Tribunal, as the case may be.

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947, 1947 or in any other law for the time being in force, any officer or other employee who becomes an officer or other employee of the Tribunal or the Appellate Tribunal under the preceding proviso shall not be entitled to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

Provided also that where the Company Law Board has established a provident fund, superannuation fund, welfare fund or other fund for the benefit of the officers and other employees employed in that Board, the monies relatable to the officers and other employees who have become officers or employees of the Tribunal or the Appellate Tribunal shall, out of the monies standing to the credit of such provident fund, superannuation fund, welfare fund or other fund, stand transferred to, and vest in, the Tribunal or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the Tribunal or the Appellate Tribunal in such manner as may be prescribed.

- (2) The persons holding the offices of Chairman, Vice-Chairman and Members, and officers and other employees of the Company Law Board immediately before the constitution of the Tribunal and the Appellate Tribunal who are not covered under proviso to sub-section (1) shall vacate their respective offices on such constitution and no such Chairman, Vice-Chairman and Members and officers or other employees shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service, if any.

1.21.27 Power of Central Government to amend Schedules [Section 467]

- (1) Subject to the provisions of this section, the Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.
- (2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs.

Provided that no such alteration in Table F of Schedule I shall apply to any company registered before the date of such alteration.

- (3) Every alteration made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

1.21.28 Powers of Central Government to make rules relating to winding up [Section 468]

- (1) The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (i) as to the mode of proceedings to be held for winding up of a company by the Tribunal;
 - (ii) for the voluntary winding up of companies, whether by members or by creditors;
 - (iii) for the holding of meetings of creditors and members in connection with proceedings under section 230;
 - (iv) for giving effect to the provisions of this Act as to the reduction of the capital;
 - (v) generally for all applications to be made to the Tribunal under the provisions of this Act;
 - (vi) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
 - (vii) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;
 - (viii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
 - (ix) the making of calls; and
 - (x) the fixing of a time within which debts and claims shall be proved.
- (3) All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of this Act and in force at such commencement, shall continue to be in force, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.

1.21. 29 Power of Central Government to make rules [Section 469]

- (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.
- (3) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.
- (4) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

1.21.30 Power to remove difficulties [Section 470]

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:
Provided that no such order shall be made after the expiry of a period of five years from the date of commencement of section 1 of this Act.
- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.



Reference Section 465(1) of the Companies Act, 2013

1.22 INCORPORATION OF PRODUCER COMPANIES AND OTHER MATTERS

1.22.1 Objects of Producer Company [Section 581B]

- (1) The objects of the Producer Company shall relate to all or any of the following matters, namely :-
 - (a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit:
Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;
 - (b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members ;
 - (c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;
 - (d) providing education on the mutual assistance principles to its Members and others ;
 - (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members
 - (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce ;
 - (g) insurance of producers or their primary produce ;
 - (h) promoting techniques of mutuality and mutual assistance ;
 - (i) welfare measures or facilities for the benefit of Members as may be decided by the Board ;
 - (j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner ; (k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.
- (2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

1.22.2 Formation of Producer Company and its Registration [Section 581C]

- (1) Any ten or more individuals, each of them being a producer or any two or more Producer institutions, or a combination of ten or more individuals and Producer institutions, desirous of forming a Producer Company having its objects specified in section 581B and otherwise complying with the requirements of this Part and the provisions of this Act in respect of registration, may form an incorporated Company as a Producer Company under this Act.
- (2) If the Registrar is satisfied that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, he shall, within thirty days of the receipt of the documents required for registration, register the memorandum, the articles and other documents, if any, and issue a certificate of incorporation under this Act.
- (3) A Producer Company so formed shall have the liability of its Members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and be termed a company limited by shares.
- (4) The Producer Company may reimburse to its promoters all other direct costs associated with the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles and the payment thereof shall be subject to the approval at its first general meeting of the Members.
- (5) On registration under sub-section (1), the Producer Company shall become a body corporate as if it is a private limited company to which the provisions contained in this Part apply, without,

however, any limit to the number of Members thereof, and the Producer Company shall not, under any circumstance, whatsoever, become or be deemed to become a public limited company under this Act.

1.22.3 Membership and Voting Rights of Members of Producer Company [Section 581D]

- (1) (a) In a case where the membership consists solely of individual members, the voting rights shall be based on a single vote for every Member, irrespective of his shareholding or patronage of the Producer Company.
(b) In a case where the membership consists of Producer institutions only, the voting rights of such Producer institutions shall be determined on the basis of their participation in the business of the Producer Company in the previous year, as may be specified by articles:
Provided that during the first year of registration of a Producer Company, the voting rights shall be determined on the basis of the shareholding by such Producer institutions.
(c) In a case where the membership consists of individuals and Producer institutions, the voting rights shall be computed on the basis of a single vote for every Member.
- (2) The articles of any Producer Company may provide for the conditions, subject to which a Member may continue to retain his membership, and the manner in which voting rights shall be exercised by the Members.
- (3) Notwithstanding anything contained in sub-section (7) or sub-section(2), any Producer Company may, if so authorised by its articles, restrict the voting rights to active Members, in any special or general meeting.
- (4) No person, who has any business interest which is in conflict with business of the Producer Company, shall become a Member of that Company.
- (5) A Member, who acquires any business interest which is in conflict with the business of the Producer Company, shall cease to be a Member of that Company and be removed as a Member in accordance with articles.

1.22.4 Benefits to Members [Section 581E]

- (1) Subject to provisions made in articles, every Member shall initially receive only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares, in proportion to the produce supplied to the Producer Company during the financial year to such extent and in such manner and subject to such conditions as may be decided by the Board.
- (2) Every Member shall, on the share capital contributed, receive only a limited return.
Provided that every such Member may be allotted bonus shares in accordance with the provisions contained in section 581ZJ.
- (3) The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 581ZI, may be disbursed as patronage bonus, amongst the Members, in proportion to their participation in the business of the Producer Company, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting.

1.22.5 Memorandum of Producer Company [Section 581F]

The memorandum of association of every Producer Company shall state: -

- (a) the name of the company with "Producer Company Limited" as the last words of the name of such Company ;
- (b) the State in which the registered office of the Producer Company is to situate ;
- (c) the main objects of the Producer Company shall be one or more of the objects specified in section 581B ;
- (d) the names and addresses of the persons who have subscribed to the memorandum ;



- (e) the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount ;
- (f) the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with sub-section (2) of section 581J ;
- (g) that the liability of its members is limited ;
- (h) opposite to the subscriber's name the number of shares each subscriber takes :
Provided that no subscriber shall take less than one share ;
- (i) in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

1.22.6 Articles of Association [Section 581G]

- (1) There shall be presented, for registration to the Registrar of the State to which the registered office of the Producer Company is, stated by the memorandum of association, to be situate: -
 - (a) memorandum of the Producer Company;
 - (b) its articles duly signed by the subscribers to the memorandum.
- (2) The articles shall contain the following mutual assistance principles, namely : -
 - (a) the membership shall be voluntary and available, to all eligible persons who, can participate or avail of the facilities or services of the Producer Company, and are willing to accept the duties of membership ;
 - (b) each Member shall, save as otherwise provided in this Part, have only a single vote irrespective of the share holding ;
 - (c) the Producer Company shall be administered by a Board consisting of persons elected or appointed as directors in the manner consistent with the provisions of this Part and the Board shall be accountable to the Members;
 - (d) save as provided in this Part, there shall be limited return on share capital ;
 - (e) the surplus arising out of the operations of the Producer Company shall be distributed in an equitable manner by : -
 - (i) providing for the development of the business of the Producer Company ;
 - (ii) providing for common facilities ; and
 - (iii) distributing amongst the Members, as may be admissible in proportion to their respective participation in the business ;
 - (f) provision shall be made for the education of Members, employees and others, on the principles of mutuality and techniques of mutual assistance ;
 - (g) the Producer Company shall actively co-operate with other Producer Companies (and other organisations following similar principles) at local, national or international level so as to best serve the interest of their Members and the communities it purports to serve.
- (3) Without prejudice to the generality of the foregoing provisions of sub-sections (1) and (2), the articles shall contain the following provisions, namely : -
 - (a) the qualifications for membership, the conditions for continuance or cancellation of membership and the terms, conditions and procedure for transfer of shares ;
 - (b) the manner of ascertaining the patronage and voting right based on patronage ;
 - (c) subject to the provisions contained in sub-section (1) of section 581N, the manner of constitution of the Board, its powers and duties, the minimum and maximum number of directors, manner of election and appointment of directors and retirement by rotation, qualifications for being elected or continuance as such and the terms of office of the said directors, their powers and duties, conditions for election or co-option of directors, method of removal of directors and the filling up of vacancies on the Board, and the manner and the terms of appointment of the Chief Executive ;

- (a) the election of the Chairman, term of office of directors and the Chairman, manner of voting at the general or special meetings of Members, procedure for voting, by directors at meetings of the Board, powers of the Chairman and the circumstances under which the Chairman may exercise a casting vote ;
- (b) the circumstances under which, and the manner in which, the withheld price is to be determined and distributed ;
- (c) the manner of disbursement of patronage bonus in cash or by issue of equity shares, or both;
- (d) the contribution to be shared and related matters referred to in subsection (2) of section 581ZI;
- (e) the matters relating to issue of bonus shares out of general reserves as set out in section 581ZJ;
- (f) the basis and manner of allotment of equity shares of the Producer Company in lieu of the whole or part of the sale proceeds of produce or products supplied by the Members ;
- (g) the amount of reserves, sources from which funds may be raised, limitation on raising of funds, restriction on the use of such funds and the extent of debt that may be contracted and the conditions thereof ;
- (h) the credit, loans or advances which may be granted to a Member and the conditions for the grant of the same ;
- (i) the right of any Member to obtain information relating to general business of the company ;
- (j) the basis and manner of distribution and disposal of funds available after meeting liabilities in the event of dissolution or liquidation of the Producer Company ;
- (k) the authorisation for division, amalgamation, merger, creation of subsidiaries and the entering into joint ventures and other matters connected therewith ;
- (l) laying of the memorandum and articles of the Producer Company before a special general meeting to be held within ninety days of its registration ;
- (m) any other provision, which the Members may, by special resolution recommend to be included in articles.

1.22.7 Amendment of Memorandum [Section 581H]

- (1) A Producer Company shall not alter the conditions contained in its memorandum except in the cases, by the mode and to the extent for which express provision is made in this Act.
- (2) A Producer Company may, by special resolution, not inconsistent with section 581B, alter its objects specified in its memorandum.
- (3) A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within thirty days from the date of adoption of any resolution referred to in sub-section (2).

Provided that in the case of transfer of the registered office of a Producer Company from the jurisdiction of one Registrar to another, certified copies of the special resolution certified by two directors shall be filed with both the Registrars within thirty days, and each Registrar shall record the same, and thereupon the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to the other Registrar all documents relating to the Producer Company.

- (4) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Company Law Board on petition.

1.22.8 Amendment of Articles [Section 581I]

- (1) Any amendment of the articles shall be proposed by not less than two-third of the elected directors or by not less than one-third of the Members of the Producer Company, and adopted by the Members by a special resolution.
- (2) A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, shall be filed with the Registrar within thirty days from the date of its adoption.



1.22.9 Option to Inter-State Co-Operative Societies to become Producer Companies [Section 581J]

- (1) Notwithstanding anything contained in sub-section (1) of section 581C, any inter-State co-operative society with objects not confined to one State may make an application to the Registrar for registration as Producer Company under this Part.
- (2) Every application under sub-section (1) shall be accompanied by -
 - (a) a copy of the special resolution, of not less than two-third of total members of inter-State co-operative society, for its incorporation as a Producer Company under this Act ;
 - (b) a statement showing -
 - (i) names and addresses or the occupation of the directors and Chief Executive, if any, by whatever name called, of such co-operative ; and
 - (ii) list of members of such inter-State co-operative society ;
 - (c) a statement indicating that the inter-State co-operative society is engaged in any one or more of the objects specified in section 581B;
 - (d) a declaration by two or more directors of the inter-State co-operative society certifying that particulars given in clauses (a) to (c) are correct.
- (3) When an inter-State co-operative society is registered as a Producer Company, the words "Producer Company Limited" shall form part of its name with any word or expression to show its identity preceding it.
- (4) On compliance with the requirements of sub-sections (1) to (3), the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-operative society applying for registration is registered and thereby incorporated as a Producer Company under this Part.
- (5) A co-operative society formed by producers, by Federation or Union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any Federation or Unions of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application under sub-section (1) and to obtain registration as a Producer Company under this Part.
- (6) The inter-State co-operative society shall, upon registration under sub-section (1), stand transformed into a Producer Company, and there-after shall be governed by the provisions of this Part to the exclusion of the law by which it was earlier governed, save insofar as anything done or omitted to be done before its registration as a Producer Company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.
- (7) Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of the society from its register.

1.22.10 Effect of Incorporation of Producer Company [Section 581K]

Every shareholder of the inter-State co-operative society immediately before the date of registration of Producer Company (hereafter referred to as the transformation date) shall be deemed to be registered on and from that date as a shareholder of the Producer Company to the extent of the face value of the shares held by such shareholder.

1.22.11 Vesting of Undertaking in Producer Company [Section 581L]

- (1) All properties and assets, movable and immovable, of, or belonging to, the inter-State co-operative society as on the transformation date, shall vest in the Producer Company.
- (2) All the rights, debts, liabilities, interests, privileges and obligations of the inter-State co-operative

society as on the transformation date shall stand transferred to, and be the rights, debts, liabilities, interests, privileges and obligations of, the Producer Company.

- (3) Without prejudice to the provisions contained in sub-section (2), all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the society as on the transformation date for or in connection with their purposes, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Producer Company.
- (4) All sums of money due to the inter-State co-operative society immediately before the transformation date, shall be deemed to be due to the Producer Company.
- (5) Every organisation, which was being managed immediately before the transformation date by the inter-State co-operative society shall be managed by the Producer Company for such period, to such extent and in such manner as the circumstances may require.
- (6) Every organisation which was getting financial, managerial or technical assistance from the inter-State cooperative society, immediately before the transformation date, may continue to be given financial, managerial or technical assistance, as the case may be, by the Producer Company, for such period, to such extent and in such manner as that company may deem fit.
- (7) The amount representing the capital of the erstwhile inter-State co-operative society shall form part of the capital of the Producer Company.
- (8) Any reference to the inter-State co-operative society in any law other than this Act or in any contract or other instrument, shall be deemed to be reference to the Producer Company.
- (9) If, on the transformation date, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the incorporation of the Producer Company under section 581C or transformation of the inter-State co-operative society as a Producer Company under section 581J, as the case may be, but the suit, arbitration, appeal or other proceeding, may be continued, prosecuted and enforced by or against the Producer Company in the same manner and to the same extent as it would have, or may have been continued, prosecuted and enforced by or against the inter-State co-operative society as if the provisions contained in this Part had not come into force.

1.22.12 Concession, Etc., to be Deemed to have been granted to Producer Company [Section 581M]

With effect from the transformation date, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the inter-State co-operative society in connection with the affairs and business of the inter-State cooperative society under any law for the time being in force shall be deemed to have been granted to the Producer Company.

1.22.13 Provisions in respect of Officers and Other Employees of Inter-State Co-Operative Society [Section 581N]

- (1) Notwithstanding anything contained in section 581-O, all the directors in the inter-State co-operative society before the incorporation of the Producer Company shall continue in office for a period of one year from the transformation date and in accordance with the provisions of this Act.
- (2) Every officer or other employee of the inter-State co-operative society (except a director of the Board, Chairman or Managing Director) serving in its employment immediately before the transformation date shall, insofar as such officer or other employee is employed in connection with the inter-State co-operative society which has vested in the Producer Company by virtue of this Act, become, as from the transformation date, an officer or, as the case may be, other employee of the Producer Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with



the same rights and privileges as to leave, leave travel concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the erstwhile inter-State cooperative society if its undertaking had not vested in the Producer Company and shall continue to do so as an officer or, as the case may be, other employee of the Producer Company.

- (3) Where an officer or other employee of the inter-State co-operative society opts under sub-section (2) not to be in employment or service of the Producer Company, such officer or other employee shall be deemed to have resigned.
- (4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the inter-State co-operative society to the Producer Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.
- (5) The officers and other employees who have retired before the transformation date from the service of the inter State co-operative society and are entitled to any benefits, rights or privileges, shall be entitled to receive the same benefits, rights or privileges from the Producer Company.
- (6) The trusts of the provident fund or the gratuity fund of the inter-State cooperative society and any other bodies created for the welfare of officers or employees shall continue to discharge functions in the Producer Company as was being done hitherto in the inter-State co-operative society and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the Producer Company.
- (7) Notwithstanding anything contained in this Act or in any other law for the time being in force or in the regulations of the inter-State co-operative society, no director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or substantial part of the business and affairs of the inter-State co-operative society shall be entitled to any compensation against the inter-State co-operative society or the Producer Company for the loss of office or for the premature termination of any contract of management entered into by him with the inter-State cooperative society.

1.22.14 Number of Directors [Section 581-O]

Every Producer Company shall have at least five and not more than fifteen directors :

Provided that in the case of an inter-State co-operative society incorporated as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.

1.22.15 Appointment of Directors [Section 581P]

- (1) Save as provided in section 581N, the Members who sign the memorandum and the articles may designate therein the Board of directors (not less than five) who shall govern the affairs of the Producer Company until the directors are elected in accordance with the provisions of this section.
- (2) The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company.

Provided that in the case of an inter-State co-operative society which has been registered as a Producer Company under sub-section (4) of section 581J in which at least five directors [including the directors continuing in office under sub-section (1) of section 581N] hold office as such on the date of registration of such company, the provisions of this sub-section shall have effect as if for the words "ninety days", the words "three hundred and sixty five days" had been substituted.

- (3) Every person shall hold office of a director for a period not less than one year but not exceeding five years as may be specified in the articles.

- (4) Every director, who retires in accordance with the articles, shall be eligible for re-appointment as a director.
- (5) Save as provided in sub-section (2), the directors of the Board shall be elected or appointed by the Members in the annual general meeting.
- (6) The Board may co-opt one or more expert directors or an additional director not exceeding one-fifth of the total number of directors or appoint any other person as additional director for such period as the Board may deem fit : Provided that the expert directors shall not have the right to vote in the election of the Chairman but shall be eligible to be elected as Chairman, if so provided by its articles.

Provided further that the maximum period, for which the expert director or the additional director holds office, shall not exceed such period as may be specified in the articles.

1.22.16 Vacation of Office by Directors [Section 581Q]

- (1) The office of the director of a Producer Company shall become vacant if-
 - (a) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months ;
 - (b) the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days ;
 - (c) he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director ;
 - (d) the Producer Company, in which he is a director -
 - (i) has not filed the annual accounts and annual return for any continuous three financial years commencing on or after the 1st day of April, 2002 ; or
 - (ii) has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more ;
 - (e) default is made in holding election for the office of director, in the Producer Company in which he is a director, in accordance with the provisions of this Act and articles ;
 - (f) the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason.
- (2) The provisions of sub-section (1) shall, as far as may be, apply to the director of a Producer institution which is a member of a Producer Company.

1.22.17 Powers and Functions of Board [Section 581R]

- (1) Subject to the provisions of this Act and articles, the Board of directors of a Producer Company shall exercise all such powers and to do all such acts and things, as that company is authorised so to do.
- (2) In particular and without prejudice to the generality of the foregoing powers, such powers may include all or any of the following matters, namely: -
 - (a) determination of the dividend payable ;
 - (b) determination of the quantum of withheld price and recommend patronage to be approved at general meeting ;
 - (c) admission of new Members ;
 - (d) pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans ;



- (e) appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles ;
 - (f) exercise superintendence, direction and control over Chief Executive and other officers appointed by it ;
 - (g) cause proper books of account to be maintained ; prepare annual accounts to be placed before the annual general meeting with the auditor's report and the replies on qualifications, if any, made by the auditors ;
 - (h) acquisition or disposal of property of the Producer Company in its ordinary course of business;
 - (i) investment of the funds of the Producer Company in the ordinary course of its business ;
 - (j) sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative ;
 - (k) take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers.
- (3) All the powers specified in sub-sections (1) and (2) shall be exercised by the Board, by means of resolution passed at its meeting on behalf of the Producer Company.

Explanation.— For the removal of doubts, it is hereby declared that a director or a group of directors, who do not constitute the Board, shall not exercise any of the powers exercisable by it.

1.22.18 Matters to be Transacted at General Meeting [Section 581S]

- (1) The Board of directors of a Producer Company shall exercise the following powers on behalf of that company, and it shall do so only by means of resolutions passed at the annual general meeting of its Members, namely :-
 - (a) approval of budget and adoption of annual accounts of the Producer Company ;
 - (b) approval of patronage bonus ;
 - (c) issue of bonus shares ;
 - (d) declaration of limited return and decision on the distribution of patronage ;
 - (e) specify the conditions and limits of loans that may be given by the Board to any director ; and
 - (f) approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.

1.22.19 Liability of Directors [Section 581T]

- (1) When the directors vote for a resolution, or approve by any other means, anything done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company.
- (2) Without prejudice to the provisions contained in sub-section (1), the Producer Company shall have the right to recover from its director -
 - (a) where such director has made any profit as a result of the contravention specified in sub-section (1), an amount equal to the profit so made ;
 - (b) where the Producer Company incurred a loss or damage as a result of the contravention specified in subsection (1), an amount equal to that loss or damage ;
- (3) The liability imposed under this section shall be in addition to and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force.

1.22.20 Committee of Directors [Section 581U]

- (1) The Board may constitute such number of committees as it may deem fit for the purpose of assisting the Board in the efficient discharge of its functions :
Provided that the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee.
- (2) A committee constituted under sub-section (1) may, with the approval of the Board, co-opt such number of persons as it deems fit as members of the committee :
Provided that the Chief Executive appointed under section 581W or a director of the Producer Company shall be a member of such committee.
- (3) Every such committee shall function under the general superintendence, direction and control of the Board, for such duration, and in such manner as the Board may direct.
- (4) The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board.
- (5) The minutes of each meeting of the committee shall be placed before the Board at its next meeting.

1.22.21 Meetings of Board and Quorum [Section 581V]

- (1) A meeting of the Board shall be held not less than once in every three months and at least four such meetings shall be held in every year.
- (2) Notice of every meeting of the Board of directors shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.
- (3) The Chief Executive shall give notice as aforesaid not less than seven days prior to the date of the meeting of the Board and if he fails to do so, he shall be punishable with fine which may extend to one thousand rupees : Provided that a meeting of the Board may be called at shorter notice and the reasons thereof shall be recorded in writing by the Board.
- (4) The quorum for a meeting of the Board shall be one-third of the total strength of directors, subject to a minimum of three.
- (5) Save as provided in the articles, directors including the co-opted director, may be paid such fees and allowances for attendance at the meetings of the Board, as may be decided by the Members in the general meeting.

1.22.22 Chief Executive and his Functions [Section 581W]

- (1) Every Producer Company shall have a full time Chief Executive, by whatever name called, to be appointed by the Board from amongst persons other than Members.
- (2) The Chief Executive shall be ex officio director of the Board and such director shall not retire by rotation.
- (3) Save as otherwise provided in articles, the qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board.
- (4) The Chief Executive shall be entrusted with substantial powers of management as the Board may determine.
- (5) Without prejudice to the generality of sub-section (4), the Chief Executive may exercise the powers and discharge the functions, namely : -
 - (a) do administrative acts of a routine nature including managing the day-to-day affairs of the Producer Company ;
 - (b) operate bank accounts or authorise any person, subject to the general or special approval of the Board in this behalf, to operate the bank account ;



- (c) make arrangements for safe custody of cash and other assets of the Producer Company ;
 - (d) sign such documents as may be authorised by the Board, for and on behalf of the company;
 - (e) maintain proper books of account ; prepare annual accounts and audit thereof; place the audited accounts before the Board and in the annual general meeting of the Members ;
 - (f) furnish Members with periodic information to appraise them of the operation and functions of the Producer Company ;
 - (g) make appointments to posts in accordance with the powers delegated to him by the Board;
 - (h) assist the Board in the formulation of goals, objectives, strategies, plans and policies;
 - (i) advise the Board with respect to legal and regulatory matters concerning the proposed and on going activities and take necessary action in respect thereof ;
 - (j) exercise the powers as may be necessary in the ordinary course of business ;
 - (k) discharge such other functions, and exercise such other powers, as may be delegated by the Board.
- (6) The Chief Executive shall manage the affairs of the Producer Company under the general superintendence, direction and control of the Board and be accountable for the performance of the Producer Company.

1.22.23 Secretary of Producer Company [Section 581X]

- (1) Every Producer Company having an average annual turnover exceeding five crore rupees in each of three consecutive financial years shall have a whole-time secretary.
- (2) No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.
- (3) If a Producer Company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

Provided that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

1.22.24 Quorum [Section 581Y]

Unless the articles require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting.

1.22.25 Voting Rights [Section 581Z]

Save as otherwise provided in sub-sections (1) and (3) of section 581D, every Member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.

1.22.26 Annual General Meetings [Section 581ZA]

- (1) Every Producer Company shall in each year, hold, in addition to any other meetings, a general meeting, as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a Producer Company and that of the next : Provided that the Registrar may, for any special reason, permit extension of the time for holding any annual general meeting (not being the first annual general meeting) by a period not exceeding three months.
- (2) A Producer Company shall hold its first annual general meeting within a period of ninety days from the date of its incorporation.

- (3) The Members shall adopt the articles of the Producer Company and appoint directors of its Board in the annual general meeting.
- (4) The notice calling the annual general meeting shall be accompanied by the following documents, namely : -
 - (a) the agenda of the annual general meeting ;
 - (b) the minutes of the previous annual general meeting or the extraordinary general meeting ;
 - (c) the names of candidates for election, if any, to the office of director including a statement of qualifications in respect of each candidate;
 - (d) the audited balance-sheet and profit and loss accounts of the Producer Company and its subsidiary, if any, together with a report of the Board of directors of such Company with respect to -
 - (i) the state of affairs of the Producer Company ;
 - (ii) the amount proposed to be carried to reserve ;
 - (iii) the amount to be paid as limited return on share capital ;
 - (iv) the amount proposed to be disbursed as patronage bonus ;
 - (v) the material changes and commitments, if any, affecting the financial position of the Producer Company and its subsidiary, which have occurred in between the date of the annual accounts of the Producer Company to which the balance sheet relates and the date of the report of the Board ;
 - (vi) any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges ;
 - (vii) any other matter which is required to be, or may be, specified by the Board ;
 - (e) the text of the draft resolution for appointment of auditors ;
 - (f) the text of any draft resolution proposing amendment to the memorandum or articles to be considered at the general meeting, along with the recommendations of the Board.
- (5) The Board of directors shall, on the requisition made in writing, duly signed and setting out the matters for the consideration, made by one-third of the Members entitled to vote in any general meeting, proceed to call an extraordinary general meeting in accordance with the provisions contained in sections 169 to 186 of this Act.
- (6) Every annual general meeting shall be called, for a time during business hours, on a day that is not a public holiday and shall be held at the registered office of the Producer Company or at some other place within the city, town or village in which the registered office of the Company is situate.
- (7) A general meeting of the Producer Company shall be called by giving not less than fourteen days prior notice in writing.
- (8) The notice of the general meeting indicating the date, time and place of the meeting shall be sent to every Member and auditor of the Producer Company.
- (9) Unless the articles of the Producer Company provide for a larger number, one-fourth of the total number of members of the Producer Company shall be the quorum for its annual general meeting.
- (10) The proceedings of every annual general meeting along with the Directors' Report, the audited balance sheet and the profit and loss account shall be filed with the Registrar within sixty days of the date on which the annual general meeting is held, with an annual return along with the filing fees as applicable under the Act.



- (11) In the case where a Producer Company is formed by Producer institutions, such institutions shall be represented in the general body through the Chairman or the Chief Executive thereof who shall be competent to act on its behalf.

Provided that a Producer institution shall not be represented if such institution makes a default or failure referred to in clauses (d) to (f) of sub-section (1) of section 581Q.

1.22.27 Share Capital [Section 581ZB]

- (1) The share capital of a Producer Company shall consist of equity shares only.
- (2) The shares held by a Member in a Producer Company, shall as far as may be, be in proportion to the patronage of that company.

1.22.28 Special user Rights [Section 581ZC]

- (1) The producers, who are active Members may, if so provided in the articles, have special rights and the Producer Company may issue appropriate instruments to them in respect of such special rights.
- (2) The instruments of the Producer Company issued under sub-section (1) shall, after obtaining approval of the Board in that behalf, be transferable to any other active Member of that Producer Company.

Explanation.— For the purposes of this section, the expression "special right" means any right relating to supply of additional produce by the active Member or any other right relating to his produce which may be conferred upon him by the Board.

1.22.29 Transferability of Shares and Attendant Rights [Section 581ZD]

- (1) Save as otherwise provided in sub-sections (2) to (4), the shares of a Member of a Producer Company shall not be transferable.
- (2) A Member of a Producer Company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active Member at par value.
- (3) Every Member shall, within three months of his becoming a Member in the Producer Company, nominate, in the manner specified in articles, a person to whom his shares in the Producer Company shall vest in the event of his death.
- (4) The nominee shall, on the death of the Member, become entitled to all the rights in the shares of the Producer Company and the Board of that Company shall transfer the shares of the deceased Member to his nominee.

Provided that in a case where such nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.

- (5) Where the Board of a Producer Company is satisfied that -
 - (a) any Member has ceased to be a primary producer ; or
 - (b) any Member has failed to retain his qualifications to be a Member as specified in articles, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.

Provided that the Board shall not direct such surrender of shares unless the Member has been served with a written notice and given an opportunity of being heard.

1.22.30 Books of Account [Section 581ZE]

- (1) Every Producer Company shall keep at its registered office proper books of account with respect to -
 - (a) all sums of money received and expended by the Producer Company and the matters in respect of which the receipts and expenditure take place ;

- (b) all sales and purchase of goods by the Producer Company ;
 - (c) the instruments of liability executed by or on behalf of the Producer Company ;
 - (d) the assets and liabilities of the Producer Company ;
 - (e) in case of a Producer Company engaged in production, processing and manufacturing, the particulars relating to utilisation of materials or labour or other items of costs.
- (2) The balance sheet and profit and loss accounts of the Producer Company shall be prepared, as far as may be, in accordance with the provisions contained in section 211.

1.22.31 Internal Audit [Section 581ZF]

Every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Institute of Chartered Accountants Act, 1949.

1.22.32 Duties of Auditor under this Part [Section 581ZG]

Without prejudice to the provisions contained in section 227, the auditor shall report on the following additional matters relating to the Producer Company, namely: -

- (a) the amount of debts due along with particulars of bad debts if any;
- (b) the verification of cash balance and securities ;
- (c) the details of assets and liabilities ;
- (d) all transactions which appear to be contrary to the provisions of this Part ;
- (e) the loans given by the Producer Company to the directors ;
- (f) the donations or subscriptions given by the Producer Company ;
- (g) any other matter as may be considered necessary by the auditor.

1.22.33 Donations or Subscription by Producer Company [Section 581ZH]

A Producer Company may, by special resolution, make donation or subscription to any institution or individual for the purposes of -

- (a) promoting the social and economic welfare of Producer Members or producers or general public; or
- (b) promoting the mutual assistance principles.

Provided that the aggregate amount of all such donation and subscription in any financial year shall not exceed three per cent of the net profit of the Producer Company in the financial year immediately preceding the financial year in which the donation or subscription was made.

Provided further that no Producer Company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.

1.22.34 General and Other Reserves [Section 581ZI]

- (1) Every Producer Company shall maintain a general reserve in every financial year, in addition to any reserve maintained by it as may be specified in articles.
- (2) In a case where the Producer Company does not have sufficient funds in any financial year for transfer to maintain the reserves as may be specified in articles, the contribution to the reserve shall be shared amongst the Members in proportion to their patronage in the business of that company in that year.



1.22.35 Issue of Bonus Shares [Section 581ZJ]

Any Producer Company may, upon recommendation of the Board and passing of resolution in the general meeting, issue bonus shares by capitalisation of amounts from general reserves referred to in section 581ZI in proportion to the shares held by the Members on the date of the issue of such shares.

1.22.36 Loan, Etc., To Members [Section 581ZK]

The Board may, subject to the provisions made in articles, provide financial assistance to the Members of the Producer Company by way of -

- (a) credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months ;
- (b) loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances.

Provided that any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.

1.22.37 Investment in Other Companies, Formation of Subsidiaries, Etc [Section 581ZL]

- (1) The general reserves of any Producer Company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.
- (2) Any Producer Company may, for promotion of its objectives acquire the shares of another Producer Company.
- (3) Any Producer Company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company by special resolution in this behalf.
- (4) Any Producer Company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a Producer Company, specified under sub-section (2), or subscription of capital under sub-section (3), for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves :

Provided that a Producer Company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.

- (5) All investments by a Producer Company may be made if such investments are consistent with the objects of the Producer Company.
- (6) The Board of a Producer Company may, with the previous approval of Members by a special resolution, dispose of any of its investments referred to in sub-sections (3) and (4).
- (7) Every Producer Company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares ; the date of acquisition ; and the manner and price at which any of the shares have been subsequently disposed of
- (8) The register referred to in sub-section (7) shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any Member who may take extracts therefrom.

SCHEDULE I
(See sections 4 and 5)
TABLE -A

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES

- 1st The name of the company is “ Limited / Private Limited”.
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
 (b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited and this liability is limited to the amount unpaid, if any, on the shares held by them.
- 5th The share capital of the company is rupees, divided into shares of rupees each.
- 6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of Merchant		Signed before me: Signature
C.D. of Merchant		Signed before me: Signature
E.F. of Merchant		Signed before me: Signature
G.H. of Merchant		Signed before me: Signature
I.J. of Merchant		Signed before me: Signature
K.L. of Merchant		Signed before me: Signature
M.N. of Merchant		Signed before me: Signature
Total share taken:			

- 7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

8th Shri/Smt, son/daughter of, resident of..... aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated the day of



TABLE -B
**MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE AND NOT HAVING A SHARE CAPITAL**

- 1st The name of the company is " Limited / Private Limited".
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited.
- 5th Every member of the company undertakes to contribute:
(i) to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member; and
(ii) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves),
such amount as may be required, not exceeding rupees.
- 6th We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of Merchant		Signed before me: Signature
C.D. of Merchant		Signed before me: Signature
E.F. of Merchant		Signed before me: Signature
G.H. of Merchant		Signed before me: Signature
I.J. of Merchant		Signed before me: Signature
K.L. of Merchant		Signed before me: Signature
M.N. of Merchant		Signed before me: Signature

- 7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

- 8th Shri/Smt , son/daughter of , resident of aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated the day of

TABLE – C
**MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY
GUARANTEE AND HAVING A SHARE CAPITAL**

- 1st The name of the company is “..... Limited/Private Limited”.
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is limited.
- 5th Every member of the company undertakes to contribute:
- (i) to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member; and
 - (ii) to the costs, charges and expenses of winding up (and for the adjustment of the rights of the contributories among themselves),
- such amount as may be required, not exceeding rupees.
- 6th The share capital of the company is..... rupees, divided into..... shares of..... rupees each
- 7th We, the several persons, whose names, addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of Merchant		Signed before me: Signature
C.D. of Merchant		Signed before me: Signature
E.F. of Merchant		Signed before me: Signature
G.H. of Merchant		Signed before me: Signature
I.J. of Merchant		Signed before me: Signature
K.L. of Merchant		Signed before me: Signature
M.N. of Merchant		Signed before me: Signature

- 8th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

- 9th Shri/Smt , son/daughter of , resident of aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)
Dated the day of



TABLE – D
MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY
AND NOT HAVING SHARE CAPITAL

- 1st The name of the company is “..... Company”.
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
(b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is unlimited.
- 5th We, the several persons, whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, descriptions and occupations of subscribers	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of..... Merchant		Signed before me: Signature
C.D. of..... Merchant		Signed before me: Signature
E.F. of..... Merchant		Signed before me: Signature
G.H. of..... Merchant		Signed before me: Signature
I.J. of..... Merchant		Signed before me: Signature
K.L. of..... Merchant		Signed before me: Signature
M.N. of..... Merchant		Signed before me: Signature

- 6th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

- 7th Shri/Smt., son/daughter of....., resident of aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of

TABLE -E
MEMORANDUM OF ASSOCIATION OF AN UNLIMITED COMPANY
AND HAVING SHARE CAPITAL

- 1st The name of the company is “..... Company”.
- 2nd The registered office of the company will be situated in the State of
- 3rd (a) The objects to be pursued by the company on its incorporation are:—
 (b) Matters which are necessary for furtherance of the objects specified in clause 3(a) are:—
- 4th The liability of the member(s) is unlimited.
- 5th The share capital of the company is..... rupees, divided into..... shares of..... rupees each.
- 6th We, the several persons, whose names, and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set against our respective names:—

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of..... Merchant		Signed before me: Signature
C.D. of Merchant		Signed before me: Signature
E.F. of..... Merchant		Signed before me: Signature
G.H. of..... Merchant		Signed before me: Signature
I.J. of..... Merchant		Signed before me: Signature
K.L. of..... Merchant		Signed before me: Signature
M.N. of..... Merchant		Signed before me: Signature

- 7th I, whose name and address is given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company (Applicable in case of one person company):—

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. Merchant		Signed before me: Signature

- 8th Shri/Smt., son/daughter of..... , resident of..... aged years shall be the nominee in the event of death of the sole member (Applicable in case of one person company)

Dated..... the day of..... .



TABLE -F

ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES Interpretation

- I.
 - (1) In these regulations—
 - (a) "the Act" means the Companies Act, 2013,
 - (b) "the seal" means the common seal of the company.
 - (2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Share capital and variation of rights

- II.
 1. Subject to the provisions of the Act and these Articles, the shares in the capital of the company shall be under the control of the Directors who may issue, allot or otherwise dispose of the same or any of them to such persons, in such proportion and on such terms and conditions and either at a premium or at par and at such time as they may from time to time think fit.
 2. (i) Every person whose name is entered as a member in the register of members shall be entitled to receive within two months after incorporation, in case of subscribers to the memorandum or after allotment or within one month after the application for the registration of transfer or transmission or within such other period as the conditions of issue shall be provided,—
 - (a) one certificate for all his shares without payment of any charges; or
 - (b) several certificates, each for one or more of his shares, upon payment of twenty rupees for each certificate after the first.
 - (ii) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid-up thereon.
 - (iii) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders. - 3. (i) If any share certificate be worn out, defaced, mutilated or torn or if there be no further space on the back for endorsement of transfer, then upon production and surrender thereof to the company, a new certificate may be issued in lieu thereof, and if any certificate is lost or destroyed then upon proof thereof to the satisfaction of the company and on execution of such indemnity as the company deem adequate, a new certificate in lieu thereof shall be given. Every certificate under this Article shall be issued on payment of twenty rupees for each certificate.
 - (ii) The provisions of Articles (2) and (3) shall mutatis mutandis apply to debentures of the company.
 - 4. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.
 - 5. (i) The company may exercise the powers of paying commissions conferred by sub-section (6) of section 40, provided that the rate per cent. or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section and rules made thereunder.
 - (ii) The rate or amount of the commission shall not exceed the rate or amount prescribed in rules made under sub-section (6) of section 40.

- (iii) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.
- 6. (i) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of section 48, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.
- (ii) To every such separate meeting, the provisions of these regulations relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be at least two persons holding at least one-third of the issued shares of the class in question.
- 7. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.
- 8. Subject to the provisions of section 55, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

Lien

- 9. (i) The company shall have a first and paramount lien—
 - (a) on every share (not being a fully paid share), for all monies (whether presently payable or not) called, or payable at a fixed time, in respect of that share; and
 - (b) on all shares (not being fully paid shares) standing registered in the name of a single person, for all monies presently payable by him or his estate to the company.

Provided that the Board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

 - (ii) The company's lien, if any, on a share shall extend to all dividends payable and bonuses declared from time to time in respect of such shares.
- 10. The company may sell, in such manner as the Board thinks fit, any shares on which the company has a lien.

Provided that no sale shall be made—
 - (a) unless a sum in respect of which the lien exists is presently payable; or
 - (b) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.
 - 11. (i) To give effect to any such sale, the Board may authorise some person to transfer the shares sold to the purchaser thereof.
 - (ii) The purchaser shall be registered as the holder of the shares comprised in any such transfer.
 - (iii) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.
 - 12. (i) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable.
 - (ii) The residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.



Calls on shares

- 13.** (i) The Board may, from time to time, make calls upon the members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times. Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.
- (ii) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified, the amount called on his shares.
- (iii) A call may be revoked or postponed at the discretion of the Board.
- 14.** A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by installments.
- 15.** The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
- 16.** (i) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at ten per cent. per annum or at such lower rate, if any, as the Board may determine.
- (ii) The Board shall be at liberty to waive payment of any such interest wholly or in part.
- 17.** (i) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.
- (ii) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
- 18.** The Board—
(a) may, if it thinks fit, receive from any member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him; and
(b) upon all or any of the monies so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, twelve per cent. per annum, as may be agreed upon between the Board and the member paying the sum in advance.

Transfer of shares

- 19.** (i) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.
- (ii) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.
- 20.** The Board may, subject to the right of appeal conferred by section 58 decline to register—
(a) the transfer of a share, not being a fully paid share, to a person of whom they do not approve; or
(b) any transfer of shares on which the company has a lien.
- 21.** The Board may decline to recognise any instrument of transfer unless—
(a) the instrument of transfer is in the form as prescribed in rules made under sub-section (1) of section 56;
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; and
- (c) the instrument of transfer is in respect of only one class of shares.

22. On giving not less than seven days' previous notice in accordance with section 91 and rules made thereunder, the registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine.

Provided that such registration shall not be suspended for more than thirty days at any one time or for more than forty-five days in the aggregate in any year.

Transmission of shares

23. (i) On the death of a member, the survivor or survivors where the member was a joint holder, and his nominee or nominees or legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

(ii) Nothing in clause (i) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

24. (i) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either—

(a) to be registered himself as holder of the share; or

(b) to make such transfer of the share as the deceased or insolvent member could have made.

(ii) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share before his death or insolvency.

25. (i) If the person so becoming entitled shall elect to be registered as holder of the share himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(ii) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.

(iii) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.

26. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other monies payable in respect of the share, until the requirements of the notice have been complied with.

27. In case of a One Person Company—

(i) on the death of the sole member, the person nominated by such member shall be the person recognised by the company as having title to all the shares of the member;

(ii) the nominee on becoming entitled to such shares in case of the member's death shall be informed of such event by the Board of the company;

(iii) such nominee shall be entitled to the same dividends and other rights and liabilities to which such sole member of the company was entitled or liable;

(iv) on becoming member, such nominee shall nominate any other person with the prior



written consent of such person who, shall in the event of the death of the member, become the member of the company.

Forfeiture of Shares

- 28.** If a member fails to pay any call, or installment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.
- 29.** The notice aforesaid shall—
 - (a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
 - (b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made shall be liable to be forfeited.
- 30.** If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.
- 31.** (i) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.
(ii) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.
- 32.** (i) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.
(ii) The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.
- 33.** (i) A duly verified declaration in writing that the declarant is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share;
(ii) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of;
(iii) The transferee shall thereupon be registered as the holder of the share; and
(iv) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.
- 34.** The provisions of these regulations as to forfeiture shall apply in the case of non payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Alteration of Capital

- 35.** The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.
- 36.** Subject to the provisions of section 61, the company may, by ordinary resolution,—
 - (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;

- (b) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- (c) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum;
- (d) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

37. Where shares are converted into stock,—

- (a) the holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit.

Provided that the Board may, from time to time, fix the minimum amount of stock transferable, so, however, that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

- (b) the holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.
- (c) such of the regulations of the company as are applicable to paid-up shares shall apply to stock and the words "share" and "shareholder" in those regulations shall include "stock" and "stock-holder" respectively.

38. The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law,—

- (a) its share capital;
- (b) any capital redemption reserve account; or
- (c) any share premium account.

Capitalisation of Profits

- 39.** (i) The company in general meeting may, upon the recommendation of the Board, resolve—
- (a) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution; and
 - (b) that such sum be accordingly set free for distribution in the manner specified in clause (ii) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.
- (ii) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (iii), either in or towards—
- (A) paying up any amounts for the time being unpaid on any shares held by such members respectively;
 - (B) paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid-up, to and amongst such members in the proportions aforesaid;
 - (C) partly in the way specified in sub-clause (A) and partly in that specified in sub-clause (B);
 - (D) A securities premium account and a capital redemption reserve account may, for



the purposes of this regulation, be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares;

- (E) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.
- 40.** (i) Whenever such a resolution as aforesaid shall have been passed, the Board shall—
(a) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares if any; and
(b) generally do all acts and things required to give effect thereto.
- (ii) The Board shall have power—
(a) to make such provisions, by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares becoming distributable in fractions; and
(b) to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid-up, of any further shares to which they may be entitled upon such capitalisation, or as the case may require, for the payment by the company on their behalf, by the application thereto of their respective proportions of profits resolved to be capitalised, of the amount or any part of the amounts remaining unpaid on their existing shares;
- (iii) Any agreement made under such authority shall be effective and binding on such members.

Buy-Back of Shares

- 41.** Notwithstanding anything contained in these articles but subject to the provisions of sections 68 to 70 and any other applicable provision of the Act or any other law for the time being in force, the company may purchase its own shares or other specified securities.

General Meetings

- 42.** All general meetings other than annual general meeting shall be called extra ordinary general meeting.
- 43.** (i) The Board may, whenever it thinks fit, call an extraordinary general meeting.
(ii) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at General Meetings

- 44.** (i) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
(ii) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.
- 45.** The chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.
- 46.** If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.
- 47.** If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.
- 48.** In case of a One Person Company—
(i) the resolution required to be passed at the general meetings of the company shall be

deemed to have been passed if the resolution is agreed upon by the sole member and communicated to the company and entered in the minutes book maintained under section 118;

- (ii) such minutes book shall be signed and dated by the member;
- (iii) the resolution shall become effective from the date of signing such minutes by the sole member.

Adjournment of Meeting

- 49.** (i) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (ii) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (iii) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (iv) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Voting Rights

- 50.** Subject to any rights or restrictions for the time being attached to any class or classes of shares,—
- (a) on a show of hands, every member present in person shall have one vote; and
 - (b) on a poll, the voting rights of members shall be in proportion to his share in the paid-up equity share capital of the company.
- 51.** A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.
- 52.** (i) In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.
- (ii) For this purpose, seniority shall be determined by the order in which the names stand in the register of members.
- 53.** A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.
- 54.** Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.
- 55.** No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.
- 56.** (i) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.
- (ii) Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

Proxy

- 57.** The instrument appointing a proxy and the power-of-attorney or other authority, if any, under which it is signed or a notarised copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to



vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll; and in default the instrument of proxy shall not be treated as valid.

- 58.** An instrument appointing a proxy shall be in the form as prescribed in the rules made under section 105.
- 59.** A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given.

Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

Board of Directors

- 60.** The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.
- 61.** (i) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.
- (ii) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—
- (a) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or
- (b) in connection with the business of the company.
- 62.** The Board may pay all expenses incurred in getting up and registering the company.
- 63.** The company may exercise the powers conferred on it by section 88 with regard to the keeping of a foreign register; and the Board may (subject to the provisions of that section) make and vary such regulations as it may think fit respecting the keeping of any such register.
- 64.** All cheques, promissory notes, drafts, hundis, bills of exchange and other negotiable instruments, and all receipts for monies paid to the company, shall be signed, drawn, accepted, endorsed, or otherwise executed, as the case may be, by such person and in such manner as the Board shall from time to time by resolution determine.
- 65.** Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.
- 66.** (i) Subject to the provisions of section 149, the Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.
- (ii) Such person shall hold office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to the provisions of the Act.

Proceedings of the Board

- 67.** (i) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.
- (ii) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.
- 68.** (i) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.
- (ii) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.

- 69.** The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.
- 70.** (i) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.
(ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be Chairperson of the meeting.
- 71.** (i) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.
(ii) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
- 72.** (i) A committee may elect a Chairperson of its meetings.
(ii) If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.
- 73.** (i) A committee may meet and adjourn as it thinks fit.
(ii) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the Chairperson shall have a second or casting vote.
- 74.** All acts done in any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.
- 75.** Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.
- 76.** In case of a One Person Company—
(i) where the company is having only one director, all the businesses to be transacted at the meeting of the Board shall be entered into minutes book maintained under section 118;
(ii) such minutes book shall be signed and dated by the director;
(iii) the resolution shall become effective from the date of signing such minutes by the director.

Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer

- 77.** Subject to the provisions of the Act,—
(i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board;
(ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.
- 78.** A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.



The Seal

- 79.** (i) The Board shall provide for the safe custody of the seal.
(ii) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Dividends and Reserve

- 80.** The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.
- 81.** Subject to the provisions of section 123, the Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.
- 82.** (i) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks fit as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends; and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, thinks fit.
(ii) The Board may also carry forward any profits which it may consider necessary not to divide, without setting them aside as a reserve.
- 83.** (i) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.
(ii) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.
(iii) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.
- 84.** The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.
- 85.** (i) Any dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.
(ii) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.
- 86.** Any one of two or more joint holders of a share may give effective receipts for any dividends, bonuses or other monies payable in respect of such share.
- 87.** Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act.
- 88.** No dividend shall bear interest against the company.

Accounts

- 89.** (i) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.
- (ii) No member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

Winding up

- 90.** Subject to the provisions of Chapter XX of the Act and rules made thereunder—

- (i) If the company shall be wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members, in specie or kind, the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.
- (ii) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.
- (iii) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories if he considers necessary, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

Indemnity

- 91.** Every officer of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in which relief is granted to him by the court or the Tribunal.

Note: The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any, and such signatures shall be in form specified below:

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of.....Merchant	Signed before me Signature.....
C.D. of.....Merchant	Signed before me Signature.....
E.F. of.....Merchant	Signed before me Signature.....
G.H. of.....Merchant	Signed before me Signature.....
I.J. of.....Merchant	Signed before me Signature.....
K.L. of.....Merchant	Signed before me Signature.....
M.N. of.....Merchant	Signed before me Signature.....

Dated the day of 20.....

Place:



TABLE – G
**ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND
HAVING A SHARE CAPITAL**

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, register an increase of members.
2. All the articles of Table F in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

TABLE – H
**ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT
HAVING SHARE CAPITAL**
Interpretation

- I. (1) In these regulations—
 - (a) “the Act” means the Companies Act, 2013;
 - (b) “the seal” means the common seal of the company.
- (2) Unless the context otherwise requires, words or expressions contained in these regulations shall have the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

Members

- II. 1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.
2. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

General Meetings

3. All general meetings other than annual general meeting shall be called extraordinary general meeting.
4. (i) The Board may, whenever it thinks fit, call an extraordinary general meeting.
(ii) If at any time directors capable of acting who are sufficient in number to form a quorum are not within India, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

Proceedings at General Meetings

5. (i) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
(ii) Save as otherwise provided herein, the quorum for the general meetings shall be as provided in section 103.
6. The Chairperson, if any, of the Board shall preside as Chairperson at every general meeting of the company.
7. If there is no such Chairperson, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as Chairperson of the meeting, the directors present shall elect one of their members to be Chairperson of the meeting.

8. If at any meeting no director is willing to act as Chairperson or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their members to be Chairperson of the meeting.

Adjournment of Meeting

9. (i) The Chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.
(ii) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
(iii) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
(iv) Save as aforesaid, and as provided in section 103 of the Act, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Voting Rights

10. Every member shall have one vote.
11. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.
12. No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.
13. (i) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.
(ii) Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.
14. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given:
Provided that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.
15. A member may exercise his vote at a meeting by electronic means in accordance with section 108 and shall vote only once.
16. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

Board of Directors

17. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.
18. (i) The remuneration of the directors shall, in so far as it consists of a monthly payment, be deemed to accrue from day-to-day.



- (ii) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them—
(a) in attending and returning from meetings of the Board of Directors or any committee thereof or general meetings of the company; or
(b) in connection with the business of the company.

Proceedings of the Board

- 19.** (i) The Board of Directors may meet for the conduct of business, adjourn and otherwise regulate its meetings, as it thinks fit.
(ii) A director may, and the manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.
- 20.** (i) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.
(ii) In case of an equality of votes, the Chairperson of the Board, if any, shall have a second or casting vote.
- 21.** The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.
- 22.** (i) The Board may elect a Chairperson of its meetings and determine the period for which he is to hold office.
(ii) If no such chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their members to be Chairperson of the meeting.
- 23.** (i) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.
(ii) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
- 24.** (i) A committee may elect a Chairperson of its meetings.
(ii) If no such Chairperson is elected, or if at any meeting the chairperson is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairperson of the meeting.
- 25.** (i) A committee may meet and adjourn as it thinks proper.
(ii) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.
- 26.** All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.
- 27.** Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effective as if it had been passed at a meeting of the Board or committee, duly convened and held.

Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer

28. Subject to the provisions of the Act,—

- (i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board.
- (ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

29. A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and chief executive officer, manager, company secretary or chief financial officer shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, chief executive officer, manager, company secretary or chief financial officer.

The Seal

30. (i) The Board shall provide for the safe custody of the seal.

- (ii) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose; and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Note: The Articles shall be signed by each subscriber of the memorandum of association who shall add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any, and such signatures shall be in form specified below:

Names, addresses, descriptions and occupations of subscribers	Witnesses (along with names, addresses, descriptions and occupations)
A.B. of.....Merchant	Signed before me Signature.....
C.D. of.....Merchant	Signed before me Signature.....
E.F. of.....Merchant	Signed before me Signature.....
G.H. of.....Merchant	Signed before me Signature.....
I.J. of.....Merchant	Signed before me Signature.....
K.L. of.....Merchant	Signed before me Signature.....
M.N. of.....Merchant	Signed before me Signature.....

Dated the day of 20.....

Place:



TABLE – I

ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING A SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, register an increase of members.
2. All the articles of Table F in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

TABLE – J

ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL

1. The number of members with which the company proposes to be registered is hundred, but the Board of Directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.
2. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.
3. All the articles of Table H in Schedule I annexed to the Companies Act, 2013 shall be deemed to be incorporated with these articles and to apply to the company.

SCHEDULE II

(See section 123)

Useful Lives to Compute Depreciation

PART 'A'

1. Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value. The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of production or similar units expected to be obtained from the asset by the entity.
2. For the purpose of this Schedule, the term depreciation includes amortisation.
3. Without prejudice to the foregoing provisions of paragraph 1,—
 - (i) In case of such class of companies, as may be prescribed and whose financial statements comply with the accounting standards prescribed for such class of companies under section 133 the useful life of an asset shall not normally be different from the useful life and the residual value shall not be different from that as indicated in Part C, provided that if such a company uses a useful life or residual value which is different from the useful life or residual value indicated therein, it shall disclose the justification for the same.
 - (ii) In respect of other companies the useful life of an asset shall not be longer than the useful life and the residual value shall not be higher than that prescribed in Part C.
 - (iii) For intangible assets, the provisions of the Accounting Standards mentioned under sub-para (i) or (ii), as applicable, shall apply.

PART 'B'

4. The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule.

PART 'C'

5. Subject to Parts A and B above, the following are the useful lives of various tangible assets:

Nature of assets			Useful life	
I	Buildings [NESD]			
	(a)	Buildings (other than factory buildings) RCC Frame Structure	60 Years	
	(b)	Buildings (other than factory buildings) other than RCC Frame Structure	30 Years	
	(c)	Factory buildings	-do-	
	(d)	Fences, wells, tune wells	5 Years	
	(e)	Others (including temporary structure, etc.)	3 Years	
II	Bridges, culverts, bounders, etc. [NESD]			
III	Roads [NESD]			
	(a)	Carpeted roads		
		(i) Carpeted Roads – RCC	10 Years	
		(ii) Carpeted Roads – other than RCC	5 Years	
	(b)	Non-Carpeted Roads	3 Years	
IV	Plant and Machinery			
	(i)	General rate applicable to plant and machinery not covered under special plant and machinery		
		(a) Plant and Machinery other than continuous process plant not covered under specific industries	15 Years	
		(b) Continuous process plant for which no special rate has been prescribed under (ii) below [NESD]	8 Years	
	(ii)	Special Plant and Machinery		
		(a) Plant and Machinery related to production and exhibition of Motion Picture Films		
		1. Cinematograph films – Machinery used in the production and exhibition of cinematograph films, recording and reproducing equipments, developing machines, printing machines, editing machines, synchronizers and studio lights except bulbs. 2. Projecting equipment for exhibition of films	13 Years - Do -	
	(b)	Plant and Machinery used in glass manufacturing		
		1. Plant and Machinery except direct fire glass melting furnaces – Recuperative and regenerative glass melting furnaces 2. Plant and Machinery except direct fire glass melting furnaces – Moulds [NESD] 3. Float Glass Melting Furnaces [NESD]	13 Years 8 Years 10 Years	
	(c)	Plant and Machinery used in mines and quarries – portable underground machinery and earth moving machinery used in open cost mining [NESD]	8 Years	
	(d)	Plant and Machinery used in Telecommunications [NESD]		
		1. Towers 2. Telecom transceivers, switching centres, transmission and other network equipment 3. Telecom – Ducts, Cables and optical fiber 4. Satellites	18 Years 13 Years 18 Years -do-	



		(e)	Plant & Machinery used in exploration, production and refining oil and gas [NESD]	
			1. Refineries 2. Oil and gas assets (including wells), processing plant and facilities 3. Petrochemical Plant 4. Storage tanks and related equipment 5. Pipelines 6. Drilling Rig 7. Field operations (above ground) Portable boilers, drilling tools, well-head tanks, etc. 8. Loggers	25 Years -do- -do- -do- 30 Years -do- 8 years -do-
		(f)	Plant and machinery used in generation, transmission and distribution of power [NESD]	
			1. Thermal/Gas/Combined Cycle Power Generation Plant 2. Hydro Power Generation Plant 3. Nuclear Power Generation Plant 4. Transmission lines, cables and other network assets 5. Wind Power Generation Plant 6. Electric Distribution Plant 7. Gas Storage and Distribution Plant 8. Water Distribution Plant including pipelines	40 Years -do- -do- -do- 22 Years 35 Years 30 Years -do-
		(g)	Plant and Machinery used in manufacture of steel	
			1. Sinter Plant 2. Blast Furnace 3. Coke ovens 4. Rolling mill in steel plant 5. Basic oxygen Furnace Converter	20 Years -do- -do- -do- 25 Years
		(h)	Plant and Machinery used in manufacture of non-ferrous metals	
			1. Metal pot line [NESD] 2. Bauxite crushing and grinding section [NESD] 3. Digester Section [NESD] 4. Turbine [NESD] 5. Equipments for Calcination [NESD] 6. Copper Smelter [NESD] 7. Roll Grinder 8. Soaking Pit 9. Annealing Furnace 10. Rolling Mills 11. Equipments for Scalping, Slitting, etc. [NESD] 12. Surface Miner, Ripper Dozer, etc., used in mines 13. Copper refining plant [NESD]	40 Years -do- -do- -do- -do- -do- 40 Years 30 Years -do- -do- -do- 25 Years -do-
		(i)	Plant and Machinery used in medical and surgical operations [NESD]	
			1. Electrical Machinery, X-ray and electrotherapeutic apparatus and accessories thereto, medical, diagnostic equipments, namely, Cat-scan, Ultrasound Machines, ECG Monitors, etc. 2. Other Equipments.	13 Years 15 Years

	(j)	Plant and Machinery used in manufacture of pharmaceuticals and chemicals [NESD]	
		1. Reactors 2. Distillation Columns 3. Drying equipments/Centrifuges and Decanters 4. Vessel/storage tanks	20 Years -do- -do- -do-
	(k)	Plant and Machinery used in civil construction	
		1. Concreting, Crushing, Piling Equipments and Road Making Equipments 2. Heavy Lift Equipments – • Cranes with capacity of more than 100 tones • Cranes with capacity of less than 100 tones 3. Transmission line, Tunneling Equipments [NESD] 4. Earth – moving equipments 5. Others including Material Handling / Pipeline/Welding Equipments [NESD]	12 Years 20 Years 15 Years 10 Years 9 Years 12 Years
	(l)	Plant and Machinery used in salt works [NESD]	15 Years
V. Furniture and fittings [NESD]			
	(i) (ii)	General furniture and fittings Furniture and fittings used in hotels, restaurants and boarding houses, schools, colleges and other educational institutions, libraries; welfare centres; meeting halls, cinema houses; theaters and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions.	10 Years 8 Years
VI. Motor Vehicles [NESD]			
	1. 2. 3. 4. 5.	Motor cycles, scooters and other mopeds Motor buses, motor lorries, motor cars and motor taxies used in a business of running them on hire. Motor buses, motor lorries and motor cars other than those used in a business of running them on hire Motor tractors, harvesting combines and heavy vehicles Electrically operated vehicles including battery powered or fuel cell powered vehicles	10 Years 6 Years 8 Years -do- 8 Years
VII. Ships [NESD]			
	1.	Ocean-going ships	
	(i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x)	Bulk Carriers and liner vessels Crude tankers, product carriers and easy chemical carriers with or without conventional tank coatings. Chemicals and Acid Carriers: (a) With Stainless steel tanks (b) With other tanks Liquified gas carriers Conventional large passenger vessels which are used for cruise purpose also Coastal service ships of all categories Offshore supply and support vessels Catamarans and other high speed passenger for ships or boats Drill Ships Hovercrafts	25 Years 20 Years 25 Years 20 Years 30 Years -do- -do- 20 Years -do- 25 Years 15 Years



		(xi) (xii)	Fishing vessels with wooden hull Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes	10 Years 14 Years
	2.		Vessels ordinarily operating on inland waters -	
		(i) (ii)	Speed boats Other vessels	13 Years 28 Years
VIII.	Aircrafts or Helicopters [NESD]			20 Years
IX.	Railways siding, locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns [NESD]			15 Years
X.	Ropeway structures [NESD]			15 Years
XI.	Office equipment [NESD]			5 Years
XII.	Computers and data processing units [NESD]			
		(i) (ii)	Servers and networks End user devices, such as, desktops, laptops, etc.	6 Years 3 Years
XIII.	Laboratory equipment [NESD]			
		(i) (ii)	General laboratory equipment Laboratory equipments used in educational institutions	10 Years 5 Years
XIV.	Electrical Installations and Equipment [NESD]			10 Years
XV.	Hydraulic works, pipelines and sluices [NESD]			15 Years

Notes:

1. "Factory buildings" does not include offices, godowns, staff quarters.
2. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a pro rata basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.
3. The following information shall also be disclosed in the accounts, namely:—
 - (i) depreciation methods used; and
 - (ii) the useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.
4. Useful life specified in Part C of the Schedule is for whole of the asset. Where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.
5. Depreciable amount is the cost of an asset, or other amount substituted for cost, less its residual value. Ordinarily, the residual value of an asset is often insignificant but it should generally be not more than 5% of the original cost of the asset.
6. The useful lives of assets working on shift basis have been specified in the Schedule based on their single shift working. Except for assets in respect of which no extra shift depreciation is permitted (indicated by NESD in Part C above), if an asset is used for any time during the year for double shift, the depreciation will increase by 50% for that period and in case of the triple shift the depreciation shall be calculated on the basis of 100% for that period.
7. From the date this Schedule comes into effect, the carrying amount of the asset as on that date—
 - (a) shall be depreciated over the remaining useful life of the asset as per this Schedule;
 - (b) after retaining the residual value, shall be recognised in the opening balance of retained earnings where the remaining useful life of an asset is nil.
8. "Continuous process plant" means a plant which is required and designed to operate for twenty-four hours a day.

SCHEDULE III
(See section 129)

**General Instructions for Preparation of Balance Sheet and
Statement of Profit and Loss of a Company**

General Instructions

1. Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head or sub-head or any changes, inter se, in the financial statements or statements forming part thereof, the same shall be made and the requirements of this Schedule shall stand modified accordingly.
2. The disclosure requirements specified in this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 2013. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statement unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirements set out in this Schedule.
3. (i) Notes to accounts shall contain information in addition to that presented in the Financial Statements and shall provide where required (a) narrative descriptions or disaggregations of items recognised in those statements; and (b) information about items that do not qualify for recognition in those statements.
(ii) Each item on the face of the Balance Sheet and Statement of Profit and Loss shall be cross-referenced to any related information in the notes to accounts. In preparing the Financial Statements including the notes to accounts, a balance shall be maintained between providing excessive detail that may not assist users of financial statements and not providing important information as a result of too much aggregation.
4. (i) Depending upon the turnover of the company, the figures appearing in the Financial Statements may be rounded off as given below:—

Turnover	Rounding off
(a) less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
(b) one hundred crore rupees or more	To the nearest lakhs, millions or crores, or decimals thereof.

- (ii) Once a unit of measurement is used, it shall be used uniformly in the Financial Statements.
5. Except in the case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.
6. For the purpose of this Schedule, the terms used herein shall be as per the applicable Accounting Standards.

Note: This part of Schedule sets out the minimum requirements for disclosure on the face of the Balance Sheet, and the Statement of Profit and Loss (hereinafter referred to as "Financial Statements" for the purpose of this Schedule) and Notes. Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company's financial position or performance or to cater to industry/sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act or under the Accounting Standards.



PART I — BALANCE SHEET

Name of the Company.....

Balance Sheet as at

(Rupees in.....)

Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
1	2	3	4

I. EQUITY AND LIABILITIES

(1) Shareholders' Funds

- (a) Share capital
- (b) Reserves and surplus
- (c) Money received against share warrants

(2) Share Application Money Pending Allotment

(3) Non-Current Liabilities

- (a) Long-term borrowings
- (b) Deferred tax liabilities (Net)
- (c) Other Long term liabilities
- (d) Long-term provisions

(4) Current Liabilities

- (a) Short-term borrowings
- (b) Trade payables
- (c) Other current liabilities
- (d) Short-term provisions

TOTAL

II. ASSETS

(1) Non-Current Assets

- (a) Fixed Assets
 - (i) Tangible assets
 - (ii) Intangible assets
 - (iii) Capital work-in-progress
 - (iv) Intangible assets under development
- (b) Non-current investments
- (c) Deferred tax assets (net)
- (d) Long-term loans and advances
- (e) Other non-current assets

(2) Current Assets

- (a) Current investments
- (b) Inventories
- (c) Trade receivables
- (d) Cash and cash equivalents

- (e) Short-term loans and advances
- (f) Other current assets

Total

See a Companying Notes to the Financial Statements.

Notes:

GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET

1. An asset shall be classified as current when it satisfies any of the following criteria:—
 - (a) it is expected to be realised in, or is intended for sale or consumption in, the company's normal operating cycle;
 - (b) it is held primarily for the purpose of being traded;
 - (c) it is expected to be realised within twelve months after the reporting date; or
 - (d) it is cash or cash equivalent unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date.All other assets shall be classified as non-current.
2. An operating cycle is the time between the acquisition of assets for processing and their realisation in cash or cash equivalents. Where the normal operating cycle cannot be identified, it is assumed to have a duration of twelve months.
3. A liability shall be classified as current when it satisfies any of the following criteria:—
 - (a) it is expected to be settled in the company's normal operating cycle;
 - (b) it is held primarily for the purpose of being traded;
 - (c) it is due to be settled within twelve months after the reporting date; or
 - (d) the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.All other liabilities shall be classified as non-current.

4. A receivable shall be classified as a "trade receivable" if it is in respect of the amount due on account of goods sold or services rendered in the normal course of business.
5. A payable shall be classified as a "trade payable" if it is in respect of the amount due on account of goods purchased or services received in the normal course of business.
6. A company shall disclose the following in the notes to accounts.

A. Share Capital

For each class of share capital (different classes of preference shares to be treated separately):

- (a) the number and amount of shares authorised;
- (b) the number of shares issued, subscribed and fully paid, and subscribed but not fully paid;
- (c) par value per share;
- (d) a reconciliation of the number of shares outstanding at the beginning and at the end of the reporting period;
- (e) the rights, preferences and restrictions attaching to each class of shares including restrictions on the distribution of dividends and the repayment of capital;



- (f) shares in respect of each class in the company held by its holding company or its ultimate holding company including shares held by or by subsidiaries or associates of the holding company or the ultimate holding company in aggregate;
- (g) shares in the company held by each shareholder holding more than 5 per cent. shares specifying the number of shares held;
- (h) shares reserved for issue under options and contracts/commitments for the sale of shares/disinvestment, including the terms and amounts;
- (i) for the period of five years immediately preceding the date as at which the Balance Sheet is prepared:
 - (A) Aggregate number and class of shares allotted as fully paid-up pursuant to contract(s) without payment being received in cash.
 - (B) Aggregate number and class of shares allotted as fully paid-up by way of bonus shares.
 - (C) Aggregate number and class of shares bought back.
- (j) terms of any securities convertible into equity/preference shares issued along with the earliest date of conversion in descending order starting from the farthest such date;
- (k) calls unpaid (showing aggregate value of calls unpaid by directors and officers);
- (l) forfeited shares (amount originally paid-up).

B. Reserves and Surplus

- (i) Reserves and Surplus shall be classified as:
 - (a) Capital Reserves;
 - (b) Capital Redemption Reserve;
 - (c) Securities Premium Reserve;
 - (d) Debenture Redemption Reserve;
 - (e) Revaluation Reserve;
 - (f) Share Options Outstanding Account;
 - (g) Other Reserves—(specify the nature and purpose of each reserve and the amount in respect thereof);
 - (h) Surplus i.e., balance in Statement of Profit and Loss disclosing allocations and appropriations such as dividend, bonus shares and transfer to/ from reserves, etc.;
(Additions and deductions since last balance sheet to be shown under each of the specified heads);
 - (ii) A reserve specifically represented by earmarked investments shall be termed as a "fund".
 - (iii) Debit balance of statement of profit and loss shall be shown as a negative figure under the head "Surplus". Similarly, the balance of "Reserves and Surplus", after adjusting negative balance of surplus, if any, shall be shown under the head "Reserves and Surplus" even if the resulting figure is in the negative.

C. Long-Term Borrowings

- (i) Long-term borrowings shall be classified as:
 - (a) Bonds/debentures;
 - (b) Term loans:
 - (A) from banks.
 - (B) from other parties.

- (c) Deferred payment liabilities;
 - (d) Deposits;
 - (e) Loans and advances from related parties;
 - (f) Long term maturities of finance lease obligations;
 - (g) Other loans and advances (specify nature).
- (ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.
 - (iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.
 - (iv) Bonds/debentures (along with the rate of interest and particulars of redemption or conversion, as the case may be) shall be stated in descending order of maturity or conversion, starting from farthest redemption or conversion date, as the case may be. Where bonds/debentures are redeemable by installments, the date of maturity for this purpose must be reckoned as the date on which the first installment becomes due.
 - (v) Particulars of any redeemed bonds/debentures which the company has power to reissue shall be disclosed.
 - (vi) Terms of repayment of term loans and other loans shall be stated.
 - (vii) Period and amount of continuing default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

D. Other Long-Term Liabilities

Other Long-term Liabilities shall be classified as:

- (a) Trade payables;
- (b) Others.

E. Long-Term Provisions

The amounts shall be classified as:

- (a) Provision for employee benefits;
- (b) Others (specify nature).

F. Short-Term Borrowings

- (i) Short-term borrowings shall be classified as:
 - (a) Loans repayable on demand;
 - (A) from banks.
 - (B) from other parties.
 - (b) Loans and advances from related parties;
 - (c) Deposits;
 - (d) Other loans and advances (specify nature).
- (ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.
- (iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.
- (iv) Period and amount of default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.



G. Other Current Liabilities

The amounts shall be classified as:

- (a) Current maturities of long-term debt;
- (b) Current maturities of finance lease obligations;
- (c) Interest accrued but not due on borrowings;
- (d) Interest accrued and due on borrowings;
- (e) Income received in advance;
- (f) Unpaid dividends;
- (g) Application money received for allotment of securities and due for refund and interest accrued thereon. Share application money includes advances towards allotment of share capital. The terms and conditions including the number of shares proposed to be issued, the amount of premium, if any, and the period before which shares shall be allotted shall be disclosed. It shall also be disclosed whether the company has sufficient authorised capital to cover the share capital amount resulting from allotment of shares out of such share application money. Further, the period for which the share application money has been pending beyond the period for allotment as mentioned in the document inviting application for shares along with the reason for such share application money being pending shall be disclosed. Share application money not exceeding the issued capital and to the extent not refundable shall be shown under the head Equity and share application money to the extent refundable, i.e., the amount in excess of subscription or in case the requirements of minimum subscription are not met, shall be separately shown under "Other current liabilities";
- (h) Unpaid matured deposits and interest accrued thereon;
- (i) Unpaid matured debentures and interest accrued thereon;
- (j) Other payables (specify nature).

H. Short-Term Provisions

The amounts shall be classified as:

- (a) Provision for employee benefits.
- (b) Others (specify nature).

I. Tangible Assets

(i) Classification shall be given as:

- (a) Land;
- (b) Buildings;
- (c) Plant and Equipment;
- (d) Furniture and Fixtures;
- (e) Vehicles;
- (f) Office equipment;
- (g) Others (specify nature).

(ii) Assets under lease shall be separately specified under each class of asset.

(iii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related depreciation and impairment losses/reversals shall be disclosed separately.

(iv) Where sums have been written-off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such

write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

J. Intangible Assets

- (i) Classification shall be given as:
 - (a) Goodwill;
 - (b) Brands /trademarks;
 - (c) Computer software;
 - (d) Mastheads and publishing titles;
 - (e) Mining rights;
 - (f) Copyrights, and patents and other intellectual property rights, services and operating rights;
 - (g) Recipes, formulae, models, designs and prototypes;
 - (h) Licences and franchise;
 - (i) Others (specify nature).
- (ii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related amortization and impairment losses/reversals shall be disclosed separately.
- (iii) Where sums have been written-off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

K. Non-Current Investments

- (i) Non-current investments shall be classified as trade investments and other investments and further classified as:
 - (a) Investment property;
 - (b) Investments in Equity Instruments;
 - (c) Investments in preference shares;
 - (d) Investments in Government or trust securities;
 - (e) Investments in debentures or bonds;
 - (f) Investments in Mutual Funds;
 - (g) Investments in partnership firms;
 - (h) Other non-current investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

- (ii) Investments carried at other than at cost should be separately stated specifying the basis for valuation thereof;



- (iii) The following shall also be disclosed:
- Aggregate amount of quoted investments and market value thereof;
 - Aggregate amount of unquoted investments;
 - Aggregate provision for diminution in value of investments.

L. Long-Term Loans and Advances

- Long-term loans and advances shall be classified as:
 - Capital Advances;
 - Security Deposits;
 - Loans and advances to related parties (giving details thereof);
 - Other loans and advances (specify nature).
- The above shall also be separately sub-classified as:
 - Secured, considered good;
 - Unsecured, considered good;
 - Doubtful.
- Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.
- Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

M. Other Non-Current Assets

Other non-current assets shall be classified as:

- Long-term Trade Receivables (including trade receivables on deferred credit terms);
- Others (specify nature);
- Long term Trade Receivables, shall be sub-classified as:
 - (a) Secured, considered good;
 - (B) Unsecured, considered good;
 - (C) Doubtful.

(b) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.

(c) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

N. Current Investments

- Current investments shall be classified as:
 - Investments in Equity Instruments;
 - Investment in Preference Shares;
 - Investments in Government or trust securities;
 - Investments in debentures or bonds;
 - Investments in Mutual Funds;

- (f) Investments in partnership firms;
- (g) Other investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate [indicating separately whether such bodies are: (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities] in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

- (ii) The following shall also be disclosed:
 - (a) The basis of valuation of individual investments;
 - (b) Aggregate amount of quoted investments and market value thereof;
 - (c) Aggregate amount of unquoted investments;
 - (d) Aggregate provision made for diminution in value of investments.

O. Inventories

- (i) Inventories shall be classified as:
 - (a) Raw materials;
 - (b) Work-in-progress;
 - (c) Finished goods;
 - (d) Stock-in-trade (in respect of goods acquired for trading);
 - (e) Stores and spares;
 - (f) Loose tools;
 - (g) Others (specify nature).
- (ii) Goods-in-transit shall be disclosed under the relevant sub-head of inventories.
- (iii) Mode of valuation shall be stated.

P. Trade Receivables

- (i) Aggregate amount of Trade Receivables outstanding for a period exceeding six months from the date they are due for payment should be separately stated.
- (ii) Trade receivables shall be sub-classified as:
 - (a) Secured, considered good;
 - (b) Unsecured, considered good;
 - (c) Doubtful.
- (iii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.
- (iv) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

Q. Cash and Cash Equivalents

- (i) Cash and cash equivalents shall be classified as:
 - (a) Balances with banks;
 - (b) Cheques, drafts on hand;
 - (c) Cash on hand;



- (d) Others (specify nature).
- (ii) Earmarked balances with banks (for example, for unpaid dividend) shall be separately stated.
- (iii) Balances with banks to the extent held as margin money or security against the borrowings, guarantees, other commitments shall be disclosed separately.
- (iv) Repatriation restrictions, if any, in respect of cash and bank balances shall be separately stated.
- (v) Bank deposits with more than twelve months maturity shall be disclosed separately.

R. Short-Term Loans and Advances

- (i) Short-term loans and advances shall be classified as:
 - (a) Loans and advances to related parties (giving details thereof);
 - (b) Others (specify nature).
- (ii) The above shall also be sub-classified as:
 - (a) Secured, considered good;
 - (b) Unsecured, considered good;
 - (c) Doubtful.
- (iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.
- (iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other person or amounts due by firms or private companies respectively in which any director is a partner or a director or a member shall be separately stated.

S. Other Current Assets (Specify Nature)

This is an all-inclusive heading, which incorporates current assets that do not fit into any other asset categories.

T. Contingent Liabilities and Commitments (to the Extent not Provided for)

- (i) Contingent liabilities shall be classified as:
 - (a) Claims against the company not acknowledged as debt;
 - (b) Guarantees;
 - (c) Other money for which the company is contingently liable.
 - (ii) Commitments shall be classified as:
 - (a) Estimated amount of contracts remaining to be executed on capital account and not provided for;
 - (b) Uncalled liability on shares and other investments partly paid;
 - (c) Other commitments (specify nature).
- U.** The amount of dividends proposed to be distributed to equity and preference shareholders for the period and the related amount per share shall be disclosed separately. Arrears of fixed cumulative dividends on preference shares shall also be disclosed separately.
- V.** Where in respect of an issue of securities made for a specific purpose, the whole or part of the amount has not been used for the specific purpose at the balance sheet date, there shall be indicated by way of note how such unutilised amounts have been used or invested.
- W.** If, in the opinion of the Board, any of the assets other than fixed assets and non-current investments do not have a value on realisation in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion, shall be stated.

PART II – STATEMENT OF PROFIT AND LOSS

Name of the Company.....

Profit and loss statement for the year ended

(Rupees in.....)

Sl. No.	Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
	1	2	3	4
I.	Revenue from operations		XXX	XXX
II.	Other income		XXX	XXX
III.	Total Revenue (I + II)		XXX	XXX
IV	Expenses:			
	Cost of materials consumed			
	Purchases of Stock-in-Trade			
	Changes in inventories of			
	finished goods		XXX	XXX
	work-in-progress and		XXX	XXX
	Stock-in-Trade		XXX	XXX
	Employee benefits expense			
	Finance costs		XXX	XXX
	Depreciation and amortisation expense			
	Other expenses			
	Total expenses		XXX	XXX
V.	Profit before exceptional and extraordinary items and tax (III-IV)		XXX	XXX
VI.	Exceptional items		XXX	XXX
VII.	Profit before extraordinary items and tax (V-VI)		XXX	XXX
VIII.	Extraordinary items		XXX	XXX
IX.	Profit before tax (VII- VIII)		XXX	XXX
X.	Tax expense:			
	(1) Current tax		XXX	XXX
	(2) Deferred tax		XXX	XXX
XI.	Profit (Loss) for the period from continuing operations (VII-VIII)		XXX	XXX
XII.	Profit/(loss) from discontinuing operations		XXX	XXX
XIII.	Tax expense of discontinuing operations		XXX	XXX
XIV.	Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)		XXX	XXX
XV	Profit (Loss) for the period (XI + XIV)		XXX	XXX
XVI.	Earnings per equity share:			
	(1) Basic		XXX	XXX
	(2) Diluted		XXX	XXX

See accompanying notes to the financial statements.



GENERAL INSTRUCTIONS FOR PREPARATION OF STATEMENT OF PROFIT AND LOSS

1. The provisions of this Part shall apply to the income and expenditure account referred to in sub-clause (ii) of clause (40) of section 2 in like manner as they apply to a statement of profit and loss.
2. (A) In respect of a company other than a finance company revenue from operations shall disclose separately in the notes revenue from—
 - (a) Sale of products;
 - (b) Sale of services;
 - (c) Other operating revenues;

Less: (d) Excise duty.

(B) In respect of a finance company, revenue from operations shall include revenue from—
 - (a) Interest; and
 - (b) Other financial services.

Revenue under each of the above heads shall be disclosed separately by way of notes to accounts to the extent applicable.
3. Finance Costs
Finance costs shall be classified as:
 - (a) Interest expense;
 - (b) Other borrowing costs;
 - (c) Applicable net gain/loss on foreign currency transactions and translation.
4. Other income
Other income shall be classified as:
 - (a) Interest Income (in case of a company other than a finance company);
 - (b) Dividend Income;
 - (c) Net gain/loss on sale of investments;
 - (d) Other non-operating income (net of expenses directly attributable to such income).
5. Additional Information
A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:—
 - (i) (a) Employee Benefits Expense [showing separately (i) salaries and wages, (ii) contribution to provident and other funds, (iii) expense on Employee Stock Option Scheme (ESOP) and Employee Stock Purchase Plan (ESPP), (iv) staff welfare expenses].
 - (b) Depreciation and amortisation expense;
 - (c) Any item of income or expenditure which exceeds one per cent. of the revenue from operations or ₹1,00,000, whichever is higher;
 - (d) Interest Income;
 - (e) Interest expense;
 - (f) Dividend income;

- (g) Net gain/loss on sale of investments;
 - (h) Adjustments to the carrying amount of investments;
 - (i) Net gain or loss on foreign currency transaction and translation (other than considered as finance cost);
 - (j) Payments to the auditor as (a) auditor; (b) for taxation matters; (c) for company law matters; (d) for management services; (e) for other services; and (f) for reimbursement of expenses;
 - (k) In case of Companies covered under section 135, amount of expenditure incurred on corporate social responsibility activities;
 - (l) Details of items of exceptional and extraordinary nature;
 - (m) Prior period items;
- (ii) (a) In the case of manufacturing companies,—
- (1) Raw materials under broad heads.
 - (2) goods purchased under broad heads.
- (b) In the case of trading companies, purchases in respect of goods traded in by the company under broad heads.
- (c) In the case of companies rendering or supplying services, gross income derived from services rendered or supplied under broad heads.
- (d) In the case of a company, which falls under more than one of the categories mentioned in (a), (b) and (c) above, it shall be sufficient compliance with the requirements herein if purchases, sales and consumption of raw material and the gross income from services rendered is shown under broad heads.
- (e) In the case of other companies, gross income derived under broad heads.
- (iii) In the case of all concerns having works in progress, works-in-progress under broad heads.
- (iv) (a) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserve, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as to which the balance sheet is made up.
- (b) The aggregate, if material, of any amounts withdrawn from such reserves.
- (v) (a) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.
- (b) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.
- (vi) Expenditure incurred on each of the following items, separately for each item:—
- (a) Consumption of stores and spare parts;
 - (b) Power and fuel;
 - (c) Rent;
 - (d) Repairs to buildings;
 - (e) Repairs to machinery;
 - (f) Insurance;
 - (g) Rates and taxes, excluding, taxes on income;
 - (h) Miscellaneous expenses,



(vii) (a) Dividends from subsidiary companies.

(b) Provisions for losses of subsidiary companies.

(viii) The profit and loss account shall also contain by way of a note the following information, namely:—

(a) Value of imports calculated on C.I.F basis by the company during the financial year in respect of—

- I. Raw materials;
- II. Components and spare parts;
- III. Capital goods;

(b) Expenditure in foreign currency during the financial year on account of royalty, know-how, professional and consultation fees, interest, and other matters;

(c) Total value if all imported raw materials, spare parts and components consumed during the financial year and the total value of all indigenous raw materials, spare parts and components similarly consumed and the percentage of each to the total consumption;

(d) The amount remitted during the year in foreign currencies on account of dividends with a specific mention of the total number of non-resident shareholders, the total number of shares held by them on which the dividends were due and the year to which the dividends related;

(e) Earnings in foreign exchange classified under the following heads, namely:—

- I. Export of goods calculated on F.O.B. basis;
- II. Royalty, know-how, professional and consultation fees;
- III. Interest and dividend;
- IV. Other income, indicating the nature thereof.

Note: Broad heads shall be decided taking into account the concept of materiality and presentation of true and fair view of financial statements.

GENERAL INSTRUCTIONS FOR THE PREPARATION OF CONSOLIDATED FINANCIAL STATEMENTS

1. Where a company is required to prepare Consolidated Financial Statements, i.e., consolidated balance sheet and consolidated statement of profit and loss, the company shall mutatis mutandis follow the requirements of this Schedule as applicable to a company in the preparation of balance sheet and statement of profit and loss. In addition, the consolidated financial statements shall disclose the information as per the requirements specified in the applicable Accounting Standards including the following:
 - (i) Profit or loss attributable to "minority interest" and to owners of the parent in the statement of profit and loss shall be presented as allocation for the period.
 - (ii) "Minority interests" in the balance sheet within equity shall be presented separately from the equity of the owners of the parent.
2. In Consolidated Financial Statements, the following shall be disclosed by way of additional information:

Name of the entity in the	Net Assets, i.e., total assets minus total liabilities		Share in profit or loss	
	As % of consolidated net assets	Amount	As % of consolidated profit or loss	Amount
1	2	3	4	5
Parent Subsidiaries Indian 1. 2. 3.				
Foreign 1. 2. 3.				
Minority Interests in all subsidiaries Associates (Investment as per the equity method) Indian 1. 2. 3.				
Foreign 1. 2. 3.				
Joint Ventures (as per proportionate consolidation/ investment as per the equity method) Indian 1. 2. 3.				
Foreign 1. 2. 3.				
Total				

3. All subsidiaries, associates and joint ventures (whether Indian or foreign) will be covered under consolidated financial statements.
4. An entity shall disclose the list of subsidiaries or associates or joint ventures which have not been consolidated in the consolidated financial statements along with the reasons of not consolidating.



SCHEDULE IV

[See section 149(8)]

CODE FOR INDEPENDENT DIRECTORS

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfillment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of Professional Conduct:

An independent director shall:

- (1) uphold ethical standards of integrity and probity;
- (2) act objectively and constructively while exercising his duties;
- (3) exercise his responsibilities in a bona fide manner in the interest of the company;
- (4) devote sufficient time and attention to his professional obligations for informed and balanced decision making;
- (5) not allow any extraneous considerations that will vitiate his exercise of objective independent judgment in the paramount interest of the company as a whole, while concurring in or dissenting from the collective judgment of the Board in its decision making;
- (6) not abuse his position to the detriment of the company or its shareholders or for the purpose of gaining direct or indirect personal advantage or advantage for any associated person;
- (7) refrain from any action that would lead to loss of his independence;
- (8) where circumstances arise which make an independent director lose his independence, the independent director must immediately inform the Board accordingly;
- (9) assist the company in implementing the best corporate governance practices.

II. Role and Functions:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;
- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

III. Duties :

The independent directors shall—

- (1) undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;
- (2) seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;
- (3) strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;
- (4) participate constructively and actively in the committees of the Board in which they are chairpersons or members;
- (5) strive to attend the general meetings of the company;
- (6) where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;
- (7) keep themselves well informed about the company and the external environment in which it operates;
- (8) not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;
- (9) pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;
- (10) ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;
- (11) report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;
- (12) acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;
- (13) not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

IV. Manner of Appointment:

- (1) Appointment process of independent directors shall be independent of the company management; while selecting independent directors the Board shall ensure that there is appropriate balance of skills, experience and knowledge in the Board so as to enable the Board to discharge its functions and duties effectively.
- (2) The appointment of independent director(s) of the company shall be approved at the meeting of the shareholders.
- (3) The explanatory statement attached to the notice of the meeting for approving the appointment of independent director shall include a statement that in the opinion of the Board, the independent director proposed to be appointed fulfils the conditions specified in the Act and the rules made thereunder and that the proposed director is independent of the management.



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- (4) The appointment of independent directors shall be formalised through a letter of appointment, which shall set out :
 - (a) the term of appointment;
 - (b) the expectation of the Board from the appointed director; the Board-level committee(s) in which the director is expected to serve and its tasks;
 - (c) the fiduciary duties that come with such an appointment along with accompanying liabilities;
 - (d) provision for Directors and Officers (D and O) insurance, if any;
 - (e) the Code of Business Ethics that the company expects its directors and employees to follow;
 - (f) the list of actions that a director should not do while functioning as such in the company; and
 - (g) the remuneration, mentioning periodic fees, reimbursement of expenses for participation in the Boards and other meetings and profit related commission, if any.
 - (5) The terms and conditions of appointment of independent directors shall be open for inspection at the registered office of the company by any member during normal business hours.
 - (6) The terms and conditions of appointment of independent directors shall also be posted on the company's website.

V. Re-Appointment:

The re-appointment of independent director shall be on the basis of report of performance evaluation.

VI. Resignation or Removal:

- (1) The resignation or removal of an independent director shall be in the same manner as is provided in sections 168 and 169 of the Act.
- (2) An independent director who resigns or is removed from the Board of the company shall be replaced by a new independent director within a period of not more than one hundred and eighty days from the date of such resignation or removal, as the case may be.
- (3) Where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.

VII. Separate Meetings:

- (1) The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management;
- (2) All the independent directors of the company shall strive to be present at such meeting;
- (3) The meeting shall:
 - (a) review the performance of non-independent directors and the Board as a whole;
 - (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

VIII. Evaluation mechanism:

- (1) The performance evaluation of independent directors shall be done by the entire Board of Directors, excluding the director being evaluated.
- (2) On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

SCHEDULE V
(See sections 196 and 197)
PART - I

**CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR
WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE
CENTRAL GOVERNMENT**

APPOINTMENTS

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

- (a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:—
 - (i) the Indian Stamp Act, 1899 (2 of 1899);
 - (ii) the Central Excise Act, 1944 (1 of 1944);
 - (iii) the Industries (Development and Regulation) Act, 1951 (65 of 1951);
 - (iv) the Prevention of Food Adulteration Act, 1954 (37 of 1954);
 - (v) the Essential Commodities Act, 1955 (10 of 1955);
 - (vi) the Companies Act, 2013;
 - (vii) the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
 - (viii) the Wealth-tax Act, 1957 (27 of 1957);
 - (ix) the Income-tax Act, 1961 (43 of 1961);
 - (x) the Customs Act, 1962 (52 of 1962);
 - (xi) the Competition Act, 2002 (12 of 2003);
 - (xii) the Foreign Exchange Management Act, 1999 (42 of 1999);
 - (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
 - (xiv) the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (xv) the Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);
 - (xvi) the Prevention of Money-Laundering Act, 2002; (15 of 2003);
- (b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. (52 of 1974);

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

- (c) he has completed the age of twenty-one years and has not attained the age of seventy years.

Provided that where he has attained the age of seventy years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;

- (d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;



(e) he is resident of India.

Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—

- (i) for taking up employment in India; or
- (ii) for carrying on a business or vacation in India.

Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

PART II REMUNERATION

Section I.— Remuneration Payable by Companies Having Profits:

Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

Section II.— Remuneration Payable by Companies having no Profit or Inadequate Profit without Central Government Approval:

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:—

(A):

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	30 lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs
(iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of ₹250 crores:

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Explanation.— It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B) In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, — 2.5% of the current relevant profit:

Provided that if the resolution passed by the shareholders is a special resolution, this limit shall be doubled:

Provided further that the limits specified under this section shall apply, if—

- (i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;

- (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;
- (iii) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;
- (iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:—
 - I. General Information:
 - (1) Nature of industry
 - (2) Date or expected date of commencement of commercial production
 - (3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
 - (4) Financial performance based on given indicators
 - (5) Foreign investments or collaborations, if any.
 - II. Information about the appointee:
 - (1) Background details
 - (2) Past remuneration
 - (3) Recognition or awards
 - (4) Job profile and his suitability
 - (5) Remuneration proposed
 - (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)
 - (7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.
 - III. Other information:
 - (1) Reasons of loss or inadequate profits
 - (2) Steps taken or proposed to be taken for improvement
 - (3) Expected increase in productivity and profits in measurable terms.
 - IV. Disclosures:

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—

- (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
- (ii) details of fixed component and performance linked incentives along with the performance criteria;
- (iii) service contracts, notice period, severance fees;
- (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Section III.— Remuneration Payable by Companies having no Profit or Inadequate Profit without Central Government Approval in Certain Special Circumstances:

In the following circumstances a company may, without the Central Government approval, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—

- (a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration



for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

(b) where the company—

- (i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or
- (ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival,

it may pay remuneration up to two times the amount permissible under Section II.

(c) where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal:

Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—

- (i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;
 - (ii) the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.
 - (iii) the auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.
- (d) a company in a Special Economic Zone as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to ₹ 2,40,00,000 per annum.

Section IV.— Perquisites not Included in Managerial Remuneration:

1. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:—
 - (a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961 (43 of 1961);
 - (b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
 - (c) encashment of leave at the end of the tenure.
2. In addition to the perquisites specified in paragraph 1 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III:—
 - (a) Children's education allowance: In case of children studying in or outside India, an allowance limited to a maximum of ₹ 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
 - (b) Holiday passage for children studying outside India or family staying abroad: Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.

- (c) Leave travel concession: Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

Explanation I.— For the purposes of Section II of this Part, "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Explanation II.—

- (a) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment;
- (b) In any other case the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

Explanation III.— For the purposes of this Schedule, "family" means the spouse, dependent children and dependent parents of the managerial person.

Explanation IV.— The Nomination and Remuneration Committee while approving the remuneration under Section II or Section III, shall—

- (a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.;
- (b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Explanation V.— For the purposes of this Schedule, "negative effective capital" means the effective capital which is calculated in accordance with the provisions contained in Explanation I of this Part is less than zero.

Explanation VI.— For the purposes of this Schedule:—

- (A) "current relevant profit" means the profit as calculated under section 198 but without deducting the excess of expenditure over income referred to in sub-section 4 (I) thereof in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.
- (B) "Remuneration" means remuneration as defined in clause (78) of section 2 and includes reimbursement of any direct taxes to the managerial person.

Section V: Remuneration Payable to a Managerial Person in two Companies:

Subject to the provisions of sections I to I V, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

PART III

Provisions Applicable to Parts I and II of this Schedule

1. The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.
2. The auditor or the Secretary of the company or where the company is not required to appointed a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule



have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196.

PART IV

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.

SCHEDULE VI

(See sections 55 and 186)

The term "infrastructural projects" or "infrastructural facilities" includes the following projects or activities:—

- (1) Transportation (including inter modal transportation), includes the following:—
 - (a) roads, national highways, state highways, major district roads, other district roads and village roads, including toll roads, bridges, highways, road transport providers and other road-related services;
 - (b) rail system, rail transport providers, metro rail roads and other railway related services;
 - (c) ports (including minor ports and harbours), inland waterways, coastal shipping including shipping lines and other port related services;
 - (d) aviation, including airports, heliports, airlines and other airport related services;
 - (e) logistics services.
- (2) Agriculture, including the following, namely:—
 - (a) infrastructure related to storage facilities;
 - (b) construction relating to projects involving agro-processing and supply of inputs to agriculture;
 - (c) construction for preservation and storage of processed agro-products, perishable goods such as fruits, vegetables and flowers including testing facilities for quality.
- (3) Water management, including the following, namely:—
 - (a) water supply or distribution;
 - (b) irrigation;
 - (c) water treatment.
- (4) Telecommunication, including the following, namely:—
 - (a) basic or cellular, including radio paging;
 - (b) domestic satellite service (i.e., satellite owned and operated by an Indian company for providing telecommunication service);
 - (c) network of trunking, broadband network and internet services.
- (5) Industrial, commercial and social development and maintenance, including the following, namely:—
 - (a) real estate development, including an industrial park or special economic zone;
 - (b) tourism, including hotels, convention centres and entertainment centres;
 - (c) public markets and buildings, trade fair, convention, exhibition, cultural centres, sports and recreation infrastructure, public gardens and parks;
 - (d) construction of educational institutions and hospitals;
 - (e) other urban development, including solid waste management systems, sanitation and sewerage systems.
- (6) Power, including the following:—
 - (a) generation of power through thermal, hydro, nuclear, fossil fuel, wind and other renewable sources;

- (b) transmission, distribution or trading of power by laying a network of new transmission or distribution lines.
- (7) Petroleum and natural gas, including the following:—
 - (a) exploration and production;
 - (b) import terminals;
 - (c) liquefaction and re-gasification;
 - (d) storage terminals;
 - (e) transmission networks and distribution networks including city gas infrastructure.
- (8) Housing, including the following:—
 - (a) urban and rural housing including public / mass housing, slum rehabilitation, etc;
 - (b) other allied activities such as drainage, lighting, laying of roads, sanitation and facilities.
- (9) Other miscellaneous facilities/services, including the following:—
 - (a) mining and related activities;
 - (b) technology related infrastructure;
 - (c) manufacturing of components and materials or any other utilities or facilities required by the infrastructure sector like energy saving devices and metering devices;
 - (d) environment related infrastructure;
 - (e) disaster management services;
 - (f) preservation of monuments and icons;
 - (g) emergency services (including medical, police, fire and rescue).
- (10) such other facility service as may be prescribed.

SCHEDULE VII
(See sections 135)

Activities which may be included by companies in their Corporate Social Responsibility Policies.

Activities relating to:—

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;
- (viii) social business projects;
- (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) such other matters as may be prescribed; and
- (xi) slum area development.

Explanation.— For the purposes of this item, the term "slum area" shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being force.

Study Note - 2

LAWS AND PROCEDURES FOR CORPORATE RESTRUCTURING



This Study Note includes

2.1 Compromises, Arrangements and Amalgamations

2.2 Prevention of Oppression and Mismanagement

2.1 COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

2.1.1 Power to Compromise or Make Arrangements with Creditors and Members [Section 230]

- (1) Where a compromise or arrangement is proposed—
(a) Between a company and its creditors or any class of them; or
(b) Between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.— For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

- (2) The company or any other person, by whom an application is made under subsection (1) shall disclose to the Tribunal by affidavit—
(a) All material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;
(b) Reduction of share capital of the company, if any, included in the compromise or arrangement;
(c) Any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—
(i) A creditor's responsibility statement in the prescribed form;
(ii) Safeguards for the protection of other secured and unsecured creditors;
(iii) Report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;
(iv) Where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and
(v) A valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

- (3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed.

Provided that such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as may be prescribed.

Provided further that where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company.

- (4) A notice under sub-section (3) shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice.

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

- (5) A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

- (6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

- (7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

- (a) Where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
- (b) The protection of any class of creditors;
- (c) If the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;



- (d) If the compromise or arrangement is agreed to by the creditors under sub-section (6), Any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;
- (e) Such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement.
- Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.
- (8) The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.
- (9) The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.
- (10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.
- (11) Any compromise or arrangement may include takeover offer made in such manner as may be prescribed.
- Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.
- (12) An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Explanation.— For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

2.1.2 Power of Tribunal to enforce Compromise or Arrangement [Section 231]

- (1) Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—
- Shall have power to supervise the implementation of the compromise or arrangement; and
 - May, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.
- (2) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.
- (3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

2.1.3 Merger and Amalgamation of Companies [Section 232]

- (1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—
- That the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

- (b) That under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies.

The Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

- (2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—
- (a) The draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company;
 - (b) Confirmation that a copy of the draft scheme has been filed with the Registrar;
 - (c) A report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;
 - (d) The report of the expert with regard to valuation, if any;
 - (e) A supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.
- (3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—
- (a) The transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;
 - (b) The allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person.
- Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;
- (c) The continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;
 - (d) Dissolution, without winding-up, of any transferor company;
 - (e) The provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;
 - (f) Where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;
 - (g) The transfer of the employees of the transferor company to the transferee company;



- (h) Where the transferor company is a listed company and the transferee company is an unlisted company,—
- (A) The transferee company shall remain an unlisted company until it becomes a listed company;
- (B) If shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal.

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

- (i) Where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and
- (j) Such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out.

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

- (4) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.
- (5) Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.
- (6) The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.
- (7) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.
- (8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation.— For the purposes of this section,—

- (i) In a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is

- proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;
- (ii) References to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;
 - (iii) A scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and
 - (iv) Property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

2.1.4 Merger or Amalgamation of certain Companies [Section 233]

- (1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:—
 - (a) A notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;
 - (b) The objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;
 - (c) Each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
 - (d) The scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.
- (2) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.
- (3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.
- (4) If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days.
Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.
- (5) If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under sub-section (2) stating its objections and requesting that the Tribunal may consider the scheme under section 232.



- (6) On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit.

Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.

- (7) A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.
- (8) The registration of the scheme under sub-section (3) or sub-section (7) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.
- (9) The registration of the scheme shall have the following effects, namely:—
- Transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;
 - The charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;
 - Legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and
 - Where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.
- (10) A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.
- (11) The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital.
- Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.
- (12) The provisions of this section shall mutatis mutandis apply to a company or companies specified in sub-section (1) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (b) of subsection (1) of section 232.
- (13) The Central Government may provide for the merger or amalgamation of companies in such manner as may be prescribed.
- (14) A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

2.1.5 Merger or Amalgamation of Company with Foreign Company [Section 234]

- (1) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply mutatis mutandis to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government.

Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

- (2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

Explanation.— For the purposes of sub-section (2), the expression "foreign company" means any company or body corporate incorporated outside India whether having a place of business in India or not.

2.1.6 Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract Approved by Majority [Section 235]

- (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.
- (2) Where a notice under sub-section (1) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.
- (3) Where a notice has been given by the transferee company under sub-section (1) and the Tribunal has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall—
- Thereupon register the transferee company as the holder of those shares; and
 - Within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.
- (4) Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.
- (5) In relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:—



- (a) In sub-section (1), for the words "the shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries," the words "the shares affected" shall be substituted; and
- (b) In sub-section (3), the words "together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company" shall be omitted.

Explanation.— For the purposes of this section, "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

2.1.7 Purchase of Minority Shareholding [Section 236]

- (1) In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent. majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.
- (2) The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.
- (3) Without prejudice to the provisions of sub-sections (1) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (2).
- (4) The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a separate bank account to be operated by the transferor company for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days.

Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, fail to receive or claim payment arising out of such disbursement.

- (5) In the event of a purchase under this section, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.
- (6) In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled, and the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.
- (7) In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.
- (8) Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, the shareholders holding seventy-five

per cent. or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a pro rata basis.

Explanation.— For the purposes of this section, the expressions "acquirer" and "person acting in concert" shall have the meanings respectively assigned to them in clause (b) and clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

- (9) When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—
- The shares of the company of the residual minority equity shareholder had been delisted; and
 - The period of one year or the period specified in the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, had elapsed.

2.1.8 Power of Central Government to Provide for Amalgamation of Companies in Public Interest [Section 237]

- Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.
- The order under sub-section (1) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.
- Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.
- Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.
- No order shall be made under this section unless—
 - A copy of the proposed order has been sent in draft to each of the companies concerned;
 - The time for preferring an appeal under sub-section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and
 - The Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by



that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

- (6) The copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

2.1.9 Registration of Offer of Schemes Involving Transfer of Shares [Section 238]

- (1) In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—
- (a) Every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as may be prescribed;
 - (b) Every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and
 - (c) Every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered.

Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

- (2) An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (1).
- (3) The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

2.1.10 Preservation of Books and Papers of Amalgamated Companies [Section 239]

The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

2.1.11 Liability of Officers in respect of Offences Committed prior to Merger, Amalgamation, etc. [Section 240]

Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

2.2 PREVENTION OF OPPRESSION AND MISMANAGEMENT

2.2.1 Application to Tribunal for relief in cases of Oppression, etc. [Section 241]

- (1) Any member of a company who complains that—
 - (a) The affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or
 - (b) The material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.
- (2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

2.2.2 Powers of Tribunal [Section 242]

- (1) If, on any application made under section 241, the Tribunal is of the opinion—
 - (a) That the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and
 - (b) That to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

The Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

- (2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—
 - (a) The regulation of conduct of affairs of the company in future;
 - (b) The purchase of shares or interests of any members of the company by other members thereof or by the company;
 - (c) In the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
 - (d) Restrictions on the transfer or allotment of the shares of the company;
 - (e) The termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;
 - (f) The termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e).

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;



- (g) The setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;
- (h) Removal of the managing director, manager or any of the directors of the company;
- (i) Recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
- (j) The manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);
- (k) Appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
- (l) Imposition of costs as may be deemed fit by the Tribunal;
- (m) Any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.
- (3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.
- (4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.
- (5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.
- (6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.
- (7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.
- (8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

2.2.3 Consequence of Termination or Modification of certain Agreements [Section 243]

- (1) Where an order made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section,—
- (a) Such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

- (b) No managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

- (2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1), and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

2.2.4 Right to apply Under Section 241 [Section 244]

- (1) The following members of a company shall have the right to apply under section 241, namely:—
- (a) In the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
 - (b) In the case of a company not having a share capital, not less than one-fifth of the total number of its members.

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.— For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

- (2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

2.2.5 Class Action [Section 245]

- (1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—
- (a) To restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
 - (b) To restrain the company from committing breach of any provision of the company's memorandum or articles;
 - (c) To declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
 - (d) To restrain the company and its directors from acting on such resolution;
 - (e) To restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
 - (f) To restrain the company from taking action contrary to any resolution passed by the members;



- (g) To claim damages or compensation or demand any other suitable action from or against—
- The company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
 - The auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
 - Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part; (h) to seek any other remedy as the Tribunal may deem fit.
- (2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.
- (3) (i) The requisite number of members provided in sub-section (1) shall be as under:—
- In the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
 - In the case of a company not having a share capital, not less than one-fifth of the total number of its members.
- (ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.
- (4) In considering an application under sub-section (1), the Tribunal shall take into account, in particular—
- Whether the member or depositor is acting in good faith in making the application for seeking an order;
 - Any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of subsection (1);
 - Whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;
 - Any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;]
 - Where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—
 - Authorised by the company before it occurs; or
 - Ratified by the company after it occurs;
 - Where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

- (5) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:—
 - (a) Public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed;
 - (b) All similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;
 - (c) Two class action applications for the same cause of action shall not be allowed;
 - (d) The cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.
- (6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.
- (7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
- (8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.
- (9) Nothing contained in this section shall apply to a banking company.
- (10) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).

2.2.6 Application of certain provisions to proceedings Under Section 241 or Section 245 [Section 246]

The provisions of sections 337 to 341 (both inclusive) shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241 or section 245.

Study Note - 3

SEBI LAWS AND REGULATIONS

This Study Note includes

- 3.1 The Securities and Exchange Board of India Act, 1992**
- 3.2 The Securities Contracts (Regulation) Act, 1956**
- 3.3 SEBI (Issue of Capital and Disclosure regulations), 2009**
- 3.4 Corporate Governance of Listing Agreement**
- 3.5 SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011**

3.1 THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

PRELIMINARY

Short title, extent & commencement (Section 1)

- (1) This Act may be called the Securities and Exchange Board of India Act, 1992.
- (2) It extends to the whole of India.
- (3) It shall be deemed to have come into force on the 30th day of January, 1992.

Definitions (Section 2)

- (1) In this Act, unless the context otherwise requires, -
 - (a) "Board" means the Securities and Exchange Board of India established under section 3;
 - (b) "Chairman" means the Chairman of the Board;
 - (ba) "collective investment scheme" means any scheme or arrangement which satisfies the conditions specified in Section 11AA;
 - (c) "existing Securities and Exchange Board" means the Securities and Exchange Board of India constituted under the Resolution of the Government of India in the Department of Economic Affairs No.1 (44)SE/86, dated the 12th day of April, 1988;
 - (d) "Fund" means the Fund constituted under Section 14;
 - (e) "member" means a member of the Board and includes the Chairman;
 - (f) "notification" means a notification published in the Official Gazette;
 - (g) "prescribed" means prescribed by rules made under this Act;
 - (h) "regulations" means the regulations made by the Board under this Act;
 - (ha) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;
 - (i) "securities" has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956.
- (2) Words and expressions used and not defined in this Act, but defined in the Securities Contracts (Regulation) Act, 1956, [or the Depositories Act, 1996], shall have the meanings respectively assigned to them in that Act.

ESTABLISHMENT OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

Establishment and incorporation of Board [Section 3]

- (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board by the name of the Securities and Exchange Board of India.
- (2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.
- (3) The head office of the Board shall be at Bombay.
- (4) The Board may establish offices at other places in India.

Management of the Board [Section 4]

- (1) The Board shall consist of the following members, namely:-
 - (a) a Chairman;
 - (b) two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act, 1956;
 - (c) one member from amongst the officials of the Reserve Bank;
 - (d) five other members of whom at least three shall be the whole-time members, to be appointed by the central Government.
- (2) The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board.
- (3) Save as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board.
- (4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank respectively.
- (5) The Chairman and the other members referred to in clauses (a) and (d) of subsection (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

Term of office and conditions of service of Chairman and members of the Board [Section 5]

- (1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub- section (1) of section 4 shall be such as may be prescribed.
- (2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 4, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.



Removal of member from office [Section 6]

The Central Government shall remove a member from office if he -

- (a) is, or at any time has been, adjudicated as insolvent;
- (b) is of unsound mind and stands so declared by a competent court;
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;
- (d) [.....]
- (e) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

Meetings [Section 7]

- (1) The Board shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.
- (2) The Chairman or, if for any reason, he is unable to attend a meeting of the Board, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.
- (3) All questions which come up before any meeting of the Board shall be decided by a majority votes of the members present and voting, and, in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have a second or casting vote.

Member not to participate in meetings in certain cases [Section 7A]

"Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter".

Vacancies etc., not to invalidate proceedings of Board [Section 8]

No act or proceeding of the Board shall be invalid merely by reason of -

- (a) any vacancy in, or any defect in the constitution of, the Board; or
- (b) any defect in the appointment of a person acting as a member of the Board; or
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

Officers and employees of the Board [Section 9]

- (1) The Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.
- (2) The term and other conditions of service of officers and employees of the Board appointed under sub- section (1) shall be such as may be determined by regulations.

TRANSFER OF ASSETS, LIABILITIES, ETC., OF THE EXISTING SECURITIES AND EXCHANGE BOARD TO THE BOARD

Transfer of assets, liabilities, etc., of existing Securities and Exchange Board to the Board [Section 10]

- (1) On and from the date of establishment of the Board,-
 - (a) any reference to the existing Securities and Exchange Board in any law other than this Act or in any contract or other instrument shall be deemed as a reference to the Board;
 - (b) all properties and assets, movable and immovable, of, or belonging to, the existing Securities and Exchange Board, shall vest in the Board;
 - (c) all rights and liabilities of the existing Securities and Exchange Board shall be transferred to, and be the rights and liabilities of, the Board;
 - (d) without prejudice to the provisions of clause (c), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Securities and Exchange Board immediately before that date, for or in connection with the purpose of the said existing Board shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Board;
 - (e) all sums of money due to the existing Securities and Exchange Board immediately before that date shall be deemed to be due to the Board;
 - (f) all suits and other legal proceedings instituted or which could have been instituted by or against the existing Securities and Exchange Board immediately before that date may be continued or may be instituted by or against the Board; and
 - (g) every employee holding any office under the existing Securities and Exchange Board immediately before that date shall hold his office in the Board by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the Board had not been established and shall continue to do so as an employee of the Board or until the expiry of the period of six months from that date if such employee opts not to be the employee of the Board within such period.
- (2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, absorption of any employee by the Board in its regular service under this section shall not entitle such employee to any compensation under that Act or other law and no such claim shall be entertained by any court, tribunal or other authority.

POWERS AND FUNCTIONS OF THE BOARD

Functions of Board [Section 11]

- (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.
 - (ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;
 - (ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard.



Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;

- (2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for -
- (a) regulating the business in stock exchanges and any other securities markets;
 - (b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;
 - (ba) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;
 - (c) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;
 - (d) promoting and regulating self-regulatory organisations;
 - (e) prohibiting fraudulent and unfair trade practices relating to securities markets;
 - (f) promoting investors' education and training of intermediaries of securities markets;
 - (g) prohibiting insider trading in securities;
 - (h) regulating substantial acquisition of shares and take-over of companies;
 - (i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;
 - (ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;
 - (ij) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government;
 - (k) levying fees or other charges for carrying out the purposes of this section;
 - (l) conducting research for the above purposes;
 - (la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;
 - (m) performing such other functions as may be prescribed.
- (2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.
- (3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) or clause (ia) of sub-section (2) or sub-section (2A), the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely :

- (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;
 - (ii) summoning and enforcing the attendance of persons and examining them on oath;
 - (iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;]
 - (iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);
 - (v) issuing commissions for the examination of witnesses or documents.]
- (4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:-
- (a) suspend the trading of any security in a recognised stock exchange;
 - (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
 - (c) suspend any office-bearer of any stock exchange or self- regulatory organisation from holding such position;
 - (d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;
 - (e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;
 - (f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market:

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.]
- (5) The amount disgorged, pursuant to a direction issued, under section 11B or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.



Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities [Section 11A]

- (1) Without prejudice to the provisions of the Companies Act, 1956, the Board may, for the protection of investors, -
 - (a) specify, by regulations –
 - (i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
 - (ii) the manner in which such matters shall be disclosed by the companies;
 - (b) by general or special orders –
 - (i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
 - (ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.
- (2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956, the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.]

Collective Investment Scheme [Section 11AA]

- (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-Section (2A) shall be a collective investment scheme.

Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.
- (2) Any scheme or arrangement made or offered by any person under which,—
 - (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;
 - (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;
 - (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
 - (iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.
- (2A) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.
- (3) Notwithstanding anything contained in sub-section (2) or sub-Section (2A), any scheme or arrangement-
 - (i) made or offered by a co-operative society registered under the co-operative societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any state;
 - (ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;
 - (iii) being a contract of insurance to which the Insurance Act, 1938, applies;

- (iv) providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
 - (v) under which deposits are accepted under section 58A of the Companies Act, 1956;
 - (vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956;
 - (vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;
 - (viii) under which contributions made are in the nature of subscription to a mutual fund;
 - (ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,
- shall not be a collective investment scheme.

Power to issue directions [Section 11B]

Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,-

- (i) in the interest of investors, or orderly development of securities market; or
 - (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
 - (iii) to secure the proper management of any such intermediary or person, it may issue such directions,-
- (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
 - (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market

Explanation.— For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, the disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

Investigation [Section 11C]

- (1) Where the Board has reasonable ground to believe that –
 - (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or
 - (b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder,

It may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

- (2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as



the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any book, register, other document and record if they are needed again:

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(6) If any person fails without reasonable cause or refuses –

- (a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or
- (b) to furnish any information which is his duty under sub-section (3) to furnish; or
- (c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or
- (d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

(7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Magistrate or Judge of such designation court in Mumbai, as may be notified by the Central Government for an order for the seizure of such books, registers, other documents and record.

(8A) The amount disgorged, pursuant to a direction issued, under section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as

the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.

- (9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designated Court may, by order, authorise the Investigating Authority –
- (a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;
 - (b) to search that place or those places in the manner specified in the order; and
 - (c) to seize books, registers, other documents and record, it considers necessary for the purposes of the investigation.

Provided that the Magistrate or Judge of the Designated Court shall not authorise seizure of books, registers, other documents and record, of any listed public company or a public company (not being the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation.

- (10) The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate or Judge of the Designated Court of such return.

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

- (11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures made under that Code.

Cease and desist proceedings [Section 11D]

If the Board finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation:

Provided that the Board shall not pass such order in respect of any listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless the Board has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.

REGISTRATION CERTIFICATE

Registration of stock brokers, sub-brokers, share transfer agents, etc. [Section 12]

- (1) No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before



the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

- (1A) No depository, participant, custodian of securities, foreign institutional investor, credit rating agency or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a depository, participant, custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to buy or sell securities or otherwise deal with the securities market until such time regulations are made under clause (d) of sub-section (2) of section 30.

- (1B) No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations:

Provided that any person sponsoring or causing to be sponsored, carrying on or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.]

Explanation.- For the removal of doubts, it is hereby declared that, for the purpose of this section, a collective investment scheme or mutual fund shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment besides the component of insurance issued by an insurer.

- (2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.
- (3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations.

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control [Section 12A]

No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (d) engage in insider trading;
- (e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

FINANCE, ACCOUNTS AND AUDIT

Grants by the Central Government [Section 13]

The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Board grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

Fund [Section 14]

- (1) There shall be constituted a Fund to be called the Securities and Exchange Board of India General Fund and there shall be credited thereto-
 - (a) all grants, fees and charges received by the Board under this Act;
 - (b) all sums received by the Board from such other sources as may be decided upon by the Central Government.
- (2) The Fund shall be applied for meeting -
 - (a) the salaries, allowances and other remuneration of members, officers and other employees of the Board;
 - (b) the expenses of the Board in the discharge of its functions under section 11;
 - (c) the expenses on objects and for purposes authorised by this Act.

Accounts and Audit. (Section 15)

- (1) The Board shall maintain proper 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.
- (2) The accounts of the Board shall be audited by the Comptroller and Auditor- General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.
- (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.
- (4) The accounts of the Board as certified by the Comptroller and Auditor- General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.



PENALTIES AND ADJUDICATION

Penalty for failure to furnish information, return, etc. [Section 15A]

If any person, who is required under this Act or any rules or regulations made thereunder,-

- (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (c) to maintain books of accounts or records, fails to maintain the same, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure by any person to enter into agreement with clients [Section 15B]

If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure to redress investors' grievances [Section 15C]

If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for certain defaults in case of mutual funds. (Section 15D)

If any person, who is –

- (a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees.
- (b) registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (c) registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

- (d) registered as a collective investment scheme, including mutual funds, fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (e) registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
- (f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure to observe rules and regulations by an asset management company [Section 15E]

Where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset management company shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure in case of stock brokers [Section 15F]

If any person, who is registered as a stock broker under this Act, -

- (a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to for which the contract note was required to be issued by that broker;
- (b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees.
- (c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Penalty for insider trading [Section 15G]

If any insider who,-

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
- (ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.



Penalty for non-disclosure of acquisition of shares and takeovers [Section 15H]

If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

- (i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
- (ii) make a public announcement to acquire shares at a minimum price; or
- (iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or
- (iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,

he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for fraudulent and unfair trade practices [Section 15HA]

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided [Section 15HB]

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extent to one crore rupees.

Power to adjudicate [Section 15-I]

- (1) For the purpose of adjudicating under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB], the Board shall appoint any officers not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
- (2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.
- (3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify.

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.

Factors to be taken into account by the adjudicating officer [Section 15J]

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

Crediting sums realized by way of penalties to Consolidated Fund of India [Section 15JA]

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Settlement of administrative and civil proceedings [section 15JB]

- (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceeding initiated or to be initiated for the alleged defaults.
- (2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.
- (3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.
- (4) No appeal shall lie under section 15T against any order passed by the Board or Adjudicating officer, as the case may be, under this section.

ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF APPELLATE TRIBUNAL

Establishment of Securities Appellate Tribunals [Section 15K]

- (1) The Central Government shall, by notification, establish one or more Appellate Tribunals to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act or any other law for the time being in force.
- (2) The Central Government shall also specify in the notification referred to in sub-section (1) the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.

Composition of Securities Appellate Tribunal [Section 15L]

A Securities Appellate Tribunal shall consist of a Presiding Officer and two other Members, to be appointed, by notification, by the Central Government:

Provided that the Securities Appellate Tribunal, consisting of one person only, established before the commencement of the Securities and Exchange Board of India (Amendment) Act, 2002, shall continue to exercise the jurisdiction, powers and authority conferred on it by or under this Act or any other law for the time being in force till two other Members are appointed under this section.

Qualification for appointment as Presiding Officer or Member of the Securities Appellate Tribunal [Section 15M]

- (1) A person shall not be qualified for appointment as the Presiding Officer of the Securities Appellate Tribunal unless he—
 - (a) is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court; or
 - (b) is a sitting or retired Judge of a High Court who has completed not less than seven years of service as a Judge in a High Court.



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- (1A) The Presiding Officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.
 - (2) A person shall not be qualified for appointment as Member of a Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy:

Provided that a member of the Board or any person holding a post at senior management level equivalent to Executive Director in the Board shall not be appointed as Presiding Officer or Member of a Securities Appellate Tribunal during his service or tenure as such with the Board or within two years from the date on which he ceases to hold office as such in the Board.

Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal [Section 15N]

The Presiding Officer and every other Member of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that no person shall hold office as the Presiding Officer of the Securities Appellate Tribunal after he has attained the age of sixty-eight years:

Provided further that no person shall hold office as a Member of the Securities Appellate Tribunal after he has attained the age of sixty-two years.

Salary and allowances and other terms and conditions of service of Presiding Officers [Section 15O]

The salary and allowances payable to and the other terms and conditions of service including pension, gratuity and other retirement benefits of the Presiding Officer and other Member of a Securities Appellate Tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Presiding Officer and other Members of a Securities Appellate Tribunal shall be varied to their disadvantage after appointment.

Filling up of vacancies [Section 15P]

If, for reason other than temporary absence; any vacancy occurs in the office of the Presiding Officer or any other Member of a Securities Appellate Tribunal, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Securities Appellate Tribunal from the stage at which the vacancy is filled.

Resignation and removal [Section 15Q]

- (1) The Presiding Officer or any other Member of a Securities Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Presiding Officer or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office, until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

- (2) The Presiding Officer or any other Member of a Securities Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court, in which the Presiding Officer or any other Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.
- (3) The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the Presiding Officer or any other Member.

Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings [Section 15R]

No order of the Central Government appointing any person as the Presiding Officer or a Member of a Securities Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

Staff of the Securities Appellate Tribunal [Section 15S]

- (1) The Central Government shall provide the Securities Appellate Tribunal with such officers and employees as that Government may think fit.
- (2) The officers and employees of the Securities Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.
- (3) The salaries and allowances and other conditions of service of the officers and employees of the Securities Appellate Tribunal shall be such as may be prescribed.

Appeal to the Securities Appellate Tribunal [Section 15T]

- (1) Save as provided in sub-section (2), any person aggrieved,-
 - (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or
 - (b) by an order made by an adjudicating officer under this Act,may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
- (2) Omitted.
- (3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the adjudicating officer, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

- (4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, the parties to the appeal and to the concerned Adjudicating Officer.
- (6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and powers of the Securities Appellate Tribunal [Section 15U]

- (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.
- (2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of any person and examining him on oath;



- (b) requiring the discovery and production of 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 which may be prescribed.
- (3) Every proceeding before the Securities Appellate Tribunal shall 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, and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Right to legal representation [Section 15V]

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Explanation.- For the purposes of this section,--

- (a) "chartered accountant" means a chartered accountant as defined in clause(b) of sub-section(1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) "company secretary" means a company secretary as defined in clause(c) of sub-section (1) of section 2 of the Company Secretaries Act,1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) "cost accountant" means a cost accountant as defined in clause(b) of subsection(1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) "legal practitioner" means an advocate, vakil or any attorney of any High Court, and includes a pleader in practice.

Limitation [Section 15W]

The provisions of the Limitation Act, 1963 , shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

Presiding Officer, Members and staff of Securities Appellate Tribunals to be public servants [Section 15X]

The Presiding Officer, Members and other officers and employees of a Securities Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Civil Court not to have jurisdiction [Section 15Y]

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to Supreme Court [Section 15Z]

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

MISCELLANEOUS

Power of Central Government to issue directions [Section 16]

- (1) without prejudice to the foregoing provisions of this Act or the Depositories Act, 1996, the Board shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

- (2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of Central Government to supersede the Board [Section 17]

- (1) If at any time the Central Government is of opinion-

- (a) that on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or
- (b) that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or
- (c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

- (2) Upon the publication of a notification under sub-section (1) superseding the Board,-

- (a) all the members shall, as from the date of supersession, vacate their offices as such;
- (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and
- (c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

- (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

- (4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.



Returns and reports [Section 18]

- (1) The Board shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the securities market, as the Central Government may, from time to time, require.
- (2) Without prejudice to the provisions of sub-section (1), the Board shall, within ninety days after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.
- (3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

Delegation [Section 19]

The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.

Appeals [Section 20]

- (1) Any person aggrieved by an order of the Board made, before the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.
- (2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefore:
Provided that an appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.
- (3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.
- (4) The procedure for disposing of an appeal shall be such as may be prescribed:
Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

Bar of jurisdiction [Section 20A]

No order passed by the Board or the adjudicating officer under this Act shall be appealable except as provided in section 15T or section 20 and no Civil Court shall have jurisdiction in respect of any matter which the Board or the adjudicating officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the adjudicating office by, or under, this Act.

Savings [Section 21]

Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

Members, Officers and employees of the Board to be public servants [Section 22]

All members, officers and other employees of the Board shall 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.

Protection of action taken in good faith [Section 23]

No suit, prosecution or other legal proceedings shall lie against the Central Government or Board or any officer of the Central Government or any member, officer or other employee of the Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Offences [Section 24]

- (1) Without prejudice to any award of penalty by the Adjudicating Officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.
- (2) If any person fails to pay the penalty imposed by the Adjudicating Officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years or with fine, which may extend to twenty-five crore rupees or with both.

Composition of certain offences [Section 24A]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Power to grant immunity [Section 24B]

- (1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that recommendation of the Board under this sub-section shall not be binding upon the Central Government.

- (2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Exemption from tax on wealth and income [Section 25]

Notwithstanding anything contained in the Wealth Tax Act, 1957, the Income Tax Act, 1961 or any other enactment for the time being in force relating to tax on wealth, income, profits or gains -

- (a) the Board;
- (b) the existing Securities and Exchange Board from the date of its constitution to the date of establishment of the Board,

shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.



Cognizance of offences by courts [Section 26]

- (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board.
- (2) Omitted.

Establishment of Special Courts [Section 26A]

- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (2) A Special Court shall consist of a single judge who shall 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 shall 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, as the case may be.

Offences triable by Special Courts [Section 26B]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Second Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or 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.

Appeal and revision [Section 26C]

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before special Court [Section 26D]

- (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.
- (2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

Transitional Provisions [Section 26E]

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this Section.

Offences by companies [Section 27]

- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section, -

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm, means a partner in the firm.

Recovery of Amounts [Section 28A]

- (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.



Explanation 3.— Any reference to appeal in Chapter XVII D and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

- (2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).
- (3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.
- (4) For the purposes of sub-sections (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

Power to make rules [Section 29]

- (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the term of office and other conditions of service of the Chairman and the members under sub-section (1) of section 5;
 - (b) the additional functions that may be performed by the Board under section 11;
 - (c) [****]
 - (d) the manner in which the accounts of the Board shall be maintained under section 15;
 - (da) the manner of inquiry under sub-section (1) of section 15-I;
 - (db) the salaries and allowances and other terms and conditions of service of the Presiding Officers, Members and other officers and employees of the Securities Appellate Tribunal under section 15-O and sub-section (3) of section 15S;
 - (dc) the procedure for the investigation of misbehaviour or incapacity of the Presiding Officers, or other Members of the Securities Appellate Tribunal under sub-section (3) of section 15Q;
 - (dd) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 15-T and the fees payable in respect of such appeal;
 - (e) the form and the manner in which returns and report to be made to the Central Government under section 18;
 - (f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

Power to make regulations [Section 30]

- (1) The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-
 - (a) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business;
 - (b) the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 9;
 - (c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;

- (ca) the utilisation of the amount credited under sub-section (5) of section 11;
- (cb) the fulfilment of other conditions relating to collective investment scheme under sub-section (2A) of section 11AA;
- (cc) the procedure to be followed by the authorised officer for search or seizure under sub-section (9) of section 11C;
- (d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12.
- (da) A (da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;
- (db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Rules and regulations to be laid before Parliament [Section 31]

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Application of other laws not barred [Section 32]

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

Power to remove difficulties [Section 34]

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:
Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Validation of Certain Acts [Section 34A]

Any act or thing done or purporting to have been done under the principal Act, in respect of calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board and in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.

Repeal and saving [Section 35]

- (1) The Securities and Exchange Board of India Ordinance, 1992 , is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.



3.2 THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

PRELIMINARY

Short title, extent and commencement [Section 1]

- (1) This Act may be called the Securities Contracts (Regulation) Act, 1956.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions [Section 2]

In this Act, unless the context otherwise requires,—

- (a) "contract" means a contract for or relating to the purchase or sale of securities;
- (aa) "corporatisation" means the succession of a recognised stock exchange, being a body of individuals or a society registered under the Societies Registration Act, 1860, by another stock exchange, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities carried on by such individuals or society;
- (ab) "demutualisation" means the segregation of ownership and management from the trading rights of the members of a recognised stock exchange in accordance with a scheme approved by the Securities and Exchange Board of India;
- (ac) "derivative" includes—
 - (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
 - (B) a contract which derives its value from the prices, or index of prices, of underlying securities;
 - (C) commodity derivatives; and
 - (D) such other instruments as may be declared by the Central Government to be derivative.
- (b) "Government security" means a security created and issued, whether before or after the commencement of this Act, by the Central Government or a State Government for the purpose of raising a public loan and having one of the forms specified in clause (2) of section 2 of the Public Debt Act, 1944;
- (bb) "goods" mean every kind of moveable property other than actionable claims, money and securities;
- (bc) "commodity derivative" means a contract –
 - (i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or
 - (ii) for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the Board, but does not include securities as referred to in sub-clauses (A) and (B) of clause (ac);
- (c) "member" means a member of a recognised stock exchange;
- (ca) "non-transferable specific delivery contract" means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other documents of title relating thereto are not transferable;

(d) "option in securities" means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a teji, a mandi, a teji mandi, a galli, a put, a call or a put and call in securities;

(e) "prescribed" means prescribed by rules made under this Act;

(ea) "ready delivery contract" means a contract which provides for the delivery of goods and the payment of a price therefore, either immediately, or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise:

Provided that where any such contract is performed either wholly or in part:

(I) by realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract; or

(II) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full price therefor is dispensed with, then such contract shall not be deemed to be a ready delivery contract;

(f) "recognised stock exchange" means a stock exchange which is for the time being recognised by the Central Government under section 4;

(g) "rules", with reference to the rules relating in general to the constitution and management of a stock exchange, includes, in the case of a stock exchange which is an incorporated association, its memorandum and articles of association;

(ga) "scheme" means a scheme for corporatisation or demutualisation of a recognised stock exchange which may provide for—

(i) the issue of shares for a lawful consideration and provision of trading rights in lieu of membership cards of members of a recognised stock exchange;

(ii) the restrictions on voting rights;

(iii) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised stock exchange, legal proceedings by, or against, the recognised stock exchange, whether in the name of the recognised stock exchange or any trustee or otherwise and any permission given to, or by, the recognised stock exchange;

(iv) the transfer of employees of a recognised stock exchange to another recognised stock exchange;

(v) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised stock exchange;

(gb) "Securities Appellate Tribunal" means a Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;

(h) "securities" include—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;



(id) units or any other such instrument issued to the investors under any mutual fund scheme;

Explanation. – For the removal of doubts, it is hereby declared that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938;

(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;

(i) “spot delivery contract” means a contract which provides for—

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

(j) “stock exchange” means—

(a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or

(b) a body corporate incorporated under the Companies Act, 1956 whether under a scheme of corporatisation and demutualisation or otherwise,

for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

(k) “transferable specific delivery contract” means a specific delivery contract which is not a non-transferable specific delivery contract and which is subject to such conditions relating to its transferability as the Central Government may by notification in the Official Gazette, specify in this behalf.

Interpretation of certain words and expressions [Section 2A]

Words and expressions used herein and not defined in this Act but defined in the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 shall have the same meanings respectively assigned to them in those Acts.

RECOGNISED STOCK EXCHANGES

Application for recognition of stock exchanges (Section 3)

- (1) Any stock exchange, which is desirous of being recognised for the purposes of this Act, may make an application in the prescribed manner to the Central Government.
- (2) Every application under sub-section (1) shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and

control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange and in particular, to—

- (a) the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;
- (b) the powers and duties of the office bearers of the stock exchange;
- (c) the admission into the stock exchange of various classes of members, the qualifications for membership, and the exclusion, suspension, expulsion and readmission of members therefrom or thereinto;
- (d) the procedure for the registration of partnerships as members of the stock exchange in cases where the rules provide for such membership; and the nomination and appointment of authorised representatives and clerks.

Grant of recognition to stock exchanges [Section 4]

- (1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require,—
 - (a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;
 - (b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and
 - (c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;
- it may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.
- (2) The conditions which the Central Government may prescribe under clause (a) of sub-section (1) for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to,—
 - (i) the qualifications for membership of stock exchanges;
 - (ii) the manner in which contracts shall be entered into and enforced as between members;
 - (iii) the representation of the Central Government on each of the stock exchange by such number of persons not exceeding three as the Central Government may nominate in this behalf; and
 - (iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.
- (3) Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office as of the stock exchange is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.
- (4) No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.
- (5) No rules of a recognised stock exchange relating to any of the matters specified in sub-section (2) of section 3 shall be amended except with the approval of the Central Government.



Corporatisation and demutualisation of stock exchanges [Section 4A]

On and from the appointed date, all recognised stock exchanges (if not corporatized and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 4B:

Provided that the Securities and Exchange Board of India may, if it is satisfied that any recognised stock exchange was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, specify another appointed date in respect of that recognised stock exchange and such recognised stock exchange may continue as such before such appointed date.

Explanation. — For the purposes of this section, "appointed date" means the date which the Securities and Exchange Board of India may, by notification in the Official Gazette, appoint and different appointed dates may be appointed for different recognised stock exchanges.

Procedure for corporatisation and demutualization [Section 4B]

- (1) All recognised stock exchanges referred to in section 4A shall, within such time as may be specified by the Securities and Exchange Board of India, submit a scheme for corporatisation and demutualisation for its approval:

Provided that the Securities and Exchange Board of India, may, by notification in the Official Gazette, specify name of the recognised stock exchange, which had already been corporatised and demutualised, and such stock exchange shall not be required to submit the scheme under this section.

- (2) On receipt of the scheme referred to in sub-section (1), the Securities and Exchange Board of India may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification.

- (3) No scheme under sub-section (2) shall be approved by the Securities and Exchange Board of India if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised stock exchange or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.

- (4) Where the scheme is approved under sub-section (2), the scheme so approved shall be published immediately by—

- (a) the Securities and Exchange Board of India in the Official Gazette;
- (b) the recognised stock exchange in such two daily newspapers circulating in India, as may be specified by the Securities and Exchange Board of India,

and upon such publication, notwithstanding anything to the contrary contained in this Act or any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised stock exchange or its members.

- (5) Where the Securities and Exchange Board of India is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Securities and Exchange Board of India shall give a reasonable opportunity of being heard to all the persons concerned and the recognised stock exchange concerned before passing an order rejecting the scheme.

- (6) The Securities and Exchange Board of India may, while approving the scheme under sub-section (2), by an order in writing, restrict—
 - (a) the voting rights of the shareholders who are also stock brokers of the recognised stock exchange;
 - (b) the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the stock exchange;
 - (c) the maximum number of representatives of the stock brokers of the recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed one-fourth of the total strength of the governing board.
- (7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or any other law for the time being in force, have full effect.
- (8) Every recognised stock exchange, in respect of which the scheme for corporatization or demutualisation has been approved under sub-section (2), shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Securities and Exchange Board of India, ensure that at least fifty-one per cent of its equity share capital is held, within twelve months from the date of publication of the order under sub-section (7), by the public other than shareholders having trading rights:

Provided that the Securities and Exchange Board of India may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.

Withdrawal of recognition [Section 5]

- (1) If the Central Government is of opinion that the recognition granted to a stock exchange under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may serve on the governing body of the stock exchange a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw, by notification in the Official Gazette, the recognition granted to the stock exchange:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

- (2) Where the recognised stock exchange has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 4B within the specified time therefore or the scheme has been rejected by the Securities and Exchange Board of India under sub-section (5) of section 4B, the recognition granted to such stock exchange under section 4, shall, notwithstanding anything to the contrary contained in this Act, stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Securities and Exchange Board of India may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 4B.

Power of Central Government to call for periodical returns or direct inquiries to be made. [Section 6]

- (1) Every recognised stock exchange shall furnish to the Securities and Exchange Board of India such periodical returns relating to its affairs as may be prescribed.



- (2) Every recognised stock exchange and every member thereof shall maintain and preserve for such periods not exceeding five years such books of account, and other documents as the Central Government, after consultation with the stock exchange concerned, may prescribe in the interest of the trade or in the public interest, and such books of account, and other documents shall be subject to inspection at all reasonable times by the Securities and Exchange Board of India.
- (3) Without prejudice to the provisions contained in sub-sections (1) and (2), the Securities and Exchange Board of India, if it is satisfied that it is in the interest of the trade or in the public interest so to do, may, by order in writing,—
- call upon a recognised stock exchange or any member thereof to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange as the Securities and Exchange Board of India may require; or
 - appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to the Securities and Exchange Board of India within such time as may be specified in the order or, in the case of an inquiry in relation to the affairs of any of the members of a stock exchange, direct the governing body to make the inquiry and submit its report to the Securities and Exchange Board of India.
- (4) Where an inquiry in relation to the affairs of a recognised stock exchange or the affairs of any of its members in relation to the stock exchange has been undertaken under sub-section (3),—
- every director, manager, secretary or other officer of such stock exchange;
 - every member of such stock exchange;
 - if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm; and
 - every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c), whether directly or indirectly;
- shall be bound to produce before the authority making the inquiry all such books of account, and other documents in his custody or power relating to or having a bearing on the subject-matter of such inquiry and also to furnish the authorities within such time as may be specified with any such statement or information relating thereto as may be required of him.

Annual reports to be furnished to Central Government by stock exchanges [Section 7]

Every recognised stock exchange shall furnish the Central Government with a copy of the annual report, and such annual report shall contain such particulars as may be prescribed.

Power of recognised stock exchange to make rules restricting voting rights, etc. [Section 7A]

- (1) A recognised stock exchange may make rules or amend any rules made by it to provide for all or any of the following matters, namely:—
- the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting;
 - the regulation of voting rights in respect of any matter placed before the stock exchange at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the stock exchange;
 - the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange;
 - in clauses (a), (b) and (c).

- (2) No rules of a recognised stock exchange made or amended in relation to any matter referred to in clauses (a) to (d) of sub-section (1) shall have effect until they have been approved by the Central Government and published by that Government in the Official Gazette and, in approving the rules so made or amended, the Central Government may make such modifications therein as it thinks fit, and on such publication, the rules as approved by the Central Government shall be deemed to have been validly made, notwithstanding anything to the contrary contained in the Companies Act, 1956.

Power of Central Government to direct rules to be made or to make rules [Section 8]

- (1) Where, after consultation with the governing bodies of stock exchanges generally or with the governing body of any stock exchange in particular, the Central Government is of opinion that it is necessary or expedient so to do, it may, by order in writing together with a statement of the reasons therefore, direct recognised stock exchanges generally or any recognised stock exchange in particular, as the case may be, to make any rules or to amend any rules already made in respect of all or any of the matters specified in sub-section (2) of section 3 within a period of two months from the date of the order.
- (2) If any recognised stock exchange fails or neglects to comply with any order made under sub-section (1) within the period specified therein, the Central Government may make the rules for, or amend the rules made by, the recognised stock exchange, either in the form proposed in the order or with such modifications thereof as may be agreed to between the stock exchange and the Central Government.
- (3) Where in pursuance of this section any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India and also in the Official Gazette or Gazettes of the State or States in which the principal office or offices of the recognised stock exchange or exchanges is or are situate, and, on the publication thereof in the Gazette of India, the rules so made or amended shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force, have effect as if they had been made or amended by the recognised stock exchange or stock exchanges, as the case may be.

Clearing corporation [Section 8A]

- (1) A recognised stock exchange may, with the prior approval of the Securities and Exchange Board of India, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956, for the purpose of—
 - (a) the periodical settlement of contracts and differences thereunder;
 - (b) the delivery of, and payment for, securities;
 - (c) any other matter incidental to, or connected with, such transfer.
- (2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Securities and Exchange Board of India for its approval.
- (3) The Securities and Exchange Board of India may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve the transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1).
- (4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognised stock exchange.

Power of recognised stock exchanges to make bye-laws [Section 9]

- (1) Any recognised stock exchange may, subject to the previous approval of the Securities and Exchange Board of India, make bye-laws for the regulation and control of contracts.



- (2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for:
- (a) the opening and closing of markets and the regulation of the hours of trade;
 - (b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house;
 - (c) the submission to the Securities and Exchange Board of India by the clearing house as soon as may be after each periodical settlement of all or any of the following particulars as the Securities and Exchange Board of India may, from time to time, require, namely:—
 - (i) the total number of each category of security carried over from one settlement period to another;
 - (ii) the total number of each category of security, contracts in respect of which have been squared up during the course of each settlement period;
 - (iii) the total number of each category of security actually delivered at each clearing;
 - (d) the publication by the clearing house of all or any of the particulars submitted to the Securities and Exchange Board of India under clause (c) subject to the directions, if any, issued by the Securities and Exchange Board of India in this behalf;
 - (e) the regulation or prohibition of blank transfers;
 - (f) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;
 - (g) the regulation, or prohibition of budlas or carry-over facilities;
 - (h) the fixing, altering or postponing of days for settlements;
 - (i) the determination and declaration of market rates, including the opening, closing highest and lowest rates for securities;
 - (j) the terms, conditions and incidents of contracts, including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;
 - (k) the regulation of the entering into, making, performance, recession and termination, of contracts, including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts;
 - (l) the regulation of taravani business including the placing of limitations thereon;
 - (m) the listing of securities on the stock exchange, the inclusion of any security for the purpose of dealings and the suspension or withdrawal of any such securities, and the suspension or prohibition of trading in any specified securities;
 - (n) the method and procedure for the settlement of claims or disputes, including settlement by arbitration;
 - (o) the levy and recovery of fees, fines and penalties;
 - (p) the regulation of the course of business between parties to contracts in any capacity;
 - (q) the fixing of a scale of brokerage and other charges;
 - (r) the making, comparing, settling and closing of bargains;

- (s) the emergencies in trade which may arise, whether as a result of pool or syndicated operations or cornering or otherwise, and the exercise of powers in such emergencies, including the power to fix maximum and minimum prices for securities;
 - (t) the regulation of dealings by members for their own account;
 - (u) the separation of the functions of jobbers and brokers;
 - (v) the limitations on the volume of trade done by any individual member in exceptional circumstances;
 - (w) the obligation of members to supply such information or explanation and to produce such documents relating to the business as the governing body may require.
- (3) The bye-laws made under this section may—
- (a) specify the bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (1) of section 14;
 - (b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely:—
 - (i) fine,
 - (ii) expulsion from membership,
 - (iii) suspension from membership for a specified period,
 - (iv) any other penalty of a like nature not involving the payment of money.
- (4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and, when approved by the Securities and Exchange Board of India, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and shall have effect as from the date of its publication in the Gazette of India:

Provided that if the Securities and Exchange Board of India is satisfied in any case that in the interest of the trade or in the public interest any bye-law should be made immediately, it may, by order in writing specifying the reasons therefore, dispense with the condition of previous publication.

Power of Securities and Exchange Board of India to make or amend bye-laws of recognised stock exchanges [Section 10]

- (1) The Securities and Exchange Board of India may, either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion, if it is satisfied after consultation with the governing body of the stock exchange that it is necessary or expedient so to do and after recording its reasons for so doing, make bye-laws for all or any of the matters specified in section 9 or amend any bye-laws made by such stock exchange under that section.
- (2) Where in pursuance of this section any bye-laws have been made or amended the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and on the publication thereof in the Gazette of India, the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised stock exchange concerned.
- (3) Notwithstanding anything contained in this section, where the governing body of a recognised stock exchange objects to any bye-laws made or amended under this section by the Securities and Exchange Board of India on its own motion, it may, within two months of the publication thereof in the Gazette of India under sub-section (2), apply to the Securities and Exchange Board



of India for revision thereof, and the Securities and Exchange Board of India may, after giving an opportunity to the governing body of the stock exchange to be heard in the matter, revise the bye-laws so made or amended, anywhere any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

- (4) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication:

Provided that if the Securities and Exchange Board of India is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made, amended or revised immediately, it may, by order in writing specifying the reasons therefore, dispense with the condition of previous publication.

**Power of Central Government to supersede governing body of a recognised stock exchange.
[Section 11]**

- (1) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised stock exchange should be superseded, then, notwithstanding anything contained in any other law for the time being in force, in the Central Government may serve on the governing body a written notice that the Central Government is considering the supersession of the governing body for the reasons specified in the notice and after giving an opportunity to the governing body to be heard in the matter, it may, by notification in the Official Gazette, declare the governing body of such stock exchange to be superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and, where more persons than one are appointed, may appoint one of such persons to be the chairman and another to be the vice-chairman thereof.
- (2) On the publication of a notification in the Official Gazette under sub-section (1), the following consequences shall ensue, namely:—
- the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;
 - the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;
 - all such property of the recognised stock exchange as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry on the business of the stock exchange, shall vest in such person or persons.
- (3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the recognised stock exchange the governing body of which is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section and the Central Government may from time to time, by like notification, vary such period.
- (4) The Central Government may at any time before the determination of the period of office of any person or persons appointed under this section call upon the recognised stock exchange to re-constitute the governing body in accordance with its rules and on such re-constitution all the property of the recognised stock exchange which has vested in, or was in the possession of, the person or persons appointed under sub-section (1), shall re-vest or vest, as the case may be, in the governing body so re-constituted:

Provided that until a governing body is so re-constituted, the person or persons appointed under sub-section (1) shall continue to exercise and perform their powers and duties.

Power to suspend business of recognised stock exchanges [Section 12]

If in the opinion of the Central Government an emergency has arisen and for the purpose of meeting the emergency the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, for reasons to be set out therein, direct a recognised stock exchange to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and, if, in the opinion of the Central Government, the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time:

Provided that where the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the governing body of the recognised stock exchange has been given an opportunity of being heard in the matter.

Power to issue directions [Section 12A]

If, after making or causing to be made an inquiry, the Securities and Exchange Board of India is satisfied that it is necessary—

- (a) in the interest of investors, or orderly development of securities market; or
- (b) to prevent the affairs of any recognised stock exchange or clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or
- (c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

it may issue such directions,—

- (i) to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or
- (ii) to any company whose securities are listed or proposed to be listed in a recognised stock exchange,

as may be appropriate in the interests of investors in securities and the securities market.

Explanation.—For the removal of doubts, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

CONTRACTS AND OPTIONS IN SECURITIES

Contracts in notified areas illegal in certain circumstances [Section 13]

If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area] which is entered into after the date of the notification otherwise than between the members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal:

Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—

- (i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;
- (ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.



Additional trading floor [Section 13A]

A stock exchange may establish additional trading floor with the prior approval of the Securities and Exchange Board of India in accordance with the terms and conditions stipulated by the said Board.

Explanation.— For the purposes of this section, “additional trading floor” means a trading ring or trading facility offered by a recognised stock exchange outside its area of operation to enable the investors to buy and sell securities through such trading floor under the regulatory framework of that stock exchange.

Contracts in notified areas to be void in certain circumstances [Section 14]

- (1) Any contract entered into in any State or area specified in the notification under section 13 which is in contravention of any of the bye-laws specified in that behalf under clause (a) of sub-section (3) of section 9 shall be void -
 - (i) as respects the rights of any member of the recognised stock exchange who has entered into such contract in contravention of any such bye-law, and also
 - (ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.
- (2) Nothing in sub-section (1) shall be construed to affect the right of any person other than a member of the recognised stock exchange to enforce any such contract or to recover any sum under or in respect of such contract if such person had no knowledge that the transaction was in contravention of any of the bye-laws specified in clause (a) of sub-section (3) of section 9.

Members may not act as principals in certain circumstances [Section 15]

No member of a recognised stock exchange shall in respect of any securities enter into any contract as a principal with any person other than a member of a recognised stock exchange, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he is acting as a principal:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure written confirmation by such person or such consent or authority within three days from the date of the contract:

Provided further that no such written consent or authority of such person shall be necessary for closing out any outstanding contract entered into by such person in accordance with the bye-laws, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he is acting as a principal.

Power to prohibit contracts in certain cases [Section 16]

- (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.
- (2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

Licensing of dealers in securities in certain areas [Section 17]

- (1) Subject to the provisions of sub-section (3) and to the other provisions contained in this Act, no person shall carry on or purport to carry on, whether on his own behalf or on behalf of any other person, the business of dealing in securities in any State or area to which section 13 has not been

declared to apply and to which the Central Government may, by notification in the Official Gazette, declare this section to apply, except under the authority of a licence granted by the Securities and Exchange Board of India in this behalf.

- (2) No notification under sub-section (1) shall be issued with respect to any State or area unless the Central Government is satisfied, having regard to the manner in which securities are being dealt with in such State or area, that it is desirable or expedient in the interest of the trade or in the public interest that such dealings should be regulated by a system of licensing.
- (3) The restrictions imposed by sub-section (1) in relation to dealings in securities shall not apply to the doing of anything by or on behalf of a member of any recognised stock exchange.

Public issue and listing of securities referred to in sub-clause (ie) of clause (h) of section 2 [Section 17A]

- (1) Without prejudice to the provisions contained in this Act or any other law for the time being in force, no securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 shall be offered to the public or listed on any recognised stock exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.
- (2) Every issuer referred to in sub-clause (ie) of clause (h) of section 2 intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognised stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.
- (3) Where the permission applied for under sub-section (2) for listing has not been granted or refused by the recognised stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent per annum.

Explanation.—In reckoning the eighth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881, shall be disregarded, and if the eighth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not a holiday.

- (4) All the provisions of this Act relating to listing of securities of a public company on a recognised stock exchange shall, mutatis mutandis, apply to the listing of the securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 by the issuer, being a special purpose distinct entity.]

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17 [Section 18]

- (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.
- (2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

Contracts in derivative [Section 18A]

Notwithstanding anything contained in any other law for the time being in force, contracts in derivative shall be legal and valid if such contracts are—

- (a) traded on a recognised stock exchange;



- (b) settled on the clearing house of the recognised stock exchange; or
- (c) between such parties and on such terms as the Central Government may, by notification in the Official Gazette, specify,

in accordance with the rules and bye-laws of such stock exchange.

Stock exchanges other than recognised stock exchanges prohibited [Section 19]

- (1) No person shall, except with the permission of the Central Government, organize or assist in organising or be a member of any stock exchange (other than a recognised stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities.
- (2) This section shall come into force in any State or area on such date as the Central Government may, by notification in the Official Gazette, appoint.

LISTING OF SECURITIES

Conditions for listing [Section 21]

Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Delisting of securities [Section 21A]

- (1) A recognised stock exchange may delist the securities, after recording the reasons therefore, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act:

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

- (2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals:

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

Right of appeal against refusal of stock exchanges to list securities of public companies [Section 22]

Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any public company or collective investment scheme, the company or scheme shall be entitled to be furnished with reasons for such refusal, and may,—

- (a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or
- (b) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1) of section 73 of the Companies Act, 1956 (hereafter in this section referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown, allow,

appeal to the Central Government against such refusal, omission or failure, as the case may be, and thereupon the Central Government may, after giving the stock exchange an opportunity of being heard,—

- (i) vary or set aside the decision of the stock exchange, or
- (ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Central Government:

Provided that no appeal shall be preferred against refusal, omission or failure, as the case may be, under this section on and after the commencement of the Securities Laws (Second Amendment) Act, 1999.

Right of appeal to Securities Appellate Tribunal against refusal of stock exchange to list securities of public companies [Section 22A]

(1) Where a recognised stock exchange, acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any company, the company shall be entitled to be furnished with reasons for such refusal, and may,—

- (a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or
- (b) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1A) of section 73 of the Companies Act, 1956 (hereafter in this section referred to as the “specified time”), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities Appellate Tribunal may, on sufficient cause being shown, allow,

appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, as the case may be, and thereupon the Securities Appellate Tribunal may, after giving the stock exchange, an opportunity of being heard,—

- (i) vary or set aside the decision of the stock exchange; or
- (ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Securities Appellate Tribunal sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Securities Appellate Tribunal.

- (2) Every appeal under sub-section (1) shall be in such form and be accompanied by such fee as may be prescribed.
- (3) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.
- (4) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure and powers of Securities Appellate Tribunal [Section 22B]

- (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.
- (2) The Securities Appellate Tribunal shall have, for the purpose of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of 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; and
 - (h) any other matter which may be prescribed.
- (3) Every proceeding before the Securities Appellate Tribunal shall 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 and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Right to legal representation [Section 22C]

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Explanation. — for the purposes of this section,—

- (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) "company secretary" means a company secretary as defined in clause (c) of subsection (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

Limitation [Section 22D]

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

Civil court not to have jurisdiction [Section 22E]

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Securities Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to Supreme Court [Section 22F]

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

PENALTIES AND PROCEDURE

Penalties [Section 23]

- (1) Any person who—
- (a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or

- (b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or
- (c) contravenes the provisions contained in section 17 or section 17A or section 19; or
- (d) enters into any contract in derivative in contravention of section 18A or the rules made under section 30;
- (e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or
- (f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or
- (g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 wilfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or
- (h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other persons for any business connected with contracts in contravention of any of the provisions of this Act; or
- (i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act;

shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.

- (2) Any person who enters into any contract in contravention of the provisions contained in section 15 or who fails to comply with the provisions of section 21 or section 21A or with the orders of or section 22 or with the orders of the Securities Appellate Tribunal shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.

Penalty for failure to furnish information, return, etc. [Section 23A]

Any person, who is required under this Act or any rules made thereunder,—

- (a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for each such failure;
- (b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.



Penalty for failure by any person to enter into an agreement with clients [Section 23B]

If any person, who is required under this Act or any bye-laws of a recognised stock exchange made thereunder, to enter into an agreement with his client, fails to enter into such an agreement, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees for every such failure.

Penalty for failure to redress investors' grievances [Section 23C]

If any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or it shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure to segregate securities or moneys of client or clients [Section 23D]

If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds [Section 23E]

If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for excess dematerialisation or delivery of unlisted securities [Section 23F]

If any issuer dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognised stock exchange, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for failure to furnish periodical returns, etc. [Section 23G]

If a recognised stock exchange fails or neglects to furnish periodical returns to the Securities and Exchange Board of India or fails or neglects to make or amend its rules or bye-laws as directed by the Securities and Exchange Board of India or fails to comply with directions issued by the Securities and Exchange Board of India, such recognised stock exchange shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

Penalty for contravention where no separate penalty has been provided [Section 23H]

Whoever fails to comply with any provision of this Act, the rules or articles or byelaws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Power to adjudicate [Section 23-I]

- (1) For the purpose of adjudging under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H, the Securities and Exchange Board of India shall appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

- (2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.
- (3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify.

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 23L, whichever is earlier.

Factors to be taken into account by adjudicating officer [Section 23J]

While adjudging the quantum of penalty under section 23-I, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.

Settlement of Administrative and Civil Proceeding [Section 23JA]

- (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 12A or section 23-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.
- (2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.
- (3) For the purpose of settlement under this section, the procedure as specified by the Board under the Securities and Exchange Board of India Act, 1992 shall apply.
- (4) No appeal shall lie under section 23L against any order passed by the Board or the adjudicating officer, as the case may be under this section.

Recovery of Amount [Section 23JB]

- (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with a direction of disgorgement order issued under section 12A or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:
 - (a) attachment and sale of the person's movable property;
 - (b) attachment of the person's bank accounts;



- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 221 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.—For the purpose of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred, directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.—Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.—Any reference to appeal in Chapter XVIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 23L of this Act.

- (2) The recovery officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).
- (3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 12A, shall have precedence over any other claim against such person.
- (4) For the purposes of sub-section (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing to exercise the powers of a Recovery Officer.

Crediting sums realised by way of penalties to Consolidated Fund of India [Section 23K]

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Appeal to Securities Appellate Tribunal [Section 23L]

- (1) Any person aggrieved, by the order or decision of the recognised stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under section 4B, or sub-Section (3) of Section 23I may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.
- (2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

- (3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (4) The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.
- (5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Offences [Section 23M]

- (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, for which no punishment is provided elsewhere in this Act, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.
- (2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

Composition of certain offences [Section 23N]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Power to grant immunity [Section 23O]

- (1) The Central Government may, on recommendation by the Securities and Exchange Board of India, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made there under or also from the imposition of any penalty under this Act with respect to the alleged violation:

Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity:

Provided further that the recommendation of the Securities and Exchange Board of India under this sub-section shall not be binding upon the Central Government.

- (2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Offences by companies [Section 24]

- (1) Where an offence has been committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:



Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals, and
 - (b) “director”, in relation to—
 - (i) a firm, means a partner in the firm;
 - (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.
- (3) The provisions of this section shall be in addition to, and not in derogation of, the provisions of section 22A.

Certain offences to be cognizable [Section 25]

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under section 23 shall be deemed to be a cognizable offence within the meaning of that Code.

Cognizance of offences by courts [Section 26]

- (1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations or bye-laws made thereunder, save on a complaint made by the Central Government or State Government or the Securities and Exchange Board of India or a recognised stock exchange or by any person.
- (2) Omitted.

Establishment of Special Court [Section 26A]

- (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (2) A Special Court shall consist of a single judge who shall 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 shall not be qualified for appointment as a judge of Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

Offences triable by Special Courts [Section 26B]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Second Ordinance, 2013 or on or after the date of such commencement, shall be taken cognizance of and triable by the Special Court established for the area in which the offence is committed or 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.

Appeal and Revision [Section 26C]

The High Court may exercise, so far as may be applicable, all the power conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before Special Court [Section 26D]

- (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.
- (2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an Advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

Transitional provisions [Section 26E]

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973.

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.

MISCELLANEOUS

Title to dividends [Section 27]

- (1) It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend declared by the company in respect thereof for any year, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee who claims the dividend from the transferor has lodged the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due.

Explanation.— The period specified in this section shall be extended—

- (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the dividend;
- (ii) in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and
- (iii) in case of delay in the lodging of any security and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

- (2) Nothing contained in sub-section (1) shall affect—

- (a) the right of a company to pay any dividend which has become due to any person whose name is for the time being registered in the books of the company as the holder of the security in respect of which the dividend has become due; or
- (b) the right of the transferee of any security to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security in the name of the transferee.



Right to receive income from collective investment scheme [Section 27A]

- (1) It shall be lawful for the holder of any securities, being units or other instruments issued by the collective investment scheme, whose name appears on the books of the collective investment scheme issuing the said security to receive and retain any income in respect of units or other instruments issued by the collective investment scheme declared by the collective investment scheme in respect thereof for any year, notwithstanding that the said security, being units or other instruments issued by the collective investment scheme, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the collective investment scheme from the transfer or has lodged the security and all other documents relating to the transfer which may be required by the collective investment scheme with the collective investment scheme for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the collective investment scheme became due.

Explanation.— The period specified in this section shall be extended—

- (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instrument issued by the collective investment scheme;
 - (ii) in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and
 - (iii) in case of delay in the lodging of any security, being units or other instruments issued by the collective investment scheme, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.
- (2) Nothing contained in sub-section (1) shall affect—
- (a) the right of a collective investment scheme to pay any income from units or other instruments issued by the collective investment scheme which has become due to any person whose name is for the time being registered in the books of the collective investment scheme as the holder of the security being units or other instruments issued by the collective investment scheme in respect of which the income in respect of units or other instruments issued by the collective scheme has become due; or
 - (b) the right of transferee of any security, being units or other instruments issued by the collective investment scheme, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security being units or other instruments issued by the collective investment scheme in the name of the transferee.

Right to receive income from mutual fund [Section 27B]

- (1) It shall be lawful for the holder of any securities, being units or other instruments issued by any mutual fund, whose name appears on the books of the mutual fund issuing the said security to receive and retain any income in respect of units or other instruments issued by the mutual fund declared by the mutual fund in respect thereof for any year, notwithstanding that the said security, being units or other instruments issued by the mutual fund, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the mutual fund from the transferor has lodged the security and all other documents relating to the transfer which may be required by the mutual fund with the mutual fund for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the mutual fund became due.

Explanation.— The period specified in this section shall be extended—

- (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instrument issued by the mutual fund;

- (ii) in case of loss of the transfer deed by theft or any other cause beyond the control of transferee, by the actual period taken for the replacement thereof; and
 - (iii) in case of delay in the lodging of any security, being units or other instruments issued by the mutual fund, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.
- (2) Nothing contained in sub-section (1) shall affect—
- (a) the right of a mutual fund to pay any income from units or other instruments issued by the mutual fund which has become due to any person, whose name is for the time being registered in the books of the mutual fund as the holder of the security being units or other instruments issued by the mutual fund in respect of which the income in respect of units or other instruments issued by the mutual fund has become due; or
 - (b) the right of transferee of any security, being units or other instruments issued by the mutual fund, to enforce against the transferor or any other person, his rights, if any, in relation to the transfer in any case where the mutual fund has refused to register the transfer of the security being units or other instruments issued by the mutual fund in the name of the transferee.

Act not to apply in certain cases [Section 28]

- (1) The provisions of this Act shall not apply to—
 - (a) the Government, the Reserve Bank of India, any local authority or any corporation set-up by a special law or any person who has effected any transaction with or through the agency of any such authority as is referred to in this clause;
 - (b) any convertible bond or share warrant or any option or right in relation thereto, insofar as it entitles the person in whose favour any of the foregoing has been issued to obtain at his option from the company or other body corporate, issuing the same or from any of its shareholders or duly appointed agents' shares of the company or other body corporate, whether by conversion of the bond or warrant or otherwise, on the basis of the price agreed upon when the same was issued.
- (2) Without prejudice to the provisions contained in sub-section (1), if the Central Government is satisfied that in the interests of trade and commerce or the economic development of the country it is necessary or expedient so to do, it may, by notification in the Official Gazette, specify any class of contracts as contracts to which this Act or any provision contained therein shall not apply, and also the conditions, limitations or restrictions, if any, subject to which it shall not so apply.

Protection of action taken in good faith [Section 29]

No suit, prosecution or other legal proceeding whatsoever shall lie in any court against the governing body or any member, office bearer or servant of any recognised stock exchange or against any person or persons appointed under sub-section (1) of section 11 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made there under.

Power to delegate [Section 29A]

The Central Government may, by order published in the Official Gazette, direct that the powers (except the power under section 30) exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934.

Power to make rules [Section 30]

- (1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act.



- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,—
- (a) the manner in which applications may be made, the particulars which they should contain and the levy of a fee in respect of such applications;
 - (b) the manner in which any inquiry for the purpose of recognising any stock exchange may be made, the conditions which may be imposed for the grant of such recognition, including conditions as to the admission of members if the stock exchange concerned is to be the only recognised stock exchange in the area; and the form in which such recognition shall be granted;
 - (c) the particulars which should be contained in the periodical returns and annual reports to be furnished to the Central Government;
 - (d) the documents which should be maintained and preserved under section 6 and the periods for which they should be preserved;
 - (e) the manner in which any inquiry by the governing body of a stock exchange shall be made under section 6;
 - (f) the manner in which the bye-laws to be made or amended under this Act shall before being so made or amended be published for criticism;
 - (g) the manner in which applications may be made by dealers in securities for licences under section 17, the fee payable in respect thereof and the period of such licences, the conditions subject to which licences may be granted, including conditions relating to the forms which may be used in making contracts, the documents to be maintained by licensed dealers and the furnishing of periodical information to such authority as may be specified and the revocation of licences for breach of conditions;
 - (h) the requirements which shall be complied with—
 - (A) by public companies for the purpose of getting their securities listed on any stock exchange;
 - (B) by collective investment scheme for the purpose of getting their units listed on any stock exchange;
 - (ha) the grounds on which the securities of a company may be delisted from any recognised stock exchange under sub-section (1) of section 21A;
 - (hb) the form in which an appeal may be filed before the Securities Appellate Tribunal under sub-section (2) of section 21A and the fees payable in respect of such appeal;
 - (hc) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal;
 - (hd) the manner of inquiry under sub-section (1) of section 23-I;
 - (he) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 23L and the fees payable in respect of such appeal;
 - (i) any other matter which is to be or may be prescribed.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Special Provisions related to commodity derivatives [Section 30A]

- (1) Nothing contained in this Act shall apply to non-transferable specific delivery contracts: Provided that no person shall organise or assist in organising or be a member of any association in any area to which the provisions of section 13 have been made applicable (other than a stock exchange) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.
- (2) Where in respect of any area, the provisions of section 13 have been made applicable in relation to commodity derivatives for the sale or purchase of any goods or class of goods, the Central Government may, by notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of this Act shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.
- (3) Notwithstanding anything contained in sub-section (1), if the Central Government is of the opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply to such class or classes of non-transferable specific delivery contracts in such area in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

Power of Securities and Exchange Board of India to make regulations [Section 31]

- (1) Without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :—
 - (a) the manner, in which at least fifty-one per cent of equity share capital of a recognised stock exchange is held within twelve months from the date of publication of the order under sub-section (7) of section 4B by the public other than the shareholders having trading rights under sub-section (8) of that section;
 - (b) the eligibility criteria and other requirements under section 17A.
 - (c) the terms determined by the Board for settlement of proceedings under sub-section (2) of section 23JA;
 - (d) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.
- (3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

Validation of Certain Acts [Section 32]

Any act or thing done or purporting to have been done under the principal Act, in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.



3.3 SEBI (ISSUE OF CAPITAL AND DISCLOSURE REGULATIONS), 2009

REGULATIONS, 2009

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations, namely:—

PRELIMINARY

Short title and commencement [Regulation 1]

- (1) These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- (2) They shall come into force on the date of their publication in the Official Gazette.

Definitions [Regulation 2]

- (1) In these regulations, unless the context otherwise requires:
 - (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (b) "advertisement" includes notices, brochures, pamphlets, show cards, catalogues, hoardings, placards, posters, insertions in newspaper, cover pages of offer documents, pictures and films in any print media or electronic media, radio, television programme;
 - (c) "anchor investor" means a qualified institutional buyer '[who makes] an application for a value of ten crore rupees or more in a public issue made through the book building process in accordance with these regulations;
 - (d) "Application Supported by Blocked Amount (ASBA)" means an application for subscribing to a public issue or rights issue, along with an authorisation to Self Certified Syndicate Bank to block the application money in a bank account;
 - (e) "Board" means the Securities and Exchange Board of India established under section 3 of the Act;
 - (f) "book building" means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations;
 - (g) "book runner" means a merchant banker appointed by the issuer to undertake the book building process;
 - (h) "composite issue" means an issue of specified securities by a listed issuer on public-cum-rights basis, wherein the allotment in both public issue and rights issue is proposed to be made simultaneously;
 - (i) "control" shall have the same meaning as assigned to it under clause (c) of sub-regulation (I) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisitions of Shares and Takeovers) Regulations, 1997;
 - (j) "convertible debt instrument" means an instrument which creates or acknowledges indebtedness and is convertible into equity shares of the issuer at a later date at or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not;
 - (k) "convertible security" means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of the security and includes convertible debt instrument and convertible preference shares;]
 - (l) "designated stock exchange" means a recognised stock exchange in which securities of an issuer are listed or proposed to be listed and which is chosen by the issuer as a designated

stock exchange for the purpose of a particular issue of specified securities under these regulations:

Provided that where one or more of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange:

Provided further that subject to the provisions of this clause, the issuer may choose a different recognised stock exchange as a designated stock exchange for any subsequent issue of specified securities under these regulations;

- (m) "employee" means a permanent and full-time employee, working in India or abroad, of the issuer or of the holding company or subsidiary company or of that material associate(s) of the issuer whose financial statements are consolidated with the issuer's financial statements as per Accounting Standard 21, or a director of the issuer, whether whole time or part time and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of that person or of the spouse);
- (n) "further public offer" means an offer of specified securities by a listed issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in a listed issuer;
- (na) "General Corporate Purposes" include such identified purposes for which no specific amount is allocated or any amount so specified towards General Corporate Purpose or any such purpose by whatever name called, in the draft offer document filed with the Board.

Provided that any issue related expenses shall not be considered as a part of General Corporate Purpose merely because no specific amount has been allocated for such expenses in the draft offer document filed with the Board.]
- (o) "green shoe option" means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism;
- (p) "initial public offer" means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such securities in an unlisted issuer;
- (q) "issue size" includes offer through document and promoters' contribution;
- (r) "issuer" means any person making an offer of specified securities;
- (s) "key management personnel" means the officers vested with executive powers and the officers at the level immediately below the board of directors of the issuer and includes any other person whom the issuer may declare as a key management personnel;
- (t) "listed issuer" means an issuer whose equity shares are listed in a recognized stock exchange;
- (u) "net offer to public" means an offer of specified securities to the public but does not include reservation;
- (v) "net worth" means the aggregate of the paid up share capital, share premium account, and reserves and surplus (excluding revaluation reserve) as reduced by the aggregate of miscellaneous expenditure (to the extent not adjusted or written off) and the debit balance of the profit and loss account;
- (w) "non-institutional investor" means an investor other than a retail individual investor and qualified institutional buyer;
- (x) "offer document" means a red herring prospectus, prospectus or shelf prospectus and information memorandum in terms of section 60A of the Companies Act, 1956 in case of a public issue and letter of offer in case of a rights issues;
- (y) "offer through offer document" means net offer to public and reservations;



- (z) "preferential issue" means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis and does not include an offer of specified securities made through a public issue, rights issue, bonus issue, employee stock option scheme, employee stock purchase scheme or qualified institutions placement or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities;
- (za) "promoter" includes:
- (i) the person or persons who are in control of the issuer;
 - (ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;
 - (iii) the person or persons named in the offer document as promoters;
- Provided** that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter;
- Provided further** that a financial institutions, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person;
- Provided further** that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;
- (zb) "promoter group" includes:
- (i) the promoter;
 - (ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and
 - (iii) in case promoter is a body corporate:
 - (A) a subsidiary or holding company of such body corporate;
 - (B) anybody corporate in which the promoter holds ten per cent or more of the equity share capital or which holds ten per cent or more of the equity share capital of the promoter;
 - (C) anybody corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent or more of the equity share capital in that body corporate also holds twenty per cent or more of the equity share capital of the issuer; and
 - (iv) in case the promoter is an individual:
 - (A) anybody corporate in which ten per cent or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;
 - (B) anybody corporate in which a body corporate as provided in (A) above holds ten per cent or more, of the equity share capital;
 - (C) any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent of the total; and
 - (v) all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group":

Provided that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person:

Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;

- (zc) "public issue" means an initial public offer or further public offer;
- (zd) "qualified institutional buyer" means:
 - (i) a mutual fund, venture capital fund [Alternative Investment Fund] and foreign venture capital investor registered with the Board;
 - (ii) a foreign institutional investor and sub-account (other than a sub-account which is a foreign corporate or foreign individual), registered with the Board;
 - (iii) a public financial institution as defined in section 4A of the Companies Act, 1956;
 - (iv) a scheduled commercial bank;
 - (v) a multilateral and bilateral development financial institution;
 - (vi) a state industrial development corporation;
 - (vii) an insurance company registered with the Insurance Regulatory and Development Authority.
 - (viii) A provident fund with minimum corpus of twenty five crore rupees;
 - (ix) A pension fund with minimum corpus of twenty five crore rupees;
 - (x) National Investment Fund set up by resolution F. No. 2/3/2005 – DDII dated November 23, 2005 of the Government of India published in the Gazette of India;
 - (xi) Insurance funds set up and managed by army, navy or air force of the Union of India;
 - (xii) Insurance funds set up and managed by the Department of Posts, India;
- (ze) "retail individual investor" means an investor who applies or bids for specified securities for a value of not more than [two] lakh rupees;
- (zf) "retail individual shareholder" means a shareholder of a listed issuer, who:
 - (i) [***]
 - (ii) Applies or bids for specified securities for a value of not more than [two] lakh rupees;
- (zg) "rights issue" means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose;
- (zh) "Schedule" means schedule annexed to these regulations;
- (zi) "Self Certified Syndicate Bank" means a banker to an issue registered with the Board, which offers the facility of Application Supported by Blocked Amount;
- (zj) "specified securities" means equity shares and convertible securities;
- (zk) "stabilising agent" means a merchant b .inker who is responsible for stabilizing the price of equity shares under a green shoe option, in terms of these regulations;
- "syndicate member" means an intermediary registered with the Board and who is permitted to carry on the activity as an underwriter;
- (zm) "unlisted issuer" means an issuer which is not a listed issuer.



- (2) All other words and expressions used but not defined in these regulations, but defined in the Act or the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and/or the rules and regulations made thereunder shall have the same meaning as respectively assigned to them in such Acts or rules or regulations or any statutory modification or re-enactment thereto, as the case may be.

Applicability of the regulations [Regulation 3]

Unless otherwise provided, these regulations shall apply to the following:

- (a) a public issue;
- (b) a rights issue, where the aggregate value of specified securities offered is fifty lakh rupees or more;
- (c) a preferential issue;
- (d) an issue of bonus shares by a listed issuer;
- (e) a qualified institutions placement by a listed issuer;
- (f) an issue of Indian Depository Receipts:

Provided that the provisions of these regulations shall not apply to issue of securities under clauses (b), (d) and (e) of sub-regulation (1) of regulation 9 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

COMMON CONDITIONS FOR PUBLIC ISSUES AND RIGHTS ISSUES

General conditions [Regulation 4]

- (1) Any issuer offering specified securities through a public issue or rights issue shall satisfy the conditions of this Chapter at the time of filing draft offer document with the Board (unless stated otherwise in this Chapter) and at the time of registering or filing the final offer document with the Registrar of Companies or designated stock exchange, as the case may be.
- (2) No issuer shall make a public issue or rights issue of specified securities:
- (a) if the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board;
 - (b) if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred from a made by the Board;
 - (c) if the issuer of convertible debt instruments is in the list of willful defaulters published by the Reserve Bank of India or it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months;
 - (d) unless it has made an application to one or more recognized stock exchanges for listing of specified securities on such stock exchanges and has chosen one of them as the designated stock exchange:

Provided that in case of an initial public offer, the issuer shall make an application for listing of the specified securities in at least one recognized stock exchange having nationwide trading terminals;

- (e) unless it has entered into an agreement with a depository for dematerialization of specified securities already issued or proposed to be issued;
- (f) unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;

- (g) unless firm arrangements of finance through verifiable means towards seventy five per cent of the stated means of finance, excluding the amount to be raised through the proposed public issue or rights issue or though existing identifiable internal accruals, have been made.
- (3) Warrants may be issued along with public issue or rights issue of specified securities subject to the following:
 - (a) the tenure of such warrants shall not exceed twelve months from their date of allotment in the public / rights issue;
 - (b) not more than one warrant shall be attached to one specified security.
- (4) The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document filed with the Board, shall not exceed twenty five per cent of the amount raised by the issuer by issuance of specified securities.

Appointment of merchant banker and other intermediaries [Regulation 5]

- (1) The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.
- (2) The issuer shall, in consultation with the lead merchant banker, appoint only those intermediaries which are registered with the Board.
- (3) Where the issue is managed by more than one merchant banker, the rights, obligations and responsibilities, relating inter alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker shall be predetermined and disclosed in the offer document as specified in Schedule I.

Provided that where any of the merchant bankers is an associate of the issuer, it shall declare itself as a marketing lead manager and its role shall be limited to marketing of the issue.

- (4) The lead merchant banker shall, only after independently assessing the capability of other intermediaries to carry out their obligations, advise the issuer on their appointment.
- (5) The issuer shall enter into an agreement with the lead merchant banker in the format specified in Schedule II and with other intermediaries as required under the respective regulations applicable to the intermediary concerned:

Provided that such agreements may include such other clauses as the issuer and the intermediary may deem fit without diminishing or limiting in any way the liabilities and obligations of the merchant bankers, other intermediaries and the issuer under the Act, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder or any statutory modification or statutory enactment thereof:

Provided further that in case of ASBA process, the issuer shall take cognizance of the deemed agreement of the issuer with Self Certified Syndicate Banks.

- (6) An issuer shall, in case of an issue made through the book building process, appoint syndicate members and in the case of any other issue, appoint bankers to issue, at all mandatory collection centres as specified in Schedule III and such other collection centres as it may deem fit.
- (7) The issuer shall appoint a registrar which has connectivity with all the depositories:

Provided that if issuer itself is a registrar to an issue registered with the Board, then another registrar to an issue shall be appointed as registrar to the issue:

Provided further that the lead merchant banker shall not act as a registrar to the issue in which it is also handling the post issue responsibilities.

Explanation.- or the purpose of this regulation, in case of a book built issue, the lead merchant banker appointed by the issuer shall act as the lead book runner.



Filing of offer document [Regulation 6]

- (1) No issuer shall make,
- a public issue; or
 - a rights issue, where the aggregate value of the specified securities offered is fifty lakh rupees or more,
- unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the Board through the lead merchant banker, at least thirty days prior to registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be.
- (2) The Board may specify changes or issue observations, if any, on the draft offer document within thirty days from the later of the following dates:
- the date of receipt of the draft offer document under sub-regulation (1); or
 - the date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or
 - the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or
 - the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.
- (3) If the Board specifies changes or issues observations on the draft offer document, the issuer and lead merchant banker shall carry out such changes in the draft offer document and comply with the observations issued by the Board before registering the prospectus, red herring prospectus or shelf prospectus, as the case may be, with the Registrar of Companies or filing the letter of offer with the designated stock exchange.
- (4) The issuer shall, simultaneously while registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange or before the opening of the issue, file a copy thereof with the Board through the lead merchant banker.
- (5) The lead merchant banker shall, while filing the offer document with the Board in terms of sub-regulation (1) and sub-regulation (4), file a copy of such document with the recognized stock exchanges where the specified securities are proposed to be listed.
- (6) The offer document file with the Board under this regulation shall also be furnished to the Board in a soft copy in the manner specified in Schedule V.

In-principle approval from recognized stock exchanges [Regulation 7]

The issuer shall obtain in-principle approval from recognized stock exchanges as follows:

- in case of an initial public offer, from all the recognized stock exchanges in which the issuer proposes to get its specified securities listed; and
- in case of a further public offer and rights issue:
 - where the specified securities are listed only on recognized stock exchanges having nationwide trading terminals, from all such stock exchanges;
 - where the specified securities are not listed on any recognized stock exchange having nationwide trading terminals, from all the stock exchanges in which the specified securities of the issuer are proposed to be listed.
 - where the specified securities are listed on recognized stock exchanges having nationwide trading terminals as well as on the recognized stock exchanges not having nationwide trading terminals, from all recognized stock exchanges having nationwide trading terminals.

Documents to be submitted before opening of the issue [Regulation 8]

- (1) The lead merchant banker shall submit the draft offer document:
 - (a) a certificate, confirming that an agreement has been entered into between the issuer and the lead merchant bankers as per the format specified in Schedule II;
 - (b) [***]
 - (c) a due diligence certificate as per Form A of Schedule VI;
 - (d) in case of an issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of Schedule VI;
 - (e) a certificate confirming compliance of the conditions specified in Part C of Schedule VHL.
- (2) The lead merchant bankers shall submit the following documents to the Board after issuance of observations by the Board or after expiry of the period stipulated in sub-regulation (2) of regulation 6 if the Board has not issued observations:
 - (a) a statement certifying that all changes, suggestions and observations made by the Board have been incorporated in the offer document;
 - (b) a due diligence certificate as per Form C of Schedule VI, at the time of registering the prospectus with the Registrar of Companies;
 - (c) a copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoters towards amount received against promoters' contribution, before opening of the issue;
 - (d) a certificate from a Chartered Accountant, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, accompanying therewith the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid by each of them towards such contribution;
 - (e) a due diligence certificate as per Form D of Schedule VI, immediately before the opening of the issue, certifying that necessary corrective action, if any, has been taken;
 - (f) a due diligence certificate as per Form E of Schedule VI, after the issue has opened but before it closes for subscription.
- (3) The issuer shall, at the time of filing draft offer document with the recognised stock exchange where the specified securities are proposed to be listed, submit the Permanent Account Number, bank account number and passport number of its promoters to such stock exchange.

Draft offer document to be made public [Regulation 9]

- (1) The draft offer document filed with the Board shall be made public, for comments, if any, for a period of at least twenty one days from the date of such filing, by hosting it on the websites of the Board, recognised stock exchanges where specified securities are proposed to be listed and merchant bankers associated with the issue.
- (2) The lead merchant bankers shall, after expiry of the period stipulated in sub-regulation (1), file with the Board a statement giving information of the comments received by them or the issuer on the draft offer document during that period and the consequential changes, if any, to be made in the draft offer document.
- (3) The issuer either on the date of filing the draft offer document with the Board or on the next day shall make a public announcement in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated, disclosing to



the public the fact of filing of draft offer document with the Board and inviting the public to give their comments to the Board in respect of disclosures made in the draft offer document.

Fast Track Issue [Regulation 10]

- (1) Nothing contained in sub-regulations (1), (2) and (3) of regulation 6 and regulations 7 and 8 shall apply to a public issue or rights issue if the issuer satisfies the following conditions:
- (a) the equity shares of the issuer have been listed on any recognised stock exchange having nationwide trading terminals for a period of at least three years immediately preceding the reference date;
 - (b) the average market capitalisation of public shareholding of the issuer is at least one thousand crore rupees in case of public issue and two hundred and fifty crore rupees in case of right issue;
 - (c) the annualised trading turnover of the equity shares of the issuer during six calendar months immediately preceding the month of the reference date has been at least two per cent of the weighted average number of equity shares listed during such six months' period :
Provided that for issuers, whose public shareholding is less than fifteen per cent of its issued equity capital, the annualised trading turnover of its equity shares has been at least two per cent of the weighted average number of equity shares available as free float during such six months' period;
 - (d) the issuer has redressed at/least ninety five per cent of the complaints received from the investors' till the end of the quarter immediately preceding the month of the reference date;
 - (e) the issuer has been in compliance with the equity listing agreement for a period of at least three years immediately preceding the reference date:
Provided that if the issuer has not complied with the provision of the equity listing agreement relating to composition of board of directors, for any quarter during the last three years immediately preceding the reference date, but is compliant with such provisions at the time of filing of offer document with the Registrar of Companies or designated stock exchange, as the case may be, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the reference date, it shall be deemed as compliance with the condition:
Provided further that imposition of only monetary fines by stock exchanges on the issuer shall not be a ground for ineligibility for undertaking issuances under this regulation.
 - (f) the impact of auditors' qualifications, if any, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed in the offer document does not exceed five per cent of the net profit or loss after tax of the issuer for the respective years;
 - (g) no show-cause notices have been issued or prosecution proceedings initiated 3[by the Board] or pending against the issuer or its promoters or whole time directors as on the reference date;
 - (ga) the issuer or promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through the consent or settlement mechanism with the Board during three years immediately preceding the reference date;
 - (h) the entire shareholding of the promoter group of the issuer is held in dematerialised form on the reference date.
 - (i) in case of a rights issue, promoters and promoter group shall mandatorily subscribe to their rights entitlement and shall not renounce their rights, except to the extent of renunciation

- within the promoter group or for the purpose of complying with minimum public shareholding norms prescribed under Rule 19A of the Securities Contracts (Regulation) Rules, 1957;
- (j) the equity shares of the issuer have not been suspended from trading as a disciplinary measure during last three years immediately preceding the reference date;
 - (k) the annualized delivery-based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been at least ten per cent of the weighted average number of equity shares listed during such six months' period;
 - (l) there shall be no conflict of interest between the lead merchant banker(s) and the issuer or its group or associate company in accordance with applicable regulations.
- (2) The issuer shall file the offer document with the Board and the recognised stock exchanges in accordance with sub-regulations (4), (5) and (6) of regulation 6 and shall pay fees to the Board as specified in Schedule IV.
- (3) The lead merchant bankers shall submit to the Board, the following documents along with the offer document:
- (a) a due diligence certificate as per Form A of Schedule VI including additional confirmations as specified in Form F of Schedule VI;
 - (b) in case of a fast track issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of Schedule VI.
- Explanation: for the purposes of this regulation:
- (I) "reference date" means:
 - (a) in case of a public issue by a listed issuer, the date of registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies; and
 - (b) in case of a rights issue by a listed issuer, the date of filing the letter of offer with the designated stock exchange.
 - (II) "average market capitalisation of public shareholding" means the sum of daily market capitalisation of public shareholding for a period of one year up to the end of the quarter preceding the month in which the proposed issue was approved by the shareholders or the board of the issuer, as the case may be, divided by the number of trading days.
 - (III) "public shareholding" shall have the same meaning as assigned to it in the equity listing agreement.

Opening of an issue [Regulation 11]

- (1) Subject to the compliance with sub-section (4) of section 60 of the Companies Act, 1956, a public issue or rights issue may be opened:
 - (a) within twelve months from the date of issuance of the observations by the Board under regulation 6; or
 - (b) within three months of expiry of the period stipulated in sub-regulation (2) of regulation 6, if the Board has not issued observations:

Provided that in case of a fast track issue, the issue shall open within the period stipulated in sub-section (4) of section 60 of the Companies Act, 1956.
- (2) In case of shelf prospectus, the first issue may be opened within three months of issuance of observations by the Board.



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- (3) The issuer shall, before registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as (he case may be, file with the Board through the lead merchant bankers, an updated offer document highlighting all changes made in the offer document.
 - (4) Notwithstanding anything contained in this regulation, if there are changes in the offer document in relation to the matters specified in Schedule VI, the updated offer document or new draft offer document, as the case may be, shall be filed with the Board along with fees specified in Schedule IV.
 - (5) An issue shall be opened after at least three working days from the date of registering the red herring prospectus with the Registrar of Companies.]

Dispatch of issue material [Regulation 12]

The lead merchant bankers shall dispatch the offer document and other issue material including forms for ASBA to the designated stock exchange, syndicate members, registrar to issue and share transfer agents, depository participants, stock brokers underwriters, bankers to the issue, investors' associations and Self Certified Syndicate Banks in advance.

Underwriting [Regulation 13]

- (1) Where the issuer making a public issue (other than through the book building process) or rights issue, desires to have the issue underwritten, it shall appoint the underwriters in accordance with Securities and Exchange Board of India (Underwriters) Regulations, 1993.
- (2) Where the issuer makes a public issue through the book building process, such issue shall be underwritten by book runners or syndicate members: '[Provided that at least 2[seventy five per cent] of the net offer to the public proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance of the eligibility conditions specified in sub-regulation (2) of regulation 26 and regulation 27, cannot be underwritten.]
- (3) The issuer shall enter into underwriting agreement with the book runner, who in turn shall enter into underwriting agreement with syndicate members, indicating therein the number of specified securities which they shall subscribe to at the predetermined price in the event of/under-subscription in the issue.
- (4) If syndicate members fail to fulfill their underwriting obligations, the lead book runner shall fulfill the underwriting obligations.
- (5) The book runners and syndicate members shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.
- (6) [***]
- (7) In case of every underwritten issue, the lead merchant banker or the lead book runner shall undertake minimum underwriting obligations as specified in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.
- (8) Where hundred per cent of the offer through offer document is underwritten, the underwriting obligations shall be for the entire hundred per cent of the offer through offer document and shall not be restricted upto the minimum subscription level.

Minimum subscription [Regulation 14]

- (1) The minimum subscription to be received in an issue shall not be less than ninety per cent of the offer through offer document

Provided that in the case of an initial public offer, the minimum subscription to be received shall be subject to allotment of minimum number of specified securities, as prescribed in sub-clause (b) of clause (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957.

- (2) In the event of non-receipt of minimum subscription referred to in sub-regulation (1), all application moneys received shall be refunded to the applicants forthwith, but not later than:
 - (a) fifteen days of the closure of the issue, in case of a non-underwritten issue; and
 - (b) seventy days of the closure of the issue, in the case of an underwritten issue where minimum subscription including devolvement obligations paid by the underwriters is not received within sixty days of the closure of the issue.
- (3) The offer document shall contain adequate disclosures regarding minimum subscription as specified in Part A of Schedule VIII.
- (4) Nothing contained in this regulation, except the requirement relating to allotment of minimum, number of specified securities, shall apply to offer for sale of specified securities.

Oversubscription [Regulation 15]

No allotment shall be made by the issuer in excess of the specified securities offered through the offer document:

Provided that in case of oversubscription, an allotment of not more than ten per cent of the net offer to public may be made for the purpose of making allotment in minimum lots.

Monitoring agency [Regulation 16]

- (1) If the issue size exceeds five hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by one of the scheduled commercial banks named in the offer document as bankers of the issuer:
Provided that nothing contained in this clause shall apply to an offer for sale or an issue of specified securities made by a bank or public financial institution [for an insurance company]
- (2) The monitoring agency shall submit its report to the issuer in the format specified in Schedule IX on a half yearly basis, till the proceeds of the issue have been fully utilized.

Manner of calls [Regulation 17]

If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment in the issue and if any applicant fails to pay the call money within the said twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be forfeited.

Provided that it shall not be necessary to call the outstanding subscription money within twelve months, if the issuer has appointed a monitoring agency in terms of regulation 16.

Allotment, refund and payment of interest [Regulation 18]

- (1) The issuer and merchant bankers shall ensure that specified securities are allotted and / or application moneys are refunded within fifteen days from the date of closure of the issue.
- (2) Where specified securities are not allotted and /or application moneys are not refunded within the period stipulated in sub-regulation (1), the issuer shall under-take to pay interest at such rate and within such time as disclosed in the offer document.

Restriction on further capital issues [Regulation 19]

No issuer shall make any further issue of specified securities in any manner whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise:

- (a) in case of a fast track issue, during the period between the date of registering the red herring prospectus (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies or filing the letter of offer with the designated stock exchange and the listing of the specified securities offered through the offer document or refund of application moneys; or



- (b) in case of other issues, during the period between the date of filing the draft offer document with the Board and the listing of the specified securities offered through the offer document or refund of application moneys,

unless full disclosures regarding the total number of specified securities and amount proposed to be raised from such further issue are made in such draft offer document or offer document, as the case may be.

Additional requirements for issue of convertible debt instruments [Regulation 20]

- (1) In addition to other requirements laid down in these regulations, an issuer making a public issue or rights issue of convertible debt instruments shall comply with the following conditions:
- (a) it has obtained credit rating from one or more credit rating agencies;
 - (b) it has appointed one or more debenture trustees in accordance with the provisions of section 117B of the Companies Act, 1956 and Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;
 - (c) it has created debenture redemption reserve in accordance with the provisions of section 117C of the Companies Act, 1956;
 - (d) if the issuer proposes to create a charge or security on its assets in respect of secured convertible debt instruments, it shall ensure that:
 - (i) such assets are sufficient to discharge the principal amount at all times;
 - (ii) such assets are free from any encumbrance;
 - (iii) where security is already created on such assets in favour of financial institutions or banks or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such financial institution, bank or lessor for a second or pari passu charge has been obtained and submitted to the debenture trustee before the opening of the issue;
 - (iv) the security/asset cover shall be arrived at after reduction of the liabilities having a first/prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.
- (2) The issuer shall redeem the convertible debt instruments in terms of the offer document.

Roll over of non-convertible portion of partly convertible debt instruments [Regulation 21]

- (1) The non-convertible portion of partly convertible debt instruments issued by a listed issuer, the value of which exceeds fifty lakh rupees, may be rolled over without change in the interest rate, subject to compliance with the provisions of section 121 of the Companies Act, 1956 and the following conditions:
- (a) seventy five per cent of the holders of the convertible debt instruments of the issuer have, through a resolution, approved the rollover through postal ballot;
 - (b) the issuer has, along with the notice for passing the resolution, sent to all holders of the convertible debt instruments, an auditors' certificate on the cash flow of the issuer and with comments on the liquidity position of the issuer;
 - (c) the issuer has undertaken to redeem the non-convertible portion of the partly convertible debt instruments of all the holders of the convertible debt instruments who have not agreed to the resolution;
 - (d) credit rating has been obtained from at least one credit rating agency registered with the Board within a period of six months prior to the due date of redemption and has been communicated to the holders of the convertible debt instruments, before the roll over.

- (2) The creation of fresh security and execution of fresh trust deed shall not be mandatory if the existing trust deed or the security documents provide for continuance of the security till redemption of secured convertible debt instruments:

Provided that whether the issuer is required to create fresh security and to execute fresh trust deed or not shall be decided by the debenture trustee.

Conversion of optionally convertible debt instruments into equity share capital [Regulation 22]

- (1) An issuer shall not convert its optionally convertible debt instruments into equity shares unless the holders of such convertible debt instruments have sent their positive consent to the issuer and non-receipt of reply to any notice sent by the issuer for this purpose shall not be construed as consent for conversion of any convertible debt instruments.
- (2) Where the value of the convertible portion of any convertible debt instruments issued by a listed issuer exceeds fifty lakh rupees and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue, the holders of such convertible debt instruments shall be given the option of not converting the convertible portion into equity shares:

Provided that where the upper limit on the price of such convertible debt instruments and justification thereon is determined and disclosed to the investors at the time of making the issue, it shall not be necessary to give such option to the holders of the convertible debt instruments for converting the convertible portion into equity share capital within the said upper limit.

- (3) Where an option is to be given to the holders of the convertible debt instruments in terms of sub-regulation (2) and if one or more of such holders do not exercise the option to convert the instruments into equity share capital at a price determined in the general meeting of the shareholders, the issuer shall redeem that part of the instruments within one month from the last date by which option is to be exercised, at a price which shall not be less than its face value.
- (4) The provision of sub-regulation (3) shall not apply if such redemption is in terms of the disclosures made in the offer document.

Issue of convertible debt instruments for financing [Regulation 23]

No issuer shall issue convertible debt instruments for financing replenishment of funds or for providing loan to or for acquiring shares of any person who is part of the same group or who is under the same management:

Provided that an issuer may issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

Explanation: For the purpose of this regulation:

- (I) Two persons shall be deemed to be "part of the same group" if they belong to the group within the meaning of clause (ef) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) or if they own interconnected undertakings within the meaning of clause (g) of section 2 of the said Act;
- (II) The expression "under the same management" shall have the same meaning as assigned to it in sub-section (1B) of section 370 of the Companies Act, 1956 (1 of 1956).

Alteration of rights of holders of specified securities [Regulation 24]

No issuer shall alter the terms (including the terms of issue) of specified securities which may adversely affect the interests of the holders of that specified securities, except with the consent in writing of the holders of not less than three-fourths of the specified securities of that class or with the sanction of a special resolution passed at a meeting of the holders of the specified securities of that class.



PROVISIONS AS TO PUBLIC ISSUE

ELIGIBILITY REQUIREMENTS

Reference date [Regulation 25]

Unless otherwise provided in this Chapter, an issuer making a public issue shall satisfy the conditions of this Chapter as on the date of filing draft offer document with the Board and also as on the date of registering the offer document with the Registrar of Companies.

Conditions for initial public offer [Regulation 26]

- (1) An issuer may make an initial public offer, if:
 - (a) it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent are held in monetary assets:

Provided that if more than fifty per cent of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project:

Provided further that the limit of fifty per cent on monetary assets shall not be applicable in case the public offer is made entirely through an offer for sale;
 - (b) it has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years;
 - (c) it has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);
 - (d) the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;
 - (e) if it has changed its name within the last one year, at least fifty per cent of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.
- (2) An issuer not satisfying the condition stipulated in sub-regulation (1) may make an initial public offer if the issue is made through the book-building process and the issuer undertakes to allot, at least seventy five per cent of the net offer to public, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers
- (3) An issuer may make an initial public offer of convertible debt instruments without making a prior public issue of its equity shares and listing thereof.
- (4) An issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.
- (5) No issuer shall make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares:

Provided that the provisions of this sub-regulation shall not apply to:

- (a) a public issue made during the currency of convertible debt instruments which were issued through an earlier initial public offer, if the conversion price of such convertible debt instruments was determined and disclosed in the prospectus of the earlier issue of convertible debt instruments;

- (b) outstanding options granted to employees pursuant to an employee stock option scheme framed in accordance with the relevant Guidance Note or Accounting Standards, if any, issued by the Institute of Chartered Accountants of India in this regard;
 - (c) fully paid-up outstanding convertible securities which are required to be converted on or before the date of filing of the red herring prospectus (in case of book-built issues) or the prospectus (in case of fixed price issues), as the case may be.
- (6) Subject to provisions of the Companies Act, 1956 and these regulations, equity shares may be offered for sale to public if such equity shares have been held by the sellers for a period of at least one year prior to the filing of draft offer document with the Board in accordance with sub-regulation (1) of regulation 6:
- Provided that in case equity shares received on conversion or exchange of fully paid-up compulsorily convertible securities including depository receipts are being offered for sale, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period referred in this sub-regulation:
- Provided further** that the requirement of holding equity shares for a period of one year shall not apply:
- (a) in case of an offer for sale of specified securities of a Government company or statutory authority or corporation or any special purpose vehicle set up and controlled by any one or more of them, which is engaged in infrastructure sector;
 - (b) if the specified securities offered for sale were acquired pursuant to any scheme approved by a High Court under sections 391 -394 of the Companies Act, 1956, in lieu of business and invested capital which had been in existence for a period of more than one year prior to such approval.
 - (c) if the specified securities offered for sale were issued under a bonus issue on securities held for a period of at least one year prior to the filing of draft offer document with the Board and further subject to the following, -
 - (i) such specified securities being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the Board ; and
 - (ii) such specified securities not being issued by utilization of revaluation reserves or unrealized profits of the issuer.
- (7) An issuer making an initial public offer may obtain grading for such offer from one or more credit rating agencies registering with the Board.

Explanation.— For the purposes of this regulation:

- (I) "net tangible assets" mean the sum of all net assets of the issuer, excluding intangible assets as defined in Accounting Standard 26 (AS 26) issued by the Institute of Chartered Accountants of India;
- (II) "project" means the object for which monies are proposed to be raised to cover the objects of the issue;
- (III) In case of an issuer which had been a partnership firm, the track record of distributable profits of the partnership firm shall be considered only if the financial statements of the partnership business for the period during which the issuer was a partnership firm, conform to and are revised in the format prescribed for companies under the Companies Act, 1956 and also comply with the following:
 - (a) adequate disclosures are made in the financial statements as required to be made by the issuer as per Schedule VI of the Companies Act, 1956;



- (b) the financial statements are duly certified by a Chartered Accountant stating that:
- (i) the accounts and the disclosures made are in accordance with the provisions of Schedule VI of the Companies Act, 1956;
 - (ii) the accounting standards of the Institute of Chartered Accountants of India have been followed;
 - (i) the financial statements present a true and fair view of the firm's accounts;
 - (iv) In case of an issuer formed out of a division of an existing company, the track record of distributable profits of the division spun-off shall be considered only if the requirements regarding financial statements as provided for partnership firms in Explanation III are complied with;
 - (v) "bid-ask spread" means the difference between quotations for sale and purchase;
 - (vi) The term "infrastructure sector" includes the facilities or services as specified in Schedule X.

Conditions for further public offer [Regulation 27]

An issuer may make a further public offer if it satisfies the conditions specified in clauses (d) and (e) of sub-regulation (1) of regulation 26 and if it does not satisfy those conditions, it may make a further public offer if it satisfies the conditions specified in sub-regulation (2) of regulation 26.

PRICING IN PUBLIC ISSUE

Pricing [Regulation 28]

- (1) An issuer may determine the price of specified securities in consultation with the lead merchant banker or through the book building process.
- (2) An issuer may determine the coupon rate and conversion price of convertible debt instruments in consultation with the lead merchant banker or through the book building process.
- (3) The issuer shall undertake the book building process in a manner specified in Schedule XL.

Differential pricing [Regulation 29]

An issuer may offer specified securities at different prices, subject to the following:

- (a) retail individual investors or retail individual shareholders '[or employees 2[***] entitled for reservation made under regulation 42 making an application for specified securities of value not more than 3[two] lakh rupees,] may be offered specified securities at a price lower than the price at which net offer is made to other categories of applicants:
Provided that such difference shall not be more than ten per cent of the price at which specified securities are offered to other categories of applicants;
- (b) in case of a book built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;
- (c) in case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document;
- (d) in case the issuer opts for the alternate method of book building in terms of Part D of Schedule XI, the issuer may offer specified securities to its employees at a price lower than the floor price :

Provided that the difference between the floor price and the price at which specified securities are offered to employees shall not be more than ten per cent of the floor price.

Price and price band [Regulation 30]

- (1) The issuer may mention a price or price band in the draft prospectus (in case of a fixed price issue) and floor price or price band in the red herring prospectus (in case of a book built issue) and determine the price at a later date before registering the prospectus with the Registrar of Companies:

Provided that the prospectus registered with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.
- (2) [* * *] the issuer shall announce the floor price or price band at least [five working days] before the opening of the bid (in case of an initial public offer) and at least one working day before the opening of the bid (in case of a further public offer), in all the newspapers in which the pre-issue advertisement was released.
- (3) The announcement referred to in sub-regulation (2) shall contain relevant financial ratios computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section titled "basis of issue price" in the prospectus.
- (3A) The announcement referred to in sub-regulation (2) and the relevant financial ratios referred to in sub-regulation (3) shall be disclosed on the websites of those stock exchanges where the securities are proposed to be listed and shall also be prefilled in the application forms available on the websites of the stock exchanges
- (4) The cap on the price band shall be less than or equal to one hundred and twenty per cent of the floor price.
- (5) The floor price or the final price shall not be less than the face value of the specified securities.

Explanation : For the purposes of sub-regulation (4), the "cap on the price band" includes cap on the coupon rate in case of convertible debt instruments.

Face value of equity shares [Regulation 31]

- (1) Subject to the provisions of the Companies Act, 1956, the Act and these regulations, an issuer making an initial public offer may determine the face value of the equity shares in the following manner:
 - (a) if the issue price per equity share is five hundred rupees or more, the issuer shall have the option to determine the face value at less than ten rupees per equity share:

Provided that the face value shall not be less than one rupee per equity share;
 - (b) if the issue price per equity share is less than five hundred rupees, the face value of the equity shares shall be ten rupees per equity share: Provided that nothing contained in this sub-regulation shall apply to initial public offer made by any Government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector.
- (2) The disclosure about the face value of equity shares (including the statement about the issue price being "X" times of the face value) shall be made in the advertisements, offer documents and application forms in identical font size as that of issue price or price band.

Explanation: For the purposes of this regulation, the term "infrastructure sector" includes the facilities or services as specified in Schedule X.

PROMOTERS' CONTRIBUTION

Minimum promoters' contribution [Regulation 32]

- (1) The promoters of the issuer shall contribute in the public issue as follows:
 - (a) in case of an initial public offer, not less than twenty per cent of the post issue capital

Provided that in case the post issue shareholding of the promoters is less than twenty per cent, alternative investment funds may contribute for the purpose of meeting the shortfall in minimum contribution as specified for promoters, subject to a maximum of ten per cent of the post issue capital.

- (b) in case of a further public offer, either to the extent of twenty per cent of the proposed issue size or to the extent of twenty per cent of the post-issue capital;
 - (c) in case of a composite issue, either to the extent of twenty per cent of the proposed issue size or to the extent of twenty per cent of the post-issue capital excluding the rights issue component.
- (2) In case of a public issue or composite issue of convertible securities, minimum promoters' contribution shall be as follows:
- (a) the promoters shall contribute twenty per cent as stipulated in clause (a), (b) or (c) of sub-regulation (1), as the case may be, either by way of equity shares or by way of subscription to the convertible securities:

Provided that if the price of the equity shares allotted pursuant to conversion is not predetermined and not disclosed in the offer document, the promoters shall contribute only by way of subscription to the convertible securities being issued in the public issue and shall undertake in writing to subscribe to the equity shares pursuant to conversion of such securities;
 - (b) in case of any issue of convertible securities which are convertible or exchangeable on different dates and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities;
 - (c) subject to the provisions of clauses (a) and (b) above, in case of an initial public offer of convertible debt instruments without a prior public issue of equity shares, the promoters shall bring in a contribution of at least twenty per cent of the project cost in the form of equity shares, subject to contributing at least twenty per cent of the issue size from their own funds in the form of equity shares:

Provided that if the project is to be implemented in stages, the promoters' contribution shall be with respect to total equity participation till the respective stage vis-a-vis the debt raised or proposed to be raised through the public issue.
- (3) In case of a further public offer or composite issue where the promoters contribute more than the stipulated minimum promoters' contribution, the allotment with respect to excess contribution shall be made at a price determined in terms of the provisions of regulation 76 or the issue price, whichever is higher.
- (4) The promoters shall satisfy the requirements of this regulation at least one day prior to the date of opening of the issue and the amount of promoters' contribution shall be kept in an escrow account with a scheduled commercial bank and shall be released to the issuer along with the release of the issue proceeds:

Provided that where the promoters' contribution has already been brought in and utilised, the issuer shall give the cash flow statement disclosing the use of such funds in the offer document:

Provided further that where the minimum promoters' contribution is more than one hundred crore rupees, the promoters shall bring in at least one hundred crore rupees before the date of opening of the issue and the remaining amount may be brought on pro rata basis before the calls are made to public.

Explanation.— For the purpose of this regulation:

- (I) Promoters' contribution shall be computed on the basis of the post-issue expanded capital:

- (a) assuming full proposed conversion of convertible securities into equity shares;
 - (b) assuming exercise of all vested options, where any employee stock options are outstanding at the time of initial public offer in terms of proviso (b) to sub-regulation (5) of regulation 26.
- (II) For computation of "weighted average price":
- (a) "weights" means the number of equity shares arising out of conversion of such specified securities into equity shares at various stages;
 - (b) "price" means the price of equity shares on conversion arrived at after taking into account predetermined conversion price at various stages.

Securities ineligible for minimum promoters' contribution [Regulation 33]

- (1) For the computation of minimum promoters' contribution, the following-specified securities shall not be eligible:
- (a) specified securities acquired during the preceding three years, if they are:
 - (i) acquired for consideration other than cash and revaluation of assets or capitalisation of intangible assets is involved in such transaction; or
 - (ii) resulting from a bonus issue by utilisation of revaluation reserves or unrealised profits of the issuer or from bonus issue against equity shares which are ineligible for minimum promoters' contribution;
 - (b) specified securities acquired by promoters I[and alternative investment funds] during the preceding one year at a price lower than the price at which specified securities are being offered to public in the initial public offer:

Provided that nothing contained in this clause shall apply:

- (i) if promoters [alternative investment funds, as applicable] pay to the issuer, the difference between the price at which specified securities are offered in the initial public offer and the price at which the specified securities had been acquired;
- (ii) if such specified securities are acquired in terms of the scheme under sections 391-394 of the Companies Act, 1956, as approved by a High Court, by promoters in lieu of business and invested capital that had been in existence for a period of more than one year prior to such approval;
- (iii) to an initial public offer by a Government company, statutory authority or corporation or any special purpose vehicle set up by any of them, which is engaged in infrastructure sector;
- (c) specified securities allotted to promoters][and alternative investment funds] during the preceding one year at a price less than the issue price, against funds brought in by them during that period, in case of an issuer formed by conversion of one or more partnership firms, where the partners of the erstwhile partnership firms are the promoters of the issuer and there is no change in the management:

Provided that specified securities, allotted to promoters against capital existing in such firms for a period of more than one year on a continuous basis, shall be eligible;

- (d) specified securities pledged with any creditor.

- (2) Specified securities referred to in clauses (a) and (c) of sub-regulation (1) shall be eligible for the computation of promoters' contribution, if such securities are acquired pursuant to a scheme which has been approved under sections 391-394 of the Companies Act, 1956.

Explanation.— For the purposes of clause (b) of sub-regulation (1), the term "infrastructure sector" includes the facilities or services as specified in Schedule X.



Requirement of minimum promoters' contribution not applicable in certain cases [Regulation 34]

The requirements of minimum promoters' contribution shall not apply in case of:

- (a) an issuer which does not have any identifiable promoter;
- (b) a further public offer, where the equity shares '[of the issuer] 2[***] are not infrequently traded in a recognised stock exchange for a period of at least three years and the issuer has a track record of dividend payment for at least immediately preceding three years:

Provided that where promoters propose to subscribe to the specified securities offered to the extent greater than higher of the two options available in clause (b) of sub-regulation (1) of regulation 32, the subscription in excess of such percentage shall be made at a price determined in terms of the provisions of regulation 76 or the issue price, whichever is higher;

- (c) rights issues.

Explanation.— For the purpose of clause (b), the words "infrequently traded" have the same meaning as assigned to them in Explanation to sub-regulation (5) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and the reference date for the purpose of computing the annualised trading turnover referred to in the said Explanation shall be the date of filing the draft offer document with the Board and in case of a fast track issue, the date of filing the offer document with the Registrar of Companies before opening of the issue.

RESTRICTION ON TRANSFERABILITY (LOCK-IN) OF PROMOTERS' CONTRIBUTION, ETC.

Date of commencement of lock-in and inscription of non-transferability [Regulation 35]

- (1) Save as otherwise provided in this Chapter, specified securities held by promoters and persons other than promoters shall not be transferable (hereinafter referred to as "lock-in") from the date of allotment of the specified securities in the proposed public issue for the period stipulated in this Chapter.
- (2) The certificate of specified securities which are subject to lock-in shall contain the inscription "non-transferable" and the lock-in period and in case such specified securities are dematerialised, the issuer shall ensure that lock-in is recorded by the depository.
- (3) Where the specified securities which are subject to lock-in are partly paid-up and the amount called-up on such specified securities is less than the amount called-up on the specified securities issued to the public, the "lock-in" shall end only on the expiry of three years after such specified securities have become pari passu with the specified securities issued to the public.

Lock-in of specified securities held by promoters [Regulation 36]

In a public issue, the specified securities held by promoters shall be locked-in for the period stipulated hereunder:

- (a) minimum promoters' contribution [including contribution made by alternative investment funds, referred to in proviso to clause (a) of sub-regulation (1) of regulation 32,] shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;
- (b) promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of one year:

Provided that excess promoters' contribution as provided in proviso to clause (b) of regulation 34 shall not be subject to lock-in.

Explanation.— For the purposes of this clause, the expression "date of commencement of commercial production" means the last date of the month in which commercial production in a manufacturing company is expected to commence as stated in the offer document.

Lock-in of specified securities held by persons other than promoters [Regulation 37]

In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:

Provided that nothing contained in this regulation shall apply to:

- (a) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;
- (b) equity shares held by a venture capital fund or alternative investment fund of Category I or a foreign venture capital investor:

Provided that such equity shares shall be locked-in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

Explanation.- For the purpose of clause (b), in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid and no further consideration is payable at the time of their conversion.

Lock-in of specified securities lent to stabilising agent under green shoe option [Regulation 38]

The lock-in provisions of this Chapter shall not apply with respect to the specified securities lent to stabilising agent for the purpose of green shoe option, during the period starting from the date of lending of such specified securities and ending on the date on which they are returned to the lender in terms of sub-regulation (5) or (6) of regulation 45:

Provided that the specified securities shall be locked-in for the remaining period from the date on which they are returned to the lender.

Pledge of locked-in specified securities [Regulation 39]

Specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution, subject to the following:

- (a) if the specified securities are locked-in in terms of clause (a) of regulation 36, the loan has been granted by such bank or institution for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the terms of sanction of the loan;
- (b) if the specified securities are locked-in in terms of clause (b) of regulation 36 and the pledge of specified securities is one of the terms of sanction of the loan.

Transferability of locked-in specified securities [Regulation 40]

Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the specified securities held by promoters and locked-in as per regulation 36 may be transferred to another promoter or any person of the promoter group or a new promoter or a person in control of the issuer and the specified securities held by persons other than promoters and locked-in as per regulation 37 may be transferred to any other person holding the specified securities which are locked-in along with the securities proposed to be transferred:

Provided that lock-in on such specified securities shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer them till the lock-in period stipulated in these regulations has expired.



MINIMUM OFFER TO PUBLIC, RESERVATIONS, ETC.

Minimum net offer to public [Regulation 41]

The minimum net offer to the public shall be subject to the provisions of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulations) Rules, 1957.

Reservation on competitive basis [Regulation 42]

- (1) In case of an issue made through the book building process, the issuer may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of the following categories of persons:
 - (a) employees; and in case of a new issuer, persons who are in the permanent and full time employment of the promoting companies excluding the promoters and an immediate relative of the promoter of such companies;
 - (b) shareholders (other than promoters) of:
 - (i) listed promoting companies, in case of a new issuer; and
 - (ii) listed group companies, in case of an existing issuer:

Provided that if the promoting companies are designated financial institutions or state and central financial institutions, the shareholders of such promoting companies shall not be eligible for the reservation on competitive basis;
 - (c) persons who, as on the date of filing the draft offer document with the Board, are associated with the issuer as depositors, bondholders or subscribers to services of the issuer making an initial public offer :

Provided that the issuer shall not make the reservation to the issue management team, syndicate members, their promoters, directors and employees and for the group or associate companies of the issue management team and syndicate members and their promoters, directors and employees.
- (2) In case of an issue made other than through the book building process, the issuer may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of the following categories of persons:
 - (a) employees; and in case of a new issuer, persons who are in the permanent and full time employment of the promoting companies excluding the promoters and an immediate relative of the promoter of such companies;
 - (b) shareholders (other than promoters) of:
 - (i) listed promoting companies, in the case of a new issuer; and
 - (ii) listed group companies, in the case of an existing issuer:

Provided that if the promoting companies are designated financial institutions or state and central financial institutions, the shareholders of such promoting companies shall not be eligible for the reservation on competitive basis.
- (3) In case of a further public offer (not being a composite issue), the issuer may make reservation on competitive basis out of the issue size excluding promoters' contribution and net offer to public in favour of retail individual shareholders of the issuer.
- (4) The reservation on competitive basis shall be subject to following conditions:
 - (a) the aggregate of reservations for employees shall not exceed '[five per cent of the post issue capital of the issuer];'

- (b) reservation for shareholders shall not exceed ten per cent of the issue size;
 - (c) reservation for persons who as on the date of filing the draft offer document with the Board, have business association as depositors, bondholders and subscribers to services with the issuer making an initial public offer shall not exceed five per cent of the issue size;
 - (d) no further application for subscription in the net offer-to public category shall be entertained from any person (except an employee and retail individual shareholder) in favour of whom reservation on competitive basis is made;
 - (e) any unsubscribed portion in any reserved category may be added to any other reserved category and the unsubscribed portion, if any, after such inter se adjustments among the reserved categories shall be added to the net offer to the public category;
 - (f) in case of under subscription in the net offer to the public category, spill-over to the extent of under subscription shall be permitted from the reserved category to the net public offer category;
 - (g) value of allotment to any employee in pursuance of reservation made under sub-regulation (1) or (2), as the case may be, shall not exceed 3[two] lakh rupees.]
- (5) In the case of reserved categories, a single applicant in the reserved category may make an application for a number of specified securities which exceeds the reservation.

Explanation.- For the purposes of this regulation:

- (I) The term "reservation on competitive basis" means reservation wherein specified securities are allotted in proportion of the number of specified securities applied for in respect of a particular reserved category to the number of specified securities reserved for that category;
- (II) The term "new issuer" means an issuer which has not completed twelve months of commercial operation and its audited operative results are not available.

Allocation in net offer to public [Regulation 43]

- (1) No person shall make an application in the net offer to public category for that number of specified securities which exceeds the number of specified securities offered to public.
- (2) In an issue made through the book building process under sub-regulation (1) of regulation 26, the allocation in the net offer to public category shall be as follows:
 - (a) not less than thirty five per cent to retail individual investors;
 - (b) not less than fifteen per cent to non-institutional investors;
 - (c) not more than fifty per cent to qualified institutional buyers, five per cent of which shall be allocated to mutual funds:

Provided that in addition to five per cent allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.
- (2A) In an issue made through the book building process under sub-regulation (2) of regulation 26, the allocation in the net offer to public category shall be as follows:
 - (a) not more than ten per cent to retail individual investors;
 - (b) not more than fifteen per cent to non-institutional investors;
 - (c) not less than seventy five per cent to qualified institutional buyers, five per cent of which shall be allocated to mutual funds:



Provided that in addition to five per cent allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.]

- (3) In an issue made through the book building process, the issuer may allocate upto sixty per cent of the portion available for allocation to qualified institutional buyers to an anchor investor in accordance with the conditions specified in this regard in Schedule XI.
- (4) In an issue made other than through the book building process, allocation in the net offer to public category shall be made as follows:
 - (a) minimum fifty per cent to retail individual investors; and
 - (b) remaining to:
 - (i) individual applicants other than retail individual investors; and
 - (ii) other investors including corporate bodies or institutions, irrespective of the number of specified securities applied for;
 - (c) the unsubscribed portion in either of the categories specified in clause (a) or (b) may be allocated to applicants in the other category.

Explanation.- For the purpose of sub-regulation (4), if the retail individual investor category is entitled to more than fifty per cent on proportionate basis, the retail individual investors shall be allocated that higher percentage.

Safety-net arrangement [Regulation 44]

An issuer may provide for a safety-net arrangement for the specified securities offered in any public issue in consultation with the merchant banker after ascertaining the financial capacity of the person offering the safety-net arrangement, subject to disclosures specified in this regard in Part A of Schedule VIII:

Provided that any such arrangement shall provide for an offer to purchase up to a maximum of one thousand specified securities per original resident retail individual allottee at the issue price within a period of six months from the last date of despatch of security certificates or credit of demat account.

Explanation.— For the purpose of this regulation, the term "safety net arrangement" means an arrangement provided by the issuer under which a person offers to purchase specified securities from the original resident retail individual allottees at the issue price.

Price stabilisation through green shoe option [Regulation 45]

- (1) An issuer making a public issue of specified securities may provide green shoe option for stabilising the post listing price of its specified securities, subject to the following:
 - (a) the issuer has been authorized, by a resolution passed in the general meeting of shareholders approving the public issue, to allot specified securities to the stabilising agent, if required, on the expiry of the stabilisation period;
 - (b) the issuer has appointed a merchant banker or book runner, as the case may be, from amongst the merchant bankers appointed by the issuer as a stabilising agent, who shall be responsible for the price stabilisation process;
 - (c) prior to filing the draft offer document with the Board, the issuer and the stabilising agent have entered into an agreement, stating all the terms and conditions relating to the green shoe option including fees charged and expenses to be incurred by the stabilising agent for discharging his responsibilities;
 - (d) prior to filing the offer document with the Board, the stabilising agent has entered into an agreement with the promoters or pre-issue shareholders or both for borrowing specified

- securities from them in accordance with clause (g) of this sub-regulation, specifying therein the maximum number of specified securities that may be borrowed for the purpose of allotment or allocation of specified securities in excess of the issue size (hereinafter referred to as the "over-allotment"), which shall not be in excess of fifteen per cent of the issue size;
- (e) subject to clause (d), the lead merchant banker or lead book runner, in consultation with the stabilising agent, shall determine the amount of specified securities to be over-allotted in the public issue;
 - (f) the draft and final offer documents shall contain all material disclosures about the green shoe option specified in this regard in Part A of Schedule VIII;
 - (g) in case of an initial public offer pre-issue shareholders and promoters and in case of a further public offer pre-issue shareholders holding more than five per cent specified securities and promoters, may lend specified securities to the extent of the proposed over-allotment;
 - (h) the specified securities borrowed shall be in dematerialised form and allocation of these securities shall be made pro rata to all successful applicants.
- (2) For the purpose of stabilisation of post'-listing price of the specified securities, the stabilising agent shall determine the relevant aspects including the timing of buying such securities, quantity to be bought and the price at which such securities are to be bought from the market.
- (3) The stabilisation process shall be available for a period not exceeding thirty days from the date on which trading permission is given by the recognised stock exchanges in respect of the specified securities allotted in the public issue.
- (4) The stabilising agent shall open a special account, distinct from the issue account, with a bank for crediting the monies received from the applicants against the over-allotment and a special account with a depository participant for crediting specified securities to be bought from the market during the stabilisation period out of the monies credited in the special bank account.
- (5) The specified securities bought from the market and credited in the special account with the depository participant shall be returned to the promoters or pre-issue shareholders immediately, in any case not later than two working days after the end of the stabilization period.
- (6) On expiry of the stabilisation period, if the stabilising agent has not been able to buy specified securities from the market to the extent of such securities over-allotted, the issuer shall allot specified securities at issue price in dematerialised form to the extent of the shortfall to the special account with the depository participant, within five days of the closure of the stabilisation period and such specified securities shall be returned to the promoters or pre-issue shareholders by the stabilising agent in lieu of the specified securities borrowed from them and the account with the depository participant shall be closed thereafter.
- (7) The issuer shall make a listing application in respect of the further specified securities allotted under sub-regulation (6), to all the recognised stock exchanges where the specified securities allotted in the public issue are listed and the provisions of Chapter VII shall not be applicable to such allotment.
- (8) The stabilising agent shall remit the monies with respect to the specified securities allotted under sub-regulation (6) to the issuer from the special bank account.
- (9) Any monies left in the special bank account after remittance of monies to the issuer under sub-regulation (8) and deduction of expenses incurred by the stabilising agent for the stabilisation process shall be transferred to the Investor Protection and Education Fund established by the Board and the special ban ; account shall be closed soon thereafter.
- (10) The stabilising agent shall submit a report to the stock exchange on a daily basis during the stabilisation period and a final report to the Board in the format specified in Schedule XII.



- (11) The stabilising agent shall maintain a register for a period of at least three years from the date of the end of the stabilisation period and such register shall contain the following particulars:
- The names of the promoters or pre-issue shareholder from whom the specified securities were borrowed and the number of specified securities borrowed from each of them;
 - The price, date and time in respect of each transaction effected in the course of the stabilisation process; and
 - The details of allotment made by the issuer on expiry of the stabilisation process.

Period of subscription [Regulation 46]

- Except as otherwise provided in these regulations] a public issue shall be kept open for at least three working days but not more than .en working days including the days for which the issue is kept open in case of revision in price band.
- In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the red herring prospectus shall be extended for a minimum period of three working days:

Provided that the total bidding period shall not exceed ten working days.

Pre-issue advertisement for public Issue [Regulation 47]

- Subject to the provisions of section 66 of the Companies Act, 1956, the issuer shall, after registering the red herring prospectus (in case of a b)ok built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.
- The pre-issue advertisement shall be in the format and shall contain the disclosures specified in Part A of Schedule XIII.

Issue opening and issue closing advertisement for public issue [Regulation 48].

An issuer may issue advertisements for issue opening and issue closing advertisements, which shall be in the formats specified in Parts B and C of Schedule XIII.

Minimum application value [Regulation 49]

- The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of [ten thousand rupees to fifteen thousand rupees].
- The issuer shall invite applications in multiples of the minimum application value, an illustration whereof is given in Schedule XIV.
- The minimum sum payable on application shall not be less than twenty five per cent of the issue price:

Provided that in case of an offer for sale, the issue price payable for each specified security shall be brought in at the time of application.

Explanation.- For the purpose of this regulation, "minimum application value" shall be with reference to the issue price of the specified securities and not with reference to the amount payable on application.

Allotment procedure and basis of allotment [Regulation 50]

- The allotment of specified securities to applicants other than retail individual investors and] anchor investors shall be on proportionate basis within the specified investor categories and the number

of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed by the issuer :

Provided that value of specified securities allotted to any person in pursuance of reservation made under clause (a) of sub-regulation (1) or clause (a) of sub-regulation (2) of regulation 42, shall not exceed two lakh rupees.

- (1A) The allotment of specified securities to each retail individual investor shall not be less than the minimum bid lot, subject to availability of shares in retail individual investor category, and the remaining available shares, if any, shall be allotted on a proportionate basis.
- (2) The executive director or managing director of the designated stock exchange along with the post issue lead merchant bankers and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in Schedule XV.

Utilisation of subscription money [Regulation 51]

The post-issue lead merchant banker shall ensure that moneys received in respect of the issue are released to the issuer in compliance with the provisions of section 73 of the Companies Act, 1956.

Annual Updation of Offer Document [Regulation 51A]

The disclosures made in the red herring prospectus while making an initial public offer, shall be updated on an annual basis by the issuer and shall be made publicly accessible in the manner specified by the Board.

RIGHTS ISSUE

Record date [Regulation 52]

- (1) A listed issuer making a rights issue shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue.
- (2) The issuer shall not withdraw rights issue after announcement of the record date.
- (3) If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for listing of any of its specified securities on any recognised stock exchange for a period of twelve months from the record date announced under sub-regulation (1):

Provided that the issuer may seek listing of its equity shares allotted pursuant to conversion or exchange of convertible securities issued prior to the announcement of the record date, on the recognised stock exchange where its securities are listed.

Restriction on rights issue [Regulation 53]

- (1) No issuer shall make a rights issue of equity shares 2[***] unless it has made reservation of equity shares of the same class in favour of the holders of 3[***] outstanding compulsorily convertible debt instruments, if any,] in proportion to the convertible part thereof.
- (2) The equity shares 4[so] reserved for the holders of fully or partially [compulsorily] convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms 5[at] which the equity shares offered in the rights issue were issued.

Letter of offer, abridged letter of offer, pricing and period of subscription [Regulation 54]

- (1) The abridged letter of offer, along with application form, shall be dispatched through registered post or speed post to all the existing shareholders at least three days before the date of opening of the issue :

Provided that the letter of offer shall be given by the issuer or lead merchant banker to any existing shareholder who has made a request in this regard.



- (2) The shareholders who have not received the application form may apply in writing on a plain paper, along with the requisite application money.
- (3) The shareholders making application otherwise than on the application form shall not renounce their rights and shall not utilise the application form for any purpose including renunciation even if it is received subsequently.
- (4) Where a shareholder makes an application on application form as well as on plain paper, the application is liable to be rejected.
- (5) The issue price shall be decided before determining the record date which shall be determined in consultation with the designated stock exchange.
- (6) A rights issue shall be open for subscription for a minimum period of fifteen days and for a maximum period of thirty days.
- (7) The issuer shall give only one payment option out of the following to all the investors—
 - (a) part payment on application with balance money to be paid in calls; or
 - (b) full payment on application:

Provided that where the issuer has given the part payment option to investors, such issuer shall obtain the necessary regulatory approvals to facilitate the same.]

Pre-Issue Advertisement for rights issue [Regulation 55]

- (1) The issuer shall issue an advertisement for rights issue disclosing the following:
 - (a) the date of completion of despatch of abridged letter of offer and the application form;
 - (b) the centres other than registered office of the issuer where the shareholders or the persons entitled to receive the rights entitlements may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;
 - (c) a statement that if the shareholders entitled to receive the rights entitlements have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;
 - (d) a format to enable the shareholders entitled to apply against their rights entitlements, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of equity shares held, ledger folio numbers, depository participant ID, client ID, number of equity shares entitled and applied for, additional shares if any, amount to be paid along with application, and particulars of cheque, etc. to be drawn in favour of the issuer's account;
 - (e) a statement that the applications can be directly sent by the shareholders entitled to apply against rights entitlements through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;
 - (f) a statement to the effect that if the shareholder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.
- (2) The advertisement shall be made in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated, at least three days before the date of opening of the issue.

Reservation for employees along with rights issue [Regulation 55A].

Subject to other applicable provision of these regulations the issuer may make reservation for employees alongwith rights issue subject to the condition that value of allotment to any employee shall not exceed two lakh rupees.]

Utilisation of funds raised in rights issue [Regulation 56]

The issuer shall utilise funds collected in rights issues after the finalisation of the basis of allotment.

MANNER OF DISCLOSURES IN THE OFFER DOCUMENTS

Manner of disclosures in the offer document [Regulation 57]

- (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.
 - (2) Without prejudice to the generality of sub-regulation (1):
 - (a) the red-herring prospectus, shelf prospectus and prospectus shall contain:
 - (i) the disclosures specified in Schedule II of the Companies Act, 1956; and
 - (ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof;
 - (iii) the letter of offer shall contain disclosures as specified in Part E of Schedule VD3
- Provided that in the case of a further public offer or a rights issue, the offer document shall be deemed to be in compliance with the provisions of this regulation, if suitable references are made to the updated disclosures in the offer document referred to in regulation 51A of these regulations.

Abridged prospectus, abridged letter of offer and ASBA [Regulation 58]

- (1) The abridged prospectus shall contain the disclosures as specified in Part D of Schedule VIII.
- (2) The abridged letter of offer shall contain the disclosures as specified in Part F of Schedule VIII.
- (3) The abridged prospectus and abridged letter of offer shall not contain any matter extraneous to the contents of the offer document.
- (4) Every application form including ASBA form distributed by the issuer or any other person in relation to an issue shall be accompanied by a copy of the abridged prospectus or abridged letter of offer, as the case may be.
- (5) In all, -
 - (i) Public issues, the issuer shall accept bids using only ASBA facility in the manner specified by the Board;
 - (ii) Rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by the Board:

Provided that in case of qualified institutional buyers and non-institutional investors the issuer shall accept bids using ASBA facility only

GENERAL OBLIGATIONS OF ISSUER AND INTERMEDIARIES WITH RESPECT TO PUBLIC ISSUE AND RIGHTS ISSUE

Prohibition on payment of incentives [Regulation 59]

No person connected with the issue shall offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application for allotment of specified securities: Provided that nothing contained in this regulation shall apply to fees or commission for services rendered in relation to the issue.



Explanation.- For the purpose of this regulation, the expression "person connection with the issue" includes a person connected with the distribution of the issue.

Public communications, publicity materials, advertisements and research reports [Regulation 60]

- (1) Any public communication including advertisement and publicity material issued by the issuer or research report made by the issuer or any intermediary concerned with the issue or their associates shall contain only factual information and shall not contain projections, estimates, conjectures, etc. or any matter extraneous to the contents of the offer document.
- (2) All public communications and publicity material issued or published in any media during the period commencing from the date of the meeting of the board of directors of the issuer in which the public issue or rights issue is approved till the date of filing draft offer document with the Board shall be consistent with its past practices:

Provided that where such public communication or publicity material is not consistent with the past practices of the issuer, it shall be prominently displayed or announced in such public communication or publicity material that the issuer is proposing to make a public or rights issue of specified securities in the near future and is in the process of filing a draft offer document with the Board.
- (3) All public communications and publicity material issued or published in any media during the period commencing from the date of filing draft offer document with the Board till the date of allotment of securities offered in the issue, shall prominently disclose that:
 - (a) the issuer is proposing to make a public issue or rights issue of the specified securities and has filed a draft offer document with the Board or has filed the red herring prospectus or prospectus with the Registrar of Companies or the letter of offer with the designated stock exchange, as the case may be.
 - (b) the draft offer document, red herring prospectus or final offer document, as the case may be, is available on the website of the Board, lead merchant bankers or lead book runners.

Provided that requirements of this sub-regulation shall not be applicable in case of product advertisements of the issuer
- (4) The issuer shall make prompt, true and fair disclosure of all material developments which take place during the following period mentioned in this sub-regulation, relating to its business and securities and also relating to the business and securities of its subsidiaries, group companies, etc., which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had issued pre-issue advertisement under regulation 47 or regulation 55, as the case may be:
 - (a) in case of public issue, between the date of registering final prospectus or the red herring prospectus, as the case may be, with the Registrar of Companies, and the date of allotment of specified securities;
 - (b) in case of a rights issue, between the date of filing the letter of offer with the designated stock exchange and the date of allotment of the specified securities.
- (5) The issuer shall not, directly or indirectly, release, during any conference or at any other time, any material or information which is not contained in the offer document.
- (6) In respect of all public communications, issue advertisements and publicity materials, the issuer shall obtain approval from the lead merchant bankers responsible for marketing the issue and shall also make copies of all issue related materials available with the lead merchant bankers at least till the allotment is completed.
- (7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:
 - (a) it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;

- (b) if it reproduces or purports to reproduce any information contained in an offer document, it shall reproduce such information in full and disclose all relevant facts and not be restricted to select extracts relating to that information;
 - (c) it shall be set forth in a clear, concise and understandable language;
 - (d) it shall not include any issue slogans or brand names for the issue except the normal commercial name of the issuer or commercial brand names of its products already in use;
 - (e) if it presents any financial data, data for the past three years shall also be included along with particulars relating to sales, gross profit, net profit, share capital, reserves, earnings per share, dividends and the book values;
 - (f) no advertisement shall use extensive technical, legal terminology or complex language and excessive details which may distract the investor;
 - (g) no issue advertisement shall contain statements which promise or guarantee rapid increase in profits;
 - (h) no issue advertisement shall display models, celebrities, fictional characters, landmarks or caricatures or the likes;
 - (i) no issue advertisement shall appear in the form of crawlers (the advertisements which run simultaneously with the programme in a narrow strip at the bottom of the television screen) on television;
 - (j) in any issue advertisement on television screen, the risk factors shall not be scrolled on the television screen and the advertisement shall advise the viewers to refer to the red herring prospectus or other offer document for details;
 - (k) no issue advertisement shall contain slogans, expletives or non-factual and unsubstantiated titles;
 - (l) if an advertisement or research report contains highlights, it shall also contain risk factors with equal importance in all respects including print size of not less than point seven size;
 - (m) an issue advertisement displayed on a billboard shall not contain information other than that specified in Parts A, B and C of Schedule XIII, as applicable;
 - (n) an issue advertisement which contains highlights or information other than the details contained in the format as specified in Parts A and B of Schedule XIII shall contain risk factors.
- (8) No advertisement shall be issued giving any impression that the issue has been fully subscribed or oversubscribed during the period the issue is open for subscription.
- (9) An announcement regarding closure of issue shall be made only after the lead merchant banker(s) is satisfied that at least ninety per cent of the offer through offer document has been subscribed and a certificate has been obtained to that effect from the registrar to the issue:
Provided that such announcement shall not be made before the date on which the issue is to be closed.
- (10) No advertisement or distribution material with respect to the issue shall contain any offer of incentives, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise.
- (11) No product advertisement shall contain any reference, directly or indirectly, to the performance of the issuer during the period commencing from the date of the resolution of the board of directors of the issuer approving the public issue or rights issue till the date of allotment of specified securities offered in such issue.



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- (12) A research report may be prepared only on the basis of information, disclosed to the public by the issuer by updating the offer document or otherwise.
 - (13) No selective or additional information or information which is extraneous to the information disclosed to the public through the offer document or otherwise, shall be given by the issuer or any member of the issue management team or syndicate to any particular section of the investors or to any research analyst in any manner whatsoever, including at road shows, presentations, in research or sales reports or at bidding centres.
 - (14) The merchant bankers shall submit a compliance certificate in the format specified in Part D of Schedule XIII, for the period between the date of filing the draft offer document with the Board and the date of closure of the issue, in respect of news reports appearing in any of the following media:
 - (a) newspapers mentioned in sub-regulation (3) of regulation 9;
 - (b) major business magazines;
 - (c) print and electronic media controlled by a media group where the media group has a private treaty/shareholders' agreement with the issuer or promoters of the issuer.

Explanation.- For the purpose of this regulation:

- (I) "public communication or publicity material" includes corporate, product and issue advertisements of the issuer, interviews by its promoters, directors, duly authorized employees or representatives of the issuer, documentaries about the issuer or its promoters, periodical reports and press releases.
- (II) An issue advertisement shall be considered to be misleading, if it contains:
 - (a) Statements made about the performance or activities of the issuer without necessary explanatory or qualifying statements, which may give an exaggerated picture of such performance or activities.
 - (b) An inaccurate portrayal of past performance or its portrayal in a manner which implies that past gains or income will be repeated in the future.

Copies of offer documents to be available to public [Regulation 61]

- (1) The issuer and lead merchant bankers shall ensure that the contents of offer documents hosted on the websites as required in these regulations are the same as that of their printed versions as filed with the Registrar of Companies, Board and the stock exchanges.
- (2) The lead merchant bankers and the recognised stock exchange shall provide copies of the draft offer document and final offer document to the public as and when requested.
- (3) The lead merchant bankers or the recognised stock exchange may charge a reasonable sum for providing the copy of the offer document.

Redressal of investor grievances [Regulation 62]

The post-issue lead merchant bankers shall actively associate himself with post-issue activities such as allotment, refund, despatch and giving instructions to syndicate members, Self-Certified Syndicate Banks and other intermediaries and shall regularly monitor redressal of investor grievances arising therefrom.

Appointment of Compliance Officer [Regulation 63]

The issuer shall appoint a compliance officer who shall be responsible for monitoring the compliance of the securities laws and for redressal of investors' grievances.

Explanation.— For the purpose of this regulation, the term "securities laws" means the Companies Act, 1956, the Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the rules and regulations made thereunder and the regulations, general or special orders, guidelines or circulars made or issued by the Board.

Due diligence [Regulation 64]

- (1) The lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents.
- (2) The lead merchant bankers shall call upon the issuer, its promoters or directors or in case of an offer for sale, the selling shareholders, to fulfill their obligations as disclosed by them in the offer document and as required in terms of these Regulations.
- (3) The post-issue merchant banker shall continue to be responsible for post-issue activities till the subscribers have received the securities certificates, credit to their demat account or refund of application moneys and the listing agreement is entered into by the issuer with the stock exchange and listing/trading permission is obtained.
- (4) The responsibility of the lead merchant banker shall continue even after the completion of issue process.

Post-issue reports [Regulation 65]

- (1) In public issue, the lead merchant banker shall submit final post-issue report as specified in Part C of Schedule XVI, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.
- (2) In rights issue, the lead merchant banker shall submit post-issue reports as follows:-
 - (a) initial post issue report as specified in Part B of Schedule XVI, within three days of closure of the issue;
 - (b) final post issue report as specified in Part D of Schedule XVI, within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue.
- (3) The lead merchant banker shall submit a due diligence certificate as per the format specified in Form G of Schedule VI, along with the final post issue report.

Post-issue Advertisements [Regulation 66]

- (1) The post-issue merchant banker shall ensure that advertisement giving details relating to over subscription, basis of allotment, number, value and percentage of all applications including ASBA, number, value and percentage of successful allottees for all applications including ASBA, date of completion of despatch of refund orders or instructions to Self-Certified Syndicate Banks by the Registrar, date of despatch of certificates and date of filing of listing application, etc. is released within ten days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.
- (2) The post-issue merchant banker shall ensure that issuer, advisors, brokers or any other entity connected with the issue do not publish any advertisement stating that issue has been over subscribed or indicating investors' response to the issue, during the period when the public issue is still open for subscription by the public.



Co-ordination with Intermediaries [Regulation 67]

- (1) The post-issue merchant banker shall maintain close co-ordination with the registrars to the issue and arrange to depute its officers to the offices of various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from collecting bank branches and/ or Self Certified Syndicate Banks, processing of the applications including application form for ASBA and other matters till the basis of allotment is finalised, despatch of security certificates and refund orders are completed and securities are listed.
- (2) Any act of omission or commission on the part of any of the intermediaries noticed during such visits shall be duly reported to the Board.
- (3) In case there is a devolvement on underwriters, the merchant banker shall ensure that the notice for devolvement containing the obligation of the underwriters is issued within a period of ten days from the date of closure of the issue.
- (4) In case of under subscribed issues, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting devolvement to the Board in the format specified in Schedule XVII.
- (5) The post-issue merchant banker shall confirm to the bankers to the issue by way of copies of listing and trading approvals that all formalities in connection with the issue have been completed and that the banker is free to release the money to the issuer or release the money for refund in case of failure of the issue.

Audited financial statements in the offer document [Regulation 68]

The merchant banker shall ensure that the information contained in the offer document and the particulars as per audited financial statements in the offer document are not more than six months old from the issue opening date.

Other responsibilities [Regulation 69]

- (1) The post-issue merchant banker shall ensure that the despatch of refund orders, allotment letters and share certificates is done by way of registered post or certificate of posting, as may be applicable.
- (2) The post-issue merchant banker shall ensure payment of interest to the applicants for delayed despatch of allotment letters, refund orders, etc. as per the disclosure made in the offer document.
- (3) In case of absence of definite information about subscription figures, the issue shall be kept open for the required number of days to avoid any dispute, at a later date, by the underwriters in respect of their liability.
- (4) The issuer shall ensure that transactions in securities by the promoter and promoter group during the period between the date of registering the offer document with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be and the date of closure of the issue shall be reported to the recognised stock exchanges where the specified securities of the issuer are listed, within twenty four hours of the transactions.

PREFERENTIAL ISSUE

Chapter VII not to apply in certain cases [Regulation 70]

- (1) The provisions of this Chapter shall not apply where the preferential issue of equity shares is made:
 - (a) pursuant to conversion of loan or option attached to convertible debt instruments in terms of sub-sections (3) and (4) of section 81 of the Companies Act, 1956;
 - (b) pursuant to a scheme approved by a High Court under sections 391 to 394 of the Companies Act, 1956;
 - (c) in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985:
Provided that the lock-in provisions of this Chapter shall apply to preferential issue of equity shares mentioned in clause (c).
- (2) The provisions of this Chapter relating to pricing and lock-in shall not apply to equity shares allotted to any financial institution within the meaning of sub-clauses (ia) and (ii) of clause (h) of section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (51 of 1993).
- (3) The provisions of regulation 73 and regulation 76 shall not apply to a preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, where the Board has granted relaxation to the issuer in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, if adequate disclosures about the plan and process proposed to be followed for identifying the allottees are given in the explanatory statement to notice for the general meeting of shareholders.
- (4) The provisions of sub-regulation (2) of regulation 72 and sub-regulation (6) of regulation 78 shall not apply to a preferential issue of specified securities where the proposed allottee is a Mutual Fund registered with the Board or Insurance Company registered with Insurance Regulatory and Development Authority.

Relevant date [Regulation 71]

For the purpose of this Chapter, "relevant date" means:

- (a) in case of preferential issue of equity shares, the date thirty days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue:
Provided that in case of preferential issue of equity shares pursuant to a scheme approved under the Corporate Debt Restructuring Framework of Reserve Bank of India, the date of approval of the Corporate Debt Restructuring Package shall be the relevant date;
- (b) in case of preferential issue of convertible securities, either the relevant date referred to in clause (a) of this regulation or a date thirty days prior to the date on which the holders of the convertible securities become entitled to apply for the equity shares.

Explanation.— Where the relevant date falls on a Weekend/Holiday, the day preceding the Weekend/Holiday will be reckoned to be the relevant date.

Frequently traded shares [Regulation 71A]

For the purpose of this Chapter, "frequently traded shares" means shares of an issuer, in which the traded turnover on any stock exchange during the twelve calendar months preceding the relevant date, is at least ten per cent of the total number of shares of such class of shares of the issuer.

Provided that where the share capital of a particular class of shares of the issuer is not identical throughout such period, the weighted average number of total shares of such class of the issuer shall represent the total number of shares.



Conditions for preferential issue [Regulation 72]

- (1) A listed issuer may make a preferential issue of specified securities, if:
 - (a) a special resolution has been passed by its shareholders;
 - (b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form;
 - (c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;
 - (d) the issuer has obtained the Permanent Account Number of the proposed allottees.
- (2) The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date:

Provided that in respect of the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, the Board may grant relaxation from the requirements of this sub-regulation, if the Board has granted relaxation in terms of regulation 29A of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to such preferential allotment.

Explanation.—Where any person belonging to promoter(s) or the promoter group has sold his equity shares in the issuer during the six months preceding the relevant date, the promoter(s) and promoter group shall be ineligible for allotment of specified securities on preferential basis.

- (3) Where any person belonging to promoter(s) or the promoter group has previously subscribed to warrants of an issuer but failed to exercise the warrants, the promoter(s) and promoter group shall be ineligible for issue of specified securities of such issuer on preferential basis for a period of one year from:
 - (a) the date of expiry of the tenure of the warrants due to non-exercise of the option to convert; or
 - (b) the date of cancellation of the warrants, as the case may be.

Disclosures [Regulation 73]

- (1) The issuer shall, in addition to the disclosures required under section 173 of the Companies Act, 1956 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing-special resolution:
 - (a) the objects of the preferential issue;
 - (b) the proposal of the promoters, directors or key management personnel of the issuer to subscribe to the offer;
 - (c) the shareholding pattern of the issuer before and after the preferential issue;
 - (d) the time within which the preferential issue shall be completed;
 - (e) the identity of the natural persons who are the ultimate beneficial owner of the shares proposed to be allotted and/or who ultimately control, the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any, in the issuer consequent to the preferential issue;

Provided that if there is any listed company, mutual fund, bank or insurance company in the chain of ownership of the proposed allottee, no further disclosure will be necessary.

- (f) an undertaking that the issuer shall re-compute the price of the specified securities in terms of the provision of these regulations where it is required to do so;

- (g) an undertaking that if the amount payable on account of there-computation of price is not paid within the time stipulated in these regulations, the specified securities shall continue to be locked-in till the time such amount is paid by the allottees.
- (2) The issuer shall place a copy of the certificate of its statutory auditor before the general meeting of the shareholders, considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations.
- (3) Where specified securities are issued on a preferential basis to promoters, their relatives, associates and related entities for consideration other than cash, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent qualified valuer, which shall be submitted to the recognised stock exchanges where the equity shares of the issuer are listed:
Provided that if the recognised stock exchange is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may obtain any information, as deemed necessary, from the issuer.
- (4) The special resolution shall specify the relevant date on the basis of which price of the equity shares to be allotted on conversion or exchange of convertible securities shall be calculated.

Explanation.— For the purpose of sub-regulation (3), the term 'valuer' has the same meaning as is assigned to it under clause (r) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002.

Allotment pursuant to special resolution [Regulation 74]

- (1) Allotment pursuant to the special resolution shall be completed within a period of fifteen days from the date of passing of such resolution:
Provided that where any application for exemption from the applicability of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 or any approval or permission by any regulatory authority or the Central Government for allotment is pending, the period of fifteen days shall be counted from the date of order on such application or the date of approval or permission, as the case may be.
Provided further that where the Board has granted relaxation to the issuer in terms of regulation 29A of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, shall be made by it within such time as may be specified by the Board in its order granting the relaxation.
Provided further that requirement of allotment within fifteen days shall not apply-to allotment of specified securities on preferential basis pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India.
- (2) If the allotment of specified securities is not completed within fifteen days from the date of special resolution, a fresh special resolution shall be passed and the relevant date for determining the price of specified securities under this Chapter will be taken with reference to the date of latter special resolution.
- (3) Notwithstanding anything contained in this regulation, where a preferential allotment is made that attracts an obligation to make an open offer for shares of the issuer under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and there is no offer made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the period of fifteen days shall be counted from the expiry of the period specified in sub-regulation (1) of regulation 20 or date of receipt of all statutory approvals required for the completion of an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.



Provided that if an offer is made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the period of fifteen days shall be counted from the expiry of the offer period as defined in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Provided further that the provisions of this sub-regulation shall not apply to an offer made under sub-regulation (1) of regulation 20 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, pursuant to a preferential allotment.

- (4) Allotment shall only be made in dematerialised form.

Explanation.—The requirement of allotment in dematerialised form shall also be applicable for the equity shares to be allotted pursuant to exercise of option attached to warrant or conversion of convertible securities.

Tenure of convertible securities [Regulation 75]

The tenure of the convertible securities of the issuer shall not exceed eighteen months from the date of their allotment.

Pricing of equity shares – Frequently traded shares [Regulation 76]

- (1) If the equity shares of the issuer have been listed on a recognised stock exchange for a period [twenty six weeks] or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following:
- (a) The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the relevant date; or
 - (b) The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (2) If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than twenty six weeks as on the relevant date, the equity shares shall be allotted at a price not less than the higher of the following:
- (a) the price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of arrangement under sections 230 to 240 of the Companies Act, 2013, pursuant to which the equity shares of the issuer were listed, as the case may be; or
 - (b) the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the period shares have been listed preceding the relevant date; or
 - (c) the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.
- (3) Where the price of the equity shares is determined in terms of sub-regulation (2), such price shall be recomputed by the issuer on completion of twenty six weeks from the date of listing on a recognised stock exchange with reference to the average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during these twenty six weeks and if such recomputed price is higher than the price paid on allotment, the difference shall be paid by the allottees to the issuer.

- (4) Any preferential issue of specified securities, to qualified institutional buyers not exceeding five in number, shall be made at a price not less than the average of the weekly high and low of the closing prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

Explanation.- For the purpose of this regulation, 'stock exchange' means any of the recognised stock exchanges in which the equity shares are listed and in which the highest trading volume in respect of the equity shares of the issuer has been recorded during the preceding twenty six weeks prior to the relevant date.

Pricing of equity shares – Infrequently traded shares [Regulation 76A]

Where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.

Provided that the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent merchant banker or an independent chartered accountant in practice having a minimum experience of ten years, to the stock exchange where the equity shares of the issuer are listed.

Adjustments in pricing – Frequently or Infrequently traded shares [Regulation 76B]

The price determined for preferential issue in accordance with regulation 76 or regulation 76A, shall be subject to appropriate adjustments, if the issuer :

- (a) makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
- (b) makes a rights issue of equity shares;
- (c) consolidates its outstanding equity shares into a smaller number of shares;
- (d) divides its outstanding equity shares including by way of stock split;
- (e) re-classifies any of its equity shares into other securities of the issuer;
- (f) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

Payment of consideration [Regulation 77]

- (1) Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities:

Provided that in case of a preferential issue of specified securities pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India, the allottee may pay the consideration in terms of such scheme.

- (2) An amount equivalent to at least twenty five per cent of the consideration determined in terms of regulation 76 shall be paid against each warrant on the date of allotment of warrants.
- (3) The balance seventy five per cent of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.
- (4) In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant in terms of sub-regulation (2) shall be forfeited by the issuer.
- (5) The issuer shall ensure that the consideration of specified securities, if paid in cash, shall be received from respective allottee's bank account.
- (6) The issuer shall submit a certificate of the statutory auditor to the stock exchange where the



equity shares of the issuer are listed stating that the issuer is in compliance of sub-regulation (5) and the relevant documents thereof are maintained by the issuer as on the date of certification.

Lock-in of specified securities [Regulation 78]

- (1) The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be locked-in for a period of three years from the date of trading approval granted for specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be.

Provided that not more than twenty per cent of the total capital of the issuer shall be locked-in for three years from the date of trading approval.

Provided further that equity shares allotted in excess of the twenty per cent shall be locked-in for one year from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.

- (2) The specified securities allotted on preferential basis to persons other than promoter and promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be locked-in for a period of one year from the date of trading approval.
- (3) The lock-in of equity shares allotted pursuant to conversion of convertible securities other than warrants, issued on preferential basis shall be reduced to the extent the convertible securities have already been locked-in.
- (4) The equity shares issued on preferential basis pursuant to a scheme of corporate debt restructuring as per the Corporate Debt Restructuring framework specified by the Reserve Bank of India shall be locked-in for a period of one year from the date of trading approval.

Provided that partly paid up equity shares, if any, shall be locked-in from the date of trading approval and the lock-in shall end on the expiry of one year from the date when such equity shares become fully paid up.

- (5) If the amount payable by the allottee, in case of re-calculation of price under sub-regulation (3) of regulation 76 is not paid till the expiry of lock-in period, the equity shares shall continue to be locked-in till such amount is paid by the allottee.
- (6) The entire pre-preferential allotment shareholding of the allottees, if any, shall be locked-in from the relevant date upto a period of six months from the date of trading approval.

Explanation 1.- For the purpose of this regulation:

- (I) The expression "total capital of the issuer" means:
- (a) equity share capital issued by way of public issue or rights issue including equity shares issued pursuant to conversion of specified securities which are convertible; and
 - (b) specified securities issued on a preferential basis to promoter or promoter group.
- (II) (a) For the computation of twenty per cent of the total capital of the issuer, the amount of minimum promoters' contribution held and locked-in, in the past in terms of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 or these regulations shall be taken into account.
- (b) The minimum promoters' contribution shall not again be put under fresh lock-in, even though it is considered for computing the requirement of twenty per cent of the total capital of the issuer, in case the said minimum promoters' contribution is free of lock-in at the time of the preferential issue.

Explanation 2. - For the purposes of this regulation, the date of trading approval shall mean the latest date when trading approval has been granted by all the recognised stock exchanges where the equity shares of the issuer are listed, for specified securities allotted as per the provisions of this Chapter.

Transferability of locked-in specified securities and warrants issued on preferential basis [Regulation 79]

- (1) Subject to the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, specified securities held by promoters and locked-in in terms of sub-regulation (1) of regulation 78 may be transferred among promoters or promoter group or to a new promoter or persons in control of the issuer :
Provided that lock-in on such specified securities shall continue for the remaining period with the transferee.
- (2) The specified securities allotted on preferential basis shall not be transferred by the allottee till trading approval is granted for such securities by all the recognised stock exchanges where the equity shares of the issuer are listed.

QUALIFIED INSTITUTIONS PLACEMENT

Applicability [Regulation 80]

The provisions of this Chapter shall apply to a qualified institutions placement made by a listed issuer.

Definitions [Regulation 81]

For the purpose of this Chapter:

- (a) "eligible securities" include equity shares, non-convertible debt instruments along with warrants and convertible securities other than warrants;
- (b) "qualified institutions placement" means allotment of eligible securities by a listed issuer to qualified institutional buyers on private placement basis in terms of these regulations;
- (c) "relevant date" means:
 - (i) in case of allotment of equity shares, the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the proposed issue;
 - (ii) in case of allotment of eligible convertible securities, either the date of the meeting in which the board of directors of the issuer or the committee of directors duly authorised by the board of directors of the issuer decides to open the issue of such convertible securities or the date on which the holders of such convertible securities become entitled to apply for the equity shares.

Conditions for qualified institutions placement [Regulation 82]

A listed issuer may make qualified institutions placement if it satisfies the following conditions:

- (a) a special resolution approving the qualified institutions placement has been passed by its shareholders;
- (b) the equity shares of the same class, which are proposed to be allotted through qualified institutions placement or pursuant to conversion or exchange of eligible securities offered through qualified institutions placement, have been listed on a recognised stock exchange having nationwide trading terminal for a period of at least one year prior to the date of issuance of notice to its shareholders for convening the meeting to pass the special resolution:

Provided that where an issuer, being a transferee-company in a scheme of merger, demerger, amalgamation or arrangement sanctioned by a High Court under sections 391 to 394 of the Companies Act, 1956, makes qualified institutions placement, the period for which the equity shares of the same class of the transferor-company were listed on a stock exchange having



nationwide trading terminals shall also be considered for the purpose of computation of the period of one year;

- (c) it is in compliance with the requirement of minimum public shareholding specified in the Securities Contracts (Regulation) Rules, 1957;
- (d) in the special resolution, it shall be, among other relevant matters, specified that the allotment is proposed to be made through qualified institutions placement and the relevant date referred to in sub-clause (ii) of clause (c) of regulation 81 shall also be specified.

Explanation.—For the purpose of clause (b), “equity shares of the same class” shall have the same meaning as assigned to them in Explanation to sub-rule (4) of rule 19 of the Securities Contracts (Regulation) Rules, 1957.

Appointment of merchant banker [Regulation 83]

- (1) A qualified institutions placement shall be managed by merchant banker(s) registered with the Board who shall exercise due diligence.
- (2) The merchant banker shall, while seeking in-principle approval for listing of the eligible securities issued under qualified institutions placement, furnish to each stock exchange on which the same class of equity shares of the issuer are listed, a due diligence certificate stating that the eligible securities are being issued under qualified institutions placement and that the issuer complies with requirements of this Chapter.

Placement document [Regulation 84]

- (1) The qualified institutions placement shall be made on the basis of a placement document which shall contain all material information, including those specified in Schedule XVIH.
- (2) The placement document shall be serially numbered and copies shall be circulated only to select investors.
- (3) The issuer shall, while seeking in-principle approval from the recognised stock exchange, furnish a copy of the placement document, a certificate confirming compliance with the provisions of this Chapter along with any other documents required by the stock exchange.
- (4) The placement document shall also be placed on the website of the concerned stock exchange and of the issuer with a disclaimer to the effect that it is in connection with a qualified institutions placement and that no offer is being made to the public or to any other category of investors.

Pricing [Regulation 85]

- (1) The qualified institutions placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date 2[:]

Provided that the issuer may offer a discount of not more than five per cent on the price so calculated for the qualified institutions placement, subject to approval of shareholders as specified in clause (&) of regulation 82 of these regulations

- (2) Where eligible securities are convertible into or exchangeable with equity shares of the issuer, the issuer shall determine the price of such equity shares allotted pursuant to such conversion or exchange taking the relevant date as decided and disclosed by it while passing the special resolution.
- (3) The issuer shall not allot partly paid up eligible securities:

Provided that in case of allotment of non-convertible debt instruments along with warrants, the allottees may pay the full consideration or part thereof payable with respect to warrants, at the time of allotment of such warrants:

Provided further that on allotment of equity shares on exercise of options attached to warrants, such equity shares shall be fully paid up.

- (4) The prices determined for qualified institutions placement shall be subject to appropriate adjustments if the issuer:
- (a) makes an issue of equity shares by way of capitalization of profits or reserves, other than by way of a dividend on shares;
 - (b) makes a rights issue of equity shares;
 - (c) consolidates its outstanding equity shares into a smaller number of shares;
 - (d) divides its outstanding equity shares including by way of stock split;
 - (e) re-classifies any of its equity shares into other securities of the issuer;
 - (f) is involved in such other similar events or circumstances, which in the opinion of the concerned stock exchange, requires adjustments.

Explanation.—For the purpose of sub-regulation (1), the term "stock exchange" means any of the recognized stock exchanges in which the equity shares of the same class of the issuer are listed and in which the highest trading volume in such equity shares has been recorded during the two weeks immediately preceding the relevant date.

Restrictions on allotment [Regulation 86]

- (1) Allotment under the qualified institutions placement shall be made subject to the following conditions:
- (a) Minimum of ten per cent of eligible securities shall be allotted to mutual funds:
Provided that if the mutual funds do not subscribe to said minimum percentage or any part thereof, such minimum portion or part thereof may be allotted to other qualified institutional buyers;
 - (b) No allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to promoters of the issuer:
Provided that a qualified institutional buyer who does not hold any shares in the issuer and who has acquired the said rights in the capacity of a lender shall not be deemed to be a person related to promoters.
- (2) In a qualified institutions placement of non-convertible debt instrument along with warrants, an investor can subscribe to the combined offering of non-convertible debt instruments with warrants or to the individual securities, that is, either non-convertible debt instruments or warrants.
- (3) The applicants in qualified institutions placement shall not withdraw their bids after the closure of the issue.

Explanation.—For the purpose of clause (b) of sub-regulation (1), a qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters of the issuer:

- (a) rights under a shareholders' agreement or voting agreement entered into with promoters or persons related to the promoters;
- (b) veto rights; or
- (c) right to appoint any nominee director on the board of the issuer.

Minimum number of allottees [Regulation 87]

- (1) The minimum number of allottees for each placement of eligible securities made under qualified



institutions placement shall not be less than:

- (a) two, where the issue size is less than or equal to two hundred and fifty crore rupees;
- (b) five, where the issue size is greater than two hundred and fifty crore rupees;

Provided that no single allottee shall be allotted more than fifty per cent of the issue size.

- (2) The qualified institutional buyers belonging to the same group or who are under same control shall be deemed to be a single allottee.

Explanation.—For the purpose of sub-regulation (2), the expression “qualified institutional buyers belonging to the same group” shall have the same meaning as derived from sub-section (11) of section 372 of the Companies Act, 1956.

Validity of the special resolution [Regulation 88]

- (1) Allotment pursuant to the special resolution referred to in clause (a) of regulation 82 shall be completed within a period of twelve months from the date of passing of the resolution.
- (2) The issuer shall not make subsequent qualified institutions placement until expiry of six months from the date of the prior qualified institutions placement made pursuant to one or more special resolutions.

Restrictions on amount raised [Regulation 89]

The aggregate of the proposed qualified institutions placement and all previous qualified institutions placements made by the issuer in the same financial year shall not exceed five times the net worth of the issuer as per the audited balance sheet of the previous financial year.

Tenure [Regulation 90]

The tenure of the convertible or exchangeable eligible securities issued through qualified institutions placement shall not exceed sixty months from the date of allotment.

Transferability of eligible securities [Regulation 91]

The eligible securities allotted under qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.

INSTITUTIONAL PLACEMENT PROGRAMME

Applicability [Regulation 91A]

- (1) The provisions of this Chapter shall apply to issuance of fresh shares and or offer for sale of shares in a listed issuer for the purpose of achieving minimum public shareholding in terms of rules 19(2) (b) and 19A of the Securities Contracts (Regulation) Rules, 1957.
- (2) Unless otherwise specified, no provisions of these regulations shall be applicable to the institutional placement programme except for the following:—
 - (a) regulations 2, 5, 12, 18, 19, 47, 48, 51, 59, 60, 61, 64, 65, 66 and 68;
 - (b) clauses (a) and (b) of sub-regulation (2) of regulation 4;
 - (c) clause (b) of regulation 7.

Definitions [Regulation 91B]

For the purpose of this Chapter:

- (a) “eligible securities” shall mean equity shares of same class listed and traded in the stock exchange(s);
- (b) “eligible seller” include listed issuer, promoter/promoter group of listed issuer;

- (c) "institutional placement programme" means a further public offer of eligible securities by an eligible seller, in which the offer, allocation and allotment of such securities is made only to qualified institutional buyers in terms of this Chapter.

Conditions for institutional placement programme [Regulation 91C]

- (1) An institutional placement programme, may be made only after a special resolution approving the institutional placement programme has been passed by the shareholders of the issuer in terms of section 81(1 A) of the Companies Act, 1956.
- (2) No partly paid-up securities shall be offered.
- (3) The issuer shall obtain an in-principle approval from the stock exchange(s).

Appointment of merchant banker [Regulation 91D]

An institutional placement programme shall be managed by merchant banker(s) registered with the Board who shall exercise due diligence.

Offer Document [Regulation 91E]

- (1) The institutional placement programme shall be made on the basis of the offer document which shall contain all material information, including those specified in Schedule XVIII.
- (2) The issuer shall, simultaneously while registering the offer document with the Registrar of Companies, file a copy thereof with the Board and with the stock exchange(s) through the lead merchant banker.
- (3) The issuer shall file the soft copy of the offer document with the Board as specified in Schedule V, along with the fee as specified in Schedule IV.
- (4) The offer document shall also be placed on the website of the concerned stock exchange and of the issuer clearly stating that it is in connection with institutional placement programme and that the offer is being made only to the qualified institutional buyers.
- (5) The merchant banker shall submit to the Board a due diligence certificate as per Form A of Schedule VI, stating that the eligible securities are being issued under institutional placement programme and that the issuer complies with requirements of this Chapter.

Pricing and allocation/allotment [Regulation 91F].

- (1) The eligible seller shall announce a floor price or price band at least one day prior to the opening of institutional placement programme.
- (2) The eligible seller shall have the option to make allocation/allotment as per any of the following methods—
 - (a) proportionate basis;
 - (b) price priority basis; or
 - (c) criteria as mentioned in the offer document.
- (3) The method chosen shall be disclosed in the offer document.
- (4) Allocation/allotment shall be overseen by stock exchange before final allotment.

Restrictions [Regulation 91G]

- (1) The promoter or promoter group shall not make institutional placement programme if the promoter or any person who is part of the promoter group has purchased or sold the eligible securities during the twelve weeks period prior to the date of the programme and they shall not purchase or sell the eligible securities during the twelve weeks period after the date of the programme:



Provided that such promoter or promoter group may, within the period provided in sub-regulation (1), offer eligible securities held by them through institutional placement programme or offer for sale through stock exchange mechanism specified by the Board, subject to the condition that there shall be a gap of minimum two weeks between the two successive offer(s) and/or programme(s).

- (2) Allocation/allotment under the institutional placement programme shall be made subject to the following conditions:

- (a) Minimum of twenty five per cent of eligible securities shall be allotted to mutual funds and insurance companies:

Provided that if the mutual funds and insurance companies do not subscribe to said minimum percentage or any part thereof, such minimum portion or part thereof may be allotted to other qualified institutional buyers;

- (b) No allocation/allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to promoters of the issuer:

Provided that a qualified institutional buyer who does not hold any shares in the issuer and who has acquired the rights in the capacity of a lender shall not be deemed to be a person related to promoters.

- (3) The issuer shall accept bids using ASBA facility only.

- (4) The bids made by the applicants in institutional placement programme shall not be revised downwards or withdrawn.

Explanation.- For the purpose of clause (b) of sub-regulation (2), a qualified institutional buyer who has any of the following rights shall be deemed to be a person related to the promoters of the issuer:—

- (a) rights under a shareholders' agreement or voting agreement entered into with promoters or persons related to the promoters;
- (b) veto rights; or
- (c) right to appoint any nominee director on the board of the issuer.

Minimum number of allottees [Regulation 91H]

- (1) The minimum number of allottees for each offer of eligible Securities made under institutional placement programme shall not be less than ten;

Provided that no single allottee shall be allotted more than twenty five percent of the offer size.

- (2) The qualified institutional buyers belonging to the same group or who are under same control shall be deemed to be a single allottee.

Explanation.- For the purpose of sub-regulation (2), the expression "qualified institutional buyers belonging to the same group" shall have the same meaning as derived from sub-section (11) of section 372 of the Companies Act, 1956;

Restrictions on size of the offer [Regulation 91-I]

- (1) The aggregate of all the tranches of institutional placement programme made by the eligible seller shall not result in increase in public shareholding by more than ten per cent or such lesser per cent as is required to reach minimum public shareholding.

- (2) Where the issue has been oversubscribed, an allotment of not more than ten per cent of the offer size shall be made by the eligible seller.

Period of Subscription and display of demand [Regulation 91J]

- (1) The issue shall be kept open for a minimum of one day or maximum of two days.
- (2) The aggregate demand schedule shall be displayed by stock exchange(s) without disclosing the price.

Withdrawal of offer [Regulation 91K]

The eligible seller shall have, the right to withdraw the offer in case it is not fully subscribed.

Transferability of eligible securities [Regulation 91L]

The eligible securities allotted under institutional placement programme shall not be sold by the allottee for a period of one year from the date of allocation/allotment, except on a recognised stock exchange

BONUS ISSUE

Conditions for bonus issue [Regulation 92]

Subject to the provisions of the Companies Act, 1956 or any other applicable law for the time being in force, a listed issuer may issue bonus shares to its members if:

- (a) it is authorised by its articles of association for issue of bonus shares, capitalisation of reserves, etc.: Provided that if there is no such provision in the articles of association, the issuer shall pass a resolution at its general body meeting making provisions in the articles of association for capitalisation of reserve;
- (b) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (c) it has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus;
- (d) the partly paid shares, if any outstanding on the date of allotment, are made fully paid up.

Restriction on bonus issue [Regulation 93]

- (1) No issuer shall make a bonus issue of equity shares [***] unless it has made reservation of equity shares of the same class in favour of the holders of 2[***] outstanding [compulsorily] convertible debt instruments 3[, if any in proportion to the convertible part thereof.
- (2) The equity shares so reserved for the holders of fully or partly/compulsorily/convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms or same proportion [of] which the bonus shares were issued.

Bonus shares only against reserves, etc. if capitalised in cash [Regulation 94]

- (1) The bonus issue shall be made out of free reserves built out of the genuine profits or securities premium collected in cash only and reserves created by revaluation of fixed assets shall not be capitalised for the purpose of issuing bonus shares.
- (2) Without prejudice to the provisions of sub-regulation (1), the bonus share shall not be issued in lieu of dividend.

Completion of bonus issue [Regulation 95]

- (1) An issuer, announcing a bonus issue after the approval of its board of directors and not requiring shareholders' approval for capitalisation of profits or reserves for making the bonus issue, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors:



Provided that where the issuer is required to seek shareholders' approval for capitalisation of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval.

- (2) Once the decision to make a bonus issue is announced, the issue cannot be withdrawn.

ISSUE OF INDIAN DEPOSITORY RECEIPTS

Applicability [Regulation 96]

- (1) The provisions of this Chapter shall apply to an issue of Indian Depository Receipts (hereinafter referred to as "IDR") made in terms of section 605A of the Companies Act, 1956 and Companies (Issue of Indian Depository Receipts) Rules, 2004.
- (2) All provisions of these regulations shall be applicable in case of issue of IDR, except the disclosure requirements with respect to public issue and rights issue of specified securities as provided in these regulations and the following:
- (a) clauses (a), (b), (c) and (f) of sub-regulation (2) of regulation 4;
 - (b) sub-regulations (1), (2) and (3) of regulation 6;
 - (c) clauses (c), (d) and (e) of sub-regulation (1) of regulation 8;
 - (d) sub-regulations (2) and (3) of regulation 8;
 - (e) regulations 10, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 31, 41, 42, [*] 45, 47, 49 and 68;
 - (f) sub-regulation (2) of regulation 11;
 - (g) sub-regulation (2) of regulation 28;
 - (h) clauses (b) and (c) of regulation 29;
 - (i) Parts III and IV of Chapter III;
 - (ia) regulation 43, except sub-regulation (3) thereof;
 - (j) Chapter IV;
 - (K) sub-regulation (3) of regulation 65;
 - (l) Chapters VII, VITI and IX.
- (3) Further, the applicability of regulation 60 shall be as follows:
- (a) the applicability of sub-regulations (1) and (7) and Explanation II shall be restricted to any issue advertisements made in India or any research report circulated in India, pertaining to the IDR issue of the issuing company;
 - (b) the applicability of sub-regulations (2) and (3) shall be restricted to any public communications and publicity material issued or published in any media in India;
 - (c) the applicability of sub-regulations (5) and (6) shall be restricted to any material or information released in India and any issue advertisements and publicity materials issued or published in any media in India;
 - (d) the applicability of sub-regulation (13) shall be restricted to any product advertisement of an issuing company issued or published in any media in India;
 - (e) all other provisions of regulation 60 shall be applicable.

Eligibility [Regulation 97]

An issuing company making an issue of IDR shall also satisfy the following:

- (a) the issuing company is listed in its home country;
- (b) the issuing company is not prohibited to issue securities by any regulatory body;
- (c) the issuing company has track record of compliance with securities market regulations in its home country.

Explanation.—For the purpose of this regulation, the term "home country" means the country where the issuing company is incorporated and listed.

Conditions for issue of IDR [Regulation 98]

An issue of IDR shall be subject to the following conditions:

- (a) issue size shall not be less than fifty crore rupees;
- (b) procedure to be followed by each class of applicant for applying shall be mentioned in the prospectus;
- (c) minimum application amount shall be twenty thousand rupees;
- (d) at least fifty per cent of the IDR issued shall be allotted to qualified institutional buyers on proportionate basis as per illustration given in Part C of Schedule XI;
- (e) the balance fifty per cent may be allocated among the categories of non-institutional investors and retail individual investors including employees at the discretion of the issuer and the manner of allocation shall be disclosed in the prospectus. Allotment to investors within a category shall be on proportionate basis :

Provided that at least thirty per cent of the IDRs being offered in the public issue shall be available for allocation to retail individual investors and in case of under subscription in retail individual investor category, spillover to other categories to the extent of under subscription may be permitted.

Explanation.— For the purpose of this regulation, "employee" shall mean a person who, —

- (a) is a resident of India, and
 - (b) is a permanent and full-time employee or a director, whether whole time or part time, of the issuer or of the holding company or subsidiary company or of the material associate(s) of the issuer; whose financial statements are consolidated with the issuer's financial statements, working in India and does not include promoters and an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse);
- (f) at any given time, there shall be only one denomination of IDR of the issuing company.

Minimum subscription [Regulation 99]

- (1) For non-underwritten issues:
 - (a) If the issuing company does not receive the minimum subscription of ninety per cent of the offer through offer document on the date of closure of the issue, or if the subscription level falls below ninety per cent after the closure of issue on account of cheques having been returned unpaid or withdrawal of applications, the issuing company shall forthwith refund the entire subscription amount received.
 - (b) If the issuing company fails to refund the entire subscription amount within fifteen days from the date of the closure of the issue, it is liable to pay the amount with interest to the subscribers at the rate of fifteen per cent per annum for the period of delay.
- (2) For underwritten issues: If the issuing company does not receive the minimum subscription of ninety per cent of the offer through offer document including devolvement of underwriters within



sixty days from the date of closure of the issue, the issuing company shall forthwith refund the entire subscription amount received with interest to the subscribers at the rate of fifteen per cent per annum for the period of delay beyond sixty days.

Fungibility [Regulation 100]

The Indian Depository Receipts shall not be automatically fungible into underlying equity shares of issuing company.

Filing of draft prospectus, due diligence certificates, payment of fees and issue advertisement for IDR [Regulation 101]

- (1) The issuing company making an issue of IDR shall enter into an agreement with a merchant banker on the lines of format of agreement specified in Schedule II.
- (2) Where the issue is managed by more than one merchant banker, the rights, obligations and responsibilities, relating inter alia to disclosures, allotment, refund and underwriting obligations, if any, of each merchant banker shall be predetermined and disclosed in the prospectus on the lines of format as specified in Schedule I.
- (3) The issuing company shall file a draft prospectus with the Board through a merchant banker along with the requisite fee, as prescribed in Companies (Issue of Indian Depository Receipts) Rules, 2004.
- (4) The prospectus filed with the Board under this regulation shall also be furnished to the Board in a soft copy on the lines specified in Schedule V.
- (5) The lead merchant bankers shall:
 - (a) submit a due diligence certificate as per format given in Part C of Schedule XIX to the Board along with the draft prospectus;
 - (b) certify that all amendments, suggestions or observations made by the Board have been incorporated in the prospectus;
 - (c) submit a fresh due diligence certificate as per format given in Part C of Schedule XIX, at the time of filing the prospectus with the Registrar of the Companies;
 - (d) furnish a certificate as per format given in Part C of Schedule XTX, immediately before the opening of the issue, certifying that no corrective action is required on its part;
 - (e) furnish a certificate as per format given in Part C of Schedule XIX, after the issue has opened but before it closes for subscription.
- (6) The issuing company shall make arrangements for mandatory collection centres as specified in Schedule III.
- (7) The issuing company shall issue an advertisement in one English national daily circulation and one Hindi national daily newspaper with wide circulation, soon after receiving final observations, if any, on the publicly filed draft prospectus with the board, which shall be on the lines of the format and contain the ; as given in Part A of Schedule XIII.

Display of bid data [Regulation 102]

The stock exchanges offering online bidding system for the book building process shall display on their website, the data pertaining to book built IDR issue, in the format specified in Part B(II) of Schedule XI, from the date of opening of the bids till at least three days after closure of bids.

Disclosures in prospectus and abridged prospectus [Regulation 103]

- (1) The prospectus shall contain all material disclosures which are true, correct and adequate so as to enable the applicants to take an informed investment decision.

- (2) Without prejudice to the generality of sub-regulation (1), the prospectus shall contain:
- (a) the disclosures specified in Schedule to Companies (Issue of Indian Depository Receipts) Rules, 2004, and
 - (b) the disclosures in the manner as specified in Part A of Schedule XIX.

Post-issue reports [Regulation 104]

- (1) The merchant banker shall submit post-issue reports to the Board in accordance with sub-regulation (2).
- (2) The post-issue reports shall be submitted as follows:
 - (a) initial post-issue reports on the lines of Parts A and B of Schedule XVI, within three days of closure of the issue;
 - (b) final post-issue report on the lines of Parts C and D of Schedule XVI, within fifteen days of the date of finalization of basis of allotment or within fifteen days of refund of money in case of failure of issue.

Undersubscribed issue [Regulation 105]

In case of undersubscribed issue of IDR, the merchant banker shall furnish information in respect of underwriters who have failed to meet their underwriting development to the Board on the lines of the format specified in Schedule XVII.

Finalization of basis of allotment [Regulation 106]

The executive director or managing director of the stock exchange, where the IDR are proposed to be listed, along with the post-issue lead merchant bankers and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in Schedule XV.

RIGHTS ISSUE OF INDIAN DEPOSITORY RECEIPTS

Applicability [Regulation 106A]

- (1) In addition to compliance with Chapter X, a listed issuer offering IDR through a rights issue shall satisfy the conditions specified in this Chapter at the time of filing the offer document:

Provided that the provisions of the following regulations shall not be applicable in case of rights issue of IDRs:

 - (a) clauses (a), (b), (c), (d) and (e) of regulation 98;
 - (b) regulation 102; and
 - (c) regulation 103.
- (2) Every listed issuer offering IDRs through a rights issue shall prepare the offer document in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI and regulation 106F and file the same with the Board and the stock exchanges on which the IDRs of the issuer are listed.

Eligibility [Regulation 106B]

No issuer shall make a rights issue of IDRs:

- (a) if at the time of undertaking the rights issue, the issuer is in breach of ongoing material obligations under the IDR Listing Agreement as may be applicable to such issuer or material obligations under the deposit agreement entered into between the domestic depository and the issuer at the time of initial offering of IDRs; and



- (b) unless it has made an application to all the recognised stock exchanges in India, where its IDRs are already listed, for listing of the IDRs to be issued by way of rights and has chosen one of them as the designated stock exchange.

Renunciation by an IDR holder [Regulation 106C]

Unless the laws of the home jurisdiction of the issuer company otherwise provide, the rights offering shall be deemed to include a right exercisable by the person concerned to renounce the IDRs offered to the IDR holder in favour of any other person subject to applicable laws and the same shall be disclosed in the offer document.

Depository [Regulation 106D]

The domestic depository shall, in accordance with the depository agreement executed with the issuer at the time of initial offering of IDRs, take such steps as are necessary to enable the IDR holders to have entitlements under the rights offering and issue additional IDRs to such IDR holders, distribute the rights to the IDR Holders/renounces or arrange for the IDR holders/renounces to subscribe for any additional rights which are available due to lack of take-up by other holders of underlying shares.

Record Date [Regulation 106E]

- (1) A listed issuer making a rights issue of IDRs shall in accordance with provisions of the listing agreement, announce a record date for the purpose of determining the shareholders eligible to apply for IDRs in the proposed rights issue.
- (2) if the issuer withdraws the rights issue after announcing the record date, it shall notify the Board about the same and shall notify the same in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where principal office of the issuer is situated in India. If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for offering of IDRs on a rights basis for a period of twelve months from the said record date.

Disclosures in the offer document and the addendum for the rights offering [Regulation 106F]

- (1) The offer document for the rights offering shall contain disclosures as required under the home country regulations of the issuer.
- (2) Apart from the disclosures as required under the home country regulations, an additional wrap (addendum to offer document) shall be attached to the offer document to be circulated in India containing information as specified in Part A of Schedule XXI and other instructions as to the procedures and process to be followed with respect to rights issue of IDRs in India.
- (3) Without prejudice to the generality of sub-regulations (1) and (2), the offer document and the addendum attached with it, shall contain all material information, which are true, correct and adequate, so as to enable the applicants to take an informed investment decision.

Filing of draft offer document and the addendum for rights offering [Regulation 106G]

- (1) The issuer shall appoint one or more merchant bankers, one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.
- (2) The issuer shall, through the lead merchant banker, file the draft offer document prepared in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI with the Board, as a confidential filing accompanied with fees as specified in Part A of Schedule IV.
- (3) The Board may specify changes or issue observations, if any, on the draft offer document and the addendum within thirty days or from the following dates, whichever is later:

- (a) the, date of receipt of the draft offer document prepared in accordance with the home country requirements along with an addendum under sub-regulation (2); or
 - (b) the, date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or
 - (c) the, date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or
 - (d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.
- (4) If the Board specifies changes or issues observations on the draft offer document and the addendum under sub-regulation (3), the issuer and the merchant banker shall file the revised draft offer document and the updated addendum after incorporating the changes suggested or specified by the Board.
- (5) The issuer shall also submit an undertaking from the Overseas Custodian and Domestic Depository addressed to the issuer, to comply with their obligations with respect to the said rights issue under their respective agreements entered into between them, along with the offer document.
- (6) The issuer shall ensure that the Compliance Officer, in charge of ensuring compliance with the obligations under this Chapter, functions from within the territorial limits of India.

Fast track issue [Regulation 106H]

- (1) Nothing contained in sub-regulations (1), (2), (3) and (4) of regulation 106G shall apply, if the issuer satisfies the following conditions:
 - (a) the issuer is in compliance in all material respects with the provisions of deposit agreement and the provisions of listing agreements (or listing conditions) applicable in all the jurisdictions wherever the issuer is listed, for a period of at least three years immediately preceding the date of filing of the offer document, and a certification to this effect is provided by the issuer;
 - (b) the offer document for the rights offering of the securities of the issuer has been filed and reviewed by the securities regulator in the home country of the issuer;
 - (c) there are no pending show-cause notices or prosecution proceedings against the issuer or its promoters, where applicable, or whole time directors on the reference date by the Board or the regulatory authorities in its home country restricting them from accessing the capital markets; and
 - (d) the issuer has redressed at least ninety five per cent of the complaints received from the IDR holders before the end of the three months period immediately preceding the month of date of filing the letter of offer with the designated stock exchange.
- (2) Where the conditions in sub-regulation (1) are satisfied, the issuer may opt for rights issue of IDRs by filing a copy of the offer document prepared in accordance with the home country requirements along with an addendum containing disclosures as specified in Part A of Schedule XXI with the Board for record purposes, before filing the same with the recognised stock exchanges.

Dispatch of abridged letter of offer and application form [Regulation 106 I].

- (1) The abridged letter of offer, containing disclosures as specified in Part B of Schedule XXI, for a rights offering, along with application form, shall be dispatched through registered post or speed post to all the eligible IDR holders at least three days before the date of opening of the issue and shall be made available on the website of the issuer with appropriate access restrictions at the same time it is made available to the holders of its equity shares:



Provided that a hard copy of the offer document for a rights offering along with the addendum shall be made available at the principal office of the issuer or lead merchant banker to any existing IDR holder who has made a request in this regard,

- (2) The eligible IDR holders who have not received the application form may apply in writing on a plain paper to the domestic depository, along with the requisite application money within the time frame for acceptance.
- (3) The eligible IDR holders making an application otherwise than on the application form shall not renounce their rights and shall not utilize the application form for any purpose including renunciation even if it is received subsequently.
- (4) Where any eligible IDR holder makes an application on an application form as well as on plain paper, such application is liable to be rejected.
- (5) The issue price and the ratio shall be decided simultaneously with record date in accordance with the home country regulations.

Period of subscription [Regulation 106J]

A rights issue shall be open for subscription in India for a period as applicable under the laws of its home country but in no case less than 10 days.

Pre-Issue Advertisement for rights issue [Regulation 106K]

- (1) The issuer shall issue an advertisement for the rights issue disclosing the following:
 - (a) the date of completion of dispatch of the abridged letter of offer and the application form;
 - (b) the centres other than principal office of the issuer in India where the eligible IDR holders may obtain duplicate copies of the application forms in case they do not receive the application form within a reasonable time after opening of the rights issue;
 - (c) a statement that if the eligible IDR holders have neither received the original application forms nor they are in a position to obtain the duplicate forms, they may make application in writing on a plain paper to subscribe to the rights issue;
 - (d) a format to enable the eligible IDR holders, to make the application on a plain paper specifying therein necessary particulars such as name, address, ratio of rights issue, issue price, number of IDRs held, ledger folio numbers, depository participant ID, client ID, number of IDRs entitled and applied for, amount to be paid along with application, and particulars of cheque, etc., to be drawn in favour of the issuer's account;
 - (e) a statement that the applications can be directly sent by the eligible IDR holders through registered post together with the application moneys to the issuer's designated official at the address given in the advertisement;
 - (f) a statement to the effect that if the eligible IDR holder makes an application on plain paper and also on application form both his applications shall be liable to be rejected at the option of the issuer.
- (2) The advertisement shall be made in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where principal office of the issuer is situated in India at least three days before the date of opening of the issue.

Utilization of funds raised in rights issue [Regulation 106L]

- (1) The issuer shall utilize funds raised in relation to the IDRs pursuant to the rights offering only upon completion of the allotment process.

ISSUE OF SPECIFIED SECURITIES BY SMALL AND MEDIUM ENTERPRISES

Applicability [Regulation 106M]

- (1) An issuer whose post-issue face value capital does not exceed ten crore rupees shall issue its specified securities in accordance with provisions of this Chapter.
- (2) An issuer, whose post-issue face value capital is more than ten crore rupees aid up to twenty five crore rupees, may also issue specified securities in accordance with provisions of this Chapter.
- (3) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall mutatis mutandis apply to any issue of specified securities under this Chapter :

Provided that provisions of sub-regulations (1), (2) and (3) of regulation 6, regulation 7, regulation 8, regulation 9, regulation 10, regulation 25, regulation 26, regulation 27 and sub-regulation (1) of regulation 49 of these regulations shall not apply to an issue of specified securities made under this Chapter.

Definitions [Regulation 106N]

- (1) In this Chapter, unless the context otherwise requires,—
 - (a) "Main Board" means a recognized stock exchange having nationwide trading terminals, other than SME exchange;
 - (b) "nominated investor" means a qualified institutional buyer or private equity fund, who enters into an agreement with the merchant banker to subscribe to the issue in case of under-subscription or to receive or deliver the specified securities in the market-making process.
Explanation.—"private equity fund" means a fund registered with any regulatory authority or a fund established by any person registered with any regulatory authority;
 - (c) "SME exchange" means a trading platform of a recognized stock exchange having nationwide trading terminals permitted by the Board to list the specified securities issued in accordance with this Chapter and includes a stock exchange granted recognition for this purpose but does not include the Main Board.
- (2) All other words and expression used in this Chapter but not defined under sub-regulation (1) shall derive their meaning from regulation 2 of these regulations.

Filing of offer document and due diligence certificate [Regulation 106 O]

- (1) The issuer making a public issue or rights issue of specified securities under this Chapter shall not file the draft offer document with the Board:
Provided that the issuer shall file a copy of the offer document with the Board through a merchant banker, simultaneously with the filing of the prospectus with the SME exchange and the Registrar of Companies or letter of offer with the SME Exchange:
Provided further that the Board shall not issue any observation on the offer document.
- (2) The merchant banker shall submit a due-diligence certificate as per Form A of Schedule VI including additional confirmations as provided in Form H of Schedule VI along with the offer document of the Board.
- (3) The offer document shall be displayed from the date of filing in terms of sub-regulation (1) on the websites of the Board, the issuer, the merchant banker and the SME exchange where the specified securities offered through the offer document are proposed to be listed.

Underwriting by merchant bankers and underwriters [Regulation 106P]

- (1) The issue made under this Chapter shall be hundred per cent under written.



Explanation.— The underwriting under this regulation shall be for the entire hundred per cent of the offer through offer document and shall not be restricted up to the minimum subscription level.

- (2) The merchant banker/s shall underwrite at least fifteen per cent of the issue size on his/their own account/s.
- (3) The issuer in consultation with merchant banker may appoint underwriters in accordance with Securities and Exchange Board of India (Underwriters) Regulations, 1993 and the merchant banker may enter into an agreement with nominated investor indicating therein the number of specified securities which they agree to subscribe at issue price in case of under-subscription.
- (4) If other underwriters fail to fulfill their underwriting obligations or other nominated investors fail to subscribe to unsubscribed portion, the merchant banker shall fulfill the underwriting obligations.
- (5) The underwriters other than the merchant banker and the nominated investors, who have entered into an agreement for subscribing to the issue in case of under-subscription, shall not subscribe to the issue made under this Chapter in any manner except for fulfilling their obligations under their respective agreements with the merchant banker in this regard.
- (6) All the underwriting and subscription arrangements made by the merchant banker shall be disclosed in the offer document.
- (7) The merchant banker shall file an undertaking to the Board that the issue has been hundred per cent underwritten along with the list of underwriters and nominated investors indicating the extent of underwriting or subscriptions commitment made by them, one day before the opening of issue.

Minimum Application Value [Regulation 106Q]

The issuer shall stipulate in the offer document, the minimum application size in terms of number of specified securities which shall not be less than one lakh rupees per application.

Minimum Number of Allottees [Regulation 106R]

No allotment shall be made pursuant to any initial public offer made under this Chapter, if the number of prospective allottees is less than fifty.

Listing of specified securities [Regulation 106S]

- (1) Specified securities issued in accordance with this Chapter shall be listed on SME exchange.
- (2) Where any listed issuer issues specified securities in accordance with provisions of this Chapter it shall migrate the specified securities already listed on any recognized stock exchange/s to the SME exchange.

Migration to SME exchange [Regulation 106T]

A listed issuer whose post-issue face value capital is less than twenty five crore rupees may migrate its specified securities to SME exchange if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the SME exchange :

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

Migration to Main Board [Regulation 106U]

- (1) An issuer, whose specified securities are listed on a SME Exchange and whose post issue face value capital is more than ten crore rupees and up to twenty five crore rupees, may migrate its specified securities to Main Board if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the Main Board:

Provided that the special resolution shall be acted upon if and only if the votes cast by shareholder other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal.

- (2) Where the post issue face value capital of an issuer listed on SME exchange is likely to increase beyond twenty five crore rupees by virtue of any further issue of capital by the issuer by way of rights issue, preferential issue, bonus issue, etc. the issuer shall migrate its specified securities listed on SME exchange to Main Board and seek listing of specified securities proposed to be issued on the Main Board subject to the fulfillment of the eligibility criteria for listing of specified securities laid down by the Main Board : Provided that no further issue of capital by the issuer shall be made unless—
- (a) the shareholders of the issuer have approved the migration by passing a special resolution through postal ballot wherein the votes cast by shareholders other than promoters in favour of the proposal amount to at least two times the number of votes cast by shareholders other than promoter shareholders against the proposal;
 - (b) the issuer has obtained in-principle approval from the Main Board for listing of its entire specified securities on it.

Market Making [Regulation 106V]

- (1) The merchant banker shall ensure compulsory market making through the stock brokers of SME exchange in the manner specified by the Board for a minimum period of three years from the date of listing of specified securities issued under this Chapter on SME exchange or from the date of migration from Main Board in terms of regulation 2[106T], as the case may be.
- (2) The merchant banker may enter into agreement with nominated investors for receiving or delivering the specified securities in the market making subject to the prior approval by the SME exchange where the specified securities are proposed to be listed.
- (3) The issuer shall disclose the details of arrangement of market making in the offer document.
- (4) The specified securities being bought or sold in the process of market making may be transferred to or from the nominated investor with whom the merchant banker has entered into an agreement for the market making :

Provided that the inventory of the market maker, as on the date of allotment of the specified securities, shall be at least five per cent of the specified securities proposed to be listed on SME exchange.

- (5) The market maker shall buy the entire shareholding of a shareholder of the issuer in one lot, where value of such shareholding is less than the minimum contract size allowed for trading on the SME exchange :
Provided that market maker shall not sell in lots less than the minimum contract size allowed for trading on the SME exchange.
- (6) Market maker shall not buy the shares from the promoters or persons belonging to promoter group of the issuer or any person who has acquired shares from such promoter or person belonging to promoter group, during the compulsory market making period laid down under sub-regulation (1).
- (7) The promoters' holding shall not be eligible for offering to the market maker under this Chapter during the period specified in sub-regulation (1):
Provided that the promoters' holding which is not locked-in as per these regulations can be traded with prior permission of the SME exchange, in the manner specified by the Board.
- (8) Subject to the agreement between the issuer and the merchant banker/s, the merchant banker/s who have the responsibility of market making may be represented on the board of the issuer.



LISTING ON INSTITUTIONAL TRADING PLATFORM

Applicability [Regulation 106W]

- (1) The provisions of this chapter shall apply to entities which seek listing of their specified securities exclusively on the institutional trading platform either pursuant to a public issue or otherwise.
- (2) The provisions of these regulations, in respect of the matters not specifically dealt or excluded under this Chapter, shall apply mutatis mutandis to any listing of specified securities under this Chapter:
Provided that the provisions of sub-regulation (4) of regulation 4, sub-regulations (1) and (2) of regulation 26 of these regulations shall not apply to listing of specified securities made under this Chapter.
- (3) The institutional trading platform shall be accessible to institutional investors and non-institutional investors.

Definitions [Regulation 106X]

- (1) In this chapter, unless the context otherwise requires,-
 - (a) "institutional trading platform" means the trading platform for listing and trading of specified securities of entities that comply with the eligibility criteria specified in regulation 106Y;
 - (b) "institutional investor" means:
 - (i) qualified institutional buyer; or
 - (ii) family trust or systematically important NBFCs registered with Reserve Bank of India or intermediaries registered with the Board, all with net-worth of more than five hundred crore rupees, as per the last audited financial statements;
 - (c) "persons acting in concert" shall have the same meaning as assigned to it under regulation 2(1)(q) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- (2) All other words and expressions used in this Chapter but not defined under sub-regulation (1) shall derive their meaning from regulation 2 of these regulations.

Eligibility [Regulation 106Y]

- (1) The following entities shall be eligible for listing on the institutional trading platform,-
 - (a) an entity which is intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology to provide products, services or business platforms with substantial value addition and at least twenty five per cent of its pre-issue capital is held by qualified institutional buyer(s) as on the date of filing of draft information document or draft offer document with the Board, as the case may be; or
 - (b) any other entity in which at least fifty per cent of the pre-issue capital is held by qualified institutional buyers as on the date of filing of draft information document or draft offer document with the Board, as the case may be.
- (2) No person, individually or collectively with persons acting in concert, shall hold twenty five per cent or more of the post-issue share capital in an entity specified in sub-regulation (1).

Listing without public issue [Regulation 106Z]

- (1) An entity seeking listing of its specified securities without making a public issue shall file a draft information document along with necessary documents with the Board in accordance with these regulations along with fee as specified in Schedule IV of these regulations.
- (2) The draft information document shall contain the disclosures as specified for draft offer document in these regulations.

- (3) Regulations relating to the following shall not be applicable in case of listing without public issue:
 - (i) allotment;
 - (ii) issue opening / closing;
 - (iii) advertisement;
 - (iv) underwriting;
 - (v) sub-regulation (5) of regulation 26;
 - (vi) pricing;
 - (vii) dispatch of issue material;
 - (viii) and other such provisions related to offer of specified securities to public.
- (4) The entity shall obtain in-principle approval from the recognised stock exchanges on which it proposes to get its specified securities listed.
- (5) The entity shall list its specified securities on the recognised stock exchange(s) within thirty days:
 - (a) from the date of issuance of observations by the Board; or
 - (b) from the expiry of the period stipulated in sub-regulation (2) of regulation 6, if the Board has not issued any such observations.
- (6) The entity which has received in-principle approval from the recognised stock exchange for listing of its specified securities on the institutional trading platform, without making a public issue, shall be deemed to have been waived by the Board under sub-rule (7) of rule 19 from the requirement of clause (b) of sub-rule (2) of rule 19 of Securities Contracts (Regulation) Rules, 1957 for the limited purpose of listing on the institutional trading platform.
- (7) Provisions relating to minimum public shareholding shall not apply to entities listed on institutional trading platform without making a public issue.
- (8) The draft and final information document shall be approved by the board of directors of the entity and shall be signed by all directors, the Chief Executive Officer, i.e., the Managing Director or Manager within the meaning of the Companies Act, 2013 and the Chief Financial Officer, i.e., the Whole-time Finance Director or any other person heading the finance function and discharging that function.
- (9) The signatories shall also certify that all disclosures made in the information document are true and correct.
- (10) In case of mis-statement in the information document or any omission therein, any person who has authorized the issue of information document shall be liable in accordance with the provisions of the SEBI Act, 1992 and regulations made thereunder.

Listing pursuant to public issue [Regulation 106ZA]

- (1) An entity seeking issue and listing of its specified securities shall file a draft offer document along with necessary documents with the Board in accordance with these regulations along with fees as specified in Schedule IV of these regulations.
- (2) The minimum application size shall be ten lakh rupees.
- (3) The number of allottees shall be more than two hundred.
- (4) The allocation in the net offer to public category shall be as follows:
 - (a) seventy-five per cent to institutional investors;
Provided that there shall be no separate allocation for Anchor Investors;
 - (b) twenty-five per cent to non-institutional investors;



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- (5) Any under-subscription in the non-institutional investor category shall be available for subscription under the institutional investors' category.
 - (6) The allotment to institutional investors may be on a discretionary basis whereas the allotment to non-institutional investors shall be on a proportionate basis.
 - (7) The mode of allotment to institutional investors, i.e., whether discretionary or proportionate, shall be disclosed prior to or at the time of filing of the Red Herring Prospectus.
 - (8) In case of discretionary allotment to institutional investors, no institutional investor shall be allotted more than ten per cent of the issue size.
 - (9) The offer document shall disclose the broad objects of the issue.
 - (10) The basis of issue price may include disclosures, except projections, as deemed fit by the issuers in order to enable investors to take informed decisions and the disclosures shall suitably caution the investors about basis of valuation.

Lock-in [Regulation 106ZB]

- (1) The entire pre-issue capital of the shareholders shall be locked-in for a period of six months from the date of allotment in case of listing pursuant to public issue or date of listing in case of listing without public issue:

Provided that nothing contained in this regulation shall apply to:

- (i) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the entity prior to the initial public offer, if the entity has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII;
- (ii) equity shares held by a venture capital fund or alternative investment fund of Category I or a foreign venture capital investor;

Provided that such equity shares shall be locked in for a period of at least one year from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

- (iii) equity shares held by persons other than promoters, continuously for a period of at least one year prior to the date of listing in case of listing without public issue:

Explanation.- For the purpose of clause (ii) and (iii), in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period and the convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid at the time of their conversion.

- (2) The specified securities held by promoters and locked-in may be pledged with any scheduled commercial bank or public financial institution as collateral security for loan granted by such bank or institution if the pledge of specified securities is one of the terms of sanction of the loan.
- (3) The specified securities that are locked-in may be transferable in accordance with regulation 40 of these regulations.
- (4) All specified securities allotted on a discretionary basis shall be locked-in in accordance with the requirements for lock-in by Anchor Investors on main board of the stock exchange, as specified under clause 10(j) in Part A of Schedule XI.

Trading lot [Regulation 106ZC]

The minimum trading lot shall be ten lakh rupees.

Exit of entities listed without making a public issue [Regulation 106ZD]

- (1) An entity whose specified securities are listed on the institutional trading platform without making a public issue may exit from that platform, if-
 - (a) its shareholders approve such exit by passing a special resolution through postal ballot where ninety per cent of the total votes and the majority of non-promoter votes have been cast in favor of such proposal; and
 - (b) the recognised stock exchange where its shares are listed approve of such an exit.
- (2) The recognised stock exchange may delist the specified securities of an entity listed without making a public issue upon non-compliance of the conditions of listing and in the manner as specified by the stock exchange.
- (3) No entity promoted by promoters and directors of an entity delisted under sub-regulation (2), shall be permitted to list on institutional trading platform for a period of five years from the date of such delisting:

Provided that the provisions of this regulation shall not apply to another entity promoted by the independent directors of such a delisted entity.

Migration to main board [Regulation 106ZE]

An entity that has listed its specified securities on a recognised stock exchange in accordance with the provisions of this Chapter may at its option migrate to the main board of that recognised stock exchange after expiry of three years from the date of listing subject to compliance with the eligibility requirements of the stock exchange.

Repeal and saving [Regulation 106ZF]

The provisions of Chapter XC and all directions, guidelines, instructions or circulars, issued by the Board as applicable to small and medium enterprises which are listed on the institutional trading platform, as on the date of commencement of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2015 shall continue to remain in force for the period such companies are listed on the institutional trading platform or till such time as specified by the Board, whichever is earlier, as if Chapter XC had not been repealed.

Explanation.- Under this Chapter, the phrases 'pre-issue' and 'post-issue', wherever they occur shall be construed as 'pre-listing' and 'post-listing', respectively, in case of listing without public issue.

MISCELLANEOUS

Directions by the Board [Regulation 107]

Without prejudice to the power under sections 11, 11A, 1 IB, 1 ID, sub-section (3) of section 12, Chapter VIA and section 24 of the Act or section 621 of the Companies Act, 1956, the Board may either suo motu or on receipt of information or on completion or pendency of any inspection, inquiry or investigation, in the interests of investors or the securities market, issue such directions or orders as it deems fit including any or all of the following:

- (a) directing the persons concerned not to access the securities market for a specified period;
- (b) directing the person concerned to sell or divest the securities;
- (c) any other direction which Board may deem fit and proper in the circumstances of the case:

Provided that the Board shall, either before or after issuing such direction or order, give a reasonable opportunity of being heard to the person concerned:



Provided further that if any interim direction or order is required to be issued, the Board may give post-decisional hearing to the person concerned.

Power to remove difficulty [Regulation 108]

In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications through guidance notes or circulars after recording reasons in writing.

Power to relax strict enforcement of the regulations [Regulation 109]

The Board may, in the interest of investors or for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that:

- (a) the requirement is procedural in nature; or
- (b) any disclosure requirement is not relevant for a particular class of industry or issuer; or
- (c) the non-compliance was caused due to factors beyond the control of the issuer.

Amendments to other regulations [Regulation 110]

On and from the commencement of these regulations, the regulations mentioned in Schedule XX shall stand amended to the extent specified therein.

Repeal and Savings [Regulation 111]

- (1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 shall stand rescinded.
- (2) Notwithstanding such rescission:
 - (a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;
 - (b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.

3.4 CORPORATE GOVERNANCE OF LISTING AGREEMENT

Applicability of Clause 49

The Clause 49 of the Listing Agreement shall be applicable to all companies whose equity shares are listed on a recognized stock exchange. However, compliance with the provisions of Clause 49 shall not be mandatory, for the time being, in respect of the following class of companies:

- (a) Companies having paid up equity share capital not exceeding ₹10 crore and Net Worth not exceeding ₹25 crore, as on the last day of the previous financial year;

Provided that where the provisions of Clause 49 becomes applicable to a company at a later date, such company shall comply with the requirements of Clause 49 within six months from the date on which the provisions became applicable to the company.

- (b) Companies whose equity share capital is listed exclusively on the SME and SME-ITP Platforms.

Corporate Governance

- I. The company agrees to comply with the provisions of Clause 49 which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below. In case of any ambiguity, the said provisions shall be interpreted and applied in alignment with the principles.

A. The Rights of Shareholders

1. The company should seek to protect and facilitate the exercise of shareholders' rights.
 - a. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes.
 - b. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings.
 - c. Shareholders should be informed of the rules, including voting procedures that govern general shareholder meetings.
 - d. Shareholders should have the opportunity to ask questions to the board, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.
 - e. Effective shareholder participation in key Corporate Governance decisions, such as the nomination and election of board members, should be facilitated.
 - f. The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.
 - g. The Company should have an adequate mechanism to address the grievances of the shareholders.
 - h. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress.
2. The company should provide adequate and timely information to shareholders.
 - a. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be discussed at the meeting.
 - b. Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.



- c. All investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase.
- 3. The company should ensure equitable treatment of all shareholders, including minority and foreign shareholders.
 - a. All shareholders of the same series of a class should be treated equally.
 - b. Effective shareholder participation in key Corporate Governance decisions, such as the nomination and election of board members, should be facilitated.
 - c. Exercise of voting rights by foreign shareholders should be facilitated.
 - d. The company should devise a framework to avoid Insider trading and abusive self-dealing.
 - e. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders.
 - f. Company procedures should not make it unduly difficult or expensive to cast votes.

B. Role of stakeholders in Corporate Governance

- 1. The company should recognise the rights of stakeholders and encourage cooperation between company and the stakeholders.
 - a. The rights of stakeholders that are established by law or through mutual agreements are to be respected.
 - b. Stakeholders should have the opportunity to obtain effective redress for violation of their rights.
 - c. Company should encourage mechanisms for employee participation.
 - d. Stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in Corporate Governance process.
 - e. The company should devise an effective whistle blower mechanism enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

C. Disclosure and transparency

- 1. The company should ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the company.
 - a. Information should be prepared and disclosed in accordance with the prescribed standards of accounting, financial and non-financial disclosure.
 - b. Channels for disseminating information should provide for equal, timely and cost efficient access to relevant information by users.
 - c. The company should maintain minutes of the meeting explicitly recording dissenting opinions, if any.
 - d. The company should implement the prescribed accounting standards in letter and spirit in the preparation of financial statements taking into consideration the interest of all stakeholders and should also ensure that the annual audit is conducted by an independent, competent and qualified auditor.

D. Responsibilities of the Board

- 1. Disclosure of Information
 - a. Members of the Board and key executives should be required to disclose to the board

whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.

- b. The Board and top management should conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture for good decision-making.

2. Key functions of the Board

The board should fulfill certain key functions, including:

- a. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestments.
 - b. Monitoring the effectiveness of the company's governance practices and making changes as needed.
 - c. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.
 - d. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.
 - e. Ensuring a transparent board nomination process with the diversity of thought, experience, knowledge, perspective and gender in the Board.
 - f. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.
 - g. Ensuring the integrity of the company's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
 - h. Overseeing the process of disclosure and communications.
 - i. Monitoring and reviewing Board Evaluation framework.
3. Other responsibilities
 - a. The Board should provide the strategic guidance to the company, ensure effective monitoring of the management and should be accountable to the company and the shareholders.
 - b. The Board should set a corporate culture and the values by which executives throughout a group will behave.
 - c. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.
 - d. The Board should encourage continuing directors training to ensure that the Board members are kept up to date.
 - e. Where Board decisions may affect different shareholder groups differently, the Board should treat all shareholders fairly.
 - f. The Board should apply high ethical standards. It should take into account the interests of stakeholders.



- g. The Board should be able to exercise objective independent judgement on corporate affairs.
- h. Boards should consider assigning a sufficient number of non-executive Board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest.
- i. The Board should ensure that, while rightly encouraging positive thinking, these do not result in over-optimism that either leads to significant risks not being recognised or exposes the company to excessive risk.
- j. The Board should have ability to 'step back' to assist executive management by challenging the assumptions underlying: strategy, strategic initiatives (such as acquisitions), risk appetite, exposures and the key areas of the company's focus.
- k. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.
- l. Board members should be able to commit themselves effectively to their responsibilities.
- m. In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.
- n. The Board and senior management should facilitate the Independent Directors to perform their role effectively as a Board member and also a member of a committee.

II. Board of Directors

A. Composition of Board

- 1. The Board of Directors of the company shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the Board of Directors comprising non-executive directors.

The provisions regarding appointment of woman director shall be applicable with effect from April 01, 2015.

- 2. Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise independent directors and in case the company does not have a regular non-executive Chairman, at least half of the Board should comprise independent directors.

Provided that where the regular non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors.

Explanation.— For the purpose of the expression "related to any promoter" referred to in sub-clause (2):

- (i) If the promoter is a listed entity, its directors other than the independent directors, its employees or its nominees shall be deemed to be related to it;
- (ii) If the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it.

B. Independent Directors

- 1. For the purpose of the clause A, the expression 'independent director' shall mean a non-executive director, other than a nominee director of the company:
 - a. who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;

- b. (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
- (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- c. apart from receiving director's remuneration, has or had no material pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- d. none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- e. who, neither himself nor any of his relatives —
 - (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
 - (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —
 - (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or
 - (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;
 - (iii) holds together with his relatives two per cent or more of the total voting power of the company; or
 - (iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the company;
 - (v) is a material supplier, service provider or customer or a lessor or lessee of the company;
- f. who is not less than 21 years of age.

Explanation.—

For the purposes of the sub-clause (1):

- (i) "Associate" shall mean a company which is an "associate" as defined in Accounting Standard (AS) 23, "Accounting for Investments in Associates in Consolidated Financial Statements", issued by the Institute of Chartered Accountants of India.
- (ii) "Key Managerial Personnel" shall mean "Key Managerial Personnel" as defined in section 2(51) of the Companies Act, 2013.
- (iii) "Relative" shall mean "relative" as defined in section 2(77) of the Companies Act, 2013 and rules prescribed there under.



2. Limit on number of directorships

- a. A person shall not serve as an independent director in more than seven listed companies.
- b. Further, any person who is serving as a whole time director in any listed company shall serve as an independent director in not more than three listed companies.

3. Maximum tenure of Independent Directors

- a. The maximum tenure of Independent Directors shall be in accordance with the Companies Act, 2013 and clarifications/circulars issued by the Ministry of Corporate Affairs, in this regard, from time to time.

4. Formal letter of appointment to Independent Directors

- a. The company shall issue a formal letter of appointment to independent directors in the manner as provided in the Companies Act, 2013.
- b. The terms and conditions of appointment shall be disclosed on the website of the company.

5. Performance evaluation of Independent Directors

- a. The Nomination Committee shall lay down the evaluation criteria for performance evaluation of independent directors.
- b. The company shall disclose the criteria for performance evaluation, as laid down by the Nomination Committee, in its Annual Report.
- c. The performance evaluation of independent directors shall be done by the entire Board of Directors (excluding the director being evaluated).
- d. On the basis of the report of performance evaluation, it shall be determined whether to extend or continue the term of appointment of the independent director.

6. Separate meetings of the Independent Directors

- a. The independent directors of the company shall hold at least one meeting in a year, without the attendance of non-independent directors and members of management. All the independent directors of the company shall strive to be present at such meeting.
- b. The independent directors in the meeting shall, *inter-alia*:
 - (i) review the performance of non-independent directors and the Board as a whole;
 - (ii) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - (iii) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

7. Familiarisation programme for Independent Directors

- a. The company shall familiarise the independent directors with the company, their roles, rights, responsibilities in the company, nature of the industry in which the company operates, business model of the company, etc., through various programmes.
- b. The details of such familiarisation programmes shall be disclosed on the company's website and a web link thereto shall also be given in the Annual Report.

C. Non-executive Directors' compensation and disclosures

All fees / compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general

meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate.

Provided that the requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

Provided further that independent directors shall not be entitled to any stock option.

D. Other provisions as to Board and Committees

1. The Board shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings. The minimum information to be made available to the Board is given in **Annexure - X to the Listing Agreement**.
2. A director shall not be a member in more than ten committees or act as Chairman of more than five committees across all companies in which he is a director. Furthermore, every director shall inform the company about the committee positions he occupies in other companies and notify changes as and when they take place.

Explanation.—

- (i) For the purpose of considering the limit of the committees on which a director can serve, all public limited companies, whether listed or not, shall be included and all other companies including private limited companies, foreign companies and companies under Section 8 of the Companies Act, 2013 shall be excluded.
- (ii) For the purpose of reckoning the limit under this sub-clause, Chairmanship/ membership of the Audit Committee and the Stakeholders' Relationship Committee alone shall be considered.
3. The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.
4. An independent director who resigns or is removed from the Board of the Company shall be replaced by a new independent director at the earliest but not later than the immediate next Board meeting or three months from the date of such vacancy, whichever is later.
5. Provided that where the company fulfils the requirement of independent directors in its Board even without filling the vacancy created by such resignation or removal, as the case may be, the requirement of replacement by a new independent director shall not apply.
6. The Board of the company shall satisfy itself that plans are in place for orderly succession for appointments to the Board and to senior management.

E. Code of Conduct

1. The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.
2. All Board members and senior management personnel shall affirm compliance with the code on an annual basis. The Annual Report of the company shall contain a declaration to this effect signed by the CEO.
3. The Code of Conduct shall suitably incorporate the duties of Independent Directors as laid down in the Companies Act, 2013.
4. An independent director shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently with respect of the provisions contained in the Listing Agreement.



Explanation.— For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding Board of Directors. Normally, this would comprise all members of management one level below the executive directors, including all functional heads.

F. Whistle Blower Policy

1. The company shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy.
2. This mechanism should also provide for adequate safeguards against victimization of director(s) / employee(s) who avail of the mechanism and also provide for direct access to the Chairman of the Audit Committee in exceptional cases.
3. The details of establishment of such mechanism shall be disclosed by the company on its website and in the Board's report.

III. Audit Committee

A. Qualified and Independent Audit Committee

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.
2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

Explanation (i): The term "financially literate" means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation (ii): A member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

3. The Chairman of the Audit Committee shall be an independent director;
4. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;
5. The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;
6. The Company Secretary shall act as the secretary to the committee.

B. Meeting of Audit Committee

The Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

C. Powers of Audit Committee

The Audit Committee shall have powers, which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

D. Role of Audit Committee

The role of the Audit Committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
2. Recommendation for appointment, remuneration and terms of appointment of auditors of the company;
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors;
4. Reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:
 - a. Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (c) of sub-section 3 of section 134 of the Companies Act, 2013
 - b. Changes, if any, in accounting policies and practices and reasons for the same
 - c. Major accounting entries involving estimates based on the exercise of judgment by management
 - d. Significant adjustments made in the financial statements arising out of audit findings
 - e. Compliance with listing and other legal requirements relating to financial statements
 - f. Disclosure of any related party transactions
 - g. Qualifications in the draft audit report
5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval;
6. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter;
7. Review and monitor the auditor's independence and performance, and effectiveness of audit process;
8. Approval or any subsequent modification of transactions of the company with related parties;
9. Scrutiny of inter-corporate loans and investments;
10. Valuation of undertakings or assets of the company, wherever it is necessary;
11. Evaluation of internal financial controls and risk management systems;
12. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems;



13. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit;
14. Discussion with internal auditors of any significant findings and follow up there on;
15. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board;
16. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern;
17. To look into the reasons for substantial defaults in the payment to the depositors, debenture holders, shareholders (in case of non-payment of declared dividends) and creditors;
18. To review the functioning of the Whistle Blower mechanism;
19. Approval of appointment of CFO (i.e., the whole-time Finance Director or any other person heading the finance function or discharging that function) after assessing the qualifications, experience and background, etc. of the candidate;
20. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee.

Explanation (i): The term "related party transactions" shall have the same meaning as provided in Clause 49(VII) of the Listing Agreement.

E. Review of information by Audit Committee

The Audit Committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
2. Statement of significant related party transactions (as defined by the Audit Committee), submitted by management;
3. Management letters / letters of internal control weaknesses issued by the statutory auditors;
4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

IV. Nomination and Remuneration Committee

- A. The company through its Board of Directors shall constitute the nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director.

Provided that the chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

- B. The role of the committee shall, *inter-alia*, include the following:
 1. Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, key managerial personnel and other employees;
 2. Formulation of criteria for evaluation of Independent Directors and the Board;
 3. Devising a policy on Board diversity;

4. Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report.
- C. The Chairman of the nomination and remuneration committee could be present at the Annual General Meeting, to answer the shareholders' queries. However, it would be up to the Chairman to decide who should answer the queries.

V. Subsidiary Companies

- A. At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material non-listed Indian subsidiary company.
- B. The Audit Committee of the listed holding company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company.
- C. The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company. The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.
- D. The company shall formulate a policy for determining 'material' subsidiaries and such policy shall be disclosed on the company's website and a web link thereto shall be provided in the Annual Report.
- E. For the purpose of this clause, a subsidiary shall be considered as material if the investment of the company in the subsidiary exceeds twenty per cent of its consolidated net worth as per the audited balance sheet of the previous financial year or if the subsidiary has generated twenty per cent of the consolidated income of the company during the previous financial year.
- F. No company shall dispose of shares in its material subsidiary which would reduce its shareholding (either on its own or together with other subsidiaries) to less than 50% or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.
- G. Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal."

Explanation (i): For the purpose of sub-clause (V)(A), the term "material non-listed Indian subsidiary" shall mean an unlisted subsidiary, incorporated in India, whose income or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated income or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.

Explanation (ii): For the purpose of sub-clause (V)(C), the term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.

Explanation (iii): For the purpose of sub-clause (V), where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned.



VI. Risk Management

- A The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures.
- B The Board shall be responsible for framing, implementing and monitoring the risk management plan for the company.
- C The company through its Board of Directors shall constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.
- D The majority of Committee shall consist of members of the Board of Directors.
- E Senior executives of the company may be members of the said Committee but the Chairman of the Committee shall be a member of the Board of Directors.

VII. Related Party Transactions

- A. A related party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

Explanation:- A “transaction” with a related party shall be construed to include single transaction or a group of transactions in a contract.

- B. For the purpose of Clause 49 (VII), an entity shall be considered as related to the company if:
 - (i) such entity is a related party under Section 2(76) of the Companies Act, 2013; or
 - (ii) such entity is a related party under the applicable accounting standards.
- C. The company shall formulate a policy on materiality of Related Party Transactions and also on dealing with Related Party Transactions.

Provided that a transaction with a related party shall be considered material if the transaction / transactions to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the company as per the last audited financial statements of the company.

- D. All Related Party Transactions shall require prior approval of the Audit Committee. However, the Audit Committee may grant omnibus approval for Related Party Transactions proposed to be entered into by the company subject to the following conditions:
 - a. The Audit Committee shall lay down the criteria for granting the omnibus approval in line with the policy on Related Party Transactions of the company and such approval shall be applicable in respect of transactions which are repetitive in nature.
 - b. The Audit Committee shall satisfy itself the need for such omnibus approval and that such approval is in the interest of the company;
 - c. Such omnibus approval shall specify (i) the name/s of the related party, nature of transaction, period of transaction, maximum amount of transaction that can be entered into, (ii) the indicative base price / current contracted price and the formula for variation in the price if any and (iii) such other conditions as the Audit committee may deem fit. Provided that where the need for Related Party Transaction cannot be foreseen and aforesaid details are not available, Audit Committee may grant omnibus approval for such transactions subject to their value not exceeding ₹ 1 crore per transaction.
 - d. Audit Committee shall review, at least on a quarterly basis, the details of RPTs entered into by the company pursuant to each of the omnibus approval given.

- e. Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year
- E. All material Related Party Transactions shall require approval of the shareholders through special resolution and the related parties shall abstain from voting on such resolutions.
- Provided that sub-clause 49 (VII) (D) and (E) shall not be applicable in the following cases:
- (i) transactions entered into between two government companies;
 - (ii) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Explanation(i): For the purpose of Clause 49(VII), "Government company" shall have the same meaning as defined in Section 2(45) of the Companies Act, 2013.

Explanation(ii): For the purpose of Clause 49(VII), all entities falling under the definition of related parties shall abstain from voting irrespective of whether the entity is a party to the particular transaction or not.

VIII. Disclosures

A. Related Party Transactions

1. Details of all material transactions with related parties shall be disclosed quarterly along with the compliance report on corporate governance.
2. The company shall disclose the policy on dealing with Related Party Transactions on its website and a web link thereto shall be provided in the Annual Report.

B. Disclosure of Accounting Treatment

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.

C. Remuneration of Directors

1. All pecuniary relationship or transactions of the non-executive directors vis-à-vis the company shall be disclosed in the Annual Report.
2. In addition to the disclosures required under the Companies Act, 2013, the following disclosures on the remuneration of directors shall be made in the section on the corporate governance of the Annual Report:
 - a. All elements of remuneration package of individual directors summarized under major groups, such as salary, benefits, bonuses, stock options, pension etc.
 - b. Details of fixed component and performance linked incentives, along with the performance criteria.
 - c. Service contracts, notice period, severance fees.
 - d. Stock option details, if any - and whether issued at a discount as well as the period over which accrued and over which exercisable.
3. The company shall publish its criteria of making payments to non-executive directors in its annual report. Alternatively, this may be put up on the company's website and reference drawn thereto in the annual report.



4. The company shall disclose the number of shares and convertible instruments held by non-executive directors in the annual report.
5. Non-executive directors shall be required to disclose their shareholding (both own or held by / for other persons on a beneficial basis) in the listed company in which they are proposed to be appointed as directors, prior to their appointment. These details should be disclosed in the notice to the general meeting called for appointment of such director.

D. Management

1. As part of the directors' report or as an addition thereto, a Management Discussion and Analysis report should form part of the Annual Report to the shareholders. This Management Discussion & Analysis should include discussion on the following matters within the limits set by the company's competitive position:
 - a. Industry structure and developments.
 - b. Opportunities and Threats.
 - c. Segment-wise or product-wise performance.
 - d. Outlook
 - e. Risks and concerns.
 - f. Internal control systems and their adequacy.
 - g. Discussion on financial performance with respect to operational performance.
 - h. Material developments in Human Resources / Industrial Relations front, including number of people employed.
2. Senior management shall make disclosures to the board relating to all material financial and commercial transactions, where they have personal interest, that may have a potential conflict with the interest of the company at large (for e.g. dealing in company shares, commercial dealings with bodies, which have shareholding of management and their relatives etc.)

Explanation: For this purpose, the term "senior management" shall mean personnel of the company who are members of its core management team excluding the Board of Directors). This would also include all members of management one level below the executive directors including all functional heads.

3. The Code of Conduct for the Board of Directors and the senior management shall be disclosed on the website of the company.

E. Shareholders

1. In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:
 - a. A brief resume of the director;
 - b. Nature of his expertise in specific functional areas;
 - c. Names of companies in which the person also holds the directorship and the membership of Committees of the Board; and
 - d. Shareholding of non-executive directors as stated in Clause 49 (IV) (E) (v) above
2. Disclosure of relationships between directors inter-se shall be made in the Annual Report, notice of appointment of a director, prospectus and letter of offer for issuances and any related filings made to the stock exchanges where the company is listed.

3. Quarterly results and presentations made by the company to analysts shall be put on company's web-site, or shall be sent in such a form so as to enable the stock exchange on which the company is listed to put it on its own web-site.
4. A committee under the Chairmanship of a non-executive director and such other members as may be decided by the Board of the company shall be formed to specifically look into the redressal of grievances of shareholders, debenture holders and other security holders. This Committee shall be designated as 'Stakeholders Relationship Committee' and shall consider and resolve the grievances of the security holders of the company including complaints related to transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends.
5. To expedite the process of share transfers, the Board of the company shall delegate the power of share transfer to an officer or a committee or to the registrar and share transfer agents. The delegated authority shall attend to share transfer formalities at least once in a fortnight.

I. Proceeds from public issues, rights issue, preferential issues, etc.

When money is raised through an issue (public issues, rights issues, preferential issues etc.), the company shall disclose the uses /applications of funds by major category (capital expenditure, sales and marketing, working capital, etc), on a quarterly basis as a part of their quarterly declaration of financial results to the Audit Committee. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/ prospectus/ notice and place it before the audit committee. Such disclosure shall be made only till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company. Furthermore, where the company has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, it shall place before the Audit Committee the monitoring report of such agency, upon receipt, without any delay. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

IX. CEO/CFO certification

The CEO or the Managing Director or manager or in their absence, a Whole Time Director appointed in terms of Companies Act, 2013 and the CFO shall certify to the Board that:

- A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief :
 1. these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 2. these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B. There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company's code of conduct.
- C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- D. They have indicated to the auditors and the Audit committee:
 1. significant changes in internal control over financial reporting during the year;



-
2. significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
 3. instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company's internal control system over financial reporting.

X. **Report on Corporate Governance**

- A. There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in **Annexure - XII to the Listing Agreement** and list of non-mandatory requirements is given in **Annexure - XIII to the Listing Agreement**.
- B. The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given in **Annexure – XI to the Listing Agreement**. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

XI. **Compliance**

- A. The company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.
- B. The non-mandatory requirements given in **Annexure - XIII to the Listing Agreement** may be implemented as per the discretion of the company. However, the disclosures of the compliance with mandatory requirements and adoption (and compliance) / non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

Annexure - X to the Listing Agreement

Information to be placed before Board of Directors

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business segments.
4. Minutes of meetings of audit committee and other committees of the board.
5. The information on recruitment and remuneration of senior officers just below the board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand, prosecution notices and penalty notices which are materially important.
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial nonpayment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgement or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/ Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.
15. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.



Annexure - XI to the Listing Agreement

Format of Quarterly Compliance Report on Corporate Governance

Name of the Company: Quarter ending on:

Particulars	Clause of Listing agreement	Compliance Status Yes/No	Remarks
II. Board of Directors	49 (II)		
(A) Composition of Board	49 (IIA)		
(B) Independent Directors	49 (IIB)		
(C) Non-executive Directors' compensation & disclosures	49 (IIC)		
(D) Other provisions as to Board and Committees	49 (IID)		
(E) Code of Conduct	49 (IIE)		
(F) Whistle Blower Policy	49 (IIF)		
III. Audit Committee	49 (III)		
(A) Qualified & Independent Audit Committee	49 (IIIA)		
(B) Meeting of Audit Committee	49 (IIIB)		
(C) Powers of Audit Committee	49 (IIIC)		
(D) Role of Audit Committee	49 (IIID)		
(E) Review of Information by Audit Committee	49 (IIIE)		
IV. Nomination and Remuneration Committee	49 (IV)		
V. Subsidiary Companies	49 (V)		
VI. Risk Management	49 (VI)		
VII. Related Party Transactions	49 (VII)		
VIII. Disclosures	49 (VIII)		
(A) Related party transactions	49 (VIIIA)		
(B) Disclosure of Accounting Treatment	49 (VIIIB)		
(C) Remuneration of Directors	49 (VIII C)		
(D) Management	49 (VIII D)		
(E) Shareholders	49 (VIII E)		
(F) Disclosure of resignation of directors	49 (VIII F)		
(G) Disclosure of formal letter of appointment	49 (VIII G)		
(H) Disclosures in the Annual report	49 (VIII H)		
(I) Proceeds from public issues, rights issue, preferential issues, etc	49 (VIII I)		
IX. CEO/CFO Certification	49 (IX)		
X. Report on Corporate Governance	49 (X)		
XI. Compliance	49 (XI)		

Note:

1. The details under each head shall be provided to incorporate all the information required as per the provisions of the Clause 49 of the Listing Agreement.
2. In the column No. 3, compliance or non-compliance may be indicated by Yes/No/N.A.. For example, if the Board has been composed in accordance with the Clause 49 I of the Listing Agreement, "Yes" may be indicated. Similarly, in case the company has no related party transactions, the words "N.A." may be indicated against 49(VII).
3. In the remarks column, reasons for non-compliance may be indicated, for example, in case of requirement related to circulation of information to the shareholders, which would be done only in the AGM/EGM, it might be indicated in the "Remarks" column as – "will be complied with at the AGM". Similarly, in respect of matters which can be complied with only where the situation arises, for example, "Report on Corporate Governance" is to be a part of Annual Report only, the words "will be complied in the next Annual Report" may be indicated.

Annexure - XII to the Listing Agreement

Suggested List of Items to Be Included In the Report on Corporate Governance in the Annual Report of Companies

1. A brief statement on company's philosophy on code of governance.
2. Board of Directors:
 - a. Composition and category of directors, for example, promoter, executive, nonexecutive, independent non-executive, nominee director, which institution represented as lender or as equity investor.
 - b. Attendance of each director at the Board meetings and the last AGM.
 - c. Number of other Boards or Board Committees in which he/she is a member or Chairperson.
 - d. Number of Board meetings held, dates on which held.
3. Audit Committee:
 - i. Brief description of terms of reference
 - ii. Composition, name of members and Chairperson
 - iii. Meetings and attendance during the year
4. Nomination and Remuneration Committee:
 - i. Brief description of terms of reference
 - ii. Composition, name of members and Chairperson
 - iii. Attendance during the year
 - iv. Remuneration policy
 - v. Details of remuneration to all the directors, as per format in main report.
5. Stakeholders' Grievance Committee:
 - i. Name of non-executive director heading the committee
 - ii. Name and designation of compliance officer
 - iii. Number of shareholders' complaints received so far
 - iv. Number not solved to the satisfaction of shareholders
 - v. Number of pending complaints
6. General Body meetings:
 - i. Location and time, where last three AGMs held.
 - ii. Whether any special resolutions passed in the previous 3 AGMs
 - iii. Whether any special resolution passed last year through postal ballot - details of voting pattern
 - iv. Person who conducted the postal ballot exercise
 - v. Whether any special resolution is proposed to be conducted through postal ballot vi. Procedure for postal ballot
7. Disclosures:
 - i. Disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large.



- ii. Details of non-compliance by the company, penalties, strictures imposed on the company by Stock Exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last three years.
 - iii. Whistle Blower policy and affirmation that no personnel has been denied access to the audit committee.
 - iv. Details of compliance with mandatory requirements and adoption of the non-mandatory requirements of this clause
8. Means of communication:
- i. Quarterly results
 - ii. Newspapers wherein results normally published
 - iii. Any website, where displayed
 - iv. Whether it also displays official news releases; and
 - v. The presentations made to institutional investors or to the analysts.
9. General Shareholder information:
- i. AGM: Date, time and venue
 - ii. Financial year
 - iii. Date of Book closure
 - iv. Dividend Payment Date
 - v. Listing on Stock Exchanges
 - vi. Stock Code
 - vii. Market Price Data: High., Low during each month in last financial year
 - viii. Performance in comparison to broad-based indices such as BSE Sensex, CRISIL index etc.
 - ix. Registrar and Transfer Agents
 - x. Share Transfer System
 - xi. Distribution of shareholding
 - xii. Dematerialization of shares and liquidity
 - xiii. Outstanding GDRs/ADRs/Warrants or any Convertible instruments, conversion date and likely impact on equity
 - xiv. Plant Locations
 - xv. Address for correspondence

Annexure - XIII to the Listing Agreement

Non-Mandatory Requirements

1. The Board

The Board - A non-executive Chairman may be entitled to maintain a Chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties.

2. Shareholder Rights

A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.

3. Audit qualifications

Company may move towards a regime of unqualified financial statements.

4. Separate posts of Chairman and CEO

The company may appoint separate persons to the post of Chairman and Managing Director/CEO.

5. Reporting of Internal Auditor

The Internal auditor may report directly to the Audit Committee.



3.5 SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

F. No. LAD-NRO/GN/201 1-12/24/30181.—In exercise of the powers conferred under section 30 read with clause (h) of sub-section (2) of section 11 of the Securities and Exchange Board of India Act, 1992 the Securities and Exchange Board of India hereby, makes the following regulations, namely:—

PRELIMINARY

Short title, commencement and applicability [Regulation 1]

- (1) These regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- (2) These regulations shall come into force on the thirtieth day from the date of their publication in the Official Gazette.
- (3) These regulations shall apply to direct and indirect acquisition of shares or voting rights in, or control over target company.

Provided that these regulations shall not apply to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue, on the institutional trading platform of a recognised stock exchange.

Definitions [Regulation 2]

- (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,—
 - (a) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company;
 - (b) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company;
 - (c) "Act" means the Securities and Exchange Board of India Act, 1992;
 - (d) "Board" means the Securities and Exchange Board of India established under section 3 of the Act;
 - (e) "control" includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position;
- (f) "convertible security" means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of the security, and includes convertible debt instruments and convertible preference shares;
- (g) "disinvestment" means the direct or indirect sale by the Central Government or any State Government or by a government company, as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking;
- (h) "enterprise value" means the value calculated as market capitalization of a company plus debt, minority interest and preferred shares, minus total cash and cash equivalents;
- (i) "financial year" means the period of twelve months commencing on the first day of the month of April;

- (j) "frequently traded shares" means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is made, is at least ten per cent of the total number of shares of such class of the target company:
- Provided** that where the share capital of a particular class of shares of the target company is not identical throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares;
- (k) "identified date" means the date falling on the tenth working day prior to the commencement of the tendering period, for the purposes of determining the shareholders to whom the letter of offer shall be sent;
- (l) "immediate relative" means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse;
- (m) "listing agreement" means the agreement with the stock exchange governing the conditions of listing of shares of the target company;
- (n) "manager to the open offer" means a merchant banker referred to in regulation 12;
- (o) "maximum permissible non-public shareholding" means such percentage shareholding in the target company excluding the minimum public shareholding required under the Securities Contracts (Regulation) Rules, 1957;
- (p) "offer period" means the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be;
- (q) "persons acting in concert" means,—
- (1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.
 - (2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—
 - (i) a company, its holding company, subsidiary company and any company under the same management or control;
 - (ii) a company, its directors, and any person entrusted with the management of the company;
 - (iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;
 - (iv) promoters and members of the promoter group;
 - (v) immediate relatives;
 - (vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;
 - (vii) a collective investment scheme and its collective investment management company, trustees and trustee company;
 - (viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;



(viiia) An alternative investment fund and its sponsor, trustees, trustee company and manager;

- (ix) a foreign institutional investor and its sub-accounts;
- (x) a merchant banker and its client, who is an acquirer;
- (xi) a portfolio manager and its client, who is an acquirer;
- (xii) banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual:

Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;

- (xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unit holder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

Explanation.— For the purposes of this clause "associate" of a person means,—

- (a) any immediate relative of such person;
- (b) trusts of which such person or his immediate relative is a trustee;
- (c) partnership firm in which such person or his immediate relative is a partner; and
- (d) members of Hindu undivided families of which such person is a coparcener;

(r) "postal ballot" means a postal ballot as provided for under the Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 made under the Companies Act, 1956;

(s) "Promoter" has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group;

(t) "Promoter group" has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

(u) "public sector undertaking" means a target company in which, directly or indirectly, majority of shares or voting rights or control is held by the Central Government or any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

(v) "shares" means shares in the equity share capital of a target company carrying voting rights, and includes any security which entitles the holder thereof to exercise voting rights;

Explanation.— For the purpose of this clause shares will include all depository receipts carrying an entitlement to exercise voting rights in the target company;

(w) "specified" means as specified by the Board;

(x) "state-level financial institution" means a Financial Corporation established under section 3 or section 3A and institutions notified under section 46 of the State Financial Corporations

Act, 1951, and includes a development corporation established as a company by a State Government with the object of development of industries or agricultural activities in the state;

- (y) "stock exchange" means a stock exchange which has been granted recognition under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
 - (z) "target company" means a company and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, whose shares are listed on a stock exchange;
 - (za) "tendering period" means the period within which shareholders may tender their shares in acceptance of an open offer to acquire shares made under these regulations;
 - (zb) "volume weighted average market price" means the product of the number of equity shares traded on a stock exchange and the price of each equity share divided by the total number of equity shares traded on the stock exchange;
 - (zc) "volume weighted average price" means the product of the number of equity shares bought and price of each such equity share divided by the total number of equity shares bought;
 - (zd) "weighted average number of total shares" means the number of shares at the beginning of a period, adjusted for shares cancelled, bought back or issued during the aforesaid period, multiplied by a time-weighing factor;
 - (ze) "working day" means any working day of the Board.
- (2) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Act or the Securities Contracts (Regulation) Act, 1956, or the Companies Act, 1956, or any statutory modification or re-enactment thereto, as the case may be.

SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL

Substantial acquisition of shares or voting rights [Regulation 3]

- (1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.
- (2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Explanation.—For the purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

- (i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.



- (ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.
- (3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

Acquisition of control [Regulation 4]

Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Indirect acquisition of shares or control [Regulation 5]

- (1) For the purposes of regulation 3 and regulation 4, acquisition of shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company.
- (2) Notwithstanding anything contained in these regulations, in the case of an indirect acquisition attracting the provisions of sub-regulation (1) where,—
 - (a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;
 - (b) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or
 - (c) the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired;

is in excess of eighty per cent, on the basis of the most recent audited annual financial statements, such indirect acquisition shall be regarded as a direct acquisition of the target company for all purposes of these regulations including without limitation, the obligations relating to timing, pricing and other compliance requirements for the open offer.

Explanation.— For the purposes of computing the percentage referred to in clause (c) of this sub-regulation, the market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.

Voluntary Offer [Regulation 6]

- (1) An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise twenty-five per cent or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares in accordance with these regulations,

subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding:

Provided that where an acquirer or any person acting in concert with him has acquired shares of the target company in the preceding fifty-two weeks without attracting the obligation to make a public announcement of an open offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring shares under this regulation:

Provided further that during the offer period such acquirer shall not be entitled to acquire any shares otherwise than under the open offer.

- (2) An acquirer and persons acting in concert with him, who have made a public announcement under this regulation to acquire shares of a target company shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer except pursuant to another voluntary open offer:

Provided that such restriction shall not prohibit the acquirer from making a competing offer upon any other person making an open offer for acquiring shares of the target company.

- (3) Shares acquired through bonus issue or stock splits shall not be considered for purposes of the dis-entitlement set out in this regulation.

Offer Size [Regulation 7]

- (1) The open offer for acquiring shares to be made by the acquirer and persons acting in concert with him under regulation 3 and regulation 4 shall be for at least twenty six per cent of total shares of the target company, as of tenth working day from the closure of the tendering period:

Provided that the total shares of the target company as of tenth working day from the closure of the tendering period shall take into account all potential increases in the number of outstanding shares during the offer period contemplated as of the date of the public announcement:

Provided further that the offer size shall be proportionately increased in case of an increase in total number of shares, after the public announcement, which is not contemplated on the date of the public announcement.

- (2) The open offer made under regulation 6 shall be for acquisition of at least such number of shares as would entitle the holder thereof to exercise an additional ten per cent of the total shares of the target company, and shall not exceed such number of shares as would result in the post-acquisition holding of the acquirer and persons acting in concert with him exceeding the maximum permissible non-public shareholding applicable to such target company:

Provided that in the event of a competing offer being made, the acquirer who has voluntarily made a public announcement of an open offer under regulation 6 shall be entitled to increase the number of shares for which the open offer has been made to such number of shares as he deems fit:

Provided further that such increase in offer size shall have to be made within a period of fifteen working days from the public announcement of a competing offer, failing which the acquirer shall not be entitled to increase the offer size.

- (3) Upon an acquirer opting to increase the offer size under sub-regulation (2), such open offer shall be deemed to have been made under sub-regulation (2) of regulation 3 and the provisions of these regulations shall apply accordingly.

- (4) In the event the shares accepted in the open offer were such that the shareholding of the acquirer taken together with persons acting in concert with him pursuant to completion of the open offer results in their shareholding exceeding the maximum permissible non-public shareholding, the acquirer shall be required to bring down the non-public shareholding to the level specified and within the time permitted under Securities Contract (Regulation) Rules, 1957.



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- (5) The acquirer whose shareholding exceeds the maximum permissible non-public shareholding, pursuant to an open offer under these regulations, shall not be eligible to make a voluntary delisting offer under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, unless a period of twelve months has elapsed from the date of the completion of the offer period.
 - (6) Any open offer made under these regulations shall be made to all shareholders of the target company, other than the acquirer, persons acting in concert with him and the parties to any underlying agreement including persons deemed to be acting in concert with such parties, for the sale of shares of the target company.

Offer Price [Regulation 8]

- (1) The open offer for acquiring shares under regulation 3, regulation 4, regulation 5 or regulation 6 shall be made at a price not lower than the price determined in accordance with sub-regulation (2) or sub-regulation (3), as the case may be.
- (2) In the case of direct acquisition of shares or voting rights in, or control over the target company, and indirect acquisition of shares or voting rights in, or control over the target company where the parameters referred to in sub-regulation (2) of regulation 5 are met, the offer price shall be the highest of,—
 - (a) the highest negotiated price per share of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;
 - (b) the volume-weighted average price paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the date of the public announcement;
 - (c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the date of the public announcement;
 - (d) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;
 - (e) where the shares are not frequently traded, the price determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies; and
 - (f) the per share value computed under sub-regulation (5), if applicable.
- (3) In the case of an indirect acquisition of shares or voting rights in, or control over the target company, where the parameter referred to in sub-regulation (2) of regulation 5 are not met, the offer price shall be the highest of,—
 - (a) the highest negotiated price per share, if any, of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;
 - (b) the volume-weighted average price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

- (c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
 - (d) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, between the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the public announcement of the open offer for shares of the target company made under these regulations;
 - (e) the volume-weighted average market price of the shares for a period of sixty trading days immediately preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded; and
 - (f) the per share value computed under sub-regulation (5).
- (4) In the event the offer price is incapable of being determined under any of the parameters specified in sub-regulation (3), without prejudice to the requirements of sub-regulation (5), the offer price shall be the fair price of shares of the target company to be determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.
- (5) In the case of an indirect acquisition and open offers under sub-regulation (2) of regulation 5 where,—
- (a) the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired;
 - (b) the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired; or
 - (c) the proportionate market capitalization of the target company as a percentage of the enterprise value for the entity or business being acquired;
- is in excess of fifteen per cent, on the basis of the most recent audited annual financial statements, the acquirer shall, notwithstanding anything contained in sub-regulation (2) or sub-regulation (3), be required to compute and disclose, in the letter of offer, the per share value of the target company taken into account for the acquisition, along with a detailed description of the methodology adopted for such computation.
- Explanation.—** For the purposes of computing the percentages referred to in clause (c) of this sub-regulation, the market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain, as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period.
- (6) For the purposes of sub-regulation (2) and sub-regulation (3), where the acquirer or any person acting in concert with him has any outstanding convertible instruments convertible into shares of the target company at a specific price, the price at which such instruments are to be converted



into shares, shall also be considered as a parameter under sub-regulation (2) and sub-regulation (3).

(7) For the purposes of sub-regulation (2) and sub-regulation (3), the price paid for shares of the target company shall include any price paid or agreed to be paid for the shares or voting rights in, or control over the target company, in any form whatsoever, whether stated in the agreement for acquisition of shares or in any incidental, contemporaneous or collateral agreement, whether termed as control premium or as non-compete fees or otherwise.

(8) Where the acquirer has acquired or agreed to acquire whether by himself or through or with persons acting in concert with him any shares or voting rights in the target company during the offer period, whether by subscription or purchase, at a price higher than the offer price, the offer price shall stand revised to the highest price paid or payable for any such acquisition:

Provided that no such acquisition shall be made after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.

(9) The price parameters under sub-regulation (2) and sub-regulation (3) may be adjusted by the acquirer in consultation with the manager to the offer, for corporate actions such as issuances pursuant to rights issue, bonus issue, stock consolidations, stock splits, payment of dividend, demergers and reduction of capital, where the record date for effecting such corporate actions falls prior to three working days before the commencement of the tendering period:

Provided that no adjustment shall be made for dividend declared with a record date falling during such period except where the dividend per share is more than fifty per cent higher than the average of the dividend per share paid during the three financial years preceding the date of the public announcement.

(10) Where the acquirer or persons acting in concert with him acquires shares of the target company during the period of twenty-six weeks after the tendering period at a price higher than the offer price under these regulations, the acquirer and persons acting in concert shall pay the difference between the highest acquisition price and the offer price, to all the shareholders whose shares were accepted in the open offer, within sixty days from the date of such acquisition:

Provided that this provision shall not be applicable to acquisitions under another open offer under these regulations or pursuant to the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, or open market purchases made in the ordinary course on the stock exchanges, not being negotiated acquisition of shares of the target company whether by way of bulk deals, block deals or in any other form.

(11) Where the open offer is subject to a minimum level of acceptances, the acquirer may, subject to the other provisions of this regulation, indicate a lower price, which will not be less than the price determined under this regulation, for acquiring all the acceptances despite the acceptance falling short of the indicated minimum level of acceptance, in the event the open offer does not receive the minimum acceptance.

(12) In the case of any indirect acquisition, other than the indirect acquisition referred in sub-regulation (2) of regulation 5, the offer price shall stand enhanced by an amount equal to a sum determined at the rate of ten per cent per annum for the period between the earlier of the date on which the primary acquisition is contracted or the date on which the intention or the decision to make the primary acquisition is announced in the public domain, and the date of the detailed public statement, provided such period is more than five working days.

(13) The offer price for partly paid up shares shall be computed as the difference between the offer price and the amount due towards calls-in-arrears including calls remaining unpaid with interest, if any, thereon.

(14) The offer price for equity shares carrying differential voting rights shall be determined by the acquirer and the manager to the open offer with full disclosure of justification for the price so determined, being set out in the detailed public statement and the letter of offer:

Provided that such price shall not be lower than the amount determined by applying the percentage rate of premium, if any, that the offer price for the equity shares carrying full voting rights represents to the price parameter computed under clause (d) of sub-regulation 2, or as the case may be, clause (e) of sub-regulation 3, to the volume-weighted average market price of the shares carrying differential voting rights for a period of sixty trading days computed on the same terms as specified in the aforesaid provisions, subject to shares carrying full voting rights and the shares carrying differential voting rights, both being frequently traded shares.

- (15) In the event of any of the price parameters contained in this regulation not being available or denominated in Indian rupees, the conversion of such amount into Indian rupees shall be effected at the exchange rate as prevailing on the date preceding the date of public announcement and the acquirer shall set out the source of such exchange rate in the public announcement, the detailed public statement and the letter of offer.
- (16) For purposes of clause (e) of sub-regulation (2) and sub-regulation (4), the Board may, at the expense of the acquirer, require valuation of the shares by an independent merchant banker other than the manager to the open offer or an independent chartered accountant in practice having a minimum experience of ten years.

Mode of payment [Regulation 9]

- (1) The offer price may be paid,—
 - (a) in cash;
 - (b) by issue, exchange or transfer of listed shares in the equity share capital of the acquirer or of any person acting in concert;
 - (c) by issue, exchange or transfer of listed secured debt instruments issued by the acquirer or any person acting in concert with a rating not inferior to investment grade as rated by a credit rating agency registered with the Board;
 - (d) by issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquire listed shares in the equity share capital of the acquirer or of any person acting in concert; or
 - (e) a combination of the mode of payment of consideration stated in clause (a), clause (b), clause (c) and clause (d);

Provided that where any shares have been acquired or agreed to be acquired by the acquirer and persons acting in concert with him during the fifty-two weeks immediately preceding the date of public announcement constitute more than ten per cent of the voting rights in the target company and has been paid for in cash, the open offer shall entail an option to the shareholders to require payment of the offer price in cash, and a shareholder who has not exercised an option in his acceptance shall be deemed to have opted for receiving the offer price in cash:

Provided further that in case of revision in offer price the mode of payment of consideration may be altered subject to the condition that the component of the offer price to be paid in cash prior to such revision is not reduced.

- (2) For the purposes of clause (b), clause (d) and clause (e) of sub-regulation (1), the shares sought to be issued or exchanged or transferred or the shares to be issued upon conversion of other securities, towards payment of the offer price, shall conform to the following requirements,—
 - (a) such class of shares are listed on a stock exchange and frequently traded at the time of the public announcement;
 - (b) such class of shares have been listed for a period of at least two years preceding the date of the public announcement;



- (c) the issuer of such class of shares has redressed at least ninety five per cent of the complaints received from investors by the end of the calendar quarter immediately preceding the calendar month in which the public announcement is made;
- (d) the issuer of such class of shares has been in material compliance with the listing agreement for a period of at least two years immediately preceding the date of the public announcement:
- Provided** that in case where the Board is of the view that a company has not been materially compliant with the provisions of the listing agreement, the offer price shall be paid in cash only;
- (e) the impact of auditors' qualifications, if any, on the audited accounts of the issuer of such shares for three immediately preceding financial years does not exceed five per cent of the net profit or loss after tax of such issuer for the respective years; and
- (f) the Board has not issued any direction against the issuer of such shares not to access the capital market or to issue fresh shares.
- (3) Where the shareholders have been provided with options to accept payment in cash or by way of securities, or a combination thereof, the pricing for the open offer may be different for each option subject to compliance with minimum offer price requirements under regulation 8:
- Provided** that the detailed public statement and the letter of offer shall contain justification for such differential pricing.
- (4) In the event the offer price consists of consideration to be paid by issuance of securities, which requires compliance with any applicable law, the acquirer shall ensure that such compliance is completed not later than the commencement of the tendering period:
- Provided** that in case the requisite compliance is not made by such date, the acquirer shall pay the entire consideration in cash.
- (5) Where listed securities are offered as consideration, the value of such securities shall be higher of:
- the average of the weekly high and low of the closing prices of such securities quoted on the stock exchange during the six months preceding the relevant date;
 - the average of the weekly high and low of the closing prices of such securities quoted on the stock exchange during the two weeks preceding the relevant date; and
 - the volume-weighted average market price for a period of sixty trading days preceding the date of the public announcement, as traded on the stock exchange where the maximum volume of trading in the shares of the company whose securities are being offered as consideration, are recorded during the six-month period prior to relevant date and the ratio of exchange of shares shall be duly certified by an independent merchant banker (other than the manager to the open offer) or an independent chartered accountant having a minimum experience of ten years.

Explanation.— For the purposes of this sub-regulation, the "relevant date" shall be the thirtieth day prior to the date on which the meeting of shareholders is held to consider the proposed issue of shares under sub-section (1A) of Section 81 of the Companies Act, 1956.

General exemptions [Regulation 10]

- The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefore,—
 - acquisition pursuant to inter se transfer of shares amongst qualifying persons, being,—
 - immediate relatives;

- (ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;
- (iii) a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less than fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;
- (iv) persons acting in concert for not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement;
- (v) shareholders of a target company who have been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, and any company in which the entire equity share capital is owned by such shareholders in the same proportion as their holdings in the target company without any differential entitlement to exercise voting rights in such company:

Provided that for purposes of availing of the exemption under this clause,—

- (i) If the shares of the target company are frequently traded, the acquisition price per share shall not be higher by more than twenty-five per cent of the volume-weighted average market price for a period of sixty trading days preceding the date of issuance of notice for the proposed inter se transfer under sub-regulation (5), as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, and if the shares of the target company are infrequently traded, the acquisition price shall not be higher by more than twenty-five percent of the price determined in terms of clause (e) of sub-regulation (2) of regulation 8; and
 - (ii) the transferor and the transferee shall have complied with applicable disclosure requirements set out in Chapter V.
- (b) acquisition in the ordinary course of business,—
- (i) an underwriter registered with the Board by way of allotment pursuant to an underwriting agreement in terms of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (ii) a stock broker registered with the Board on behalf of his client in exercise of lien over the shares purchased on behalf of the client under the bye-laws of the stock exchange where such stock broker is a member;
 - (iii) a merchant banker registered with the Board or a nominated investor in the process of market making or subscription to the unsubscribed portion of issue in terms of Chapter XB of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (iv) any person acquiring shares pursuant to a scheme of safety net in terms of regulation 44 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
 - (v) a merchant banker registered with the Board acting as a stabilising agent or by the promoter or pre-issue shareholder in terms of regulation 45 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;



- (vi) by a registered market-maker of a stock exchange in respect of shares for which he is the market maker during the course of market making;
 - (vii) a Scheduled Commercial Bank, acting as an escrow agent; and
 - (viii) invocation of pledge by Scheduled Commercial Banks or Public Financial Institutions as a pledgee.
- (c) acquisitions at subsequent stages, by an acquirer who has made a public announcement of an open offer for acquiring shares pursuant to an agreement of disinvestment, as contemplated in such agreement:
- Provided** that,—
- (i) both the acquirer and the seller are the same at all the stages of acquisition; and
 - (ii) full disclosures of all the subsequent stages of acquisition, if any, have been made in the public announcement of the open offer and in the letter of offer.
- (d) acquisition pursuant to a scheme,—
- (i) made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 or any statutory modification or re-enactment thereto;
 - (ii) of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign; or
 - (iii) of arrangement not directly involving the target company as a transferor company or as a transferee company, or reconstruction not involving the target company's undertaking, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign, subject to,—
 - (A) the component of cash and cash equivalents in the consideration paid being less than twenty-five per cent of the consideration paid under the scheme; and
 - (B) where after implementation of the scheme of arrangement, persons directly or indirectly holding at least thirty-three per cent of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.
- (e) acquisition pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (f) acquisition pursuant to the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;
- (g) acquisition by way of transmission, succession or inheritance;
- (h) acquisition of voting rights or preference shares carrying voting rights arising out of the operation of sub-section (2) of section 87 of the Companies Act, 1956.
- (i) Conversion of debt into equity under Strategic Debt Restructuring Scheme - Acquisition of equity shares by the consortium of banks, financial institutions and other secured lenders pursuant to conversion of their debt as part of the Strategic Debt Restructuring Scheme in accordance with the guidelines specified by the Reserve Bank of India:

Provided that the conditions specified under sub-regulation (5) or (6) of regulation 70 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as may be applicable, are complied with.

- (j) increase in voting rights arising out of the operation of sub-section (1) of Section 106 of the Companies Act, 2013 or pursuant to a forfeiture of shares by the target company, undertaken in compliance with the provisions of the Companies Act, 2013 and its articles of association.
- (2) The acquisition of shares of a target company, not involving a change of control over such target company, pursuant to a scheme of corporate debt restructuring in terms of the Corporate Debt Restructuring Scheme notified by the Reserve Bank of India vide circular no. B.P.BC 15/21.04, 114/2001 dated August 23, 2001, or any modification or re-notification thereto provided such scheme has been authorised by shareholders by way of a special resolution passed by postal ballot, shall be exempted from the obligation to make an open offer under regulation 3.
- (3) An increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3, pursuant to buy-back of shares by the target company shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation (1) of regulation 3 within ninety days from the date of the closure of the said buy-back offer.
- (4) The following acquisitions shall be exempt from the obligation to make an open offer under sub-regulation (2) of regulation 3,—
 - (a) acquisition of shares by any shareholder of a target company, upto his entitlement, pursuant to a rights issue;
 - (b) acquisition of shares by any shareholder of a target company, beyond his entitlement, pursuant to a rights issue, subject to fulfillment of the following conditions,—
 - (i) the acquirer has not renounced any of his entitlements in such rights issue; and
 - (ii) the price at which the rights issue is made is not higher than the ex-rights price of the shares of the target company, being the sum of,—
 - (A) the volume weighted average market price of the shares of the target company during a period of sixty trading days ending on the day prior to the date of determination of the rights issue price, multiplied by the number of shares outstanding prior to the rights issue, divided by the total number of shares outstanding after allotment under the rights issue:
Provided that such volume weighted average market price shall be determined on the basis of trading on the stock exchange where the maximum volume of trading in the shares of such target company is recorded during such period; and
 - (B) the price at which the shares are offered in the rights issue, multiplied by the number of shares so offered in the rights issue divided by the total number of shares outstanding after allotment under the rights issue:
 - (c) increase in voting rights in a target company of any shareholder pursuant to buy-back of shares:
Provided that,—
 - (i) such shareholder has not voted in favour of the resolution authorising the buy-back of securities under section 77A of the Companies Act, 1956;
 - (ii) in the case of a shareholder resolution, voting is by way of postal ballot;
 - (iii) where a resolution of shareholders is not required for the buy-back, such shareholder, in his capacity as a director, or any other interested director has not voted in favour



of the resolution of the board of directors of the target company authorising the buy-back of securities under section 77A of the Companies Act, 1956; and

- (iv) the increase in voting rights does not result in an acquisition of control by such shareholder over the target company:

Provided further that where the aforesaid conditions are not met, in the event such shareholder reduces his shareholding such that his voting rights fall below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3, within ninety days from the date of closure of the buy-back offer by the target company, the shareholder shall be exempt from the obligation to make an open offer;

- (d) acquisition of shares in a target company by any person in exchange for shares of another target company tendered pursuant to an open offer for acquiring shares under these regulations;
- (e) acquisition of shares in a target company from state-level financial institutions or their subsidiaries or companies promoted by them, by promoters of the target company pursuant to an agreement between such transferors and such promoter;
- (f) acquisition of shares in a target company from a venture capital fund or Category I Alternative Investment Fund or a foreign venture capital investor registered with the Board, by promoters of the target company pursuant to an agreement between such venture capital fund or Category I Alternative Investment Fund or foreign venture capital investor and such promoters.
- (5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.
- (6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.
- (7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees twenty five thousand by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

Explanation.—For the purposes of sub-regulation (5), sub-regulation (6) and sub-regulation (7) in the case of convertible securities, the date of the acquisition shall be the date of conversion of such securities.

Exemptions by the Board [Regulation 11]

- (1) The Board may for reasons recorded in writing, grant exemption from the obligation to make an open offer for acquiring shares under these regulations subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market.
- (2) The Board may for reasons recorded in writing, grant a relaxation from strict compliance with any procedural requirement under Chapter III and Chapter IV subject to such conditions as the Board

deems fit to impose in the interests of investors in securities and the securities market on being satisfied that,—

- (a) the target company is a company in respect of which the Central Government or State Government or any other regulatory authority has superseded the board of directors of the target company and has appointed new directors under any law for the time being in force, if,—
 - (i) such board of directors has formulated a plan which provides for transparent, open, and competitive process for acquisition of shares or voting rights in, or control over the target company to secure the smooth and continued operation of the target company in the interests of all stakeholders of the target company and such plan does not further the interests of any particular acquirer;
 - (ii) the conditions and requirements of the competitive process are reasonable and fair;
 - (iii) the process adopted by the board of directors of the target company provides for details including the time when the open offer for acquiring shares would be made, completed and the manner in which the change in control would be effected; and
 - (b) the provisions of Chapter III and Chapter IV are likely to act as impediment to implementation of the plan of the target company and exemption from strict compliance with one or more of such provisions is in public interest, the interests of investors in securities and the securities market.
- (3) For seeking exemption under sub-regulation (1), the acquirer shall, and for seeking relaxation under sub-regulation (2) the target company shall file an application with the Board, supported by a duly sworn affidavit, giving details of the proposed acquisition and the grounds on which the exemption has been sought.
- (4) The acquirer or the target company, as the case may be, shall along with the application referred to under sub-regulation (3) pay a non-refundable fee of rupees fifty thousand, by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.
- (5) The Board may after affording reasonable opportunity of being heard to the applicant and after considering all the relevant facts and circumstances, pass a reasoned order either granting or rejecting the exemption or relaxation sought as expeditiously as possible:
- Provided** that the Board may constitute a panel of experts to which an application for an exemption under sub-regulation (1) may, if considered necessary, be referred to make recommendations on the application to the Board.
- (6) The order passed under sub-regulation (5) shall be hosted by the Board on its official website.

OPEN OFFER PROCESS

Manager to the open offer [Regulation 12]

- (1) Prior to making a public announcement, the acquirer shall appoint a merchant banker registered with the Board, who is not an associate of the acquirer, as the manager to the open offer.
- Explanation.—**For the purposes of this regulation the term "associate" has the same meaning as in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.
- (2) The public announcement of the open offer for acquiring shares required under these regulations shall be made by the acquirer through such manager to the open offer.

Timing [Regulation 13]

- (1) The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.



(2) Such public announcement,—

- (a) in the case of market purchases, shall be made prior to placement of the purchase order with the stock broker to acquire the shares, that would take the entitlement to voting rights beyond the stipulated thresholds;
- (b) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon converting convertible securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company shall be made on the same day as the date of exercise of the option to convert such securities into shares of the target company;
- (c) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon conversion of convertible securities with a fixed date of conversion shall be made on the second working day preceding the scheduled date of conversion of such securities into shares of the target company;
- (d) pursuant to a disinvestment shall be made on the same day as the date of executing the agreement for acquisition of shares or voting rights in or control over the target company;
- (e) in the case of indirect acquisition of shares or voting rights in, or control over the target company where none of the parameters referred to in sub-regulation (2) of regulation 5 are met, may be made at any time within four working days from the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
- (f) in the case of indirect acquisition of shares or voting rights in, or control over the target company where any of the parameters referred to in sub-regulation (2) of regulation 5 are met shall be made on the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
- (g) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, shall be made on the date on which the board of directors of the target company authorises such preferential issue;
- (h) the public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under regulation 10, shall be made not later than the ninetieth day from the date of closure of the buy-back offer by the target company;
- (i) the public announcement pursuant to any acquisition of shares or voting rights in or control over the target company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer, shall be made not later than two working days from the date of receipt of intimation of having acquired such title.

- (2A) Notwithstanding anything contained in sub-regulation (2), a public announcement referred to in regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of,-
- (i) an agreement and any one or more modes of acquisition referred to in sub-regulation (2) of regulation 13, or
 - (ii) any one or more modes of acquisition referred in clause (a) to (i) of sub-regulation (2) of regulation 13,

shall be made on the date of first such acquisition, provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition.

- (3) The public announcement made under regulation 6 shall be made on the same day as the date on which the acquirer takes the decision to voluntarily make a public announcement of an open offer for acquiring shares of the target company.

- (4) Pursuant to the public announcement made under sub-regulation (1) and sub-regulation (3), a detailed public statement shall be published by the acquirer through the manager to the open offer in accordance with regulation 14 and regulation 15, not later than five working days of the public announcement:

Provided that the detailed public statement pursuant to a public announcement made under clause (e) of sub-regulation (2) shall be made not later than five working days of the completion of the primary acquisition of shares or voting rights in, or control over the company or entity holding shares or voting rights in, or control over the target company.

Explanation.— It is clarified that in the event the acquirer does not succeed in acquiring the ability to exercise or direct the exercise of voting rights in, or control over the target company, the acquirer shall not be required to make a detailed public statement of an open offer for acquiring shares under these regulations.

Publication [Regulation 14]

- (1) The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public.
- (2) A copy of the public announcement shall be sent to the Board and to the target company at its registered office within one working day of the date of the public announcement.
- (3) The detailed public statement pursuant to the public announcement referred to in sub-regulation (4) of regulation 13 shall be published in all editions of any one English national daily with wide circulation, any one Hindi national daily with wide circulation, and any one regional language daily with wide circulation at the place where the registered office of the target company is situated and one regional language daily at the place of the stock exchange where the maximum volume of trading in the shares of the target company are recorded during the sixty trading days preceding the date of the public announcement.
- (4) Simultaneously with publication of such detailed public statement in the newspapers, a copy of the same shall be sent to,—
 - (i) the Board through the manager to the open offer,
 - (ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public,
 - (iii) the target company at its registered office, and the target company shall forthwith circulate it to the members of its board.

Contents [Regulation 15]

- (1) The public announcement shall contain such information as may be specified, including the following,—
 - (a) name and identity of the acquirer and persons acting in concert with him;
 - (b) name and identity of the sellers, if any;
 - (c) nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;
 - (d) the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;
 - (e) the offer price, and mode of payment of consideration; and
 - (f) offer size, and conditions as to minimum level of acceptances, if any.



- (2) The detailed public statement pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to make an informed decision with reference to the open offer.
- (3) The public announcement of the open offer, the detailed public statement, and any other statement, advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares under these regulations shall not omit any relevant information, or contain any misleading information.

Filing of letter of offer with the Board [Regulation 16]

- (1) Within five working days from the date of the detailed public statement made under sub-regulation (4) of regulation 13, the acquirer shall, through the manager to the open offer, file with the Board, a draft of the letter of offer containing such information as may be specified along with a non-refundable fee, as per the following scale, by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board,—

Sl. No.	Consideration payable under the Open Offer	Fee (₹)
a.	Upto ten crore rupees.	One lakh twenty five thousands rupees (₹ 1,25,000)
b.	More than ten crore rupees, but less than or equal to one thousand crore rupees.	One Lakh twenty five thousands rupees (₹1,25,000) plus 0.025 per cent of the portion of the offer size in excess of ten crore rupees (₹10,00,00,000).
c.	More than one thousand crore rupees, but less than or equal to five thousand crore rupees.	One crore twenty five lakh rupees (₹1,25,00,000) plus 0.03125 per cent of the portion of the offer size in excess of one thousand crore rupees (₹1000,00 ,00,000).
d.	More than five thousand crore rupees.	Two crore fifty lakh rupees (₹ 2,50,00,000) plus 0.01 per cent of the portion of the offer size in excess s of five thousand crore rupees (₹ 5000,00,00,000), subject to a maximum of three crore rupees (₹ 3,00,00,000).

- (2) The consideration payable under the open offer shall be calculated at the offer price, assuming full acceptance of the open offer, and in the event the open offer is subject to differential pricing, shall be computed at the highest offer price, irrespective of manner of payment of the consideration:

Provided that in the event of consideration payable under the open offer being enhanced owing to a revision to the offer price or offer size the fees payable shall stand revised accordingly, and shall be paid within five working days from the date of such revision.

- (3) The manager to the open offer shall provide soft copies of the public announcement, the detailed public statement and the draft letter of offer in accordance with such specifications as may be specified, and the Board shall upload the same on its website.
- (4) The Board shall give its comments on the draft letter of offer as expeditiously as possible but not later than fifteen working days of the receipt of the draft letter of offer and in the event of no comments being issued by the Board within such period, it shall be deemed that the Board does not have comments to offer:

Provided that in the event the Board has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarification or additional information sought.

Provided further that in the event the Board specifies any changes, the manager to the open offer and the acquirer shall carry out such changes in the letter of offer before it is dispatched to the shareholders.

- (5) In the case of competing offers, the Board shall provide its comments on the draft letter of offer in respect of each competing offer on the same day.
- (6) In the event the disclosures in the draft letter of offer are inadequate the Board may call for a revised letter of offer and shall deal with the revised letter of offer in accordance with sub-regulation (4).

Provision of escrow [Regulation 17]

- (1) Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account such aggregate amount as per the following scale:

Sl. No.	Consideration payable under the Open Offer	Escrow Amount
a.	On the first five hundred crore rupees	an amount equal to twenty-five per cent of the consideration
b.	On the balance consideration	an additional amount equal to ten per cent of the balance consideration

Provided that where an open offer is made conditional upon minimum level of acceptance, hundred percent of the consideration payable in respect of minimum level of acceptance or fifty per cent of the consideration payable under the open offer, whichever is higher, shall be deposited in cash in the escrow account.

- (2) The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and in the event of an upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.
- (3) The escrow account referred to in sub-regulation (1) may be in the form of,—
 - (a) cash deposited with any scheduled commercial bank;
 - (b) bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or
 - (c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin:

Provided that securities sought to be provided towards escrow account under clause (c) shall be required to conform to the requirements set out in sub-regulation (2) of regulation 9.

- (4) In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least one per cent of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.
- (5) For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under these regulations.



- (6) For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.
- (7) For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.
- (8) The manager to the open offer shall not release the escrow account until the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special escrow account as required under regulation 21.
- (9) In the event of non-fulfillment of obligations under these regulations by the acquirer the Board may direct the manager to the open offer to forfeit the escrow account or any amounts lying in the special escrow account, either in full or in part.
- (10) The escrow account deposited with the bank in cash shall be released only in the following manner,—
 - (a) the entire amount to the acquirer upon withdrawal of offer in terms of regulation 23 as certified by the manager to the open offer:
Provided that in the event the withdrawal is pursuant to clause (c) of sub-regulation (1) of regulation 23, the manager to the open offer shall release the escrow account upon receipt of confirmation of such release from the Board;
 - (b) for transfer of an amount not exceeding ninety per cent of the escrow account, to the special escrow account in accordance with regulation 21;
 - (c) to the acquirer, the balance of the escrow account after transfer of cash to the special escrow account, on the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer;
 - (d) the entire amount to the acquirer upon the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments;
 - (e) the entire amount to the manager to the open offer, in the event of forfeiture for non-fulfillment of any of the obligations under these regulations, for distribution in the following manner, after deduction of expenses, if any, of registered market intermediaries associated with the open offer,—
 - (i) one third of the escrow account to the target company;
 - (ii) one third of the escrow account to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009; and
 - (iii) one third of the escrow account to be distributed pro-rata among the shareholders who have accepted the open offer.

Other procedures [Regulation 18]

- (1) Simultaneously with the filing of the draft letter of offer with the Board under sub-regulation (1) of regulation 16, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.

- (2) The letter of offer shall be dispatched to the shareholders whose names appear on the register of members of the target company as of the identified date, not later than seven working days from the receipt of comments from the Board or where no comments are offered by the Board, within seven working days from the expiry of the period stipulated in sub-regulation (4) of regulation 16:

Provided that where local laws or regulations of any jurisdiction outside India may expose the acquirer or the target company to material risk of civil, regulatory or criminal liabilities in the event the letter of offer in its final form were to be sent without material amendments or modifications into such jurisdiction, and the shareholders resident in such jurisdiction hold shares entitling them to less than five per cent of the voting rights of the target company, the acquirer may refrain from dispatch of the letter of offer into such jurisdiction:

Provided further that every person holding shares, regardless of whether he held shares on the identified date or has not received the letter of offer, shall be entitled to tender such shares in acceptance of the open offer.

- (3) Simultaneously with the dispatch of the letter of offer in terms of sub-regulation (2), the acquirer shall send the letter of offer to the custodian of shares underlying depository receipts, if any, of the target company.
- (4) Irrespective of whether a competing offer has been made, an acquirer may make upward revisions to the offer price, and subject to the other provisions of these regulations, to the number of shares sought to be acquired under the open offer, at any time prior to the commencement of the last three working days before the commencement of the tendering period.
- (5) In the event of any revision of the open offer, whether by way of an upward revision in offer price, or of the offer size, the acquirer shall,—
- make corresponding increases to the amount kept in escrow account under regulation 17 prior to such revision;
 - make an announcement in respect of such revisions in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and
 - simultaneously with the issue of such an announcement, inform the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.
- (6) The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within twenty-four hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public:
- Provided** that the acquirer and persons acting in concert with him shall not acquire or sell any shares of the target company during the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period.
- (7) The acquirer shall issue an advertisement in such form as may be specified, one working day before the commencement of the tendering period, announcing the schedule of activities for the open offer, the status of statutory and other approvals, if any, whether for the acquisition attracting the obligation to make an open offer under these regulations or for the open offer, unfulfilled conditions, if any, and their status, the procedure for tendering acceptances and such other material detail as may be specified:

Provided that such advertisement shall be,—

- published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and



- (b) simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.
- (8) The tendering period shall start not later than twelve working days from date of receipt of comments from the Board under sub-regulation (4) of regulation 16 and shall remain open for ten working days.
- (9) Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.
- (10) The acquirer shall, within ten working days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer.
- (11) The acquirer shall be responsible to pursue all statutory approvals required by the acquirer in order to complete the open offer without any default, neglect or delay:

Provided that where the acquirer is unable to make the payment to the shareholders who have accepted the open offer within such period owing to non-receipt of statutory approvals required by the acquirer, the Board may, where it is satisfied that such non-receipt was not attributable to any willful default, failure or neglect on the part of the acquirer to diligently pursue such approvals, grant extension of time for making payments, subject to the acquirer agreeing to pay interest to the shareholders for the delay at such rate as may be specified:

Provided further that where the statutory approval extends to some but not all shareholders, the acquirer shall have the option to make payment to such shareholders in respect of whom no statutory approvals are required in order to complete the open offer.

- (12) (a) The acquirer shall issue a post offer advertisement in such form as may be specified within five working days after the offer period, giving details including aggregate number of shares tendered, accepted, date of payment of consideration.
- (b) Such advertisement shall be,—
- (i) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and
- (ii) simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

Conditional offer [Regulation 19]

- (1) An acquirer may make an open offer conditional as to the minimum level of acceptance:
- Provided** that where the open offer is pursuant to an agreement, such agreement shall contain a condition to the effect that in the event the desired level of acceptance of the open offer is not received the acquirer shall not acquire any shares under the open offer and the agreement attracting the obligation to make the open offer shall stand rescinded.
- (2) Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him shall not acquire, during the offer period, any shares in the target company except under the open offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.

Competing offers [Regulation 20]

- (1) Upon a public announcement of an open offer for acquiring shares of a target company being made, any person, other than the acquirer who has made such public announcement, shall be entitled to make a public announcement of an open offer within fifteen working days of the date of the detailed public statement made by the acquirer who has made the first public announcement.

- (2) The open offer made under sub-regulation (1) shall be for such number of shares which, when taken together with shares held by such acquirer along with persons acting in concert with him, shall be at least equal to the holding of the acquirer who has made the first public announcement, including the number of shares proposed to be acquired by him under the offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.
- (3) Notwithstanding anything contained in these regulations, an open offer made within the period referred to in sub-regulation (1) shall not be regarded as a voluntary open offer under regulation 6, and the provisions of these regulations shall apply accordingly.
- (4) Every open offer made under sub-regulation (1) and the open offer first made shall be regarded as competing offers for purposes of these regulations.
- (5) No person shall be entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, after the period of fifteen working days referred to in sub-regulation (1) and until the expiry of the offer period for such open offer.
- (6) Unless the open offer first made is an open offer conditional as to the minimum level of acceptances, no acquirer making a competing offer may be made conditional as to the minimum level of acceptances.
- (7) No person shall be entitled to make a public announcement of an open offer for acquiring shares, or enter into any transaction that would attract the obligation to make a public announcement of an open offer under these regulations until the expiry of the offer period where,—
 - (a) the open offer is for acquisition of shares pursuant to disinvestment, in terms of clause (d) of sub-regulation (2) of regulation 13; or
 - (b) the open offer is pursuant to a relaxation from strict compliance with the provisions of Chapter III or Chapter IV granted by the Board under sub-regulation (2) of regulation 11.
- (8) The schedule of activities and the tendering period for all competing offers shall be carried out with identical timelines and the last date for tendering shares in acceptance of the every competing offer shall stand revised to the last date for tendering shares in acceptance of the competing offer last made.
- (9) Upon the public announcement of a competing offer, an acquirer who had made a preceding competing offer shall be entitled to revise the terms of his open offer provided the revised terms are more favourable to the shareholders of the target company:
Provided that the acquirers making the competing offers shall be entitled to make upward revisions of the offer price at any time up to three working days prior to the commencement of the tendering period.
- (10) Except for variations made under this regulation, all the provisions of these regulations shall apply to every competing offer.

Payment of consideration [Regulation 21]

- (1) For the amount of consideration payable in cash, the acquirer shall open a special escrow account with a banker to an issue registered with the Board and deposit therein, such sum as would, together with cash transferred under clause (b) of sub-regulation (10) of regulation 17, make up the entire sum due and payable to the shareholders as consideration payable under the open offer, and empower the manager to the offer to operate the special escrow account on behalf of the acquirer for the purposes under these regulations.
- (2) Subject to provisos to sub-regulation (11) of regulation 18, the acquirer shall complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or



transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.

- (3) Unclaimed balances, if any, lying to the credit of the special escrow account referred to in sub-regulation (1) at the end of seven years from the date of deposit thereof, shall be transferred to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

Completion of acquisition [Regulation 22]

- (1) The acquirer shall not complete the acquisition of shares or voting rights in, or control over, the target company, whether by way of subscription to shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period:
- Provided** that in case of an offer made under sub-regulation (1) of regulation 20, pursuant to a preferential allotment, the offer shall be completed within the period as provided under sub-regulation (1) of regulation 74 of Securities and Exchange Board of India (Issue of Capital and Disclosure) Regulations, 2009.
- (2) Notwithstanding anything contained in sub-regulation (1), subject to the acquirer depositing in the escrow account under regulation 17, cash of an amount equal to one hundred per cent of the consideration payable under the open offer assuming full acceptance of the open offer, the parties to such agreement may after the expiry of twenty-one working days from the date of detailed public statement, act upon the agreement and the acquirer may complete the acquisition of shares or voting rights in, or control over the target company as contemplated.
- (2A) Notwithstanding anything contained in sub-regulation (1), an acquirer may acquire shares of the target company through preferential issue or through the stock exchange settlement process, other than through bulk deals or block deals, subject to , -
- (i) such shares being kept in an escrow account,
- (ii) the acquirer not exercising any voting rights over such shares kept in the escrow account:
- Provided that such shares may be transferred to the account of the acquirer, subject to the acquirer complying with requirements specified in sub-regulation (2).
- (3) The acquirer shall complete the acquisitions contracted under any agreement attracting the obligation to make an open offer not later than twenty-six weeks from the expiry of the offer period:
- Provided** that in the event of any extraordinary and supervening circumstances rendering it impossible to complete such acquisition within such period, the Board may for reasons to be published, may grant an extension of time by such period as it may deem fit in the interests of investors in securities and the securities market.

Withdrawal of open offer [Regulation 23]

- (1) An open offer for acquiring shares once made shall not be withdrawn except under any of the following circumstances,—
- (a) statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer under these regulations having been finally refused, subject to such requirements for approval having been specifically disclosed in the detailed public statement and the letter of offer;
- (b) the acquirer, being a natural person, has died;
- (c) any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, and such agreement is rescinded, subject to such conditions having been specifically disclosed in the detailed public statement and the letter of offer; or

Provided that an acquirer shall not withdraw an open offer pursuant to a public announcement made under clause (g) of sub-regulation (2) of regulation 13, even if the proposed acquisition through the preferential issue is not successful.

- (d) such circumstances as in the opinion of the Board, merit withdrawal.

Explanation.— For the purposes of clause (d) of sub-regulation (1), the Board shall pass a reasoned order permitting withdrawal, and such order shall be hosted by the Board on its official website.

- (2) In the event of withdrawal of the open offer, the acquirer shall through the manager to the open offer, within two working days,—
- (a) make an announcement in the same newspapers in which the public announcement of the open offer was published, providing the grounds and reasons for withdrawal of the open offer; and
 - (b) simultaneously with the announcement, inform in writing to,—
 - (i) the Board;
 - (ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and
 - (iii) the target company at its registered office.

OTHER OBLIGATIONS

Directors of the target company [Regulation 24]

- (1) During the offer period, no person representing the acquirer or any person acting in concert with him shall be appointed as director on the board of directors of the target company, whether as an additional director or in a casual vacancy:

Provided that after an initial period of fifteen working days from the date of detailed public statement, appointment of persons representing the acquirer or persons acting in concert with him on the board of directors may be effected in the event the acquirer deposits in cash in the escrow account referred to in regulation 17, one hundred per cent of the consideration payable under the open offer:

Provided further that where the acquirer has specified conditions to which the open offer is subject in terms of clause (c) of sub-regulation (1) of regulation 23, no director representing the acquirer may be appointed to the board of directors of the target company during the offer period unless the acquirer has waived or attained such conditions and complies with the requirement of depositing cash in the escrow account.

- (2) Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert shall, notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to regulation 17, not be entitled to appoint any director representing the acquirer or any person acting in concert with him on the board of directors of the target company during the offer period.
- (3) During the pendency of competing offers, notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to in regulation 17, by any acquirer or person acting in concert with him, there shall be no induction of any new director to the board of directors of the target company:

Provided that in the event of death or incapacitation of any director, the vacancy arising therefrom may be filled by any person subject to approval of such appointment by shareholders of the target company by way of a postal ballot.



- (4) In the event the acquirer or any person acting in concert is already represented by a director on the board of the target company, such director shall not participate in any deliberations of the board of directors of the target company or vote on any matter in relation to the open offer.

Obligations of the acquirer [Regulation 25]

- (1) Prior to making the public announcement of an open offer for acquiring shares under these regulations, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.
- (2) In the event the acquirer has not declared an intention in the detailed public statement and the letter of offer to alienate any material assets of the target company or of any of its subsidiaries whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of two years after the offer period:
Provided that in the event the target company or any of its subsidiaries is required to so alienate assets despite the intention to alienate not having been expressed by the acquirer, such alienation shall require a special resolution passed by shareholders of the target company, by way of a postal ballot and the notice for such postal ballot shall inter alia contain reasons as to why such alienation is necessary.
- (3) The acquirer shall ensure that the contents of the public announcement, the detailed public statement, the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects and not misleading in any material particular, and are based on reliable sources, and state the source wherever necessary.
- (4) The acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.
- (5) The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under these regulations.

Obligations of the target company [Regulation 26]

- (1) Upon a public announcement of an open offer for acquiring shares of a target company being made, the board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.
- (2) During the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not,—
 - (a) alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business;
 - (b) effect any material borrowings outside the ordinary course of business;
 - (c) issue or allot any authorised but unissued securities entitling the holder to voting rights:
Provided that the target company or its subsidiaries may,—
 - (i) issue or allot shares upon conversion of convertible securities issued prior to the public announcement of the open offer, in accordance with pre-determined terms of such conversion;
 - (ii) issue or allot shares pursuant to any public issue in respect of which the red herring prospectus has been filed with the Registrar of Companies prior to the public announcement of the open offer; or

- (iii) issue or allot shares pursuant to any rights issue in respect of which the record date has been announced prior to the public announcement of the open offer;
 - (d) implement any buy-back of shares or effect any other change to the capital structure of the target company;
 - (e) enter into, amend or terminate any material contracts to which the target company or any of its subsidiaries is a party, outside the ordinary course of business, whether such contract is with a related party, within the meaning of the term under applicable accounting principles, or with any other person; and
 - (f) accelerate any contingent vesting of a right of any person to whom the target company or any of its subsidiaries may have an obligation, whether such obligation is to acquire shares of the target company by way of employee stock options or otherwise.
- (3) In any general meeting of a subsidiary of the target company in respect of the matters referred to in sub-regulation (2), the target company and its subsidiaries, if any, shall vote in a manner consistent with the special resolution passed by the shareholders of the target company.
- (4) The target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.
- (5) The target company shall furnish to the acquirer within two working days from the identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any, for registration of transfer of shares are pending with the target company:
- Provided** that the acquirer shall reimburse reasonable costs payable by the target company to external agencies in order to furnish such information.
- (6) Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations:
- Provided** that such committee shall be entitled to seek external professional advice at the expense of the target company.
- (7) The committee of independent directors shall provide its written reasoned recommendations on the open offer to the shareholders of the target company and such recommendations shall be published in such form as may be specified, at least two working days before the commencement of the tendering period, in the same newspapers where the public announcement of the open offer was published, and simultaneously, a copy of the same shall be sent to,—
- (i) the Board;
 - (ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and
 - (iii) to the manager to the open offer, and where there are competing offers, to the manager to the open offer for every competing offer.
- (8) The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.
- (9) The board of directors of the target company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer.



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- (10) Upon fulfillment by the acquirer, of the conditions required under these regulations, the board of directors of the target company shall without any delay register the transfer of shares acquired by the acquirer in physical form, whether under the agreement or from open market purchases, or pursuant to the open offer.

Obligations of the manager to the open offer [Regulation 27]

- (1) Prior to public announcement being made, the manager to the open offer shall ensure that,—
 - (a) the acquirer is able to implement the open offer; and
 - (b) firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the open offer.
- (2) The manager to the open offer shall ensure that the contents of the public announcement, the detailed public statement and the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects, not misleading in any material particular, are based on reliable sources, state the source wherever necessary, and are in compliance with the requirements under these regulations.
- (3) The manager to the open offer shall furnish to the Board a due diligence certificate along with the draft letter of offer filed under regulation 16.
- (4) The manager to the open offer shall ensure that market intermediaries engaged for the purposes of the open offer are registered with the Board.
- (5) The manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations.
- (6) The manager to the open offer shall not deal on his own account in the shares of the target company during the offer period.
- (7) The manager to the open offer shall file a report with the Board within fifteen working days from the expiry of the tendering period, in such form as may be specified, confirming status of completion of various open offer requirements.

DISCLOSURES OF SHAREHOLDING AND CONTROL

Disclosure-related provisions [Regulation 28]

- (1) The disclosures under this Chapter shall be of the aggregated shareholding and voting rights of the acquirer or promoter of the target company or every person acting in concert with him.
- (2) For the purposes of this Chapter, the acquisition and holding of any convertible security shall also be regarded as shares, and disclosures of such acquisitions and holdings shall be made accordingly.
- (3) For the purposes of this Chapter, the term "encumbrance" shall include a pledge, lien or any such transaction, by whatever name called.
- (4) Upon receipt of the disclosures required under this Chapter, the stock exchange shall forthwith disseminate the information so received.

Disclosure of acquisition and disposal [Regulation 29]

- (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

- (2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.
- (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—
 - (a) every stock exchange where the shares of the target company are listed; and
 - (b) the target company at its registered office.
- (4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

Continual disclosures [Regulation 30]

- (1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.
- (2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.
- (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—
 - (a) every stock exchange where the shares of the target company are listed; and
 - (b) the target company at its registered office.

Disclosure of encumbered shares [Regulation 31]

- (1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.
- (2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.
- (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—
 - (a) every stock exchange where the shares of the target company are listed; and
 - (b) the target company at its registered office.



MISCELLANEOUS

Power to issue directions [Regulation 32]

- (1) Without prejudice to its powers under Chapter VIA and section 24 of the Act, the Board may, in the interest of investors in securities and the securities market, issue such directions as it deems fit under section 11 or section 11B or section 11D of the Act, including,—
 - (a) directing divestment of shares acquired in violation of these regulations, whether through public auction or in the open market, or through an offer for sale under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, and directing the appointment of a merchant banker for such divestiture;
 - (b) directing transfer of the shares, or any proceeds of a directed sale of shares acquired in violation of these regulations to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009;
 - (c) directing the target company or any depository not to give effect to any transfer of shares acquired in violation of these regulations;
 - (d) directing the acquirer or any person acting in concert, or any nominee or proxy not to exercise any voting or other rights attached to shares acquired in violation of these regulations;
 - (e) debarring any person who has violated these regulations from accessing the capital market or dealing in securities for such period as may be directed, having regard to the nature and gravity of the violation;
 - (f) directing the acquirer to make an open offer for acquiring shares of the target company at such offer price as determined by the Board in accordance with these regulations;
 - (g) directing the acquirer not to cause, and the target company not to effect, any disposal of assets of the target company or any of its subsidiaries contrary to the contents of the letter of offer, where the conditions set out in the proviso to sub-regulation (2) of regulation 25 are not met;
 - (h) directing the acquirer who has failed to make an open offer or has delayed the making of an open offer, to make the open offer and to pay interest at such rate as considered appropriate by the Board along with the offer price;
 - (i) directing the acquirer who has failed to make payment of the open offer consideration to shareholders, not to make any open offer or enter into any transaction that would attract the obligation to make an open offer in respect of shares of any target company for such period as the Board may deem fit;
 - (j) directing the acquirer who has made an open offer but has delayed making payment of the open offer consideration to shareholders, to pay interest at such rate as considered appropriate by the Board for the delayed period;
 - (k) directing any person to cease and desist from exercising control acquired over any target company without complying with the requirements under these regulations;
 - (l) directing divestiture of such number of shares as would result in the shareholding of an acquirer and persons acting in concert with him being limited to the maximum permissible non-public shareholding or below.
- (2) In any proceedings initiated by the Board, the Board shall comply with principles of natural justice before issuing directions to any person.
- (3) The Board may, for failure to carry out the requirements of these regulations by any intermediary registered with the Board, initiate appropriate proceedings in accordance with applicable regulations.

Power to remove difficulties [Regulation 33]

In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars:

Provided that where any direction is issued by the Board in a specific case relating to interpretation or application of any provision of these regulations, it shall be done only after affording a reasonable opportunity of being heard to the concerned persons and after recording reasons for the direction.

Amendment to other regulations [Regulation 34]

The regulations specified in the Schedule shall be amended in the manner and to the extent stated therein.

Repeal and Savings [Regulation 35]

- (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.
- (2) Notwithstanding such repeal,—
 - (a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
 - (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;
 - (c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.
- (3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Study Note - 4

THE COMPETITION ACT, 2002 AND ITS ROLE IN CORPORATE GOVERNANCE



This Study Note includes

- 4.1 Preliminary
- 4.2 Prohibition of certain Agreements, Abuse of Dominant position and Regulation of Combination
- 4.3 Competition commission of India
- 4.4 Duties, Powers and Functions of Commission
- 4.5 Duties of Director General
- 4.6 Penalties
- 4.7 Competition Advocacy
- 4.8 Finance, Accounts and Audit
- 4.9 Competition Appellate Tribunal
- 4.10 Miscellaneous
- 4.11 MRTP Act vs. Competition Act
- 4.12 Competition Act, 2002 and Corporate Governance

4.1 PRELIMINARY

Short title, extent and commencement [Section 1]

- (1) This Act may be called The Competition Act, 2002.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date' as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions [Section 2]

In this Act, unless the context otherwise requires,-

- (a) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire-
 - (i) Shares, voting rights or assets of any enterprise; or
 - (ii) control over management or control over assets of any enterprise;
- (b) "agreement" includes any arrangement or understanding or action in concert,-
 - (i) whether or not, such arrangement, understanding or action is formal or in writing; or
 - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
- (ba) "Appellate Tribunal" means the Competition Appellate Tribunal established under sub-section (1) of Section 53A;

- (c) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;
- (d) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 8;
- (e) "Commission" means the Competition Commission of India established under sub-section(l) of section 7;
- (f) "consumer" means any person who--
 - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
 - (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;
- (g) "Director General" means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;
- (h) "enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation.- For the purposes of this clause,-

- (a) "activity" includes profession or occupation;
- (b) "article" includes a new article and "service" includes a new service; (c) "unit" or "division", in relation to an enterprise, includes
 - (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
 - (ii) any branch or office established for the provision of any service;
- (i) "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930) and includes-(A) products manufactured, processed or Mined;
(B) debentures, stocks and shares after allotment;



- (C) in relation to goods supplied, distributed or controlled in India, goods imported into India;
- (j) "Member" means a Member of the Commission appointed under sub-section (1) of section 8 and includes the Chairperson;
- (k) "notification" means a notification published in the Official Gazette; (l) "person" includes-
- (i) an individual;
 - (ii) a Hindu undivided family;
 - (iii) a company;
 - (iv) a firm;
 - (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
 - (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
 - (vii) any body corporate incorporated by or under the laws of a country outside India;
 - (viii) a cooperative society registered under any law relating to cooperative societies;
 - (ix) a local authority;
 - (x) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (m) "practice" includes any practice relating to the carrying on of any trade by a person or an enterprise;
- (n) "prescribed" means prescribed by rules made under this Act;
- (o) "Price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, of deferred, and includes any consideration which in effect relates to any goods or to the performance of any services although ostensibly relating to any other matter or thing;
- (p) "public financial institution" means a public financial institution specified under section 4A of the Companies Act, 1956 (1 of 1956) and includes a State Financial, Industrial or Investment Corporation;
- (q) "regulations" means the regulations made by the Commission under section 64;
- (r) "relevant market" means the market which may be determined by the Commission with reference to the relevant product market of the relevant geographic market or with reference to both the markets;
- (s) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;
- (t) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;
- (u) "service" means service of any the description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

- (v) "shares" means shares in the share capital of a company carrying voting rights and includes-
 - (i) any security which entitles the holder to receive shares with voting rights;
 - (ii) stock except where a distinction between stock and share is expressed or implied;
- (w) "statutory authority" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under anti. Central, State or Provincial. Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;
- (x) "trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;
- (y) "turnover" includes value of sale of goods or services;
- (z) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956) shall have the same meanings respectively assigned to them in that Act.

4.2 PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS

Anti-competitive agreements [Section 3]

- (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.
- (2) Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.
- (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-
 - (a) directly or indirectly determines purchase or sale prices;
 - (b) limits or controls production, supply, markets, technical development, investment or provision of services;
 - (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
 - (d) directly or indirectly results in bid rigging or collusive bidding,

shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in Production supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.- For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

- (4) Any agreement amongst enterprises or persons at different stages or levels of the production



chain in different markets, in respect of production, supply, distribution, Storage, sale or price of, or trade in goods or provision of services, including-

- (a) tie-in arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.- For the purposes of this sub-section,-

- (a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- (b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
- (c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
- (d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, or likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(5) Nothing contained in this section shall restrict-

- (i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under
 - (a) the Copyright Act, 1957 (14 of 1957);
 - (b) the Patents Act, 1970 (39 of 1970);
 - (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
 - (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
 - (e) the Designs Act, 2000 (16 of 2000);
 - (f) the Semiconductor Integrated Circuits Layout Design Act, 2000 (37 of 2000);
- (ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

Abuse of dominant position [Section 4]

- (1) No enterprise or group shall abuse its dominant position.
- (2) There shall be an abuse of dominant position [under sub-section (1), if an enterprise or a group].
 - (a) directly or indirectly, imposes unfair or discriminatory -
 - (i) Condition in purchase or sale of goods or service; or
 - (ii) Price in purchase or sale (including predatory price) of goods or service.
 - (b) limits or restricts-
 - (i) Production of goods or provision of services or market therefor; or
 - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
 - (c) indulges in practice or practices resulting in denial of market access 6[in any manner]; or
 - (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
 - (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.- For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

- (a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-
 - (i) operate independently of competitive forces prevailing in the relevant market; or
 - (ii) affect its competitors or consumers or the relevant market in its favour.
- (b) "predatory price" means the sale of goods or provision of services, at a. price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.
- (c) "group" shall have the same meaning as assigned to it in clause (b) of the Explanation to section 5.

Combination [Section 5]

The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if-

- (a) any acquisition where-
 - (i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,-
 - (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or



turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or

- (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,-
 - (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]
- (b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if-
 - (i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,-
 - (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]
 - (ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,-
 - (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or
- (c) any merger or amalgamation in which-
 - (i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,-
 - (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or
 - (ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,-
 - (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
 - (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India;

Explanation. – For the purposes of this section,-

- (a) “control” includes controlling the affairs or management by –
 - (i) one or more enterprises, either jointly or singly, over another enterprise or group;
 - (ii) one or more groups, either jointly or singly, over another group or enterprise;
- (b) “group” means two or more enterprises which, directly or indirectly, are in a position to–
 - (i) exercise twenty-six per cent. or more of the voting rights in the other enterprise; or
 - (ii) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or
 - (iii) control the management or affairs of the other enterprise;
- (c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

Regulation of combinations [Section 6]

- (1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.
- (2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, [shall] give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within [thirty days] of–
 - (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;
 - (b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.
- (2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under section 31, whichever is earlier.
- (3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in sections 29, 30 and 31.
- (4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.
- (5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

Explanation.-For the purposes of this section, the expression-



- (a) "foreign institutional investor" has the same meaning as assigned to it in clause (a) of the Explanation to section 115AD of the Income-tax Act, 1961(43 of 1961);
- (b) "Venture capital fund" has the same meaning as assigned to it in clause (b) of the Explanation to clause (23 FB) of section 10 of the Income-tax Act, 1961(43 of 1961);

4.3 COMPETITION COMMISSION OF INDIA

Establishment of Commission [Section 7]

- (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".
- (2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- (3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.
- (4) The Commission may establish offices at other places in India.

Composition of Commission [Section 8]

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

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

- (1) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of:
 - (a) the Chief Justice of India or his nominee - Chairperson;
 - (b) the Secretary in the Ministry of Corporate Affairs - Member;
 - (c) the Secretary in the Ministry of Law and Justice - Member;
 - (d) two experts of repute who have special Knowledge of, and professional experience in International trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy - Member.

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

Term of office of Chairperson and other Members [Section 10]

- (1) The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:
[Provided that the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years.]
- (2) A vacancy caused by the resignation or removal of the Chairperson or any other Member under section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of sections 8 and 9.
- (3) The Chairperson and every other Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed.
- (4) In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.
- (5) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions.

Resignation, removal and suspension of Chairperson and other members [Section 11]

- (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:
Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
- (2) Notwithstanding anything contained in sub-section (1), the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,-
- is, or at any time has been, adjudged as an insolvent; or
 - has engaged at any time, during his term of office, in any paid employment; or
 - has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
 - has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
 - has so abused his position as to render his continuance in office prejudicial to the public interest; or
 - has become physically or mentally incapable of acting as a Member.
- (3) Notwithstanding anything contained in [sub-section (2)], no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.



Restriction on employment of Chairperson and other Members in certain cases [Section 12]

The Chairperson and other Members shall not, for a period of 8[two years] from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Administrative powers of Chairperson [Section 13]

The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission:

Provided that the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.

Salary and allowances and other terms and conditions of service of Chairperson and other Members [Section 14]

- (1) The salary, and the other terms and conditions of service, of the Chairperson and other Members, including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.
- (2) The salary, allowances and other terms and conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after appointment.

Vacancy, etc. not to invalidate proceedings of Commission [Section 15]

No act or proceeding of the Commission shall be invalid merely by reason of -

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

Appointment of Director General, etc [Section 16]

- (1) The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.
- (1A) The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.
- (2) Every Additional, Joint, Deputy and Assistant Directors General or "[such officers or other employees," shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.
- (3) The salary, allowances and other terms and conditions of serv Director General and Additional, Joint, Deputy and Assistant Directors General or, "[such officers or other employees," shall be such as may be prescribed.
- (4) The Director General and Additional, Joint, Deputy and Assistant Directors General or [such officers or other employees," shall be appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

Appointment of Secretary, experts, professionals and officers and other employees of Commission [Section 17]

- (1) The Commission may appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.
- (2) The salaries and allowances payable to, and other terms and conditions of service of, the Secretary and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.
- (3) The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.]

4.4 DUTIES, POWERS AND FUNCTIONS OF COMMISSION

Duties of Commission [Section 18]

Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:

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

Inquiry into certain agreements and dominant position of enterprise [Section 19]

- (1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on-
 - (a) [receipt of any information, in such manner and] accompanied by such fee as may be determined by regulation, from any person, consumer or their association or trade association; or
 - (b) a reference made to it by the Central Government or a State Government or a statutory authority.
- (2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).
- (3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:-
 - (a) creation of barriers to new entrants in the market;
 - (b) driving existing competitors out of the market;
 - (c) foreclosure of competition by hindering entry into the market;
 - (d) accrual of benefits to consumers;
 - (e) improvements in production or distribution of goods or provision of services;
 - (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.



- (4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:-
- (a) market share of the enterprise;
 - (b) size and resources of the enterprise;
 - (c) size and importance of the competitors;
 - (d) economic power of the enterprise including commercial advantages over competitors;
 - (e) vertical integration of the enterprises or sale or service network of such enterprises;
 - (f) dependence of consumers on the enterprise;
 - (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
 - (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
 - (i) countervailing buying power;
 - (j) market structure and size of market;
 - (k) social obligations and social costs;
 - (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
 - (m) any other factor which the Commission inquiry
- (5) For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market" and "relevant product market".
- (6) The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:-
- (a) regulatory trade barriers;
 - (b) local specification requirements;
 - (c) national procurement policies;
 - (d) adequate distribution facilities;
 - (e) transport costs;
 - (f) language;
 - (g) consumer preferences;
 - (h) need for secure or regular supplies or rapid aftersales services.
- (7) The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:-
- (a) physical characteristics or enduse of goods;
 - (b) price of goods or service;
 - (c) consumer preferences;

- (d) exclusion of inhouse production;
- (e) existence of specialised producers;
- (f) classification of industrial products.

Inquiry into combination by Commission [Section 20]

- (1) The Commission may, upon its own knowledge or information relating to acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of section 5 or merger or amalgamation referred to in clause (c) of that section, inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India:
Provided that the Commission shall not initiate any inquiry under this sub-section after the expiry of one year from the date on which such combination has taken effect.
- (2) The Commission shall, on receipt of a notice under sub-section (2) of section 6 [* * *], inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.
- (3) Notwithstanding anything contained in section 5, the Central Government shall, on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the Commission, by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover, for the purposes of that section.
- (4) For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:-
 - (a) actual and potential level of competition through imports in the market;
 - (b) extent of barriers to entry into the market;
 - (c) level of combination in the market; .o
 - (d) degree of countervailing power in the market;
 - (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
 - (f) extent of effective competition likely to sustain in a market;
 - (g) extent to which substitutes are available or are likely to be available in the market;
 - (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
 - (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
 - (j) nature and extent of vertical integration in the market;
 - (k) possibility of a failing business;
 - (l) nature and extent of innovation;
 - (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
 - (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.



Reference by statutory authority [Section 21]

- (1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission:

Provided that any statutory authority, may, suo motu, make such a reference to the Commission.

- (2) On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefore on the issues referred to in the said opinion.

Reference by Commission [Section 21A]

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

Provided that the Commission, may, suo motu, make such a reference to the statutory authority.

- (2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefore on the issues referred to in the said opinion.

Meetings of Commission [Section 22]

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

Provided that the quorum for such meeting shall be three Members.

SECTION 23. [*]**

SECTION 24. [*]**

SECTION 25. [*]**

Procedure for inquiry under section 19 [Section 26]

- (1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

- (2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion

that there exists no *prima facie* case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

- (3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.
- (4) The Commission may forward a copy of the report referred to in sub section (3) to the parties concerned:
Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) to the Central Government or the State Government or the statutory authority, as the case may be.
- (5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.
- (6) If, after consideration of the objections and suggestions referred to in sub section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.
- (7) If, after consideration of the objections or suggestions referred to in sub section (5), if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.
- (8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

Orders by Commission after inquiry into agreements or abuse of dominant Position [Section 27]

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

- (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to reenter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.



- (c) [* * *]
- (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- (e) direct the enterprises concerned to abide by such other/orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- (f) [***]
- (g) pass such other [order or issue such directions] as it may deem fit.

[Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause(b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.]

Division of enterprise enjoying dominant position [Section 28]

- (1) The [Commission] may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.
- (2) In particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely:-
 - (a) the transfer or vesting of property, rights, liabilities or obligations;
 - (b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
 - (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
 - (d) [* * *]
 - (e) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
 - (f) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
 - (g) any other matter which may be necessary to give effect to the division of the enterprise.
- (3) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

Procedure for investigation of combination [Section 29]

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

- (2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, [or the receipt of the report from Director General called under sub section (1A), whichever is later] direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.
- (3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under sub-section (2).
- (4) The Commission may, within fifteen working days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.
- (5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within fifteen days from the expiry of the period specified in sub-section (4).
- (6) After receipt of all information and within a period of fortyfive working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.

Procedure in case of notice under sub-section (2) of section 6 [Section 30]

Where any person or enterprises has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its prima facie opinion as provided in sub-section (1) of section 29 and proceed as per provisions contained in that section.

Orders of Commission on certain combinations [Section 31]

- (1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6.
- (2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.
- (3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, co the parties to such combination.
- (4) The parties, who accept the modification proposed by the Commission under sub-section (3), shall carry out such modification within the period specified by the Commission.
- (5) If the parties to the combination, who have accepted the modification under sub-section (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.
- (6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section.



- (7) If the Commission agrees with the amendment submitted by the parties under sub-section (6), it shall, by order, approve the combination.
- (8) If the Commission does not accept the amendment submitted under sub-section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).
- (9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.
- (10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that-
 - (a) the acquisition referred to in clause (a) of section 5; or
 - (b) the acquiring of control referred to in clause (b) of section 5; or
 - (c) the merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to:
Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section.
- (11) If the Commission does not, on the expiry of a period of [two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6], pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.
Explanation.-For the purposes of determining the period of [one hundred and ten] days specified in this sub-section, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded.
- (12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.
- (13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.
- (14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

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

The Commission shall, notwithstanding that,-

- (a) an agreement referred to in section 3 has been entered into outside India; or
- (b) any party to such agreement is outside India; or
- (c) any enterprise abusing the dominant position is outside India; or
- (d) a combination has taken place outside India; or
- (e) any party to combination is outside India; or

- (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

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

Power to issue interim orders [Section 33]

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

Omitted by competition (Amendment) Act, 2007 [Section 34]

Appearance before Commission [Section 35]

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

Explanation.- For the purposes of this section,—

- (a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

Power of Commission to regulate its own procedure [Section 36]

- (1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.
- (2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—
 - (a) summoning and enforcing the attendance of any person and examining him 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) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such record or document from any office;



- (3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary to assist the Commission in the conduct of any inquiry by it.
- (4) The Commission may direct any person—
 - (a) to produce before the Director General or the Secretary or an officer authorised by it, such books, or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;
 - (b) to furnish to the Director General or the Secretary or any officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

Omitted by competition (Amendment) Act, 2007 [Section 37]

Rectification of orders [Section 38]

- (1) With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.
- (2) Subject to the other provisions of this Act, the Commission may make—
 - (a) an amendment under sub-section (1) of its own motion;
 - (b) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

Explanation : For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

Execution of orders of Commission imposing monetary penalty [Section 39]

- (1) If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations.
- (2) In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961(43 Of 1961), it may make a reference to this effect to the concerned income tax authority under that Act for recovery of the penalty as tax due under the said Act.
- (3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income Tax Act, 1961(43 Of 1961), and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made thereunder shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under the Income Tax Act 1961(43 Of 1961) and to the Commission instead of the Assessing Officer.

Explanation 1 : Any reference to sub-section (2) or sub-section (6) of section 220 of the income tax Act, 1961(43 Of 1961), in the said provisions of that Act or the rules made thereunder shall be construed as references to sections 43 to 45 of this Act.

Explanation 2: The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income-tax Act, 1961(43 Of 1961) shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty under this Act and reference made by the Commission under sub-section (2) would amount to drawing of

a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act.

Explanation 3 : Any reference to appeal in Chapter XVIID and the Second Schedule to the Income-tax Act, 1961(43 Of 1961), shall be construed as a reference to appeal before the Competition Appellate Tribunal under section 53B of this Act.

Omitted by competition (Amendment) Act, 2007 [Section 40]

4.5 DUTIES OF DIRECTOR GENERAL

Director General to investigate contravention [Section 41]

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

Explanation : For the purposes of this section, -

- (a) the words 'the Central Government' under section 240 of the Companies Act, 1956 (1 of 1956) shall be construed as "the Commission";
- (b) the word "Magistrate" under section 240A of the Companies Act, 1956 (1 of 1956) shall be construed as "the Chief Metropolitan Magistrate, Delhi".

4.6 PENALTIES

Contravention of orders of Commission [Section 42]

- (1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.
- (2) If any person, without reasonable clause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs subject to a maximum of rupees ten crore, as the Commission may determine.
- (3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

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

Compensation in case of contravention of orders of Commission [Section 42A]

Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions



issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32, and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.

Penalty for failure to comply with directions of Commission and Director General [Section 43]

If any person fails to comply, without reasonable cause, with a direction given by—

- (a) the Commission under sub-sections (2) and (4) of section 36; or
- (b) the Director General while exercising powers referred to in sub-section (2) of section 41,

such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.

Power to impose penalty for non-furnishing of information on combinations [Section 43A]

If any person or enterprise who fails to give notice to the Commission under sub-section (2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one percent of the total turnover or the assets, whichever is higher, of such combination.

Penalty for making false statement or omission to furnish material information [Section 44]

If any person, being a party to a combination,—

- (a) makes a statement which is false in any material particular, or knowing it to be false; or
- (b) omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.

Penalty for offences in relation to furnishing of information [Section 45]

- (1) Without prejudice to the provisions of section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—
 - (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
 - (b) omits to state any material fact knowing it to be material; or
 - (c) willfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

such person shall be punishable with fine which may be extend to rupees one crore as may be determined by the Commission.

- (2) Without prejudice to the provisions of sub-section (1), the Commission may also pass such other order as it deems fit.

Power to impose lesser penalty [Section 46]

The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit, than leviable under this Act or the rules or the regulations:

Provided that lesser penalty shall not be imposed by the Commission in cases where the report of the investigation directed under section 26 has been received before making of such disclosure:

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who has made the full, true and vital disclosures under this section:

Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission:

Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings,—

- (a) not complied with the condition on which the lesser penalty was imposed by the Commission; or
- (b) had given false evidence; or
- (c) the disclosure made is not vital,

and thereupon such producer, seller, distributor, trader or service provider may be tried for the offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

Crediting sums realised by way of penalties to Consolidated Fund of India [Section 47]

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Contravention by companies [Section 48]

- (1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

- (2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section,—

- (a) "Company" means a body corporate and includes a firm or other association of individuals: and
- (b) "Director", in relation to a firm, means a partner in the firm.

4.7 COMPETITION ADVOCACY

Competition Advocacy [Section 49]

- (1) The Central Government may, in formulating a policy on competition (including review of laws related to competition), or any other matter, and a State Government may, in formulating a



policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government or the State Government as the case may be, which may thereafter take further action as it deems fit.

- (2) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government or the state Government as the case may be in formulating such policy.
- (3) The Commission shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

4.8 FINANCE, ACCOUNTS AND AUDIT

Grants by Central Government [Section 50]

The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

Constitution of Fund [Section 51]

- (1) There shall be constituted a fund to be called the "Competition Fund" and there shall be credited thereto—
 - (a) All Government grants received by the Commission;
 - (b) Omitted vide Amendment Act 2007;
 - (c) The fees received under this Act;
 - (d) The interest accrued on the amounts referred to in clauses (a) and (c).
- (2) The Fund shall be applied for meeting—
 - (a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries, allowances and pension payable to the Director General, Additional Joint Deputy or Assistant Directors General, the Registrar and officers and other employees of the Commission;
 - (b) The other expenses of the Commission in connection with the discharge of its functions and for the purposes of this Act.
- (3) The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson.
- (4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

Accounts and Audit [Section 52]

- (1) The Commission shall maintain proper 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.
- (2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

Explanation.- For the removal of doubts, it is hereby declared that the orders of the Commission,

being matters appealable to the Appellate Tribunal or the Supreme Court, shall not be subject to audit under this section.

- (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.
- (4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Furnishing of returns, etc., to Central Government [Section 53]

- (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues, as the Central Government may, from time to time, require.
- (2) The Commission shall prepare once in every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies of the report shall be forwarded to the Central Government.
- (3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

4.9 COMPETITION APPELLATE TRIBUNAL

Establishment of Appellate Tribunal [Section 53A]

- (1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal –
 - (a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Act;
 - (b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under subsection (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.
- (2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify.

Appeal to Appellate Tribunal [Section 53B]

- (1) The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.
- (2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the



Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
- (4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
- (5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

Composition of Appellate Tribunal [Section 53C]

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

Qualifications for appointment of Chairperson and Members of Appellate Tribunal [Section 53D]

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

Selection Committee [Section 53E]

- (1) The Chairperson and members of the Appellate Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of –
 - (a) the Chief Justice of India or his nominee Chairperson;
 - (b) the Secretary in the Ministry of Corporate Affairs Member;
 - (c) the Secretary in the Ministry of Law and Justice Member.
- (2) The terms of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Term of office of Chairperson and Members of Appellate Tribunal [Section 53F]

The Chairperson or a member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, and shall be eligible for re-appointment:

Provided that no Chairperson or other member of the Appellate Tribunal shall hold office as such after he has attained, -

- (a) in the case of the Chairperson, the age of sixty-eight years;
- (b) in the case of any other member of the Appellate Tribunal, the age of sixty-five years.

Terms and conditions of service of chairperson and Members of Appellate Tribunal [Section 53G]

- (1) The salaries and allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall be such as may be prescribed.
- (2) The salaries, allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall not be varied to their disadvantage after their appointment.

Vacancies [Section 53H]

If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation of Chairperson and Members of Appellate Tribunal [Section 53-I]

The Chairperson or a member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

Member of Appellate Tribunal to act as its Chairperson in certain cases [Section 53J]

- (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death or resignation, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.
- (2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most member or, as the case may be, such one of the Members of the Appellate Tribunal, as the Central Government may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Removal and suspension of Chairperson and Members of Appellate Tribunal [Section 53K]

- (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any other member of the Appellate Tribunal, who-
 - (a) has been adjudged an insolvent; or
 - (b) has engaged at any time, during his terms of office, in any paid employment; or
 - (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
 - (d) has become physically or mentally incapable of acting as such Chairperson or other Member of the Appellate Tribunal; or
 - (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or
 - (f) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (2) Notwithstanding anything contained in sub-section (1), no Chairperson or a Member of the Appellate Tribunal shall be removed from his office on the ground specified in clause (e) or clause (f) of sub-section (1) except by an order made by the Central Government after an inquiry made



in this behalf by a Judge of the Supreme Court in which such Chairperson or member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases [Section 53L]

The Chairperson and other members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government Company as defined in section 617 of the Companies Act, 1956.

Staff of Appellate Tribunal [Section 53M]

- (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.
- (2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the Chairperson of the Appellate Tribunal.
- (3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

Awarding compensation [Section 53N]

- (1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any findings of the Commission or under section 42A or under sub-section(2) of section 53Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by enterprise.
- (2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission, if any, and also be accompanied with such fees as may be prescribed.
- (3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise:

Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

- (4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908, shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

Explanation.- For the removal of doubts, it is hereby declared that—

- (a) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section(1) of section53A of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of section 42A or sub-section(2) of section 53Q of the Act are attracted.
- (b) enquiry to be conducted under sub-section(3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal on whether any violation of the Act has taken place.

Procedures and powers of Appellate Tribunal [Section 53O]

- (1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings.
- (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavit;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) reviewing its decisions;
 - (g) dismissing a representation for default or deciding it ex parte;
 - (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte;
 - (i) any other matter which may be prescribed.
- (3) Every proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Execution of orders of Appellate Tribunal [Section 53P]

- (1) Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,-
 - (a) in the case of an order against a company, the registered office of the company is situated; or



- (b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.
- (2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Contravention of orders of Appellate Tribunal [Section 53Q]

- (1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for a penalty of not exceeding rupees one crore or imprisonment for a term up to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence punishable under this sub-section, save on a complaint made by an officer authorized by the Appellate Tribunal.

- (2) Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise contravening, without any reasonable ground, any order of the Appellate Tribunal or delaying in carrying out such orders of the Appellate Tribunal.

Vacancy in Appellate Tribunal not to invalidate acts or proceedings [Section 53R]

No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the constitution of the Appellate Tribunal.

Right to legal representation [Section 53S]

- (1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.
- (2) The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal.
- (3) The Commission may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal.

Explanation.- The expressions "chartered accountant" or "company secretary" or "cost accountant" or "legal practitioner" shall have the meanings respectively assigned to them in the Explanation to section 35.

Appeal to Supreme Court [Section 53T]

The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them;

Provided that the Supreme court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

Power to Punish for contempt [Section 53U]

The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to modifications that,—

- (a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;
- (b) the references to the Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officer as the Central Government may, by notification, specify in this behalf.

4.10 MISCELLANEOUS

Power to exempt [Section 54]

The Central Government may, by notification, exempt from the application of this Act, or any provision thereof, and for such period as it may specify in such notification—

- (a) any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;
- (b) any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;
- (c) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government.

Provided that in case an enterprise is engaged in any activity including the activity relatable to the sovereign functions of the Government, the Central Government may grant exemption only in respect of activity relatable to the sovereign functions.

Power of Central Government to issue directions [Section 55]

- (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

- (2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of Central Government to supersede Commission [Section 56]

- (1) If at any time the Central Government is of the opinion—
 - (a) that on account of circumstances beyond the control of the Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
 - (b) that the Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has suffered; or
 - (c) that circumstances exist which render it necessary in the public interest so to do,



the Central Government may, by notification and for reasons to be specified therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Commission to make representations against the proposed supersession and shall consider representations, if any, of the Commission.

- (2) Upon the publication of a notification under sub-section (1) superseding the Commission,—
 - (a) The Chairperson and other Members shall as from the date of supersession, vacate their offices as such;
 - (b) All the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in their behalf;
 - (c) All properties owned or controlled by the Commission shall, until the Commission is reconstituted under sub-section (3), vest in the Central Government.
- (3) On or before the expiration of the period of supersession specified in the notification issued under subsection (1), the Central Government shall reconstitute the Commission by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.
- (4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Restriction on disclosure of information [Section 57]

No information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission or the Appellate Tribunal for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

Chairperson, Members, Director General, Secretary, officers and other employees, etc., to be public servants [Section 58]

The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Secretary and officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed, while 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.

Protection of action taken in good faith [Section 59]

No suit, prosecution or other legal proceedings shall lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director-General, Additional, Joint, Deputy or Assistant Directors General or the Secretary or officers or other employees of the Commission or the Chairperson, members, officers and other employees of the Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Act to have overriding effect [Section 60]

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Exclusion of jurisdiction of civil courts [Section 61]

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Application of other laws not barred [Section 62]

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

Power to make rules [Section 63]

- (1) The Central Government may, by notification, make rules to carry out the provisions of this Act;
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of Section 9;
 - (b) the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed to under sub-section (3) of section 10;
 - (c) Omitted.
 - (d) the salary and the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section (1) of section 14;
 - (da) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1A) of section 16;]
 - (e) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or [such officers or other employees] under sub- section (3) of section 16;
 - (f) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or [such officers or other employees] under sub- section (4) of section 16;
 - (g) the salaries and allowances and other terms and conditions of service of the [Secretary] and officers and other employees payable, and the number of such officers and employees under sub- section (2) of section 17;
 - (h) [***] Omitted
 - (i) [***] Omitted
 - (j) [***] Omitted
 - (k) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 52;
 - (1a) the time within which and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1b) of section 53;
 - (m) the form in which and the time within which the annual report shall be prepared under sub-



section (2) of section 53;

- (ma) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal;
 - (mb) the term of the Selection Committee and the manner of selection of panel of names under sub-section(2) of section 53E;
 - (mc) the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 53G;
 - (md) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M;
 - (me) the fee which shall be accompanied with every application made under sub-section (2) of section 53N;
 - (mf) the other matters under clause (i) of sub-section(2) of section 53O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit;
 - (n) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal shall be dealt with by the Commission or the Appellate Tribunal, as the case may be, under the fourth proviso to sub-section (2) of section 66;
 - (o) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.
- (3) Every notification issued under sub-section(3) of section 20 and section 54 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification should not be issued or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule, as the case may be.

Power to make regulations [Section 64]

- (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely:-
 - (a) the cost of production to be determined under clause (b) of the Explanation to section 4;
 - (b) the form of notice as may be specified and the fee which may be determined under sub-section (2) of section 6;
 - (c) the form in which details of the acquisition shall be filed under sub-section(5) of Section 6;
 - (d) the procedures to be followed for engaging the experts and professionals under sub-section (3) of section 17;
 - (e) the fee which may be determined under clause (a) of sub-section (1) of section 19;
 - (f) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22;

- (g) the manner in which penalty shall be recovered under sub-section (1) of section 39;
 - (h) any other matter in respect of which provision is to be, or may be, made by regulations.
- (3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

Power to remove difficulties [Section 65]

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty :
Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and Saving [Section 66]

- (1) The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act shall stand dissolved.

-Deleted by Competition (Amendment) Act 2009

Explanation.—Deleted by Competition (Amendment) Act 2009

- (1A) The repeal of the Monopolies and Restrictive Trade Practices Act, 1969 shall, however, not affect—
 - (a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or
 - (b) any right, privilege, obligations or liability acquired, accrued or incurred under the Act so repealed; or
 - (c) any penalty confiscation or punishment incurred in respect of any contravention under the Act so repealed; or
 - (d) any proceeding or remedy in respect of any such right, privilege obligation, liability, penalty, confiscation or punishment as aforesaid and any such proceeding or remedy may be instituted, continued or enforced and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.
- 2. On dissolution of the MRTP Commission, the person appointed as the Chairman of the MRTP Commission and every other person appointed as members and Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration and any officer and other employee of that Commission and holding office as such immediately before such dissolution shall vacate their respective offices and such Chairman and other Members shall be entitled to claim compensation not exceeding three months' pay and allowance for the premature termination of term of their office or of any contract of service.

Provided that the Director General of Investigation and Registration, Additional, Joint, Deputy or assistant Director General of Investigation and Registration or any officer or other employee who



has been, immediately before the dissolution of the MTRP commission appointed on deputation basis to the MRTP Commission, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be.

Provided further that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Commission, employed on regular basis by the Monopolies and Restrictive Trade Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Competition Commission of India or the Appellate Tribunal, in such manner as may be specified by the Central Government, with the same right and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Competition Commission of India or the Appellate tribunal, as the case may be , and shall continue to do so unless and until his employment in the Competition Commission of India or the Appellate Tribunal, as the case may be, is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Competition Commission of India or the Appellate Tribunal, as the case may be.

Provided also that notwithstanding anything contained in the Industrial Disputes Act 1947 or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee employed in the Monopolies and Restrictive Trade Practices Commission, to the Competition Commission of India or the Appellate tribunal as the case may be, shall not entitle such the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

Provided also that where the MRTP Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officers and other employee employed in the Monopolies and Restrictive Trade Commission, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing on the dissolution of MRTP commission to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to and vest in, the Competition Commission of India or the Appellate Tribunal as the case may be, and such monies which stand so transferred shall be dealt with by the said commission or the Tribunal as the case may be, in such manner as may be prescribed.

- (3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending (including such case, in which any unfair trade practice has also been alleged) before the MRTP Commission shall, on the commencement of the Competition (Amendment) Act 2009 referred to the Appellate Tribunal and shall be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.

Explanation.-For removal of doubts, it is hereby declared that all cases referred to in this sub-section, sub-section(4) and sub-section(5) shall be deemed to include all applications made for the losses or damages under section 12B of the MRTP Act,1969 as it stood before its repeal.

- (4) Subject to the provisions of sub section (3), all cases pertaining to unfair trade practices other than those referred to in clause (x) of sub section(1) of section 36A of MRTP Act 1969 and pending before the MRTP commission immediately before the commencement of the Competition

(Amendment) Act 2009, shall, on such commencement, shall, stand transferred to the National Commission constituted under the Consumer Protection Act 1986 and the National Commission shall dispose of such cases as if they were cases filed under this Act.

Provided that the National Commission may if it considers appropriate transfer any case transferred to it under this sub-section, to the concerned State Commission established under section 9 of the Consumer Protection Act, 1986 and the state Commission shall dispose of such case as if it was filed under that Act.

Provided further that all the cases relating to the unfair trade practices pending, before the National Commission under this sub section on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that date, stand transferred to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act has not been repealed.

- (5) All cases pertaining to the unfair trade practices referred to in clause(x) of sub-section(1) of section 36A of MRTP Act, 1969 and pending before the MRTP Commission shall, on commencement of the Competition (Amendment) Act, 2009 stand transferred to the Appellate Tribunal and the Appellate Tribunal shall dispose of such cases as if they were cases filed under that Act.
 - (6) All investigation or proceedings other than those relating to unfair trade practice pending before the Directorate General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.
 - (7) All investigation or proceedings, relating to unfair trade practices, other than those referred to in clause(x) sub section (1)of section 36A of the MRTP Act, 1969 and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 and the National Commission may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.
- Provided** that all investigations or proceedings, relating to unfair trade practice pending before the National Commission, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President shall, on and from that date, stand standard transferred to the Appellate Tribunal and the Appellate Tribunal may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.
- (8) All investigation or proceedings relating to unfair trade practices referred to in clause(x) of sub section of section 36A of the MRTP Act, 1969 and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement stand transferred to the Competition Commission of India and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.
 - (9) Save as otherwise provided under sub section (3) to (8), all cases or proceeding pending before the MRTP commission shall abate.



- (10) The mention of the particular matters referred to in sub-section 3 to 8 shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

4.11 MRTP ACT, 1969 & COMPETITION ACT, 2002

The Difference between the MRTP Act 1969 and The Competition Act 2002 is as follows - The MRTP Act was enacted in the Pre Liberalisation era whereas the Competition Act is enacted in the Post Liberalisation era; The Object of the old Act was to prevent the economic concentration in one Common detriment, curbing unfair trade practices, and to check monopolistic activities, on the other hand the object of the new Act is to promote and Sustaining Competition in the market and to ensure the freedom of trade and to protect the interest of the consumer in whole; The MRTP Commission has the advisory role only whereas the later has some effective role including that of initiating *suo moto* actions and impose punishments to the entities having some adverse effect in the market.

The following are the basic differences between MRTP and Competition Act:

S. No	MRTP ACT, 1969	COMPETITION ACT, 2002
1	It is based on the pre- liberalisation and globalisation era.	It is based on the post- reforms scenario.
2	The objective of the Act is to prevent concentration of economic power to common detriment to control of monopolies, prevention of monopolistic and restrictive trade practices.	The objective of the Act is prevent practices having adverse effect on competition and to promote as well as sustaining the competition to protect consumer interests at market place and ensuring freedom of trade.
3	It lists out 14 offences, which are against the principle of natural justice.	It recognises only 4 offences, which are deemed to be against the principle of natural justice.
4	MRTP Commission has the power to pass only "Cease" and "Desist" orders.	The Competition Act can pass an order to prevent and punish such of those activities, which abuses competition.
5	The MRTP Act did not provide for the formation of fund for its activities.	The Competition Act provides competition fund for promotion of competition advocacy and creation of awareness about competitive issues and training as may be prescribed in its rules.
6	Entity having status of dominant position is itself considered as bad.	Entity having status of dominant position is not considered as bad. Whereas abuse of dominant position affecting consumer interest is considered as immoral.
7	In general registration of agreement was mandatory.	It does not lay down any such requirement for registration of agreements.
8	The definition of 'group' was wider.	The 'group' definition has been simplified.
9	The size of the firm, is the factor for determining dominance etc.	It focusses on the firm's structure not on the size factor.

10	MRTP Commission role was only advisory.	Competition Commission can initiate the suo motu proceedings and levy penalties.
11	MRTP Commission dealt with the unfair trade practices.	The cases relating to unfair trade practices will be transferred to consumer courts.
12	Focused on consumer interest at large.	Focused on public at large.
13	The chairman of MRTP Commission was appointed by Central Government.	The chairman of the commission will be appointed by a committee consisting of retired.

4.12 COMPETITION ACT, 2002 AND CORPORATE GOVERNANCE

In a competitive environment, firms generally cannot expect to earn excess profits. An industry that generates above-average profits tends to attract new competitors, which bring forth additional supply and drive down profitability. Where natural barriers to entry are high, excess profits may persist and interim regulation may be needed to protect consumers. Over time, however, technological advances and entrepreneurial innovations tend to chip away the natural barriers, unless they are prevented by regulations.

To withstand competition, firms need to rely on operation efficiency. Unless their production and administrative costs are kept below prevailing market prices, which may be determined by efficient competitors at home or abroad, they cannot service their debt and meet shareholders' expectations. Investors need to evaluate the viability and cash flows of projects, rather than relying on preferential treatments or on market power. Under effective competition, preferential treatment can be quickly detected and brought to light by those who suffer the adverse consequences.

Where competition is intense and global in scope, more firms realise that corporate governance makes good business sense. Investors seek out firms that run the business efficiently, treat shareholders equitably and comply with high standards of disclosure, even when they are not mandatory. By applying good governance, a firm can earn a good reputation and efficient access to finance, which in turn enhances their ability to compete. In effect, good governance becomes an instrument of competitive strategies.

Study Note - 5

LAWS RELATED TO BANKING SECTOR

This Study Note includes

- 5.1 The Banking Regulation Act, 1949**
- 5.2 The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002**
- 5.3 The Prevention of Money Laundering Act, 2002**
- 5.4 The Foreign Exchange Management Act, 1999**

5.1 THE BANKING REGULATION ACT, 1949

Short title, extent and commencement [Section 1]

- (1) This Act may be called the Banking Regulation Act, 1949.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

Application of other laws not barred [Section 2]

The provisions of this Act shall be in addition to, and not, save as hereunder expressly provided, in derogation of the Companies Act, 1956 (1 of 1956), and any other law for the time being in force.

Act to apply to co-operative societies in certain cases [Section 3]

Nothing in this Act shall apply to.—

- (a) a primary agricultural credit society;
- (b) a co-operative land mortgage bank; and
- (c) any other co-operative society, except in the manner and to the extent specified in Part V.

Power to suspend operation of Act [Section 4]

- (1) The Central Government, if on a representation made by the Reserve Bank in this behalf it is satisfied that it is expedient so to do, may by notification in the Official Gazette suspend for such period, not exceeding sixty days, as may be specified in the notification, the operation of all or any of the provisions of this Act, either generally or in relation to any specified banking company.
- (2) In a case of special emergency, the Governor of the Reserve Bank, or in his absence a Deputy Governor of the Reserve Bank nominated by him in this behalf may, by order in writing, exercise the powers of the Central Government under sub-section (1) so however that the period of suspension shall not exceed thirty days, and where the Governor or the Deputy Governor, as the case may be, does so, he shall report the matter to the Central Government forthwith, and the order shall, as soon as may be, be published in the Gazette of India.

- (3) The Central Government may, by notification in the Official Gazette, extend from time to time the period of any suspension ordered under sub-section (1) or subsection (2) for such period, not exceeding sixty days at any one time, as it thinks fit so however that the total period does not exceed one year.
- (4) A copy of any notification issued under sub-section (3) shall be laid on the table of Parliament as soon as may be after it is issued.

Interpretation [Section 5]

In this Act, unless there is anything repugnant in the subject or context,—

- (a) “approved securities” means the securities issued by the Central Government or any State Government or such other securities as may be specified by the Reserve Bank from time to time:—
- (b) “banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;
- (c) “banking company” means any company which transacts the business of banking in India;

Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

- (ca) “banking policy” means any policy which is specified from time to time by the Reserve Bank in the interest of the banking system or in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources;
- (cc) “branch” or “branch office”, in relation to a banking company, means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent, and for the purposes of section 35 includes any place of business where any other form of business referred to in sub-section (1) of section 6 is transacted;
- (d) “company” means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and includes a foreign company within the meaning of section 591 of that Act;
- (da) “corresponding new bank” means a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970); or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);
- (e) Omitted by Act 52 of 1953, Section 2.
- (f) “demand liabilities” means liabilities which must be met on demand, and “time liabilities” means liabilities which are not demand liabilities;
- (ff) “Deposit Insurance Corporation” means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961 (47 of 1961);
- (ffa) “Development Bank” means the Industrial Development Bank of India established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);
- (ffb) “Exim Bank” means the Export-Import Bank of India established under section 3 of the Export-Import India Act, 1981 (28 of 1981);



- (ffc) "Reconstruction Bank" means the Industrial Reconstruction Bank of India established under section 3 of the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984);
- (ffd) "National Housing Bank" means the National Housing Bank established under section 3 of the National Housing Bank Act, 1987;
- (g) "gold" includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;
- (gg) "managing agent" includes.—
- (i) Secretaries and Treasurers;
 - (ii) Where the managing agent is a company, and director of such company, and any member thereof who holds substantial interest in such company;
 - (iii) Where the managing agent is a firm, any partner of such firm;]
- (h) "managing director", in relation to a banking company, means a director who, by virtue of an agreement with the banking company or of a resolution passed by the banking company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with the management of the whole, or substantially the whole of the affairs of the company, and includes a director occupying the position of a managing director, by whatever name called:
- Provided that the managing director shall exercise his powers subject to the superintendence, control and direction of the Board of Directors;
- (ha) "National Bank" means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;
- (i) Omitted by Act 33 of 1959, Section 2 w.e.f. 1-5-1982.
- (j) "prescribed" means prescribed by rules made under this Act;
- (ja) "regional rural bank" means a regional rural bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);
- (k) Omitted by Act 33 of 1959, Section 2 w.e.f. 1-5-1982.
- (l) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (m) Omitted by Act 33 of 1959, Section 2 w.e.f. 1-5-1982.
- (n) "secured loan or advance" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance; and "unsecured loan or advance" means a loan or advance not so secured;
- (ni) "Small Industries Bank" means the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India, 1989;
- (na) "small-scale industrial concern" means an industrial concern in which the investment in plant and machinery is not in excess of seven and a half lakhs of rupees or such higher amount, not exceeding twenty lakhs of rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to the trends in industrial development and other relevant factors;
- (nb) "Sponsor Bank" has the meaning assigned to it in the Regional Rural Banks Act, 1976 (21 of 1976);
- (nc) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);

- (nd) "subsidiary bank" has the meaning assigned to it in the State Bank of India (Subsidiary Banks) Act, 1959;
- (ne) "substantial interest". —
 - (i) in relation to a company, means the holding of a beneficial interest by an individual or his spouse or minor child, whether singly or taken together, in the shares thereof, the amount paid up on which exceeds five lakhs of rupees or ten percent of the paid-up capital of the company, whichever is less;
 - (ii) in relation to a firm, means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than ten per cent of the total capital subscribed by all the partners of the said firm;
- (o) all other words and expressions used herein but not defined and defined in the Companies Act, 1956 (1 of 1956), shall have the meanings respectively assigned to them in that Act.

(2) Omitted by the A.O. 1950

Act to override memorandum, articles, etc [Section 5A]

Save as otherwise expressly provided in this Act. —

- (a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a banking company, or in any agreement executed by it, or in any resolution passed by the banking company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of the Banking Companies (Amendment) Act, 1959 (33 of 1959); and
- (b) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

Forms of business in which banking companies may engage [Section 6]

- (1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely: —
 - (a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;
 - (b) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent or secretary and treasurer of a company;
 - (c) contracting for public and private loans and negotiating and issuing the same;



- (d) the effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;
 - (e) carrying on and transacting every kind of guarantee and indemnity business;
 - (f) managing, selling and realising any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;
 - (g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;
 - (h) undertaking and executing trusts;
 - (i) undertaking the administration of estates as executor, trustee or otherwise;
 - (j) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;
 - (k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;
 - (l) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;
 - (m) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub- section;
 - (n) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;
 - (o) any other form of business which the Central Government may, by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.
- (2) No banking company shall engage in any form of business other than those referred to in sub-section (1).

Use of words “bank”, “banker”, “banking” or “banking company” [Section 7]

- (1) No company other than a banking company shall use as part of its name or in connection with its business any of the words “bank”, “banker” or “banking” and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words.
- (2) No firm, individual or group of individuals shall, for the purpose of carrying on any business, use as part of its or his name any of the words “bank”, “banking” or “banking company”.
- (3) Nothing in this section shall apply to.—
 - (a) a subsidiary of a banking company formed for one or more of the purposes mentioned in sub-section (1) of section 19, whose name indicates that it is a subsidiary of that banking company;
 - (b) any association of banks formed for the protection of their mutual interests and registered under section 25 of the Companies Act, 1956 (1 of 1956).]

Prohibition of trading [Section 8]

Notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy, sell or barter goods for others otherwise than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in clause (i) of sub-section (1) of section 6:

Provided that this section shall not apply to any such business as is specified in pursuance of clause (o) of sub-section (1) of section 6.

Explanation. — For the purposes of this section, "goods" means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie, and all instruments referred to in clause (a) of sub-section (1) of section 6.

Disposal of non-banking assets [Section 9]

Notwithstanding anything contained in section 6, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be:

Provided that the banking company may, within the period of seven years as aforesaid deal or trade in any such property for the purpose of facilitating the disposal thereof:

Provided further that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

Prohibition of employment of managing agents and restrictions on certain forms of employment [Section 10]

(1) No banking company —

- (a) shall employ or be managed by a managing agent; or
- (b) shall employ or continue the employment of any person—
 - (i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude; or
 - (ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company:

Provided that nothing contained in this sub-clause shall apply to the payment by a banking company of—

(a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or

(iii) whose remuneration is, in the opinion of the Reserve Bank, excessive; or

- (c) shall be managed by any person—



- (i) who is a director of any other company not being—
(a) a subsidiary of the banking company, or
(b) a company registered under section 25 of the Companies Act, 1956 (1 of 1956):

Provided that the prohibition in this sub-clause shall not apply in respect of any such director for a temporary period not exceeding three months or such further period not exceeding nine months as the Reserve Bank may allow; or

- (ii) who is engaged in any other business or vocation; or
(iii) whose term of office as a person managing the company is for period exceeding five years at any one time:

Provided that the term of office of any such person may be renewed or extended by further periods not exceeding five years on each occasion subject to the condition that such renewal/extension shall not be sanctioned earlier than two years from the date on which it is to come into force:

Provided also that where the term of office of such person is for an indefinite period, such term, unless it otherwise comes to an end earlier, shall come to an end immediately on the expiry of five years from the date of his appointment or on the expiry of three months from the date of commencement of section 8 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963), whichever is later:

Provided further that nothing in this clause shall apply to a director, other than the managing director, of a banking company by reason only of his being such director.

Explanation.— For the purpose of sub-clause (iii) of clause (b), the expression "remuneration", in relation to person employed or continued in employment, shall include salary, fees and perquisites but shall not include any allowances or other amounts paid to him for the purpose of reimbursing him in respect of the expense actually incurred by him in the performance of his duties.

- (2) In forming its opinion under sub-clause (iii) of clause (b) of sub-section (1), the Reserve Bank may have regard among other matters to the following:—
(i) the financial condition and history of the banking company, its size and area of operation, its resources, the volume of its business, and the trend of its earning capacity;
(ii) the number of its branches or offices;
(iii) the qualifications, age and experience of the person concerned;
(iv) the remuneration paid to other persons employed by the banking company or to any person occupying a similar position in any other banking company similarly situated; and
(v) the interests of its depositors.
- (3) Omitted by Act 55 of 1963, Section 8 w.e.f. 1-2-1964.
(4) Omitted by Act 55 of 1963, Section 8 w.e.f. 1-2-1964.
(5) Omitted by Act 55 of 1963, Section 8 w.e.f. 1-2-1964.
(6) Any decision or order of the Reserve Bank made under this section shall be final for all purposes.

Board of directors to include persons with professional or other experience [Section 10A]

- (1) Notwithstanding anything contained in any other law for the time being in force, every banking company,

- (a) in existence on the commencement of section 3 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), or
 - (b) which comes into existence thereafter, shall comply with the requirements of this section:
Provided that nothing contained in this sub-section shall apply to a banking company referred to in clause (a) for a period of three months from such commencement.
- (2) Not less than fifty-one per cent, of the total number of members of the Board of directors of a banking company shall consist of persons, who—
- (a) shall have special knowledge or practical experience in respect of one or more of the following matters, namely:—
 - (i) accountancy,
 - (ii) agriculture and rural economy,
 - (iii) banking,
 - (iv) co-operation,
 - (v) economics,
 - (vi) finance,
 - (vii) law,
 - (viii) small-scale industry,
 - (ix) any other matter the special knowledge of, and practical experience in, which would, in the opinion of the Reserve Bank, be useful to the banking company:
Provided that out of the aforesaid number of directors, not less than two shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry; and
 - (b) shall not—
 - (1) have substantial interest in, or be connected with, whether as employee, manager or managing agent,—
 - (i) any company, not being a company registered under section 25 of the Companies Act, 1956 (1 of 1956), or
 - (ii) any firm,
which carries on any trade, commerce or industry and which, in either case, is not a small-scale industrial concern, or
- (2) be proprietors of any trading, commercial or industrial concern, not being a small-scale industrial concern.
- (2A) Notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force, —
- (i) no director of a banking company, other than its chairman or whole-time director, by whatever name called, shall hold office continuously for a period exceeding eight years;
 - (ii) a chairman or other whole-time director of a banking company who has been removed from office as such chairman, or whole-time director, as the case may be, under the provisions of this Act shall also cease to be a director of the banking company and shall also not be eligible to be appointed as a director of such banking company, whether by election or co-option or otherwise, for a period of four years from the date of his ceasing to be the -chairman or whole-time director as the case may be.



- (3) If, in respect of any banking company the requirements, as laid down in subsection (2), are not fulfilled at any time, the Board of directors of such banking company shall re-constitute such Board so as to ensure that the said requirements are fulfilled.
- (4) If, for the purpose of re-constituting the Board under sub-section (3), it is necessary to retire any director or directors, the Board may, by lots drawn in such manner as may be prescribed, decide which director or directors shall cease to hold office and such decision shall be binding on every director of the Board.
- (5) Where the Reserve Bank is of opinion that the composition of the Board of directors of a banking company is such that it does not fulfil the requirements of subsection (2), it may, after giving to such banking company a reasonable opportunity of being heard, by an order in writing, direct the banking company to so re-constitute its Board of directors as to ensure that the said requirements are fulfilled and, if within two months from the date of receipt of that order, the banking company does not comply with the directions made by the Reserve Bank, that Bank may, after determining, by lots drawn in such manner as may be prescribed, the person who ought to be removed from the membership of the Board of directors, remove such person from the office of the director of banking company and with a view to complying with the provision of sub-section (2) appoint a suitable person as a member of the Board of directors in the place of the person so removed whereupon the person so appointed shall be deemed to have been duly elected by the banking company as its director.
- (6) Every appointment, removal or reconstitution duly made, and every election duly held, under this section shall be final and shall not be called into question in any court.
- (7) Every director elected or, as the case may be, appointed under this section shall hold office until the date up to which his predecessor would have held office, if the election had not been held, or, as the case may be, the appointment had not been made.
- (8) No act or proceeding of the Board of directors of a banking company shall be invalid by reason only of any defect in the composition thereof or on the ground that it is subsequently discovered that any of its members did not fulfil the requirements of this section.

Banking company to be managed by whole time chairman [Section 10B]

- (1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company in existence on the commencement of the Banking Regulation (Amendment) Act, 1994 (20 of 1994), or which comes into existence thereafter shall have one of its directors, who may be appointed on a whole-time or a part-time basis, as chairman of its board of directors, and where he is appointed on a whole-time basis, as chairman of its board of directors, he shall be entrusted with the management of the whole of the affairs of the banking company :
Provided that the chairman shall exercise his powers subject to the superintendence, control and direction of the board of directors.
- (1A) Where a chairman is appointed on a part-time basis, —
 - (i) such appointment shall be with the previous approval of the Reserve Bank and be subject to such conditions as the Reserve Bank may specify while giving such approval;
 - (ii) the management of the whole of the affairs of such banking company shall be entrusted to a managing director who shall exercise his powers subject to the superintendence, control and direction of the board of directors.
- (2) Every chairman of the board of directors who is appointed on a whole-time basis and every managing director of a banking company shall be in the whole-time employment of such company and shall hold office for such period, not exceeding five years, as the board of directors may fix,

but shall, subject to the provisions of this section, be eligible for re-election or reappointment:

Provided that nothing in this sub-section shall be construed as prohibiting a chairman from being a director of a subsidiary of the banking company or a director of a company registered under section 25 of the Companies Act, 1956 (1 of 1956).

- (3) Every person holding office on the commencement of section 3 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), as managing director of a banking company shall—
 - (a) if there is a chairman of its board of directors, vacate office on such commencement, or
 - (b) if there is no chairman of its board of directors, vacate office on the date on which the chairman of its board of directors is elected or appointed in accordance with the provisions of this section.
- (4) Every chairman who is appointed on a whole-time basis and every managing director of a banking company appointed under sub-section (1A) shall be a person who has special knowledge and practical experience of—
 - (a) the working of a banking company, or of the State Bank of India or any subsidiary bank or a financial institution, or
 - (b) financial, economic or business administration :

Provided that a person shall be disqualified for being a chairman who is appointed on a whole time basis or a managing director, if he—

- (a) is a director of any company other than a company referred to in the proviso to sub-section (2), or
 - (b) is a partner of any firm which carries on any trade, business or industry, or
 - (c) has substantial interest in any other company or firm, or
 - (d) is a director, manager, managing agent, partner or proprietor of any trading, commercial or industrial concern, or
 - (e) is engaged in any other business or vocation.
- (5) A chairman of the board of directors appointed on a whole-time basis or a managing director of a banking company may, by writing, under his hand addressed to the company, resign his office.
 - (5A) A chairman of the board of directors appointed on a whole-time basis or a managing director whose term of office has come to an end, either by reason of his resignation or by reason of expiry of the period of his office, shall, subject to the approval of the Reserve Bank, continue in office until his successor assumes office.
 - (6) Without prejudice to the provisions of section 36AA where the Reserve Bank is of opinion that any person who, is, or has been elected to be, the chairman of the board of directors who is appointed on a whole-time basis or the managing director of a banking company is not a fit and proper person to hold such office, it may, after giving to such person and to the banking company a reasonable opportunity of being heard by order in writing, require the banking company to elect or appoint any other person as the chairman of the board of directors who is appointed on a whole-time basis or the managing director and if, within a period of two months from the date of receipt of such order, the banking company fails to elect or appoint a suitable person as the chairman of the board of directors who is appointed on a whole-time basis or the managing director, the Reserve Bank may, by order, remove the first-mentioned person from the office of the chairman of the board of directors who is appointed on a whole-time basis



or the managing director of the banking company and appoint a suitable person in his place whereupon the person so appointed shall be deemed to have been duly elected or appointed, as the case may be, as the chairman of the board of directors who is appointed on a whole-time basis or the managing director of such banking company and any person elected or appointed as chairman on a whole-time basis or managing director under this sub-section shall hold office for the residue of the period of office of the person in whose place he has been so elected or appointed.

- (7) The banking company and any person against whom an order of removal is made under sub-section (6) may, within thirty days from the date of communication to it or to him of the order, prefer an appeal to the Central Government and the decision of the Central Government thereon, and subject thereto, the order made by the Reserve Bank under sub-section (6), shall be final and shall not be called into question in any court.
- (8) Notwithstanding anything contained in this section, the Reserve Bank may, if in its opinion it is necessary in the public interest so to do, permit the chairman of the board of directors who is appointed on a whole-time basis or the managing director to undertake such part-time honorary work as is not likely to interfere with his duties as such chairman or managing director.
- (9) Notwithstanding anything contained in this section, where a person appointed on a whole-time basis, as chairman of the board of directors or the managing director dies or resigns or is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the banking company may, with the approval of the Reserve Bank, make suitable arrangements for carrying out the duties of chairman or managing director for a total period not exceeding four months.

Power of Reserve Bank to appoint Chairman of the Board of directors appointed on a whole-time basis or a managing director of a banking company [Section 10BB]

- (1) Where the office, of the chairman of the board of directors appointed on a whole-time basis or a managing director of a banking company is vacant, the Reserve Bank may, if it is of opinion that the continuation of such vacancy is likely to adversely affect the interests of the banking company, appoint a person eligible under sub-section (4) of section 10B to be so appointed, to be the chairman of the board of directors appointed on a whole-time basis or a managing director of the banking company and where the person so appointed is not a director of such banking company, he shall, so long as he holds the office of the chairman of the board of directors appointed on a whole-time basis or a managing director, be deemed to be director of the banking company.
- (2) The chairman of the board of directors appointed on a whole-time basis or a managing director so appointed by the Reserve Bank shall be in the whole-time employment of the banking company and shall hold office for such period not exceeding three years, as the Reserve Bank may specify, but shall, subject to other provisions of this Act, be eligible for reappointment.
- (3) The chairman of the board of directors appointed on a whole-time basis or a managing director so appointed by the Reserve Bank shall draw from the banking company such pay and allowances as the Reserve Bank may determine and may be removed from office only by the Reserve Bank.
- (4) Save as otherwise provided in this section, the provisions of section 10B shall, as far as may be, apply to the chairman of the board of directors appointed on a whole-time basis or a managing director appointed by the Reserve Bank under subsection (1) as they apply to a chairman of the board of directors appointed on a whole-time basis or a managing director appointed by the banking company.

Chairman and certain directors not to be required to hold qualification shares [Section 10C]

Chairman of the board of directors who is appointed on a whole-time basis or a managing director of a banking company (by whomsoever appointed) and a director of a banking company (appointed by the Reserve Bank under section 10A) shall not be required to hold qualification shares in the banking company.

Provisions of sections 10A and 10B to override all other laws, contracts, etc [Section 10D]

Any appointment or removal of a director, chairman of the board of directors who is appointed on a whole-time basis or a managing director in pursuance of section 10A or section 10B or section 10BB shall have effect and any such person shall not be entitled to claim any compensation for the loss or termination of office, notwithstanding anything contained in any law or in any contract, memorandum or articles of association.

Requirement as to minimum paid-up capital and reserves [Section 11]

- (1) Notwithstanding anything contained in section 149 of the Companies Act, 1956 (1 of 1956), no banking company in existence on the commencement of this Act, shall, after the expiry of three years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company, may think fit in any particular case to allow, carry on business in India, and no other banking company shall after the commencement of this Act, commence or carry on business in India unless it complies with such of the requirements of this section as are applicable to it.
- (2) In the case of a banking company incorporated outside India—
 - (a) the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees and if it has a place or places of business in the city of Bombay or Calcutta or both, twenty lakhs of rupees; and
 - (b) the banking company shall deposit and keep deposited with the Reserve Bank either in cash or in the form of unencumbered approved securities, or partly in cash and partly in the form of such securities —
 - (i) an amount which shall not be less than the minimum required by clause (a); and
 - (ii) as soon as may be after the expiration of each year, an amount calculated at twenty per cent of its profit for that year in respect of all business transacted through its branches in India, as disclosed in the profit and loss account prepared with reference to that year under section 29:

Provided that any such banking company may at any time replace —

- (i) any securities so deposited by cash or by any other unencumbered approved securities or partly by cash and partly by other such securities, so however, that the total amount deposited is not affected;
 - (ii) any cash so deposited by unencumbered approved securities of an equal value.
- (2A) Notwithstanding anything contained in sub-section (2), the Central Government may, on the recommendation of the Reserve Bank, and having regard to the adequacy of the amounts already deposited and kept deposited by a banking company under sub-section (2), in relation to its deposit liabilities in India, declare by order in writing that the provisions of sub-clause (ii) of clause (b) of sub-section (2) shall not apply to such banking company for such period as may be specified in the order.
- (3) In the case of any banking company to which the provisions of sub-section (2) do not apply, the aggregate value of its paid-up capital and reserves shall not be less than—



- (i) if it has places of business in more than one State, five lakhs of rupees, and if any such place or places of business is or are situated in the city of Bombay or Calcutta or both, ten lakhs of rupees;
- (ii) if it has all its places of business in one State none of which is situated in the city of Bombay or Calcutta, one lakh of rupees in respect of its principal place of business, plus ten thousand rupees in respect of each of its other places of business situated in the same district in which it has its principal place of business, plus twenty-five thousand rupees in respect of each place of business situated elsewhere in the State otherwise than in the same district:

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees:

Provided further that no banking company to which this clause applies and which has only one place of business, shall be required to have paid-up capital and reserves exceeding an aggregate value of fifty thousand rupees:

Provided further that in the case of every banking company to which this clause applies and which commences banking business for the first time after the commencement of the Banking Companies (Amendment) Act, 1962 (36 of 1962), the value of its paid-up capital shall not be less than five lakhs of rupees;

- (iii) if it has all its places of business in one State, one or more of which is or are situated in the city of Bombay or Calcutta, five lakhs of rupees, plus twenty-five thousand rupees in respect of each place of business situated outside the city of Bombay or Calcutta, as the case may be:

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of ten lakhs of rupees.

Explanation. — For the purposes of this sub-section, a place of business situated in a State other than that in which the principal place of business of the banking company is situated shall, if it is not more than twenty-five miles distant from such principal place of business, be deemed to be situated within the same State as such principal place of business.

- (4) Any amount deposited and kept deposited with the Reserve Bank under sub-section (2) by any banking company incorporated outside India shall, in the event of the company ceasing for any reason to carry on banking business in India, be an asset of the company on which the claims of all the creditors of the company in India shall be a first charge.
- (5) For the purposes of this section,—
 - (a) "place of business" means any office, sub-office, sub-pay office and any place of business at which deposits are received, cheques cashed, or moneys lent;
 - (b) "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the banking company concerned.
- (6) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

Regulation of paid-up capital, subscribed capital and authorised capital and voting rights of shareholders [Section 12]

- (1) No banking company shall carry on business in India, unless it satisfies the following conditions, namely:—
 - (i) that the subscribed capital of the company is not less than one-half of the authorised capital, and the paid-up capital is not less than one-half of the subscribed capital and that,

- if the capital is increased, it complies with the conditions prescribed in this clause within such period not exceeding two years as the Reserve Bank may allow;
- (ii) "that", notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), the capital of such banking company consists of
- (a) equity shares only, or
 - (b) equity shares and preference shares:
- Provided that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Banks specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable), and the terms and conditions subject to which each class of preference shares may be issued.
- Provided further that no holder of the preference share, issued by the company, shall be entitled to exercise the voting right specified in clause (h) of sub-section (2) of section 87 of the Companies Act, 1956 (1 of 1956);";
- (2) No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights on poll in excess of (ten per cent) of the total voting rights of all the shareholders of the banking company.
- "Provided that the Reserve Bank may increase, in a phased manner, such ceiling on voting rights from ten per cent to twenty-six per cent."
- (3) Notwithstanding anything contained in any law for the time being in force or in any contract or instrument no suit or other proceeding shall be maintained against any person registered as the holder of a share in a banking company on the ground that the title to the said share vests in a person other than the registered holder.
- Provided that nothing contained in this sub-section shall bar a suit or other proceeding—
- (a) by a transferee of the share on the ground that he has obtained from the registered holder a transfer of the share in accordance with any law relating to such transfer; or
 - (b) on behalf of a minor or a lunatic on the ground that the registered holder holds the share on behalf of the minor or lunatic.
- (4) Every chairman, managing director or chief executive officer by whatever name called of a banking company shall furnish to the Reserve Bank through that banking company returns containing full particulars of the extent and value of his holding of shares, whether directly or indirectly, in the banking company and of any change in the extent of such holding or any variation in the rights attaching thereto and such other information relating to those shares as the Reserve Bank may, by order, require and in such form and at such time as may be specified in the order.
- Election of new directors [Section 12A]**
- (1) The Reserve Bank may, by order, require any banking company to call a general meeting of the shareholders of the company within such time, not less than two months from the date of the order, as may be specified in the order or within such further time as the Reserve Bank may allow in this behalf, to elect in accordance with the voting rights permissible under this Act fresh directors, and the banking company shall be bound to comply with the order.
 - (2) Every director elected under sub-section (1) shall hold office until the date up to which his predecessor would have held office, if the election had not been held.
 - (3) Any election duly held under this section shall not be called in question in any court.



Regulation of acquisition of shares or voting rights [Section 12B]

- (1) No person (hereinafter referred to as "the applicant") shall, except with the previous approval of the Reserve Bank, on an application being made, acquire or agree to acquire, directly or indirectly, by himself or acting in concert with any other person, shares of a banking company or voting rights therein, which acquisition taken together with shares and voting rights, if any, held by him or his relative or associate enterprise or person acting in concert with him, makes the applicant to hold five per cent, or more of the paid-up share capital of such banking company or entitles him to exercise five per cent, or more of the voting rights in such banking company.

Explanation 1.-For the purposes of this sub-section,

- (a) "relative" shall have the meaning assigned to it in section 6 of the Companies Act, 1956 (1 of 1956);
- (b) "associate enterprise" means a company, whether incorporated or not, which,
 - (i) is a holding company or a subsidiary company of the applicant; or
 - (ii) is a joint venture of the applicant; or
 - (iii) controls the composition of the Board of Directors or other body governing the applicant; or
 - (iv) exercises, in the opinion of the Reserve Bank, significant influence on the applicant in taking financial or policy decisions; or
 - (v) is able to obtain economic benefits from the activities of the applicant;
- (c) persons shall be deemed to be "acting in concert" who, for a common objective or purpose of acquisition of shares or voting rights in excess of the percentage mentioned in this sub-section, pursuant to an agreement or understanding (formal or informal), directly or indirectly cooperate by acquiring or agreeing to acquire shares or voting rights in the banking company.

Explanation 2.-For the purposes of this Act, joint venture means a legal entity in the nature of a partnership engaged in the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial enterprise wherein all contribute assets and share risks.

- (2) An approval under sub-section (1) may be granted by the Reserve Bank if it is satisfied that
- (a) in the public interest; or
 - (b) in the interest of banking policy; or
 - (c) to prevent the affairs of any banking company being conducted in a manner detrimental or prejudicial to the interests of the banking company; or
 - (d) in view of the emerging trends in banking and international best practices; or
 - (e) in the interest of the banking and financial system in India,
- the applicant is a fit and proper person to acquire shares or voting rights:
- Provided that the Reserve Bank may call for such information from the applicant as it may deem necessary for considering the application referred to in sub-section (1): Provided further that the Reserve Bank may specify different criteria for acquisition of shares or voting rights in different percentages.
- (3) Where the acquisition is by way of transfer of shares of a banking company and the Reserve Bank is satisfied that such transfer should not be permitted, it may, by order, direct that no such share

shall be transferred to the proposed transferee and may further direct the banking company not to give effect to the transfer of shares and in case the transfer has been registered, the transferee shall not be entitled to exercise voting rights on poll in any of the meetings of the banking company.

- (4) The approval for acquisition of shares may be subject to such conditions as the Reserve Bank may deem fit to impose, including a condition that any further acquisition of shares shall require prior approval of the Reserve Bank and that the applicant continues to be a fit and proper person to hold the shares or voting rights.
- (5) Before issuing or allotting any share to any person or registering the transfer of shares in the name of any person, the banking company shall ensure that the requirements of sub-section (1) are complied with by that person and where the acquisition is with the approval of the Reserve Bank, the banking company shall further ensure that the conditions imposed under sub-section (4), if any, of such approval are fulfilled.
- (6) The decision of the Reserve Bank on the application made under sub-section (1) shall be taken within a period of ninety days from the date of receipt of the application by the Reserve Bank. Provided that in computing the period of ninety days, the period taken by the applicant for furnishing the information called for by the Reserve Bank shall be excluded.
- (7) The Reserve Bank may specify the minimum percentage of shares to be acquired in a banking company if it considers that the purpose for which the shares are proposed to be acquired by the applicant warrants such minimum shareholding.
- (8) The Reserve Bank may, if it is satisfied that any person or persons acting in concert with him holding shares or voting rights in excess of five per cent, of the total voting rights of all the shareholders of the banking company, are not fit and proper to hold such shares or voting rights, pass an order directing that such person or persons acting in concert with him shall not, in the aggregate, exercise voting rights on poll in excess of five per cent, of the total voting rights of all the shareholders of the banking company.

Provided that the Reserve Bank shall not pass any such order without giving an opportunity of being heard to such person or persons acting in concert with him.

Restriction on commission, brokerage, discount, etc. on sale of shares [Section 13]

Notwithstanding anything to the contrary contained in sections 76 and 79 of the Companies Act, 1956 (1 of 1956)], no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any shares issued by it, any amount exceeding in the aggregate two and one-half per cent of the price at which the said shares are issued.

Explanation.- For the removal of doubts, it is hereby declared that the expression "price at which the said shares are issued" shall include amount or value of premium on such shares..

Prohibition of charge on unpaid capital [Section 14]

No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

Prohibition of floating charge on assets [Section 14A]

- (1) Notwithstanding anything contained in section 6, no banking company shall create a floating charge on the undertaking or any property of the company or any part thereof, unless the creation of such floating charge is certified in writing by the Reserve Bank as not being detrimental to the interests of the depositors of such company.
- (2) Any such charge created without obtaining the certificate of the Reserve Bank shall be invalid.



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- (3) Any banking company aggrieved by the refusal of a certificate under subsection (1) may, within ninety days from the date on which such refusal is communicated to it, appeal to the Central Government.
 - (4) The decision of the Central Government where an appeal has been preferred to it under sub-section (3) or of the Reserve Bank where no such appeal has been preferred shall be final.

Restrictions as to payment of dividend [Section 15]

- (1) No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organisation expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) have been completely written off.
- (2) Notwithstanding anything to the contrary contained in sub-section (1) or in the Companies Act, 1956 (1 of 1956), a banking company may pay dividends on its shares without writing off—
 - (i) the depreciation, if any, in the value of its investments in approved securities in any case where such depreciation has not actually been capitalised or otherwise accounted for as a loss;
 - (ii) the depreciation, if any, in the value of its investments in shares, debentures or bonds (other than approved securities) in any case where adequate provision for such depreciation has been made to the satisfaction of the auditor of the banking company;
 - (iii) the bad debts, if any, in any case where adequate provision for such debts has been made to the satisfaction of the auditor of the banking company.

Prohibition of common directors [Section 16]

- (1) No banking company incorporated in India shall have as a director in its Board of directors any person who is a director of any other banking company.
- (1A) No banking company referred to in sub-section (1) shall have in its Board of directors, more than three directors who are directors of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent of the total voting rights of all the shareholders to that banking company.
- (2) If immediately before the commencement of the Banking Companies (Amendment) Act, 1956 (95 of 1956), any person holding office as a director of a banking company is also a director of companies which among themselves are entitled to exercise voting rights in excess of twenty percent of the total voting rights of all the shareholders of the banking company, he shall, within such period from such commencement as the Reserve Bank may specify in this behalf—
 - (a) either resign his office as a director of the banking company; or
 - (b) choose such number of companies as among themselves are not entitled to exercise voting rights in excess of twenty per cent, of the total voting rights of all the shareholders of the banking company as companies in which he wishes to continue to hold the office of a director and resign his office as a director in the other companies.
- (3) Nothing in sub-section (1) shall apply to, or in relation to, any director appointed by the Reserve Bank.

Reserve Fund [Section 17]

- (1) Every banking company incorporated in India shall create a reserve fund and shall, out of the balance of profit of each year as disclosed in the profit and loss account prepared under section 29 and before any dividend is declared, transfer to the reserve fund a sum equivalent to not less than twenty per cent of such profit.
- (1A) Notwithstanding anything contained in sub-section (1), the Central Government may, on the

recommendation of the Reserve Bank and having regard to the adequacy of the paid-up capital and reserves of a banking company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not apply to the banking company for such period as may be specified in the order:

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

- (2) Where a banking company appropriates any sum or sums from the reserve fund or the share premium account, it shall, within twenty-one days from the date of such appropriation, report the fact to the Reserve Bank, explaining the circumstances relating to such appropriation:

Provided that the Reserve Bank may, in any particular case, extend the said period of twenty-one days by such period as it thinks fit or condone any delay in the making of such report.

Cash reserve [Section 18]

- (1) Every banking company, not being a scheduled bank, shall maintain in India on a daily basis by way of cash reserve with itself or by way of balance in a current account with the Reserve Bank, or by way of net balance in current accounts or in one or more of the aforesaid ways, a sum equivalent to such per cent of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight as the Reserve Bank may specify, by notification in the Official Gazette, from time to time, having regard to the needs of securing the monetary stability in the country and shall submit to the Reserve Bank before the twentieth day of every month a return showing the amount so held on alternate Fridays during a month with particulars of its demand and time liabilities in India on such Fridays or if any such Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), at the close of business on the preceding working day.

Explanation. —In this section, and in section 24, —

- (a) "liabilities in India" shall not include—
 - (i) the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;
 - (ii) any advance taken from the Reserve Bank or from the Exim Bank or from the Reconstruction Bank or from the National Housing Bank or from the National Bank or from the Small Industries Bank by the banking company;
 - (iii) in the case of a Regional Rural Bank, also any loan taken by such bank from its Sponsor Bank;
- (b) "fortnight" shall mean the period from Saturday to the second following Friday, both days inclusive;
- (c) "net balance in current accounts" shall, in relation to a banking company, mean the excess, if any, of the aggregate of the credit balances in current account maintained by that banking company with State Bank of India or a subsidiary bank or a corresponding new bank over the aggregate of the credit balances in current account held by the said banks with such banking company;
- (d) for the purposes of computation of liabilities, the aggregate of the liabilities of a banking company to the State Bank of India, a subsidiary bank, a corresponding new bank, a regional rural bank, another banking company, a co-operative bank or any other financial institution notified by the Central Government in this behalf, shall be reduced by the aggregate of the liabilities of all such banks and institutions to the banking company;



- (e) the expression "co-operative bank" shall have the meaning assigned to it in clause (cc) of section 56.
- (IA) If the balance held by such banking company at the close of business on any day is below the minimum specified under sub-section (1), such banking company shall, without prejudice to the provisions of any other law for the time being in force, be liable to pay to the Reserve Bank, in respect of that day, penal interest at a rate of three per cent, above the bank rate on the amount by which such balance falls short of the specified minimum, and if the shortfall continues further, the penal interest so charged shall be increased to a rate of five per cent, above the bank rate in respect of each subsequent day during which the default continues.
- (IB) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that such defaulting banking company had sufficient cause for its failure to comply with the provisions of sub-section (1), it may not demand the payment of the penal interest.
- (IC) The Reserve Bank may, for such period and subject to such conditions as may be specified, grant to any banking company such exemptions from the provisions of this section as it thinks fit with reference to all or any of its offices or with reference to the whole or any part of its assets and liabilities.".
- (2) The Reserve Bank may, for the purposes of this section and section 24, specify from time to time, with reference to any transaction or class of transactions, that such transaction or transactions shall be regarded as liability in India of a banking company and, if any question arises as to whether any transaction or class of transactions shall be regarded for the purposes of this section and section 24 as liability in India of a banking company, the decision of the Reserve Bank thereon shall be final.

Restriction on nature of subsidiary companies [Section 19]

- (1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely: —
- the undertaking of any business which, under clauses (a) to (o) of subsection (3) of section 6, is permissible for a banking company to undertake, or
 - with the previous permission in writing of the Reserve Bank, the carrying on of the business of banking exclusively outside India, or
 - the undertaking of such other business, which the Reserve Bank may, with the prior approval of the Central Government, consider to be conducive to the spread of banking in India or to be otherwise useful or necessary in the public interest.

Explanation. —For the purposes of section 8, a banking company shall not be deemed, by reason of its forming or having a subsidiary company, to be engaged indirectly in the business carried on by such subsidiary company.

- (2) Save as provided in sub-section (1), no banking company shall hold shares in any company, whether as pledge, mortgagee or absolute owner, of an amount exceeding thirty per cent of the paid-up share capital of that company or thirty per cent of its own paid-up share capital and reserves, whichever is less:

Provided that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefore if it reports the matter without delay to the Reserve Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the Reserve Bank may think fit to allow.

- (3) Save as provided in sub-section (1) and notwithstanding anything contained in sub-section (2),

a banking company shall not, after the expiry of one year from the date of the commencement of this Act, hold shares, whether as pledge, mortgage or absolute owner, in any company in the management of which any managing director or manager of the banking company is in any manner concerned or interested.

Restrictions on loans and advances [Section 20]

- (1) Notwithstanding anything to the contrary contained in section 77 of the Companies Act, 1956 (1 of 1956), no banking company shall,—
 - (a) grant any loans or advances on the security of its own shares, or—
 - (b) enter into any commitment for granting any loan or advance to or on behalf of—
 - (i) any of its directors,
 - (ii) any firm in which any of its directors is interested as partner, manager, employee or guarantor, or
 - (iii) any company not being a subsidiary of the banking company or a company registered under section 25 of the Companies Act, 1956 (1 of 1956), or a Government company of which or the subsidiary or the holding company of which any of the directors of the banking company is a director, managing agent, manager, employee or guarantor or in which he holds substantial interest, or
 - (iv) any individual in respect of whom any of its directors is a partner or guarantor.
- (2) Where any loan or advance granted by a banking company is such that a commitment for granting it could not have been made if clause (b) of sub-section (1) had been in force on the date on which the loan or advance was made, or is granted by a banking company after the commencement of section 5 of the Banking Laws (Amendment) Act, 1968 (58 of 1968), but in pursuance of a commitment entered into before such commencement, steps shall be taken to recover the amounts due to the banking company on account of the loan, or advance together with interest, if any, due thereon within the period stipulated at the time of the grant of the loan or advance, or where no such period has been stipulated, before the expiry of one year from the commencement of the said section 5:

Provided that the Reserve Bank may, in any case, on an application in writing made to it by the banking company in this behalf, extend the period for the recovery of the loan or advance until such date, not being a date beyond the period of three years from the commencement of the said section 5, and subject to such terms and conditions, as the Reserve Bank may deem fit:

Provided further that this sub-section shall not apply if and when the director concerned vacates the office of the director of the banking company, whether by death, retirement, resignation or otherwise.

- (3) No loan or advance, referred to in sub-section (2), or any part thereof shall be remitted without the previous approval of the Reserve Bank, and any remission without such approval shall be void and of no effect.
- (4) Where any loan or advance referred to in sub-section (2), payable by any person, has not been repaid to the banking company within the period specified in that subsection, then, such person shall, if he is a director of such banking company on the date of the expiry of the said period, be deemed to have vacated his office as such on the said date.

Explanation. — In this section—

- (a) “loans or advance” shall not include any transaction which the Reserve Bank may, having regard to the nature of the transaction, the period within which, and the manner and circumstances in which, any amount due on account of the transaction is likely to be



realised, the interest of the depositors and other relevant considerations, specify by general or special order as not being a loan or advance for the purpose of this section;

- (b) "director" include a member of any board or committee in India constituted by a banking company for the purpose of managing, or for the purpose of advising it in regard to the management of, all or any of its affairs.
- (5) If any question arises whether any transaction is a loan or advance for the purposes of this section, it shall be referred to the Reserve Bank, whose decision thereon shall be final.

Restrictions on power to remit debts [Section 20A]

- (1) Notwithstanding anything to the contrary contained in section 293 of the Companies Act, 1956 (1 of 1956), a banking company shall not, except with the prior approval of the Reserve Bank, remit in whole or in part any debt due to it by—
 - (a) any of its directors, or
 - (b) any firm or company in which any of its directors is interested as director, partner, managing agent or guarantor, or
 - (c) any individual if any of its directors is his partner or guarantor.
- (2) Any remission made in contravention of the provisions of sub-section (1) shall be void and of no effect.

Power of Reserve Bank to control advances by banking companies [Section 21]

- (1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.
- (2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1) the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to—
 - (a) the purposes for which advances may or may not be made,
 - (b) the margins to be maintained in respect of secured advances,
 - (c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,
 - (d) the maximum amount up to which, having regard to the considerations referred to in clause (c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and
 - (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.
- (3) Every banking company shall be bound to comply with any directions given to it under this section.

Rates of interest charged by banking companies not to be subject to scrutiny by courts [Section 21A]

Notwithstanding anything contained in the Usurious Loans Act, 1918 (10 of 1918), or any other law relating to indebtedness in force in any State, a transaction between a banking company and its

debtor shall not be re-opened by any court on the ground that the rate of interest charged by the banking company in respect of such transaction is excessive.

Licensing of banking companies [Section 22]

- (1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject of such conditions as the Reserve Bank may think fit to impose.
- (2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business in India, shall apply in writing to the Reserve Bank for a licence under this section:

Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of this section or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it:

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

- (3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely :—
 - (a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;
 - (b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;
 - (c) that the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors;
 - (d) that the company has adequate capital structure and earning prospects;
 - (e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;
 - (f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;
 - (g) any other condition, the fulfilment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.
- (3A) Before granting any licence under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.



- (4) The Reserve Bank may cancel a licence granted to a banking company under this section —
- if the company ceases to carry on banking business in India; or
 - if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or
 - if at any time, any of the conditions referred to in sub-section (3) and sub-section (3A) is not fulfilled:

Provided that before cancelling a licence under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

- Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.
- The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final.]

Restrictions on opening of new, and transfer of existing, places of business [Section 23]

- Without obtaining the prior permission of the Reserve Bank—
 - no banking company shall open a new place of business in India or change otherwise than within the same city, town or village, the location of an existing place of business situated in India; and
 - no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area:
Provided that nothing in this sub-section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the banking company already has a place of business, for the purpose of affording banking facilities to the public on the occasion of an exhibition, a conference or a mela or any other like occasion.
- Before granting any permission under this section, the Reserve Bank may require to be satisfied by an inspection under section 35 or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of location, of the place of business.
- The Reserve Bank may grant permission under sub-section (1) subject to such conditions as it may think fit to impose either generally or with reference to any particular case.
- Where, in the opinion of the Reserve Bank, a banking company has, at any time, failed to comply with any of the conditions imposed on it under this section, the Reserve Bank may, by order in writing and after affording reasonable opportunity to the banking company for showing cause against the action proposed to be taken against it, revoke any permission granted under this section.
- Any regional rural bank requiring the permission of the Reserve Bank under this section shall forward its application to the Reserve Bank through the National Bank which shall give its comments on the merits of the application and send it to the Reserve Bank:

Provided that the regional rural bank shall also send an advance copy of the application directly to the Reserve Bank.

- (5) For the purpose of this section "place of business" includes any sub-office, pay office, subpay office and any place of business at which deposits are received, cheques cashed or moneys lent.

Maintenance of a percentage of assets [Section 24]

- (1) Omitted by Banking Regulation Amendment Act, 2007.
- (2) Omitted by Banking Regulation Amendment Act, 2007.
- (2A) A scheduled bank, in addition to the average daily balance which it is, or may be, required to maintain under section 42 of the Reserve Bank of India Act, 1934 and every other banking company, in addition to the cash reserve which it is required to maintain under section 18, shall maintain in India, assets, the value of which shall not be less than such percentage not exceeding forty per cent. of the total of its demand and time liabilities in India as on the last Friday of the second preceding fortnight as the Reserve Bank may, by notification in the Official Gazette, specify from time to time and such assets shall be maintained, in such form and manner, as may be specified in such notification.
- (2B) Omitted by Banking Regulation Amendment Act, 2007
- (3) For the purpose of ensuring compliance with the provisions of this section, every banking company shall, not later than twenty days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its demand and time liabilities in India at the close of business on each alternate Friday during the month, or if any such Friday is a public holiday, at the close of business on the preceding working day:

Provided that every Regional Rural Bank shall also furnish a copy of the said return to the National Bank.

- (4) (a) If on any alternate Friday or, if such Friday is a public holiday, on the preceding working day, the amount maintained by a banking company at the close of business on that day falls below the minimum prescribed by or under sub-section (2A) such banking company shall be liable to pay to the Reserve Bank in respect of that day's default, penal interest for that day at the rate of three per cent per annum above the bank rate on the amount by which the amount actually maintained falls short of the prescribed minimum on that day; and
- (b) If the default occurs again on the next succeeding alternate Friday, or, if such Friday is a public holiday, on the preceding working day, and continues on succeeding alternate Fridays or preceding working days, as the case may be, the rate of penal interest shall be increased to a rate of five per cent per annum above the bank rate on each such shortfall in respect of that alternate Friday and each succeeding alternate Friday or preceding working day, if such Friday is a public holiday, in which the default continues.
- (5) (a) Without prejudice to the provisions of sub-section (3), the Reserve Bank may require a banking company to furnish to it a return in the form and manner specified by it showing particulars of its assets maintained in accordance with this section and its demand and time liabilities in India, as at the close of business on each day of a month; and
- (b) Without prejudice to the provisions of sub-section (4), on the failure of a banking company to maintain as on any day, the amount so required to be maintained by or under clause (a) of sub-section (2A) the Reserve Bank may, in respect of such default, require the banking company to pay penal interest for that day as provided of sub-section (4) and if the default continues on the next succeeding working day, the penal interest may be increased as provided in clause (b) of sub-section (4) for the concerned days.



- (6) (a) The penalty payable under sub-section (4) and sub-section (5) shall be paid within a period of fourteen days from the date on which a notice issued by the Reserve Bank demanding payment of the same is served on the banking company and in the event of failure of the banking company to pay the same within such period, the penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting banking company is situated, such direction to be made only upon an application made by the Reserve Bank in this behalf to the court; and
(b) When the court makes a direction under clause (a), it shall issue a certificate specifying the sum payable by the banking company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a suit.
- (7) When under the provisions of clause (b) of sub-section (4), penal interest at the increased rate of five per cent, above the bank rate has become payable by a banking company, if thereafter the amount required to be maintained on the next succeeding alternate Friday, or if such Friday is a public holiday, the next preceding working day, is still below the prescribed minimum, every director, manager or secretary of the banking company, who is knowingly and wilfully a party to the default, shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to five hundred rupees for each subsequent alternate Friday or the preceding working day, as the case may be, on which the default continues.
- (8) Notwithstanding anything contained in this section, if the Reserve Bank is satisfied, on an application in writing by the defaulting banking company, that the banking company had sufficient cause for its failure to comply with the provisions of sub-section (2A), the Reserve Bank may not demand the payment of the penal interest.

Explanation. — In this section, the expression "public holiday" means a day which is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881)].

Assets in India [Section 25]

- (1) The assets in India of every banking company at the close of business on the last Friday of every quarter or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), at the close of the business on the preceding working day, shall not be less than seventy-five percent of its demand and time liabilities in India.'
- (2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of business on the last Friday of the previous quarter, or, if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881) at the close of business on the preceding working day:
- Provided that every regional rural bank shall also furnish a copy of the said return to the National Bank.
- (3) For the purposes of this section,—
- (a) "assets in India" shall be deemed to include export bills drawn in, and import bills drawn on and payable in India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf and also such securities as the Reserve Bank may approve in this behalf notwithstanding that all or any of the said bills or securities are held outside India;
- (b) "liabilities in India" shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the banking company;
- (c) "quarter" means the period of three months ending on the last day of March, June, September or December.

Return of unclaimed deposits [Section 26]

Every banking company shall, within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts in India which have not been operated upon for ten years:

Provided that in the case of money deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period:

Provided further that every regional rural bank shall also furnish a copy of the said return to the National Bank.

Establishment of Depositor Education and Awareness Fund [Section 26A]

- (1) The Reserve Bank shall establish a Fund to be called the "Depositor Education and Awareness Fund" (hereafter in this section referred to as the "Fund").
- (2) There shall be credited to the Fund the amount to the credit of any account in India with a banking company which has not been operated upon for a period of ten years or any deposit or any amount remaining unclaimed for more than ten years, within a period of three months from the expiry of the said period of ten years:

Provided that nothing contained in this sub-section shall prevent a depositor or any other claimant to claim his deposit or unclaimed amount or operate his account or deposit account from or with the banking company after the expiry of said period of ten years and such banking company shall be liable to repay such deposit or amount at such rate of interest as may be specified by the Reserve Bank in this behalf.

- (3) Where the banking company has paid outstanding amount referred to in sub-section (2) or allowed operation of such account or deposit, such banking company may apply for refund of such amount in such manner as may be specified by the authority' or committee referred to in sub-section (5).
- (4) The Fund shall be utilised for promotion of depositors' interests and for such other purposes which may be necessary for the promotion of depositors' interests as may be specified by the Reserve Bank from time to time.
- (5) The Reserve Bank shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Reserve Bank may appoint, to administer the Fund, and to maintain separate accounts and other relevant records in relation to the Fund in such forms as may be specified by the Reserve Bank.
- (6) It shall be competent for the authority or committee appointed under subsection (5) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.'

Monthly returns and power to call for other returns and information [Section 27]

- (1) Every banking company shall, before me close of the month succeeding that to which it relates, submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities [in India] as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), at the close of business on the preceding working day.
- (2) The Reserve Bank may at any time direct a banking company to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of the banking company (including any business or affairs with which such banking company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act, and without prejudice to the generality of the foregoing power may call for information every half-year regarding 99[the investments of a banking company and the classification of its advances in respect of industry, commerce and agriculture.



- (3) Every regional rural bank shall submit a copy of the return which it submits to the Reserve Bank under sub-section (1) also to the National Bank and the powers exercisable by the Reserve Bank under sub-section (2) may also be exercised by the National Bank in relation to regional rural banks.

Power to publish information [Section 28]

The Reserve Bank or the National Bank, or both, if they consider it in the public interest so to do, may publish any information obtained by them under this Act in such consolidated form as they think fit.

Accounts and balance-sheet [Section 29]

- (1) At the expiration of each calendar year or at the expiration of a period of twelve months ending with such date as the Central Government may, by notification in the Official Gazette, specify in this behalf, every banking company incorporated in India, in respect of all business transacted by it, and every banking company incorporated outside India, in respect of all business transacted through its branches in India, shall prepare with reference to that year or period, as the case may be, a balance-sheet and profit and loss account as on the last working day of that year or the period, as the case may be in the Forms set out in the Third Schedule or as near thereto as circumstances admit:

Provided that with a view to facilitating the transition from one period, of accounting to another period of-accounting under this sub-section, the Central Government may, by order published in the Official Gazette, make such provisions as it considers necessary or expedient for the preparation of, or for other matters relating to, the balance sheet or profit and loss account in respect of the concerned year or period, as the case may be.

- (2) The balance-sheet and profit and loss account shall be signed—
- (a) in the case of a banking company incorporated in India, by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and
 - (b) in the case of a banking company incorporated outside India by the manager or agent of the principal office of the company in India.
- (3) Notwithstanding that the balance-sheet of a banking company is under subsection (1) required to be prepared in a form other than the form set out in Part I of Schedule VI to the Companies Act, 1956 (1 of 1956), the requirements of that relating to the balance-sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance-sheet or profit and loss account, as the case may be, of a banking company.
- (3A) Notwithstanding anything to the contrary contained in sub-section (3) of section 210 of the Companies Act, 1956 (1 of 1956), the period to which the profit and loss account relates shall, in the case of a banking company, be the period ending with the last working day of the year immediately preceding the year in which the annual general meeting is held.

Explanation. —In sub-section (3A), “year” means the year or, as the case may be, the period referred to in sub-section (1).

- (4) The Central Government, after giving not less than three months' notice of its mention so to do by a notification in the Official Gazette, may from time to time by a like notification amend the Form set out in the Third Schedule.

Power in respect of associate enterprises [Section 29A]

- (I) The Reserve Bank may, at any time, direct a banking company to annex to its financial statements or furnish to it separately, within such time and at such intervals as may be specified by the

Reserve Bank, such statements and information relating to the business or affairs of any associate enterprise of the banking company as the Reserve Bank may consider necessary or expedient to obtain for the purpose of this Act.

- (2) Notwithstanding anything to the contrary contained in the Companies Act, 1956, the Reserve Bank may, at any time, cause an inspection to be made of any associate enterprise of a banking company and its books of account jointly by one or more of its officers or employees or other persons along with the Board or authority regulating such associate enterprise.
- (3) The provisions of sub-sections (2) and (3) of section 35 shall apply *mutatis mutandis* to the inspection under this section.

Explanation.- "associate enterprise" in relation to a banking company includes an enterprise which

- (i) is a holding company or a subsidiary company of the banking company; or
- (ii) is a joint venture of the banking company; or
- (iii) is a subsidiary company or a joint venture of the holding company of the banking company; or
- (iv) controls the composition of the Board of directors or other body governing the banking company; or
- (v) exercises, in the opinion of the Reserve Bank, significant influence on the banking company in taking financial or policy decisions; or
- (vi) is able to obtain economic benefits from the activities of the banking company.'

Audit [Section 30]

- (1) The balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited by a person duly qualified under any law for the time being in force to be an auditor of companies.
- (1A) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking shall, before appointing re-appointing or removing any auditor or auditors, obtain the previous approval of the Reserve Bank.
- (1B) Without prejudice to anything contained in the Companies Act, 1956 (1 of 1956), or any other law for the time being in force, where the Reserve Bank is of opinion that it is necessary in the public interest or in the interest of the banking company or its depositors so to do, it may at any time by order direct that a special audit of the banking company's accounts, for any such transaction or class of transactions or for such period or periods as may be specified in the order, shall be conducted and may by the same or a different order either appoint a person duly qualified under any law for the time being in force to be an auditor of companies or direct the auditor of the banking company himself to conduct such special audit] and the auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the company.
- (1C) The expenses of, or incidental to the special audit specified in the order made by the Reserve Bank shall be borne by the banking company.
- (2) The auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 227 of the Companies Act, 1956 (1 of 1956), and auditors, if any, appointed by the law establishing, constituting or forming the banking company concerned.



- (3) In addition to the matters which under the aforesaid Act the auditor is required to state in his report, he shall, in the case of a banking company incorporated in India, state in his report,—
- whether or not the information and explanation required by him have been found to be satisfactory;
 - whether or not the transactions of the company which have come to his notice have been within the powers of the company;
 - whether or not the returns received from branch offices of the company have been found adequate for the purposes of his audit;
 - whether the profit and loss account shows a true balance of profit or loss for the period covered by such account;
 - any other matter which he considers should be brought to the notice of the shareholders of the company.

Submission of returns [Section 31]

The accounts and balance-sheet referred to in section 29 together with the auditor's report shall be published in the prescribed manner and three copies thereof shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer:

Provided that the Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months:

Provided further that a regional rural bank shall furnish such returns also to the National Bank.

Copies of balance-sheets and accounts to be sent to registrar [Section 32]

- Where a banking company in any year furnishes its accounts and balance-sheet in accordance with the provisions of section 31, it shall at the same time send to the registrar three copies of such accounts and balance-sheet and of the auditor's report, and where such copies are so sent, it shall not be necessary to file with the registrar, in the case of a public company, copies of the accounts and balance-sheet and of the auditor's report, and, in the case of a private company, copies of the balance-sheet and of the auditor's report as required by sub-section (1) of section 220 of the Companies Act, 1956 (1 of 1956); and the copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section.
- When in pursuance of sub-section (2) of section 27 the Reserve Bank requires any additional statement or information in connection with the balance-sheet and accounts furnished under section 31, the banking company shall, when supplying such statement or information, send a copy thereof to the registrar.

Display of audited balance-sheet by companies incorporated outside India [Section 33]

Every banking company incorporated outside India shall, not later than the first Monday in August of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office in India a copy of its last audited balance-sheet and profit and loss account prepared under section 29, and shall keep the copy so displayed until replaced by a copy of the subsequent balance-sheet and profit and loss account so prepared, and every such banking company shall display in like manner copies of its complete audited balance-sheet and profit and loss account relating to its banking business as soon as they are available, and shall keep the copies so displayed until copies of such subsequent accounts are available.

Accounting provisions of this Act not retrospective [Section 34]

Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and

submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

Production of documents of confidential nature [Section 34A]

- (1) Notwithstanding anything contained in section 11 of the Industrial Disputes Act, 1947 (14 of 1947), or any other law for the time being in force, no banking company shall, in any proceeding under the said Act or in any appeal or other proceeding arising therefrom or connected therewith, be compelled by any authority before which such proceeding is pending to produce, or give inspection of, any of its books of account or other document or furnish or disclose any statement or information, when the banking company claims that such document, statement or information is of a confidential nature and that the production or inspection of such document or the furnishing or disclosure of such statement or information would involve disclosure of information relating to—
 - (a) any reserves not shown as such in its published balance-sheet; or
 - (b) any particulars not shown therein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions.
- (2) If, in any such proceeding in relation to any banking company other than the Reserve Bank of India, any question arises as to whether any amount out of the reserves or provisions referred to in sub-section (1) should be taken into account by the authority before which such proceeding is pending, the authority may, if it so thinks fit, refer the question to the Reserve Bank and the Reserve Bank shall, after taking into account principles of sound banking and all relevant circumstances concerning the banking company, furnish to the authority a certificate stating that the authority shall not take into account any amount as such reserves and provisions of the banking company or may take them into account only to the extent of the amount specified by it in the certificate, and the certificate of the Reserve Bank on such question shall be final and shall not be called in question in any such proceeding.
- (3) For the purposes of this section “banking company” includes the Reserve Bank, the Development Bank, the Exim Bank, the Reconstruction Bank, the National Housing Bank, the National Bank, the Small Industries Bank the State Bank of India, a corresponding new bank, a regional rural bank and a subsidiary bank.

Inspection [Section 35]

- (1) Notwithstanding anything to the contrary contained in section 235 of the Companies Act, 1956 (1 of 1956)], the Reserve Bank at any time may, and on being directed so to do by the Central Government shall, cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such inspection.
 - (1A) (a) Notwithstanding anything to the contrary contained in any law for the time being in force and without prejudice to the provisions of sub-section (1), the Reserve Bank, at any time, may also cause a scrutiny to be made by any one or more of its officers, of the affairs of any banking company and its books and accounts; and
(b) a copy of the report of the scrutiny shall be furnished to the banking company if the banking company makes a request for the same or if any adverse action is contemplated against the banking company on the basis of the scrutiny.
- (2) It shall be the duty of every director or other officer or employee of the banking company to produce to any officer making an inspection under sub-section (1) or a scrutiny under sub-section (1A) all such books, accounts and other documents in his custody or power and to furnish him



with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

- (3) Any person making an inspection under sub-section (1) for a scrutiny under sub-section (1A) may examine on oath any director or other officer or employee of the banking company in relation to its business, and may administer an oath accordingly.
- (4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may, in any other case, report to the Central Government on any inspection 130[or scrutiny made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing—
 - (a) prohibit the banking company from receiving fresh deposits;
 - (b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company:

Provided that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order, upon such terms and conditions as it may think fit to impose.

- (5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

Explanation. —For the purpose of this section, the expression “banking company” shall include—

- (i) in the case of a banking company incorporated outside India, all its branches in India; and
 - (ii) in the case of a banking company incorporated in India—
 - (a) all its subsidiaries formed for the purpose of carrying on the business of banking exclusively outside India; and
 - (b) all its branches whether situated in India or outside India.
- (6) The powers exercisable by the Reserve Bank under this section in relation to regional rural banks may (without prejudice to the exercise of such powers by the Reserve Bank in relation to any regional rural bank whenever it considers necessary so to do) be exercised by the National Bank in relation to the regional rural banks, and accordingly, sub-sections (1) to (5) shall apply in relation to regional rural banks as if every reference therein to the Reserve Bank included also a reference to the National Bank.

Power of the Reserve Bank to give directions [Section 35A]

- (1) Where the Reserve Bank is satisfied that—
 - (a) in the public interest; or
 - (aa) in the interest of banking policy; or
 - (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or
 - (c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may,

from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

- (2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

Amendments of provisions relating to appointments of managing directors, etc., to be subject to previous approval of the Reserve Bank [Section 35B]

- (1) In the case of a banking company—

- (a) no amendment of any provision relating to the maximum permissible number of directors or the appointment or re-appointment or termination of appointment or remuneration of a chairman, a managing director or any other director, whole-time or otherwise or of a manager or a chief executive officer by whatever name called, whether that provision be contained in the company's memorandum or articles of association, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors shall have effect unless approved by the Reserve Bank;
- (b) no appointment or re-appointment or termination of appointment of a chairman, a managing or whole-time director, manager or chief executive officer by whatever name called, shall have effect unless such appointment, re-appointment or termination of appointment is made with the previous approval of the Reserve Bank.

Explanation. —For the purpose of this sub-section, any provision conferring any benefit or providing any amenity or perquisite, in whatever form, whether during or after the termination of the term of office of the chairman or the manager or the chief executive officer by whatever name called or the managing director, or any other director, whole-time or otherwise, shall be deemed to be a provision relating to his remuneration.

- (2) Nothing contained in sections 268 and 269, the proviso to sub-section (3) of section 309, sections 310 and 311, the proviso to section 387, and section 388 (in so far as section 388 makes the provisions of sections 269, 310 and 311 apply in relation to the manager of a company) of the Companies Act, 1956 (1 of 1956), shall apply to any matter in respect of which the approval of the Reserve Bank has to be obtained under sub-section (1).
- (2A) Nothing contained in section 198 of the Companies Act, 1956 (1 of 1956) shall apply to a banking company and the provisions of sub-section (1) of section 309 and of section 387 of that Act shall, in so far as they are applicable to a banking company, have effect as if no reference had been made in the said provisions to section 198 of that Act.
- (3) No act done by a person as chairman or a managing or whole-time director or a director not liable to retire by rotation or a manager or a chief executive officer by whatever name called, shall be deemed to be invalid on the ground that it is subsequently discovered that his appointment or reappointment had not taken effect by reason of any of the provisions of this Act; but nothing in this sub-section shall be construed as rendering valid any act done by such person after his appointment or reappointment has been shown to the banking company not to have had effect.

Further powers and functions of Reserve Banks [Section 36]

- (1) The Reserve Bank may—

- (a) caution or prohibit banking companies or any banking company in particular against entering into any particular transaction or class of transactions, and generally give advice to any banking company;



- (b) on a request by the companies concerned and subject to the provision of section 44A, assist, as intermediary or otherwise, in proposals for the amalgamation of such banking companies;
 - (c) give assistance to any banking company by means of the grant of a loan or advance to it under clause (3) of sub-section (1) of section 18 of the Reserve Bank of India Act, 1934 (2 of 1934);
 - (d) at any time, if it is satisfied that in the public interest or in the interest of banking policy or for preventing the affairs of the banking company being conducted in a manner detrimental to the interests of the banking company or its depositors it is necessary so to do, by order in writing and on such terms and conditions as may be specified therein—
 - (i) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company; or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank;
 - (ii) depute one or more of its officers to which the proceedings at any meeting of the Board of directors of the banking company or of any committee or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank;
 - (iii) require the Board of directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;
 - (iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its offices or branches are being conducted and make a report thereon;
 - (v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank may consider necessary.
- (2) The Reserve Bank shall make an annual report to the Central Government on the trend and progress of banking in the country, with particular reference to its activities under clause (2) of section 17 of the Reserve Bank of India Act, 1934 (2 of 1934), including in such report its suggestions, if any, for the strengthening of banking business throughout the country.
- (3) The Reserve Bank may appoint such staff at such places as it considers necessary for the scrutiny of the returns, statements and information furnished by banking companies under this Act, and generally to ensure the efficient performance of its functions under this Act.

Certain provisions of the Act not to apply to certain banking companies [Section 36A]

- (1) The provisions of section II, sub-section (1) of section 12, and sections 17, 18, 24 and 25 shall not apply to a banking company—
 - (a) which, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959 (33 of 1959), has been refused a licence under section 22, or prohibited from accepting fresh deposits by a compromise, arrangement or scheme sanctioned by a court or by any order made in any proceeding relating to such compromise, arrangement or scheme, or prohibited from accepting deposits by virtue of any alteration made in its memorandum; or

- (b) whose licence has been cancelled under section 22, whether before or after the commencement of the Banking Companies (Amendment) Act, 1959 (33 of 1959).
- (2) Where the Reserve Bank is satisfied that any such banking company as is referred to in sub-section (1) has repaid, or has made adequate provision for repaying all deposits accepted by the banking company, either in full or to the maximum extent possible, the Reserve Bank may, by notice published in the Official Gazette, notify that the banking company has ceased to be a banking company within the meaning of this Act, and thereupon all the provisions of this Act applicable to such banking company shall cease to apply to it, except as respects things done or omitted to be done before such notice.

Power of Reserve Bank to remove managerial and other persons from office [Section 36AA]

- (1) Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a banking company being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of any banking company it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any chairman, director, chief executive officer (by whatever name called) or other officer or employee of the banking company.
- (2) No order under sub-section (1) shall be made unless the chairman, director or chief executive officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Reserve Bank against the proposed order:

Provided that if, in the opinion of the Reserve Bank, any delay would be detrimental to the interests of the banking company or its depositors, the Reserve Bank may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that, pending the consideration of the representation aforesaid, if any, the chairman or, as the case may be, director or chief executive officer or other officer or employee, shall not, with effect from the date of such order—

- (a) act as such chairman or director or chief executive officer or other officer or employee of the banking company;
 - (b) in any way, whether directly or indirectly, be concerned with, or take part in the management of, the banking company.
- (3) (a) Any person against whom an order of removal has been made under subsection (1) may, within thirty days from the date of communication to him of the order, prefer an appeal to the Central Government.
(b) The decision of the Central Government on such appeal, and subject thereto, the order made by the Reserve Bank under sub-section (1), shall be final and shall not be called into question in any court.
 - (4) Where any order is made in respect of a chairman, director or chief executive officer or other officer or employee of a banking company under sub-section (1), he shall cease to be a chairman or, as the case may be, a director, chief executive officer or other officer or employee of the banking company and shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management of, any banking company for such period not exceeding five years as may be specified in the order.
 - (5) If any person in respect of whom an order is made by the Reserve Bank under sub-section (1) or under the proviso to sub-section (2) contravenes the provisions of this section, he shall be punishable with fine which may extend to two hundred and fifty rupees for each day during which such contravention continues.



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- (6) Where an order under sub-section (1) has been made, the Reserve Bank may, by order in writing, appoint a suitable person in place of the chairman or director, or chief executive officer or other officer or employee who has been removed from his office under that sub-section, with effect from such date as may be specified in the order.
 - (7) Any person appointed as chairman, director or chief executive officer or other officer or employee under this section shall,—
 - (a) hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;
 - (b) not incur any obligation or liability by reason only of his being a chairman, director or chief executive officer or other officer or employee or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.
 - (8) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the removal of a person from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.

Power of Reserve Bank to appoint additional directors [Section 36AB]

- (1) If the Reserve Bank is of opinion that in the interest of banking policy or in the public interest or in the interests of the banking company or its depositors it is necessary so to do, it may, from time to time by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the banking company:

Proviso omitted by Act 1 of 1984, Section 31 w.e.f. 15-2-1984.
- (2) Any person appointed as additional director in pursuance of this section—
 - (a) shall hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Reserve Bank may specify;
 - (b) shall not incur any obligation or liability by reason only of his being a director or for any thing done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and
 - (c) shall not be required to hold qualification-shares in the banking company.
- (3) For the purpose of reckoning any proportion of the total number of directors of the banking company, any additional director appointed under this section shall not be taken into account.

Part IIA to override other laws [Section 36AC]

Any appointment or removal of a director, chief executive officer or other officer or employee in pursuance of section 36AA or section 36AB shall have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956) or any other law for the time being in force or in any contract or any other instrument.

Part IIAB to Supersession of Board of Directors in certain cases [Section 36ACA]

- (I) Where the Reserve Bank is satisfied, in consultation with the Central Government, that in the public interest or for preventing the affairs of any banking company being conducted in a manner detrimental to the interest of the depositors or any banking company or for securing the proper management of any banking company, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such banking company for a period not exceeding six months as may be specified in the order:

Provided that the period of supersession of the Board of Directors may be extended from time to time, so, however, that the total period shall not exceed twelve months.

- (2) The Reserve Bank may, on supersession of the Board of Directors of the banking company under sub-section (1) appoint in consultation with the Central Government for such period as it may determine, an Administrator (being an officer of the Central Government or a State Government) who has experience in law, finance, banking, economics or accountancy.
- (3) The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.
- (4) Upon making the order of supersession of the Board of Directors of a banking company, notwithstanding anything contained in the Companies Act, 1956,
 - (a) the chairman, managing director and other directors shall, as from the date of supersession, vacate their offices as such;
 - (b) all the powers, functions and duties which may, by or under the provisions of the Companies Act, 1956 or this Act, or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of Directors of such banking company, or by a resolution passed in general meeting of such banking company, shall, until the Board of Directors of such banking company is reconstituted, be exercised and discharged by the Administrator appointed by the Reserve Bank under sub-section (2):

Provided that the power exercised by the Administrator shall be valid notwithstanding that such power is exercisable by a resolution passed in the general meeting of such banking company.
- (5) The Reserve Bank may constitute, in consultation with the Central Government, a committee of three or more persons who have experience in law, finance, banking, economic or accountancy to assist the Administrator in the discharge of his duties.
- (6) The committee shall meet at such times and places and observe such rules of procedure as may be specified by the Reserve Bank.
- (7) The salary and allowances to the Administrator and the members of the committee constituted under sub-section (5) by the Reserve Bank shall be such as may be specified by the Reserve Bank and be payable by the concerned banking company.
- (8) On and before the expiration of two months before the expiry of the period of supersession of the Board of Directors as specified in the order issued under sub-section (1), the Administrator of the banking company, shall call the general meeting of the company to elect new directors and reconstitute its Board of Directors.
- (9) Notwithstanding anything contained in any other law or in any contract, the memorandum or articles of association, no person shall be entitled to claim any compensation for the loss or termination of his office.
- (10) The Administrator appointed under sub-section (2) shall vacate office immediately after the Board of Directors of such banking company has been reconstituted.”.

Punishments for certain activities in relation to banking companies [Section 36AD]

- (1) No person shall—
 - (a) obstruct any person from lawfully entering or leaving any office or place of business of a banking company or from carrying on any business there, or



- (b) hold, within the office or place of business of any banking company, any demonstration which is violent or which prevents, or is calculated to prevent, the transaction of normal business by the banking company, or
 - (c) act in any manner calculated to undermine the confidence of the depositors in the banking company.
- (2) Whoever contravenes any provision of sub-section (1) without any reasonable excuse shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Power of Central Government to acquire undertakings of banking companies in certain cases [Section 36AE]

- (1) If, upon receipt of a report from the Reserve Bank, the Central Government is satisfied that a banking company—
- (a) has, no more than one occasion, failed to comply with the directions given to it in writing under section 21 or section 35A, in so far as such directions relate to banking policy, or
 - (b) is being managed in a manner detrimental to the interests of its depositors, and that—
 - (i) in the interests of the depositors of such banking company, or
 - (ii) in the interest of banking policy, or
 - (iii) for the better provision of credit generally or of credit to any particular section of the community or in any particular area,
- it is necessary to acquire the undertaking of such banking company, the Central Government may, after such consultation with the Reserve Bank as it thinks fit, by notified order, acquire the undertaking of such company (hereinafter referred to as the acquired bank) with effect from such date as may be specified in this behalf by the Central Government (hereinafter referred to as the appointed day):

Provided that no undertaking of any banking company shall be so acquired unless such banking company has been given a reasonable opportunity of showing cause against the proposed action.

Explanation. — In this Part, —

- (a) “notified order” means an order published in the Official Gazette;
 - (b) “undertaking”, in relation to a banking company incorporated outside India, means the undertaking of the company in India.
- (2) Subject to the other provisions contained in this Part, on the appointed day, the undertaking of the acquired bank and all the assets and liabilities of the acquired bank shall stand transferred to, and vest in, the Central Government.
- (3) The undertaking of the acquired bank and its assets and liabilities shall be deemed to include all rights, powers, authorities and privileges and all property, whether movable or immovable, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property as may be in the possession of or held by, the acquired bank immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations, of whatever kind, then existing of the acquired bank.
- (4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is satisfied that the undertaking of the acquired bank and its assets and liabilities should, instead of vesting in the Central Government, or continuing to so vest, vest in a company established under

any scheme made under this Part or in any corporation (hereinafter in this Part and in the Fifth Schedule referred to as the transferee bank) that Government may, by order, direct that the said undertaking, including the assets and liabilities thereof, shall vest in the transferee bank either on the publication of the notified order or on such other date as may be specified in this behalf by the Central Government.

- (5) Where the undertaking of the acquired bank and the assets and liabilities thereof vest in the transferee bank under sub-section (4), the transferee bank, shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired bank and all the rights and liabilities in relation to the acquired bank shall, on and from the date of such vesting, be deemed to have been the rights and liabilities of the transferee bank.
- (6) Unless otherwise expressly provided by or under this Part, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the acquired bank is a party or which are in favour of the acquired bank shall be of as full force and effect against or in favour of the Central Government, or as the case may be, of the transferee bank, and may be enforced or acted upon as fully and effectually as if in the place of the acquired bank the Central Government or the transferee bank had been a party thereto or as if they had been issued in favour of the Central Government or the transferee bank, as the case may be.
- (7) If, on the appointed day, any suit, appeal or other proceeding of whatever nature is pending by or against the acquired bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the acquired bank or of anything contained in this Part, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the transferee bank as the case may be.

Power of the Central Government to make scheme [Section 36AF]

- (1) The Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the purposes of this Part in relation to any acquired bank.
- (2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:—
 - (a) the corporation, or the company incorporated for the purpose, to which the undertaking including the property, assets and liabilities of the acquired bank may be transferred, and the capital, constitution, name and office thereof;
 - (b) the constitution of the first Board of management (by whatever name called) of the transferee bank, and all such matters in connection therewith or incidental thereto as the Central Government may consider to be necessary or expedient;
 - (c) the continuance of the services of all the employees of the acquired bank (excluding such of them as, not being workmen within the meaning of the Industrial Disputes Act, 1947(14 of 1947), are specifically mentioned in the scheme] in the Central Government or in the transferee bank, as the case may be, on the same terms and conditions so far as may be, as are specified in clauses (i) and (j) of sub-section (5) of section 45;
 - (d) the continuance of the right of any person who, on the appointed day, is entitled to or is in receipt of, a pension or other superannuation or compassionate allowance or benefit, from the acquired bank or any provident, pension or other fund or any authority administering such fund, to be paid by, and to receive from, the Central Government or the transferee bank, as the case may be, or any provident, pension or other fund or any authority administering such fund, the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance or benefit was granted, and if any question



arises whether he has so observed such conditions, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final;

- (e) the manner of payment of the compensation payable in accordance with the provisions of this Part to the shareholders of the acquired bank, or where the acquired bank is a banking company incorporated outside India, to the acquired bank in full satisfaction of their, or as the case may be, its claims;
 - (f) the provision, if any, for completing the effectual transfer to the Central Government or the transferee bank of any asset or any liability which forms part of the undertaking of the acquired bank in any country outside India;
 - (g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the business, property, assets and liabilities of the acquired bank to the Central Government or transferee bank, as the case may be, is effectual and complete.
- (3) The Central Government may, after consultation with the Reserve Bank, by notification in the Official Gazette, add to, amend or vary any scheme made under this section.
- (4) Every scheme made under this section shall be published in the Official Gazette.
- (5) Copies of every scheme made under this section shall be laid before each House of Parliament as soon as may be after it is made.
- (6) The provisions of this Part and of any scheme made there under shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.
- (7) Every scheme made under this section shall be binding on the Central Government or, as the case may be, on the transferee bank and also on all members, creditors, depositors and employees of the acquired bank and of the transferee bank and on any other person having any right, liability, power or function in relation to, or in connection with, the acquired bank or the transferee bank, as the case may be.

Compensation to be given to shareholders of the acquired bank [Section 36AG]

- (1) Every person who, immediately before the appointed day, is registered as a holder of shares in the acquired bank or, when the acquired bank is a banking company incorporated outside India, the acquired bank, shall be given by the Central Government, or the transferee bank, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired bank as it determined in accordance with the principles contained in the Fifth Schedule.
- (2) Nothing contained in sub-section (1) shall affect the rights inter se between the holder of any share in the acquired bank and any other person who may have any interest in such shares and such other person shall be entitled to enforce his interest against the compensation awarded to the holder of such share, but not against the Central Government, or the transferee bank.
- (3) The amount of compensation to be given in accordance with the principles contained in the Fifth Schedule shall be determined in the first instance by the Central Government, or the transferee bank, as the case may be, in consultation with the Reserve Bank, and shall be offered by it to all those to whom compensation is payable under sub-section (1) in full satisfaction thereof.
- (4) If the amount of compensation offered in terms of sub-section (3) is not acceptable to any person to whom the compensation is payable, such person may, before such date as may be notified by the Central Government in the Official Gazette, request the Central Government in writing, to have the matter referred to the Tribunal constituted under section 36AH.
- (5) If, before the date notified under sub-section (4), the Central Government receives requests, in terms of that sub-section, from not less than one-fourth in number of the shareholders holding not

less than one-fourth in value of the paid-up share capital of the acquired bank, or, where the acquired bank is a banking company incorporated outside India, from the acquired bank, the Central Government shall have the matter referred to the Tribunal for decision.

- (6) If, before the date notified under sub-section (4), the Central Government does not receive requests as provided in that sub-section, the amount of compensation offered ' under sub-section (3), and where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable under sub-section (!) and shall be final and binding on all parties concerned.

Constitution of the Tribunal [Section 36AH]

- (1) The Central Government may, for the purpose of this Part, constitute a Tribunal which shall consist of a Chairman and two other members.
- (2) The Chairman shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court, and, of the two other members, one shall be a person, who, in the opinion of the Central Government, has had experience of commercial banking and the other shall be a person who is a chartered accountant within the meaning of the Chartered Accountants' Act, 1949 (38 of 1949).
- (3) If, for any reason, a vacancy occurs in the office of the Chairman or any other member of the Tribunal, the Central Government may fill the vacancy by appointing another person thereto in accordance with the provisions of sub-section (2), and any proceeding may be continued before the Tribunal, so constituted, from the stage at which the vacancy occurred.
- (4) The Tribunal may, for the purpose of determining any compensation payable under this part, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

Tribunal to have powers of a civil court [Section 36AI]

- (1) The Tribunal shall have the powers of a civil court, while trying a suit, under the Code of Civil Procedure, , 1908 (5 of 1908) in respect of the following matters, namely :—
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examination of witnesses or documents.
- (2) Notwithstanding anything contained in sub-section (1), or in any other law for the time being in force, the Tribunal shall not compel the Central Government or the Reserve Bank, —
 - (a) to produce any books of account or other documents which the Central Government, or the Reserve Bank, claims to be of a confidential nature;
 - (b) to make any such books or documents part of the record of the proceedings before the Tribunal; or
 - (c) to give inspection of any such books or documents to any party before it or to any other person.

Procedure of the Tribunal [Section 36AJ]

- (1) The Tribunal shall have power to regulate its own procedure.
- (2) The Tribunal may hold the whole or any part of its inquiry in camera
- (3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any



accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.

High Court defined [Section 36B]

In this Part and in Part IIIA "High Court", in relation to a banking company, means the High Court exercising jurisdiction in the place where the registered office of the banking company is situated or, in the case of a banking company incorporated outside India, where its principal place of business in India is situated.

Suspension of business [Section 37]

- (1) The High Court may on the application of a banking company which is temporarily unable to meet its obligations make an order (a copy of which it shall cause to be forwarded to the Reserve Bank) staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.
- (2) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted:
Provided that the High Court may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report, and where such relief is granted, the High Court shall call for a report from the Reserve Bank on the affairs of the banking company on receipt of which it may either rescind any order already passed or pass such further orders thereon as may be just and proper in the circumstances.
- (3) When an application is made under sub-section (1), the High Court may appoint a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company.
- (4) Where the Reserve Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (1) has been made, are being conducted in a manner detrimental to the interests of the depositors, it may make an application to the High Court for the winding up of the company, and where any such application is made, the High Court shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.

Winding up by High Court [Section 38]

- (1) Notwithstanding anything contained in section 391, section 392, section 433 and section 583 of the Companies Act, 1956 (1 of 1956), but without prejudice to its powers under sub-section (1) of section 37 of this Act, the High Court shall order the winding up of a banking company—
 - (a) if the banking company is unable to pay its debts; or
 - (b) if an application for its winding up has been made by the Reserve Bank under section 37 or this section.
- (2) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (b) of sub-section (4) of section 35.
- (3) The Reserve Bank may make an application under this section for the winding up of a banking company—
 - (a) if the banking company—

- (i) has failed to comply with the requirements specified in section 11; or
 - (ii) has by reason of the provisions of section 22 become disentitled to carry on banking business in India; or
 - (iii) has been prohibited from receiving fresh deposits by an order under clause (a) of sub-section (4) of section 35 or under clause (b) of sub-section (3A) of section 42 of the Reserve Bank of India Act, 1934 (2 of 1934); or
 - (iv) having failed to comply with any requirement of this Act other than the requirements laid in section 11, has continued such failure, or, having contravened any provision of this Act continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time, after notice in writing of such failure or contravention has been conveyed to the banking company; or
- (b) if in the opinion of the Reserve Bank—
- (i) a compromise or arrangement sanctioned by a court in respect of the banking company cannot be worked satisfactorily with or without modifications; or
 - (ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Act disclose that the banking company is unable to pay its debts; or
 - (iii) the continuance of the banking company is prejudicial to the interests of its depositors.
- (4) Without prejudice to the provisions contained in section 434 of the Companies Act, 1956 (1 of 1956) a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.
- (5) A copy of every application made by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the registrar.

Court liquidator [Section 38A]

- (1) There shall be attached to every High Court a Court liquidator to be appointed by the Central Government for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto as the High Court may impose.
- (2) Omitted by Act 95 of 1956, Section 14 and Schedule w.e.f. 14-1-1957.
- (3) Omitted by Act 95 of 1956, Section 14 and Schedule w.e.f. 14-1-1957.
- (4) Where having regard to the number of banking companies wound up and other circumstances of the case, the Central Government is of opinion that it is not necessary or expedient to attach for the time being a Court liquidator to a High Court, it may, from time to time, by notification in the Official Gazette, direct that this section shall not have effect in relation to that High Court.

Reserve Bank to be official liquidator [Section 39]

- (1) Notwithstanding anything contained in section 38A of this Act or in section 448 or section 449 of the Companies Act, 1956 (1 of 1956), where in any proceeding for the winding up by the High Court of a banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank, the State Bank of India or any other bank notified by the Central Government in this behalf or any individual, as stated in such application shall be appointed as the official liquidator of the banking company in such proceeding and the liquidator, if any, functioning in such proceeding shall vacate office upon such appointment.



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- (2) Subject to such directions as may be made by the High Court, the remuneration of the official liquidator appointed under this section, the cost and expenses of this establishment and the cost and expenses of the winding up shall be met out of the assets of the banking company which is being wound up, and notwithstanding anything to the contrary contained in any other law for the time being in force, no fees shall be payable to the Central Government, out of the assets of the banking company.

Application of Companies Act to liquidators [Section 39A]

- (1) All the provisions of the Companies Act, 1956 (1 of 1956), relating to a liquidator, in so far as they are not inconsistent with this Act, shall apply to or in relation to a liquidator appointed under section 38A or section 39.
- (2) Any reference to the "official liquidator" in this Part and Part IIIA shall be construed as including a reference to any liquidator of a banking company.

Stay of proceedings [Section 40]

Notwithstanding anything to the contrary contained in section 466 of the Companies Act, 1956 (1 of 1956)], the High Court shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the High Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

Preliminary report by official liquidator [Section 41]

Notwithstanding anything to the contrary contained in section 455 of the Companies Act, 1956 (1 of 1956), where a winding up order has been made in respect of a banking company whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), the official liquidator shall submit a preliminary report to the High Court within two months from the date of the winding up order or where the winding up order has been made before such commencement, within two months from such commencement, giving the information required by that section so far as it is available to him and also stating the amount of assets of the banking company in cash which are in his custody or under his control on the date of the report and the amount of its assets which are likely to be collected in cash before the expiry of that period of two months in order that such assets may be applied speedily towards the making of preferential payments under section 530 of the Companies Act, 1956, and in the discharge, as far as possible, of the liabilities and obligations of the banking company to its depositors and other creditors in accordance with the provisions hereinafter contained; and the official liquidator shall make for the purposes aforesaid every endeavour to collect in cash as such of the assets of the banking company as practicable.

Notice to preferential claimants and secured and unsecured creditors [Section 41A]

Within fifteen days from the date of the winding up order of a banking company or where the winding up order has been made before the commencement of the Banking Companies (Second Amendment) Act, 1960 (37 of 1960), within one month from such commencement, the official liquidator shall, for the purpose of making an estimate of the debts and liabilities of the banking company (other than its liabilities and obligations to its depositors), by notice served in such manner as the Reserve Bank may direct, call upon—

- (a) every claimant entitled to preferential payment under section 530 of the Companies Act, 1956 (1 of 1956), and
- (b) every secured and every unsecured creditor, to send to the official liquidator within one month from the date of the service of the notice a statement of the amount claimed by him.
- (2) Every notice under sub-section (1) sent to a claimant having a claim under section 530 of the Companies Act, 1956 (1 of 1956), shall state that if a statement of the claim is not sent to the

official liquidator before the expiry of the period of one month from the date of the service, the claim shall not be treated as a claim entitled to be paid under section 530 of the Companies Act, 1956, in priority to all other debts but shall be treated as an ordinary debt due by the banking company.

- (3) Every notice under sub-section (1) sent to a secured creditor shall require him to value his security before the expiry of the period of one month from the date of the service of the notice and shall state that if a statement of the claim together with the valuation of the security is not sent to the official liquidator before the expiry of the said period, then, the official liquidator shall himself value the security and such valuation shall be binding on the creditor.
- (4) If a claimant fails of comply with the notice sent to him under sub-section (1), his claim will not be entitled to be paid under section 530 of the Companies Act, 1956 (1 of 1956), in priority to all other debts but shall be treated as an ordinary debt due by the banking company; and if a secured creditor fails to comply with the notice sent to him under sub-section (1), the official liquidator shall himself value the security and such valuation shall be binding on the creditor.

Power to dispense with meetings of creditors, etc [Section 42]

Notwithstanding anything to the contrary contained in section 460 of the Companies Act, 1956 (1 of 1956), the High Court may, in the proceedings for winding up a banking company, dispense with any meetings of creditors or contributories if it considers that no object will be secured thereby sufficient to justify the delay and expense.

Booked depositors' credits to be deemed proved [Section 43]

In any proceeding for the winding up of a banking company, every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in section 474 of the Companies Act, 1956 (1 of 1956), the High Court shall presume such claims to have been proved, unless the official liquidator shows that there is reason for doubting its correctness.

Preferential payments to depositors [Section 43A]

- (1) In every proceeding for the winding up of a banking company where a winding up order has been made, whether before or after the commencement of the Banking Companies (Second Amendment) Act, 1960, (37 of 1960) within three months from the date of the winding up order or where the winding up order has been made before such commencement, within three months therefrom, the preferential payments referred to in section 530 of the Companies Act, 1956 (1 of 1956), in respect of which statements of claims have been sent within one month from the date of the service of the notice referred to in section 41 A, shall be made by the official liquidator or adequate provision for such payments shall be made by him.
- (2) After the preferential payments as aforesaid have been made or adequate provision has been made in respect thereof, there shall be paid within the aforesaid period of three months—
 - (a) in the first place to every depositor in the savings bank account of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less; and thereafter;
 - (b) in the next place, to every other depositor of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less, in priority to all other debts from out of the remaining assets of the banking company available for payment to general creditors:

Provided that the sum total of the amounts paid under clause (a) and clause (b) to any one person who in his own name (and not jointly with any other person) is a depositor in (he savings bank account of the banking company and also a depositor in any other account, shall not exceed the sum of two hundred and fifty rupees.



- (3) Where within the aforesaid period of three months full payment cannot be made of the amounts required to be paid under clause (a) or clause (b) of sub-section (2) with the assets in cash, the official liquidator shall pay within that period to every depositor under clause (a) or, as the case may be, clause (b) of that sub-section on a pro rata basis so much of the amount due to the depositor under that clause as the official liquidator is able to pay with those assets; and shall pay the rest of that amount to every such depositor as and when sufficient assets are collected by the official liquidator in cash.
- (4) After payments have been made first to depositors in the savings bank account and then to the other depositors in accordance with the foregoing provisions, the remaining assets of the banking company available for payment to general creditors shall be utilised for payment on a pro rata basis of the debts of the general creditors and of the further sums, if any, due to the depositors; and after making adequate provision for payment on a pro rata basis as aforesaid of the debts of the general creditors, the official liquidator shall, as and when the assets of the company are collected in cash, make payment on a pro rata basis as aforesaid, of the further sums, if any, which may remain due to the depositors referred to in clause (a) and clause (b) of sub-section (2).
- (5) In order to enable the official liquidator to have in his custody or under his control in cash as much of the assets of the banking company as possible, the securities given to every secured creditor may be redeemed by the official liquidator—
- (a) where the amount due to the creditor is more than the value of the securities as assessed by him or, as the case may be, as assessed by the official liquidator, on payment of such value; and
 - (b) where the amount due to the creditor is equal to or less than the value of the securities as so assessed, on payment of the amount due:
- Provided that where the official liquidator is not satisfied with the valuation made by the creditor, he may apply to the High Court for making a valuation,
- (6) When any claimant, creditor or depositor to whom any payment is to be made in accordance with the provisions of this section, cannot be found or is not readily traceable, adequate provision shall be made by the official liquidator for such payment.
- (7) For the purposes of this section, the payments specified in each of the following clauses shall be treated as payments of a different class, namely:—
- (a) payments to preferential claimants under section 530 of the Companies Act, 1956 (1 of 1956);
 - (b) payments under clause (a) of sub-section (2) to the depositors in the savings bank account;
 - (c) payments under clause (b) of sub-section (2) to the other depositors;
 - (d) payments to the general creditors and payments to the depositors in addition to those specified in clause (a) and clause (b) of sub-section (2).
- (8) The payments of each different class specified in sub-section (7) shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportion.
- (9) Nothing contained in sub-sections (2), (3), (4), (7) and (8) shall apply to a banking company in respect of the depositors of which the Deposit Insurance Corporation is liable under section 16 of the Deposit Insurance Corporation Act, 1961, (47 of 1961).
- (10) After preferential payments referred to in sub-section (1) have been made or adequate provision

has been made in respect thereof, the remaining assets of the banking company referred to in sub-section (9) available for payment to general creditors shall be utilised for payment on pro rata basis of the debts of the general creditors and of the sums due to the depositors:

Provided (hat where any amount in respect of any deposit is to be paid by the liquidator to the Deposit Insurance Corporation under section 21 of the Deposit Insurance Corporation Act, 1961 (47 of 1961), only the balance, if any, left after making the said payment shall be payable to the depositor.

Powers of High Court in voluntary winding up [Section 44]

- (1) Notwithstanding anything to the contrary contained in section 484 of the Companies Act, 1956 (1 of 1956), no banking company may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue.
- (2) The High Court may, in any case where a banking company is being wound up voluntarily, make an order that the voluntary winding up shall continue, but subject to the supervision of the court.
- (3) Without prejudice to the provisions contained in sections 441 and 521 of the Companies Act, 1956 (1 of 1956), the High Court may of its own motion and shall on the application of the Reserve Bank, order the winding up of a banking company by the High Court in any of the following cases, namely:—
 - (a) where the banking company is being wound up voluntarily and at any stage during the voluntary winding up proceedings the company is not able to meet its debts as they accrue; or
 - (b) where the banking company is being wound up voluntarily or is being wound up subject to the supervision of the court and the High Court is satisfied that the voluntary winding up or winding up subject to the supervision of the court cannot be continued without detriment to the interests of the depositors.

Procedure for amalgamation of banking companies [Section 44A]

- (1) Notwithstanding anything contained in any law for the time being in force, no banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two-thirds in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.
- (2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the banking companies concerned in accordance with the relevant articles of association indicating the time, place and object of the meeting, and shall also be published atleast once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.
- (3) Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the meeting of the company concerned or to the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Reserve Bank, to claim from the banking company concerned, in respect of the shares held by him in that company, their value as determined by the Reserve Bank when sanctioning the scheme and such determination by the Reserve Bank as to the value of the shares (to be paid to the dissenting shareholder shall be final for all purposes).



- (4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Reserve Bank by an order in writing passed in this behalf, be binding on the banking companies concerned and also on all the shareholders thereof.
- (5) Omitted by Act 55 of 1963, Section 19 w.e.f. 1-2-1964.
- (6) On the sanctioning of a scheme of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said company shall, by virtue of the said order be transferred to, and become the liabilities of, the banking company which under the scheme of amalgamation is to acquire the business of the amalgamated banking company, subject in all cases to 28[the provisions of the scheme as sanctioned].
- (6A) Where a scheme of amalgamation is sanctioned by the Reserve Bank under the provisions of this section, the Reserve Bank may, by a further order in writing, direct that on such date as may be specified therein the banking company (hereinafter in this section referred to as the amalgamated banking company) which by reason of the amalgamation will cease to function, shall stand dissolved and any such direction shall take effect notwithstanding anything to the contrary contained in any other law.
- (6B) Where the Reserve Bank directs a dissolution of the amalgamated banking company, it shall transmit a copy of the order directing such dissolution to the Registrar before whom the banking company has been registered and on receipt of such order the Registrar shall strike off the name of the company.
- (6C) An order under sub-section (4) whether made before or after the commencement of section 19 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963) shall be conclusive evidence that all the requirements of this section relating to amalgamation have been complied with, and a copy of the said order certified in writing by an officer of the Reserve Bank to be a true copy of such order and a copy of the scheme certified in the like manner to be a true copy thereof shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 19), be admitted as evidence to the same extent as the original order and the original scheme.
- (7) Nothing in the foregoing provisions of this section shall affect the power of the Central Government to provide for the amalgamation of two or more banking companies under section 396 of the Companies Act, 1956 (1 of 1956):
Provided that no such power shall be exercised by the Central Government except after consultation with the Reserve Bank.

Restriction on compromise or arrangement between banking company and creditors [Section 44B]

- (1) Notwithstanding anything contained in any law for the time being in force, no High Court shall sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them or sanction any modification in any such compromise or arrangement unless the compromise or arrangement or modification, as the case may be, is certified by the Reserve Bank in writing as not being incapable of being worked and as not being detrimental to the interests of the depositors of such banking company.
- (2) Where an application under section 39 of the Companies Act, 1956 (1 of 1956), is made in respect of a banking company, the High Court may direct the Reserve Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its directors and when such direction is given, the Reserve Bank shall make such inquiry and submit its report to the High Court.

Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution of amalgamation [Section 45]

- (1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or any agreement or other instrument, for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking company.
- (2) The Central Government, after considering the application made by the Reserve Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.
- (3) Except as otherwise provided by any directions given by the Central Government in the order made by it under sub-section (2) or at any time thereafter the banking company shall not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligations to any other creditors.
- (4) During the period of moratorium, if the Reserve Bank is satisfied that—
 - (a) in the public interest; or
 - (b) in the interests of the depositors; or
 - (c) in order to secure the proper management of the banking company; or
 - (d) in the interests of the banking system of the country as a whole, it is necessary so to do, the Reserve Bank may prepare a scheme—
 - (i) for the reconstruction of the banking company, or
 - (ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank").
- (5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:
 - (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the banking company on its reconstruction or as the case may be, of the transferee bank;
 - (b) in the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;
 - (c) any change in the Board of directors, or the appointment of a new Board of directors, of the banking company on its reconstruction or, as the case may be, of the transferee bank and the authority of whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director the period for which such appointment shall be made;
 - (d) the alteration of the memorandum and articles of association of the banking company on its reconstruction or, as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;
 - (e) subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the date of the order of moratorium;



- (f) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such extent as the Reserve Bank considers necessary in the public interest or in the interest of the members, depositors and other creditors or for the maintenance of the business of the banking company;
- (g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim—
 - (i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or
 - (ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;
- (h) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation whether their interest in such shares has been reduced under clause
- (i) or not, of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim—
 - (i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or
 - (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;
 - (iii) the continuance of the services of all the employees of the banking company (excluding such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme) in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting, or as the case may be, by which they were being governed, immediately before the date of the order of moratorium:

Provided that the scheme shall contain a provision that—

- (i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and conditions of service 44[as are, at the time of such payment or grant, applicable] to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final);
- (ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to the other employees corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank:

Provided further that if in any case under clause (ii) of the first proviso any doubt or difference as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the

other employees of corresponding rank or status of the transferee bank 45[the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause, to the Reserve Bank whose decision thereon shall be final;

- (j) notwithstanding anything contained in clause (i) where any of the employees of the banking company not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme under clause (i) or where any employees of the banking company have by notice in writing given to the banking company, or, as the case may be, the transferee bank at any time before the expiry of the one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the banking company on its reconstruction or, as the case may be, of the transferee bank, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisations of the banking company immediately before the date of the order of moratorium;
 - (k) any other terms and conditions for the reconstruction or amalgamation of the banking company;
 - (l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.
- (6) (a) A copy of the scheme prepared by the Reserve Bank shall be sent in draft to the banking company and also to the transferee bank and any other banking company concerned in the amalgamation, for suggestions and objections, if any, within such period as the Reserve Bank may specify for this purpose.
- (b) The Reserve Bank may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the banking company and also from the transferee bank, and any other banking company concerned in the amalgamation and from any members, depositors or other creditors of each of those companies and the transferee bank.
- (7) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modifications or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf:
- Provided that different dates may be specified for different provisions of the scheme.
- (7A) The sanction accorded by the Central Government under sub-section (7), whether before or after the commencement of section 21 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963) shall be conclusive evidence that all that requirements of this section relating to reconstruction, or, as the case may be, amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 21), be admitted as evidence to the same extent . as the original scheme.
- (8) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking company, or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any



of those companies or the transferee bank including the trustees or other persons managing, or connected in any other manner with, any provident fund or other fund maintained by any of those companies or the transferee bank.

- (9) On and from the date of the coming into operation or, or as the case may be, the date specified in this behalf in, the scheme, the properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of the transferee bank.
- (10) If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.
- (11) Copies of the scheme or of any order made under sub-section (10) shall be laid before both Houses of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.
- (12) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the Central Government on the recommendation of the Reserve Bank may, by notification in the Official Gazette, make for the purpose of giving full effect to the scheme:
Provided that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.
- (13) Nothing in this section shall be deemed to prevent the amalgamation with a banking institution by a single scheme of several banking companies in respect of each of which an order of moratorium has been made under this section.
- (14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.
- (15) In this section, "banking institution" means any banking company and includes the State Bank of India or a subsidiary bank or a corresponding new bank.

Explanation.—References in this section of the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employee.

Part III A to override other laws [Section 45A]

The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Companies Act, 1956 (1 of 1956) or the Code of Civil Procedure, 1908 (5 of 1908), or the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force or any Instrument having effect by virtue of any such law; but the provisions of any such law or Instrument Insofar as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder shall apply to all proceedings under this Part.

Power of High Court to decide all claims in respect of banking companies [Section 45B]

The High Court shall, save as otherwise expressly provided in section 45C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under section 391 of the Companies Act, 1956 (1 of 1956) by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in

the course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding up of the banking company or before or after the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953).

Transfer of pending proceedings [Section 45C]

- (1) Where a winding up order is made or has been made in respect of a banking company, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under this Act and which is pending in any other court immediately before the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), or the date of the order for the winding up of the banking company, whichever is later, shall be proceeded with except in the manner hereinafter provided.
- (2) The official liquidator shall, within three months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.
- (3) On receipt of a report under sub-section (2), the High Court may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made under section 45U, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the order and such proceedings shall thereafter be disposed of by the High Court.
- (4) If any proceedings pending in a court is not so transferred to the High Court under sub-section (3), such proceeding shall be continued in the court in which the proceeding was pending.
- (5) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

Settlement of list of debtors [Section 45D]

- (1) Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court may settle in the manner hereinafter provided a list of debtors of a banking company which is being wound up.
- (2) Subject to any rules that may be made under section 52, the official liquidator shall, within six months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), whichever is later, from time to time, file to the High Court lists of debtors containing such particulars as are specified in the Fourth Schedule:
Provided that such lists may, with the leave of the High Court, be filed after the expiry of the said period of six months.
- (3) On receipt of any list under sub-section (2), the High Court shall, wherever necessary, cause notices to be issued on all persons affected and after making an inquiry in such manner as may be provided by rules made under section 45U, it shall make an order settling the list of debtors:
Provided that nothing in this section shall debar the High Court from settling any such list in part as against such of the persons whose debts have been settled without settling the debts of all the persons placed on the list.
- (4) At the time of the settlement of any such list, the High Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including reliefs against any guarantor or in respect of the realisation of any security.



- (5) Every such order shall, subject to the provisions for appeal, be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a suit.
- (6) In respect of every such order, the High Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.
- (7) At the time of settling the list of debtors or at any other time prior or subsequent thereto, the High Court shall have power to pass any order in respect of a debtor on the application of the official liquidator for the realisation, management, protection, preservation or sale of any property given as security to the banking company and to give such powers to the official liquidator to carry out the aforesaid directions as the High Court thinks fit.
- (8) The High Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by Instalments.
- (9) In any case in which any such list is settled ex parte as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him, and if the High Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the claim of the banking company on merits, the High Court may vary the list and pass such orders in relation thereto as it thinks fit:
Provided that the High Court may, if it so thinks fit, entertain the application after the expiry of the said period of thirty days.
- (10) Nothing in this section shall—
 - (a) apply to a debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property; or
 - (b) prejudice the rights of the official liquidator to recover any debt due to a banking company under any other law for the time being in force.

Special provisions to make calls on contributors [Section 45E]

Notwithstanding that the list of the contributors has not been settled under section 467 of the Companies Act, 1956 (1 of 1956), the High Court may, if it appears to it necessary or expedient so to do, at any time after making a winding up order, make a call on and order payment thereof by any contributory under sub-section (1) of section 470 of the Companies Act, 1956 (1 of 1956), if such contributory has been placed on the list of contributors by the official liquidator and has not appeared to dispute his liability.

Documents of banking company to be evidence [Section 45F]

- (1) Entries in the books of account or other documents of a banking company which is being wound up shall be admitted in evidence in all legal proceedings; and all such entries may be proved either by the production of the books of account or other documents of the banking company containing such entries or by the production of a copy of the entries, certified by the official liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the banking company in his possession.
- (2) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 (1 of 1872), all such entries in the books of account or other documents of a banking company shall,

as against the directors, officers and other employees of the banking company in respect of which the winding up order has been made, by *prima facie* evidence of the truth of all matters purporting to be therein recorded.

Public examination of directors and auditors [Section 45G]

(1) Where an order has been made for the winding up of a banking company, the official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission (whether or not a fraud has been committed by such 'act or omission) of any person in the promotion or formation of the banking company or of any director or auditor of the banking company.

(2) If, on consideration of the report submitted under sub-section(1), the High Court is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a director or an auditor of the banking company should be publicly examined, it should hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend there at and shall be publicly examined as to the promotion or formation or the conduct of the business of the banking company, or as to his conduct and dealings, Insofar as they relate to the affairs of the banking company:

Provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be so examined.

(3) The official liquidator shall take part in the examination and for that purpose may, if specially authorized by the High Court in that behalf, employ such legal assistance as may be sanctioned by the High Court.

(4) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the High Court who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if he is, in the opinion of the High Court, exculpated from any charges made or suggested against him, the High Court may allow him such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the Inspection of any creditor or contributory at all reasonable times.

(9) Where on such examination, the High Court, is of opinion (whether a fraud has been committed or not)—

(a) that a person, who has been a director of the banking company, is not fit to be a director of a company, or

(b) that a person, who has been an auditor of the banking company or a partner of a firm acting as such auditor, is not fit to act as an auditor of a company or to be a partner of a firm acting as such auditor, the High Court may make an order that person shall not, without the leave of the High Court, be a director of, or in any way, whether directly or indirectly, be



concerned or take part in the management of a company or, as the case may be, act as an auditor of, or be a partner of firm acting as auditors of any company for such period not exceeding five years as may be specified in the order.

Special provisions for assessing damages against delinquent directors, etc [Section 45H]

- (1) Where an application is made to the High Court under section 543 of the Companies Act, 1956 (I of 1956), against any promoter, director, manager, liquidator or officer of a banking company for repayment or restoration of any money or property and the applicant makes out a *prima facie* case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

- (2) Where an application is made, to the High Court under section 543 of the Companies Act, 1956 (I of 1956), and the High Court has reason to believe that a property belongs to any promoter, director, manager, liquidator or officer of the banking company, whether the property stands in the name of such person or any other person at an ostensible owner, then the High Court may, at any time, whether before or after making an order under sub-section (1), direct the attachment of such property, or such portion thereof, as it thinks fit and the property so attached shall remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court that he is the real owner and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to attachment of property shall, as far as may be, apply to such attachment.

Duty of directors and officers of banking company to assist in the realisation or property [Section 45-I]

Every director or other officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may reasonably require in connection with the realisation and distribution of the property of the banking company.

Special provisions for punishing offences in relation to banking companies being wound up [Section 45J]

- (1) The High Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up or by any director, manager or officer thereof:

Provided that the offence is one punished under this Act or under the Companies Act, 1956 (1 of 1956).

- (2) When trying any such offence as aforesaid, the High Court may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

- (3) In any case tried summarily under sub-section (1), the High Court—

- need not summon any witness, if it is satisfied that the evidence of such witness will not be material;
- shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the High Court, necessary in the interests of justice;
- shall, before passing any sentence, record judgment embodying the substance of the evidence and also the particulars specified in section 263 of the Code of Criminal Procedure, 1973 (2 of 1974), so far as that section may be applicable, and nothing contained in sub-section (2) of section 262 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any such trial.

- (4) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Act or under the Companies Act, 1956(1 of 1956), and which are not tried in a summary way under ' sub-section (1) shall, notwithstanding anything to the contrary in that Act or the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the High Court other than the Judge for the time being dealing with the proceedings for the winding up of the banking company.
- (5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), the High Court may take cognizance of any offence under this section, without the accused being committed to it for trial.

Power of High court to enforce schemes of arrangements, etc [Section 45K]

[Rep. by the Banking Companies (Amendment) Act, 1959, Section 31 (w.e.f. 1-10-1959).]

Public examination of directors and auditors, etc., in respect of a banking company under schemes of arrangement [Section 45L]

- (1) Where an application for sanction a compromise or arrangement in respect of a banking company is made under section 39 of the Companies Act, 1956 (1 of 1956), or where such sanction has been given and the High Court is of opinion, whether on a report of the Reserve Bank or otherwise, that any ' person who has taken part in the promotion or formation of the banking company or has been a director or auditor of the banking company should be publicly examined, it may direct such examination of such person and the provisions of section 45G shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up.
- (2) Where a compromise or arrangement is sanctioned under section 391 of the Companies Act, 1956 (1 of 1956), in respect of a banking company, the provisions of section 543 of the said Act and of section 45H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.
- (3) Where a scheme of reconstruction or amalgamation of a banking company has been sanctioned by the Central Government under section 45 and the Central Government is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a director or auditor of the banking company should be publicly examined, that Government may apply to the High Court for the examination of such person and if on such examination the High Court finds (whether a fraud has been committed or not) that that person is not fit to be a director of a company or to act as an auditor of a company or to be a partner of a firm acting as such auditors, the Central Government shall make an order that that person shall not, without the leave of the Central Government, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as auditors of, any company for such period not exceeding five years as may be specified in the order.
- (4) Where a scheme of reconstruction or amalgamation of a banking company has been sanctioned by the Central Government under section 45, the provisions of section 543 of the Companies Act, 1956 (1 of 1956), and of section 45H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the scheme of reconstruction or amalgamation, as the case may be, were an order for the winding up of the banking company; and any reference in the said section 543 to the application of the official liquidator shall be construed as a reference to the application of the Central Government.



Special provisions for banking companies working under schemes of arrangement at the commencement of the Amendment Act [Section 45M]

Where any compromise or arrangement sanctioned in respect of a banking company under section 391 of the Companies Act, 1956 (1 of 1956) is being worked at the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953) the High Court may, if it so thinks fit, on the application of such banking company, —

- (a) excuse any delay in carrying out any of the provisions of the compromise or arrangement; or
- (b) allow the banking company to settle the list of its debtors in accordance with the provisions of section 45D and in such a case, the provisions of the said section shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

Appeals [Section 45N]

- (1) An Appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject-matter of the claim exceeds five thousand rupees.
- (2) The High Court may by rules provide for an appeal against any order made under section 45J and the conditions subject to which any such appeal would lie.
- (3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every order or decision of the High Court shall be final and binding for all purposes as between the banking company on the one hand, and all persons who are parties thereto and all persons claiming through or under them or any of them, on the other hand.

Special period of limitation [Section 45-O]

- (1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded.
- (2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908) or section 543 of the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of a banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims or five years from the date of the first appointment of the liquidator, whichever is longer.
- (3) The provisions of this section, Insofar as they relate to banking companies being wound up, shall also apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953).

Reserve Bank to tender advice in winding up proceeding [Section 45P]

Where in any proceeding for the winding up of a banking company in which any person other than the Reserve Bank has been appointed as the official liquidator and the High Court has directed the official liquidator to obtain the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the record of any such proceeding and tender such advice on the matter as it may think fit.

Power to Inspect [Section 45Q]

- (1) The Reserve Bank shall, on being directed so to do by the Central Government or by the High Court, cause an Inspection to be made by one or more of its officers of a banking company which is being wound up and its books and accounts.
- (2) On such Inspection, the Reserve Bank shall submit its report to the Central Government and the High Court.
- (3) If the Central Government, on consideration of the report of the Reserve Bank, is of opinion that there has been a substantial irregularity in the winding up proceedings, it may bring such irregularity to the notice of the High Court for such action as the High Court may think fit.
- (4) On receipt of the report of the Reserve Bank under sub-section (2) or on any irregularity being brought to its notice by the Central Government under sub-section (3), the High Court may, if it deems fit, after giving notice to and hearing the Central Government in regard to the report, give such directions as it may consider necessary.

Power to call for returns and information [Section 45R]

The Reserve Bank may, at any time by a notice in writing, require the liquidator of a banking company to furnish it, within such time as may be specified in the notice or such further time as the Reserve Bank may allow, any statement or information relating to or connected with the winding up of the banking company; and it shall be the duty of every liquidator to comply with such requirements.

Explanation. —For the purposes of this section and section 45Q, a banking company working under a compromise or arrangement but prohibited from receiving fresh deposits, shall, as far as may be, be deemed to be banking company which is being wound up.

Chief Presidency Magistrate and District Magistrate to assist official liquidator in taking charge of property of banking company being wound up [Section 45S]

- (1) For the purpose of enabling the official liquidator or the special officer appointed under sub-section (3) of section 37 to take into his custody or under his control, all property, effects and actionable claims to which a banking company is or appears to be entitled, the official liquidator or the special officer, as the case may be, may request in writing the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, within whose jurisdiction any property, books of accounts or other documents of such banking company may be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, shall, on such request being made to him, —
 - (a) take possession of such property, books of accounts or other documents, and
 - (b) forward them to the official liquidator or the special officer.
- (2) Where any such property and effects are in the possession of the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, such Magistrate shall, on request in writing being made to him by the official liquidator or the special officer referred to in sub-section (1), sell such property and effects and forward the net proceeds of the sole to the official liquidator or the special officer:

Provided that such sale shall, as far as practicable, be effected by public auction.

- (3) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the Chief Judicial Magistrate may take or cause to be taken such steps and use of cause to be used such fore as may, in his opinion, be necessary.
- (4) No act of the Chief Metropolitan Magistrate or the Chief Judicial Magistrate done in pursuance of this section shall be called in question in any court or before any authority.



Enforcement of orders and decisions of High Court [Section 45T]

- (1) All orders made in any civil proceeding by a High Court may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.
- (2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908(5 of 1908), a liquidator may apply for the execution of a decree by a court, other than the one which made it on production of a certificate granted under subsection (6) of section 45D and on his certifying to such other court in writing the amount remaining due or relief remaining unenforced under the decree.
- (3) Without prejudice to the provisions of sub-section (1) or sub-section (2), any amount found due to the banking company by an order or decision of the High Court, may, with the leave of the High Court, be recovered by the liquidator in the same manner as an arrear of land revenue and for the purpose of such recovery the liquidator may forward to the Collector within whose jurisdiction the property of the person against whom any order or decision of the High Court has been made is situate, a certificate under his signature specifying the amount so due and the person by whom it is payable.
- (4) On receipt of a certificate under sub-section (3), the Collector shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue:

Provided that without prejudice to any other powers of the Collector, he shall, for the purposes of recovering the said amount, have all the powers which, under the Code of Civil Procedure, 1908 (5 of 1908), a civil court has for the purpose of the recovery of an amount due under a decree.

Power of High Court to make rules [Section 45U]

The High Court may make rules consistent with this Act and the rules made under section 52 prescribing—

- (a) the manner in which inquiries and proceedings under Part III or Part IIIA may be held;
- (b) the offences which may be tried summarily;
- (c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard;
- (d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.

References to directors, etc., shall be construed as including references to past directors, etc. [Section 45V]

For the removal of doubts it is hereby declared that any reference in this Part to a director, manager, liquidator, officer or auditor of a banking company shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the banking company.

Part II not to apply to banking companies being wound up [Section 45W]

Nothing contained in Part II shall apply to a banking company which is being wound up.

Validation of certain proceedings [Section 45X]

Notwithstanding anything contained in section 45B or any other provision of this Part or in section 11 of the Banking Companies (Amendment) Act, 1950 (20 of 1950), no proceeding held, judgment delivered or decree or order made before the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), by any court other than the High Court in respect of any matter over which the High Court has jurisdiction under this Act shall be invalid or be deemed ever to have been invalid merely by reason of the fact that such proceeding, judgment, decree or order was held, delivered or made by a court other than the High Court.

5.2 THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

An Act to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-third year of Republic of India as follows: --

Short title, extent and commencement [Section 1]

- (1) This Act may be called the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- (2) It extends to the whole of India.
- (3) It shall be deemed to have come into force on the 21st day of June, 2002.

Definitions [Section 2]

- (1) In this Act, unless the context otherwise requires,--
 - (a) "Appellate Tribunal" means a Debts Recovery Appellate Tribunal established under sub-section (1) of section 8 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
 - (b) "asset reconstruction" means acquisition by any securitisation company or reconstruction company of any right or interest of any bank or financial institution in any financial assistance for the purpose of realisation of such financial assistance;
 - (c) "bank" means--
 - (i) a banking company; or
 - (ii) a corresponding new bank; or
 - (iii) the State Bank of India; or
 - (iv) a subsidiary bank; or
 - (iva) a multi-State co-operative bank; or
 - (v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;
 - (d) "banking company" shall have the meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949;
 - (e) "Board" means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;
 - (f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitisation company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;
 - (g) "Central Registry" means the registry set up or cause to be set up under sub-section (1) of section 20;
 - (h) "corresponding new bank" shall have the meaning assigned to it in clause (da) of section 5 of the Banking Regulation Act, 1949;



- (ha) "debt" shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
- (i) "Debts Recovery Tribunal" means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
- (j) "default" means non-payment of any principal debt or interest thereon or any other amount payable by a borrower to any secured creditor consequent upon which the account of such borrower is classified as non-performing asset in the books of account of the secured creditor;
- (k) "financial assistance" means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution;
- (l) "financial asset" means debt or receivables and includes--
- (i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or
 - (ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or
 - (iii) a mortgage, charge, hypothecation or pledge of movable property; or
 - (iv) any right or interest in the security, whether full or part underlying such debt or receivables; or
 - (v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
 - (vi) any financial assistance;
- (m) "financial institution" means--
- (i) a public financial institution within the meaning of section 4A of the Companies Act, 1956;
 - (ii) any institution specified by the Central Government under sub-clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;
 - (iii) the International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958;
 - (iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934, which the Central Government may, by notification, specify as financial institution for the purposes of this Act;
- (n) "Hypothecation" means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property;
- (o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,--
- (a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;
 - (b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank;

- (p) "notification" means a notification published in the Official Gazette;
- (q) "obligor" means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset or to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower;
- (r) "originator" means the owner of a financial asset which is acquired by a securitisation company or reconstruction company for the purpose of securitisation or asset reconstruction;
- (s) "prescribed" means prescribed by rules made under this Act;
- (t) "property" means--
 - (i) immovable property;
 - (ii) movable property;
 - (iii) any debt or any right to receive payment of money, whether secured or unsecured;
 - (iv) receivables, whether existing or future;
 - (v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;
- (u) "qualified institutional buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3 or any asset management company making investment on behalf of mutual fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder, or any other body corporate as may be specified by the Board;
- (v) "reconstruction company" means a company formed and registered under the Companies Act, 1956 for the purpose of asset reconstruction;
- (w) "Registrar of Companies" means the Registrar as defined in clause (40) of section 2 of the Companies Act, 1956;
- (x) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934;
- (y) "scheme" means a scheme inviting subscription to security receipts proposed to be issued by a securitisation company or reconstruction company under that scheme;
- (z) "securitisation" means acquisition of financial assets by any securitisation company or reconstruction company from any originator, whether by raising of funds by such securitisation company or reconstruction company from qualified institutional buyers by issue of security receipts representing undivided interest in such financial assets or otherwise;
- (za) "securitisation company" means any company formed and registered under the Companies Act, 1956 for the purpose of securitisation;
- (zb) "security agreement" means an agreement, instrument or any other document or arrangement under which security interest is created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor;
- (zc) "secured asset" means the property on which security interest is created;
- (zd) "secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes—



- (i) debenture trustee appointed by any bank or financial institution; or
 - (ii) securitisation company or reconstruction company, whether acting as such or managing a trust set up by such securitisation company or reconstruction company for the securitisation or reconstruction, as the case may be; or
 - (iii) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;
- (ze) "secured debt" means a debt which is secured by any security interest;
- (zf) "security interest" means right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in section 31;
- (zg) "security receipt" means a receipt or other security, issued by a securitization company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation;
- (zh) "sponsor" means any person holding not less than ten per cent of the paid up equity capital of a securitisation company or reconstruction company;
- (zi) "State Bank of India" means the State Bank of India constituted under section 3 of the State Bank of India Act, 1955;
- (zj) "subsidiary bank" shall have the meaning assigned to it in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959.
- (2) Words and expressions used and not defined in this Act but defined in the Indian Contract Act, 1872 or the Transfer of Property Act, 1882 or the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 shall have the same meanings respectively assigned to them in those Acts.

REGULATION OF SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

Registration of securitisation companies or reconstruction companies [Section 3]

- (1) No securitisation company or reconstruction company shall commence or carry on the business of securitisation or asset reconstruction without--
- (a) obtaining a certificate of registration granted under this section; and
 - (b) having the owned fund of not less than two crore rupees or such other amount not exceeding fifteen per cent of total financial assets acquired or to be acquired by the securitisation company or reconstruction company, as the Reserve Bank may, by notification, specify:
- Provided that the Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of securitization companies or reconstruction companies:
- Provided further that a securitisation company or reconstruction company, existing on the commencement of this Act, shall make an application for registration to the Reserve Bank before the expiry of six months from such commencement and notwithstanding anything contained in this sub-section may continue to carry on the business of securitisation or asset reconstruction until a certificate of registration is granted to it or, as the case may be, rejection of application for registration is communicated to it.
- (2) Every securitisation company or reconstruction company shall make an application for registration to the Reserve Bank in such form and manner as it may specify.

- (3) The Reserve Bank may, for the purpose of considering the application for registration of a securitisation company or reconstruction company to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such securitisation company or reconstruction company, or otherwise, that the following conditions are fulfilled, namely:-
- (a) that the securitisation company or reconstruction company has not incurred losses in any of the three preceding financial years;
 - (b) that such securitisation company or reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons;
 - (c) that the directors of securitisation company or reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction;
 - (d) that the board of directors of such securitisation company or reconstruction company does not consist of more than half of its total number of directors who are either nominees of any sponsor or associated in any manner with the sponsor or any of its subsidiaries;
 - (e) that any of its directors has not been convicted of any offence involving moral turpitude;
 - (f) that a sponsor, is not a holding company of the securitisation company or reconstruction company, as the case may be, or, does not otherwise hold any controlling interest in such securitisation company or reconstruction company;
 - (g) that securitisation company or reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.
 - (h) that securitisation company or reconstruction company has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.
- (4) The Reserve Bank may, after being satisfied that the conditions specified in sub-section (3) are fulfilled, grant a certificate of registration to the securitisation company or the reconstruction company to commence or carry on business of securitisation or asset reconstruction, subject to such conditions which it may consider, fit to impose.
- (5) The Reserve Bank may reject the application made under sub-section (2) if it is satisfied that the conditions specified in sub-section (3) are not fulfilled:
- Provided that before rejecting the application, the applicant shall be given a reasonable opportunity of being heard.
- (6) Every securitisation company or reconstruction company, shall obtain prior approval of the Reserve Bank for any substantial change in its management or change of location of its registered office or change in its name:
- Provided that the decision of the Reserve Bank, whether the change in management of a securitisation company or a reconstruction company is a substantial change in its management or not, shall be final.
- Explanation.—** For the purposes of this section, the expression "substantial change in management" means the change in the management by way of transfer of shares or amalgamation or transfer of the business of the company.



Cancellation of certificate of registration [Section 4]

- (1) The Reserve Bank may cancel a certificate of registration granted to a securitisation company or a reconstruction company, if such company--
- (a) ceases to carry on the business of securitisation or asset reconstruction; or
 - (b) ceases to receive or hold any investment from a qualified institutional buyer; or
 - (c) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
 - (d) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
 - (e) fails to--
 - (i) comply with any direction issued by the Reserve Bank under the provisions of this Act; or
 - (ii) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - (iii) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
 - (iv) obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:
- Provided that before cancelling a certificate of registration on the ground that the securitisation company or reconstruction company has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the securitisation company or the reconstruction company, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfilment of such conditions.

- (2) A securitisation company or reconstruction company aggrieved by the order of cancellation of certificate of registration may prefer an appeal, within a period of thirty days from the date on which such order of cancellation is communicated to it, to the Central Government:

Provided that before rejecting an appeal such company shall be given a reasonable opportunity of being heard.

- (3) A securitisation company or reconstruction company, which is holding investments of qualified institutional buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation, be deemed to be a securitisation company or reconstruction company until it repays the entire investments held by it (together with interest, if any) within such period as the Reserve Bank may direct.

Acquisition of rights or interest in financial assets [Section 5]

- (1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution--
- (a) by issuing a debenture or bond or any other security in the nature of the debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

- (b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.
- (2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.
- (3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of the securitisation company or reconstruction company, as the case may be.
- (4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.
- (5) On acquisition of financial assets under sub-section (1), the securitisation company or reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the securitisation company or reconstruction company in such pending suit, appeal or other proceedings

Transfer of pending applications to any one of Debts Recovery Tribunals in certain cases [Section 5A]

- (1) If any financial asset, of a borrower acquired by a securitisation company or reconstruction company, comprise of secured debts of more than one bank or financial institution for recovery of which such banks or financial institutions has filed applications before two or more Debts Recovery Tribunals, the securitisation company or reconstruction company may file an application to the Appellate Tribunal having jurisdiction over any of such Tribunals in which such applications are pending for transfer of all pending applications to any one of the Debts Recovery Tribunals as it deems fit.
- (2) On receipt of such application for transfer of all pending applications under sub-section (1), the Appellate Tribunal may, after giving the parties to the application an opportunity of being heard, pass an order for transfer of the pending applications to any one of the Debts Recovery Tribunals.
- (3) Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, any order passed by the Appellate Tribunal under sub-section (2) shall be binding on all the Debts Recovery Tribunals referred to in sub-section (1) as if such order had been passed by the Appellate Tribunal having jurisdiction on each such Debts Recovery Tribunal.



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

Notice to obligor and discharge of obligation of such obligor [Section 6]

- (1) The bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any securitisation company or reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority (including Registrar of Companies) in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets have been registered.
- (2) Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned securitisation company or reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.
- (3) Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the securitisation company or reconstruction company, as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to such securitisation company or reconstruction company, as the case may be, or its agent duly authorised in this behalf.

Issue of security by raising of receipts or funds by securitisation company or reconstruction company [Section 7]

- (1) Without prejudice to the provisions contained in the Companies Act, 1956, Securities Contracts (Regulation) Act, 1956, and the Securities and Exchange Board of India Act, 1992, any securitisation company or reconstruction company, may, after acquisition of any financial asset under sub-section (1) of section 5, offer security receipts to qualified institutional buyers (other than by offer to public) for subscription in accordance with the provisions of those Acts.
- (2) A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified institutional buyer and ensure that realisations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.
 - (2-A) (a) The scheme for the purpose of offering security receipts under sub-section (1) or raising funds under sub-section (2), may be in the nature of a trust to be managed by the securitisation company or reconstruction company, and the securitisation company or reconstruction company shall hold the assets so acquired or the funds so raised for acquiring the assets, in trust for the benefit of the qualified institutional buyers holding the security receipts or from whom the funds are raised.
(b) The provisions of the Indian Trust Act, 1882 shall, except in so far as they are inconsistent with the provisions of this Act, apply with respect to the trust referred to in clause (a) above.
- (3) In the event of non-realisation under sub-section (2) of financial assets, the qualified institutional buyers of a securitisation company or reconstruction company, holding security receipts of not less than seventy-five per cent of the total value of the security receipts issued under a scheme by such company, shall be entitled to call a meeting of all the qualified institutional buyers and every resolution passed in such meeting shall be binding on the company.

- (4) The qualified institutional buyers shall, at a meeting called under sub-section (3), follow the same procedure, as nearly as possible as is followed at meetings of the board of directors of the securitisation company or reconstruction company, as the case may be.

Exemption from registration of security receipt [Section 8]

Notwithstanding anything contained in sub-section (1) of section 17 of the Registration Act, 1908 ,--

- (a) any security receipt issued by the securitisation company or reconstruction company, as the case may be, under sub-section (1) of section 7, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or
- (b) any transfer of security receipts, shall not require compulsory registration.

Measures for assets reconstruction [Section 9]

Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely:--

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

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

Other functions of Securitisation Company or Reconstruction Company [Section 10]

- (1) Any securitisation company or reconstruction company registered under section 3 may--
- (a) act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fee or charges as may be mutually agreed upon between the parties;
- (b) act as a manager referred to in clause (c) of sub-section (4) of section 13 on such fee as may be mutually agreed upon between the parties;
- (c) act as receiver if appointed by any court or tribunal:
- Provided that no securitisation company or reconstruction company shall act as a manager if acting as such gives rise to any pecuniary liability.
- (2) Save as otherwise provided in sub-section (1), no securitisation company or reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3, shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitisation or asset reconstruction:
- Provided that a securitisation company or reconstruction company which is carrying on, on or before the commencement of this Act, any business other than the business of securitisation or



asset reconstruction or business referred to in sub-section (1), shall cease to carry on any such business within one year from the date of commencement of this Act.

Explanation.—For the purposes of this section, “securitisation company” or “reconstruction company” does not include its subsidiary.

Resolution of disputes [Section 11]

Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely, the bank or financial institution or securitisation company or reconstruction company or qualified institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

Power of Reserve Bank to determine policy and issue directions [Section 12]

- (1) If the Reserve Bank is satisfied that in the public interest or to regulate financial system of the country to its advantage or to prevent the affairs of any securitisation company or reconstruction company from being conducted in a manner detrimental to the interest of investor or in any manner prejudicial to the interest of such securitisation company or reconstruction company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any securitisation company or reconstruction company in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the securitisation company or reconstruction company, as the case may be, and such company shall be bound to follow the policy so determined and the directions so issued.
- (2) Without prejudice to the generality of the power vested under sub-section (1), the Reserve Bank may give directions to any securitisation company or reconstruction company generally or to a class of securitisation companies or reconstruction companies or to any securitisation company or reconstruction company in particular as to--
 - (a) the type of financial asset of a bank or financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;
 - (b) the aggregate value of financial assets which may be acquired by any securitisation company or reconstruction company.

Power of Reserve Bank to call for statements and information [Section 12A]

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

ENFORCEMENT OF SECURITY INTEREST

Enforcement of security interest [Section 13]

- (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.
- (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to

the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

- (3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.
- (3-A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

- (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-
- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
 - (b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:
- Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:
- Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.
- (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
 - (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

- (5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.
- (5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.
- (5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.
- (5C) The provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).".
- (6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall



vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

- (7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.
- (8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset.
- (9) In the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

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

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 , may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529-A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditors the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation. - For the purposes of this sub-section, —

- (a) "record date" means the date agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding on such date;
- (b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

- (10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.
- (11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relation to the secured assets under this Act.
- (12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.
- (13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset [Section 14]

- (1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him--
 - (a) take possession of such asset and documents relating thereto; and
 - (b) forward such assets and documents to the secured creditor.

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that –

- (i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;
- (ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;
- (iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;
- (iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;
- (v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;
- (vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;
- (vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;
- (viii) the borrower has not made any repayment of the financial assistance in spite of the above



notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made there under had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

- (1A) The District Magistrate or the Chief Metropolitan magistrate may authorize any officer subordinate to him, -
- (i) to take possession of such assets and documents relating thereto; and
 - (ii) to forward such assets and documents to the secured creditor
- (2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.
- (3) No act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Manner and effect of take over of management [Section 15]

- (1) When the management of business of a borrower is taken over by a securitisation company or reconstruction company under clause (a) of section 9 or, as the case may be, by a secured creditor under clause (b) of sub-section (4) of section 13, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit--
 - (a) in a case in which the borrower is a company as defined in the Companies Act, 1956, to be the directors of that borrower in accordance with the provisions of that Act; or
 - (b) in any other case, to be the administrator of the business of the borrower.
- (2) On publication of a notice under sub-section (1),--
 - (a) in any case where the borrower is a company as defined in the Companies Act, 1956, all persons holding office as directors of the company and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;
 - (b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;
 - (c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the notice;

- (d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or, as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or, as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever.
- (3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,--
 - (a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
 - (b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;
 - (c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.
- (4) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

No compensation to directors for loss of office [Section 16]

- (1) Notwithstanding anything to the contrary contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with the borrower.
- (2) Nothing contained in sub-section (1) shall affect the right of any such managing director or any other director or manager or any such person in charge of management to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

Right to appeal [Section 17]

- (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation. - For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

- (2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.
- (3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred



to in sub-section(4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the creditors assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

- (4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.
- (5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application: Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).
- (6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.
- (7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.

Making of application to Court of District Judge in certain cases [Section 17A]

In the case of a borrower residing in the State of Jammu and Kashmir, the application under section 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.

Explanation.- For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons shall not entitle the person (including borrower) to make an application to the Court of District Judge under this section.

Appeal to Appellate Tribunal [Section 18]

- (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.

- (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and rules made thereunder.

Validation of fees levied [Section 18A]

Any fee levied and collected for preferring, before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, shall be deemed always to have been levied and collected in accordance with law as if amendments made to sections 17 and 18 of this Act by sections 11 and 12 of the said Act were in force at all material times.

Appeal to High Court in certain cases [Section 18B]

Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge under section 17A may prefer an appeal, to the High Court having jurisdiction over such Court, within thirty days from the date of receipt of the order of the Court of District Judge:

Provided that no appeal shall be preferred unless the borrower has deposited, with the Jammu and Kashmir High Court, fifty per cent of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less:

Provided further that the High Court may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of the debt referred to in the first proviso.

Right to lodge a caveat [Section 18C]

- (1) Where an application or an appeal is expected to be made or has been made under sub-section (1) of section 17 or section 17A or sub-section (1) of section 18 or section 18B, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.
- (2) Where a caveat has been lodged under sub-section (1),—
- the secured creditor by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1);
 - any person by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made under sub-section (1).
- (3) Where after a caveat has been lodged under sub-section (1), any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveator.
- (4) Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal.

Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of the period of ninety days from the date on which it was lodged unless the application or appeal referred to in sub-section (1) has been made before the expiry of the said period.



Right of borrower to receive compensation and costs in certain cases [Section 19]

If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made thereunder and directs the secured creditors to return such secured assets to the concerned borrowers, such borrower shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18B.

CENTRAL REGISTRY

Central Registry [Section 20]

- (1) The Central Government may, by notification, set-up or cause to be set-up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitisation and reconstruction of financial assets and creation of security interest under this Act.
- (2) The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred to in sub-section (1), there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.
- (3) The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions.
- (4) The provisions of this Act pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 1956, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988 and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

Central Registrar [Section 21]

- (1) The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, to be known as the Central Registrar.
- (2) The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Act as he may, from time to time, authorise them to discharge.

Register of securitisation, reconstruction and security interest transactions [Section 22]

- (1) For the purposes of this Act, a record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to--
 - (a) securitisation of financial assets;
 - (b) reconstruction of financial assets; and
 - (c) creation of security interest.
- (2) Notwithstanding anything contained in sub-section (1), it shall be lawful for the Central Registrar to keep the records wholly or partly in computer, floppies, diskettes or in any other electronic form subject to such safeguards as may be prescribed.
- (3) Where such register is maintained wholly or partly in computer, floppies, diskettes or in any other electronic form, under sub-section (2), any reference in this Act to entry in the Central Register shall

be construed as a reference to any entry as maintained in computer or in any other electronic form.

- (4) The register shall be kept under the control and management of the Central Registrar.

Filing of transactions of securitisation, reconstruction and creation of security interest [Section 23]

The particulars of every transaction of securitisation, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the manner and on payment of such fee as may be prescribed, within thirty days after the date of such transaction or creation of security, by the securitisation company or reconstruction company or the secured creditor, as the case may be:

Provided that the Central Registrar may allow the filing of the particulars of such transaction or creation of security interest within thirty days next following the expiry of the said period of thirty days on payment of such additional fee not exceeding ten times the amount of such fee.

Provided further that the Central Government may, by notification, require registration of all transactions of securitisation, or asset reconstruction or creation of security interest which are subsisting on or before the date of establishment of the Central Registry under sub-section (1) of section 20 within such period and on payment of such fees as may be prescribed.

Modification of security interest registered under this Act [Section 24]

Whenever the terms or conditions, or the extent or operation, of any security interest registered under this Chapter, are, or is, modified, it shall be the duty of the securitisation company or the reconstruction company or the secured creditor, as the case may be, to send to the Central Registrar, the particulars of such modification, and the provisions of this Chapter as to registration of a security interest shall apply to such modification of such security interest.

Securitisation company or reconstruction company or secured creditor to report satisfaction of security interest [Section 25]

- (1) The securitisation company or reconstruction company or the secured creditor, as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the securitisation company or the reconstruction company or the secured creditor and requiring registration under this Chapter, within thirty days from the date of such payment or satisfaction.
- (1A) On receipt of intimation under sub-section (1), the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.
- (2) If the concerned borrower gives an intimation to the Central Registrar for not recording the payment or satisfaction referred to in sub-section (1), the Central Registrar shall on receipt of such intimation cause a notice to be sent to the securitisation company or reconstruction company or the secured creditor calling upon it to show cause within a time not exceeding fourteen days specified in such notice, as to why payment or satisfaction should not be recorded as intimated to the Central Registrar.
- (3) If no cause is shown, the Central Registrar shall order that a memorandum of satisfaction shall be entered in the Central Register.
- (4) If cause is shown, the Central Registrar shall record a note to that effect in the Central Register, and shall inform the borrower that he has done so.

Right to inspect particulars of securitisation, reconstruction and security interest transactions [Section 26]

- (1) The particulars of securitisation or reconstruction or security interest entered in the Central Register of such transactions kept under section 22 shall be open during the business hours for inspection by any person on payment of such fee as may be prescribed.



- (2) The Central Register, referred to in sub-section (1) maintained in electronic form, shall also be open during the business hours for the inspection of any person through electronic media on payment of such fee as may be prescribed.

Rectification by Central Government in matters of registration, modification and satisfaction, etc. [Section 26A]

- (1) The Central Government, on being satisfied—
- (a) that the omission to file with the Registrar the particulars of any transaction of securitisation, asset reconstruction or security interest or modification or satisfaction of such transaction or; the omission or mis-statement of any particular with respect to any such transaction or modification or with respect to any satisfaction or other entry made in pursuance of section 23 or section 24 or section 25 of the principal Act was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors; or
 - (b) that on other grounds, it is just and equitable to grant relief, may, on the application of a secured creditor or securitisation company or reconstruction company or any other person interested on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for filing of the particulars of the transaction for registration or modification or satisfaction shall be extended or, as the case may require, the omission or mis-statement shall be rectified.
- (2) Where the Central Government extends the time for the registration of transaction of security interest or securitisation or asset reconstruction or modification or satisfaction thereof, the order shall not prejudice any rights acquired in respect of the property concerned or financial asset before the transaction is actually registered.

OFFENCES AND PENALTIES

Penalties [Section 27]

If a default is made--

- a. in filing under section 23, the particulars of every transaction of any securitisation or asset reconstruction or security interest created by a securitisation company or reconstruction company or secured creditor; or
- b. in sending under section 24, the particulars of the modification referred to in that section; or
- c. in giving intimation under section 25,

every company and every officer of the company or the secured creditor and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Penalties for non-compliance of direction of Reserve Bank [Section 28]

If any securitisation company or reconstruction company fails to comply with any direction issued by the Reserve Bank under section 12 or section 12A, such company and every officer of the company who is in default, shall be punishable with fine which may extend to five lakh rupees and in the case of a continuing offence, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.

Offences [Section 29]

If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made there under, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Cognizance of offence [Section 30]

- (1) No court shall take cognizance of any offence punishable under section 27 in relation to non-compliance with the provisions of section 23, section 24 or section 25 or under section 28 or section 29 or any other provisions of the Act, except upon a complaint in writing made by an officer of the Central Registry or an officer of the Reserve Bank, generally or specially authorised in writing in this behalf by the Central Registrar or, as the case may be, the Reserve Bank.
- (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act

MISCELLANEOUS

Provisions of this Act not to apply in certain cases [Section 31]

The provisions of this Act shall not apply to--

- (a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872; or the Sale of Goods Act, 1930 or any other law for the time being in force;
- (b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872;
- (c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934;
- (d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;
- (e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;
- (f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930;
- (g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908;
- (h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;
- (i) any security interest created in agricultural land;
- (j) any case in which the amount due is less than twenty per cent of the principal amount and interest thereon.

Power to exempt a class or classes of banks or financial institutions. [Section 31A]

- (1) The Central Government may, by notification in the public interest, direct that any of the provisions of this Act,—
 - (a) shall not apply to such class or classes of banks or financial institutions; or
 - (b) shall apply to the class or classes of banks or financial institutions with such exceptions, modifications and adaptations, as may be specified in the notification.
- (2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Protection of action taken in good faith [Section 32]

No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act.



Offences by companies [Section 33]

- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,--

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

Civil Court not to have jurisdiction [Section 34]

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

The provisions of this Act to override other laws [Section 35]

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Limitation [Section 36]

No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

Application of other laws not barred [Section 37]

The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

Power of Central Government to make rules [Section 38]

- (1) The Central Government may, by notification and in the Electronic Gazette as defined in clause (s) of section 2 of the Information Technology Act, 2000, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--
- (a) the form and manner in which an application may be filed under sub-section (10) of section 13;

- (b) the manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13;
 - (ba) the fee for making an application to the Debts Recovery Tribunal under sub-section (1) of section 17;
 - (bb) the form of making an application to the Appellate Tribunal under sub-section (6) of section 17;
 - (bc) the fee for preferring an appeal to the Appellate Tribunal under sub-section (1) of section 18;
 - (c) the safeguards subject to which the records may be kept under sub-section (2) of section 22;
 - (d) the manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;
 - (e) the fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section (1) of section 26;
 - (f) the fee for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26;
 - (g) any other matter which is required to be, or may be, prescribed, in respect of which provision is to be, or may be, made by rules.
- (3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Certain provisions of this Act to apply after Central Registry is set up or caused to be set up [Section 39]

The provisions of sub-sections (2), (3) and (4) of section 20 and sections 21, 22, 23, 24, 25, 26 and 27 shall apply after the Central Registry is set up or caused to be set up under sub-section (1) of section 20.

Power to remove difficulties [Section 40]

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:
Provided that no order shall be made under this section after the expiry of a period two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendments of certain enactments [Section 41]

The enactments specified in the Schedule shall be amended in the manner specified therein.

Repeal and saving [Section 42]

- (1) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, is hereby repealed.
- (2) Notwithstanding such repeal, any thing done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act.



5.3 THE PREVENTION OF MONEY LAUNDERING ACT, 2002

Money laundering poses a serious threat not only to the financial sector of country but also pose a serious threat to its integrity and sovereignty of the country. It may be a proxy war of the anti-national elements including alien enemies to sabotage the financial sector of the country if not tackled properly. It is the process by which criminals conceal the origin and ownership of the proceeds of crime, by legitimizing illegally obtained money, by channel sing surreptitiously through legitimate business channels and integrating those to financial system in a variety of ways like bank deposits, investments or through transfer from one place or person to another.

To achieve the objective of preventing laundering of money and other associate activities a comprehensive legislation was needed. Accordingly the Prevention Money Laundering Bill 1998 was introduced in the Parliament which was further referred to the Standing Committee on Finance which presented its report on 4th March 1999 to the Lok Sabha. The Central Government broadly accepted the recommendations of the Standing Committee and incorporated them in the said bill along with other desired changes. The Bill was passed by both the Houses of Parliament and received the assent of the President on 17th January 2003 and came to be known as **the Prevention of Money Laundering Act 2002(15th of 2003)(PMLA)**.

The act of money laundering has been criminalized in India through the enactment of the Prevention of Money Laundering Act, 2002. Persons and entities who indulge in or assist in the process or activity connected with the proceeds of scheduled crime as defined under the said Act and in projecting it as untainted property are guilty of the said offence of money laundering under **Section 3** of the Act. With money laundering becoming an international/global menace rocking the economic and financial edifice of various countries, India has become a member of Financial Action Task Force(FATF) in 2010.

The Act contains **75 sections** spread over **10 chapters** and **one schedule**. The Act was last amended vide **the Prevention of Money-laundering (Amendment) Act,2009** and another bill titled "**The Prevention of Money Laundering(Amendment) Bill 2011**" is lying pending in the Parliament [Note: the Prevention of Money Laundering(Amendment) Bill 2011 was introduced in the Lok Sabha 28th November 2012. The Act is yet to be notified by the Central Government]. The Amendment Act when passed and notified would widen the coverage of the law and makes it more stringent and bring it in line with the similar legislation of other countries. The bill extends the meaning of Money Laundering Act to include activities such as concealment and possession of proceeds of crime. The Amendment Bill(2011) also put onus on the banks, Financial Institutions, Intermediaries or person carrying on a specified business to report such instances by introducing the concept of a " Reporting Entity". Currently under PMLA fine upto five lakh can be imposed, the proposed amendment bill proposes to do away with the limit.

EXTENT AND COMMENCEMENT

Date of enforcement of the Act: 1st July 2005 and extends to whole of India.

CONCEPTS AND DEFINITIONS

Section 2 of the Prevention of Money Laundering Act, 2002 defines various terms.

- (1) In this Act unless the context otherwise requires,-
 - (a) "**Adjudicating Authority**" means an Adjudicating Authority appointed under sub-section (1) of section 6;
 - (b) "**Appellate Tribunal**" means the Appellate Tribunal established under **section 25**;
 - (c) "**Assistant Director**" means an Assistant Director appointed under sub-section (1) of **section 49**;
 - (d) "**Attachment**" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;
 - (da) "**Authorised person**" means an authorised person as defined in clause (c) of **section 2 of the Foreign Exchange Management Act, 1999**;

- (e) "**Banking company**" means a banking company or a co-operative bank to which **the Banking Regulation Act, 1949** applies and includes any bank or banking institution referred to in **section 51** of that Act;
- (f) "**Bench**" means a Bench of the Appellate Tribunal;
- (fa) "**beneficial owner**" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;
- (g) "**Chairperson**" means Chairperson of the Appellate Tribunal;
- (h) "**Chit fund company**" means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in **section 2 of the Chit Funds Act, 1982**;
- (ha) "**client**" means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting;
- (i) "**Co-operative bank**" shall have the same meaning as assigned to it in clause (dd) of **section 2** of the Deposit Insurance and Credit Guarantee Corporation Act, 1961;
- (ia) "**corresponding law**" means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences;
- (ib) "**dealer**" has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956;';
- (ij) "**Deputy Director**" means a Deputy Director appointed under sub-section (1) of section 49;
- (k) "**Director**" or "**Additional Director**" or "**Joint Director**" means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 49;
- (l) "**Financial institution**" means a financial institution as defined in clause (c) of section 45-1 of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India;
- (m) "**Housing finance institution**" shall have the meaning as assigned to it in clause (d) of section 2 of the National Housing Bank Act, 1987;
- (n) "**Intermediary**" means.—
 - (i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or
 - (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or
 - (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or
 - (iv) a recognised stock exchange referred to in clause (J) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- (o) "**Member**" means a Member of the Appellate Tribunal and includes the Chairperson;
- (p) "money-laundering" has the meaning assigned to it in section 3;
- (q) "**Non-banking financial company**" shall have the same meaning as assigned to it in clause (f) of section 45-1 of the Reserve Bank of India Act, 1934;



(r) "**Notification**" means a notification published in the Official Gazette;

(ra) "**Offence of cross border implications**", means –

- (i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof to India; or
- (ii) any offence specified in Part A , Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation:- Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money – Laundering (Amendment) Act 2009;

(rb) "**Payment system**" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

Explanation- For the purpose of this clause, "payment system" includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;

(rc) "**Payment system operator**" means a person who operates a payment system and such person includes his overseas principal.

Explanation- For the purpose of this clause, "overseas principal" means, -

- (A) In the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
- (B) In the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
- (C) In the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;]

(s) "**Person**" includes;-

- (i) an individual
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) firm,
- (v) an association of persons or a body of individuals whether incorporated or not,
- (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

- (sa) "**Person carrying on designated business or profession**" means,—
- (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
 - (ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government;
 - (iii) real estate agent, as may be notified by the Central Government;
 - (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
 - (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
 - (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time;
- (sb) "**Precious metal**" means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;
- (sc) "**Precious stone**" means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;
- (t) "**Prescribed**" means prescribed by rules made under this Act;
- (u) "**Proceeds of crime**" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;
- (v) "**Property**" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
- Explanation.—** For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;
- (va) "**Real estate agent**" means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;
- (w) "**Records**" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;
- (wa) "**Reporting entity**" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;
- (x) "**Schedule**" means the Schedule to this Act;
- (y) "**Scheduled offence**" means -
- (i) the offences specified under Part A of the Schedule; or
 - [(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or
 - (iii) the offences specified under Part C of the Schedule.]
- (z) "**Special Court**" means a Court of Session designated as Special Court under sub-section (1) of section 43;
- (za) "**Transfer**" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.
- (zb) "**Value**" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.



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- (2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

5.3.1 What is Money Laundering?

Money Laundering is the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such process appear to have derived from the legitimate source. The term money laundering has not been defined in the Act anywhere, however, **Section 2** of the Act which defines various terms and expressions used in the Act in sub section (p) refer the meaning of money laundering to **section 3** of the Act.

Section 3 of the Act says “**Whosoever directly or indirectly attempts to indulge or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering**”. So we can say that activity or process by which tainted money of crime is projected as untainted property is money laundering. It is not necessary that the person should be directly involved in the process of legitimating the tainted money but also all those persons who assisted or were party to it or attempts to do will be guilty of money laundering activity.

PUNISHMENT FOR MONEY LAUNDERING:

Section 4 of the Act provide punishing of rigorous imprisonment ranging from 3 years to seven years and fine, for indulging in money laundering activity or process.

Where the proceeds of crime involved in money laundering relates to any offence specified under paragraph 2 of Part A of the schedule the maximum imprisonment can extend to 10 years instead of 7 years. Under paragraph 2 of Part A of the Schedule to the Act certain offences under various sections of the Narcotic Drugs Psychotropic Substances Act (NDPS), 1985 have been included for which maximum imprisonment extend to 10 years. These offences includes contravention in relation to poppy straw(sec 15 of NDPS Act,1985),contravention in relation to coco plant and coca leaves(sec 16 of NDPS),contravention in relation to prepared opium(sec 17 of NDPS), contravention in relation to opium poppy and opium etc.

In order to prevent the process of money laundering activities Director or any other officer not below the rank of Deputy Director appointed under **section 49** of the Act has power to order in writing to attach property provisionally for a period not exceeding 180 days from the date of order where he has reasons to believe that on the basis of material in his possession, that –

- (a) Any person is in possession of any proceeds of crime
- (b) Such person has been charged of having committed a scheduled offence and
- (c) Such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceed.

No such order of attachment can be made unless in relation to the scheduled offence a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure 1973 or a complaint has been filed by a person, authorized to investigate the offence mentioned in the schedule, before a magistrate or court for taking cognizance of the scheduled offence as may be.

Despite attachment of the property the person interested in the property in the enjoyment of the immovable property attached under this Act. Interested person in relation to any immovable property includes all persons claiming or entitled to claim any interest in the property.

The officer attaching the property is required to file a complaint stating the fact of attachment of such property before the Adjudicating Authority within a period of 30 days from the date of such attachment.

In order to adjudicate the case of money laundering the Central Government shall by notification appoint an Adjudicating Authority to exercise jurisdiction powers and authority conferred by or under the Act. The Adjudicating Authority consists of a Chairman and two other members.

On receipt of complaint of attachment of the property of the proceeds of money laundering if the Adjudicating Authority has reasons to believe that any person has committed an offence under section 3 of the Act or is in possession of proceeds of crime, he may serve a notice of not less than 30 days on such person calling upon him to indicate the source of his income, earnings or assets out of which or by means of which he has acquired the property attached or seized under this Act., the evidence on which he relies and other relevant information and particulars and to show causes why all or any of such properties should not be declared to be the properties involved in money laundering and confiscated by the Central Government.

Where an order of confiscation has been made by the Special court or Adjudicating Authority in respect of any property of a person, all the rights and title in such property vests absolutely in the Central Government free from all encumbrances. (**sec 9**)

Where the Special court or Adjudicating Authority is of the opinion that any encumbrance on the property or lease hold interest has been created with view to defeat the provisions of this Act, it may be order declare such encumbrances or lease hold interest to be void and thereupon the said property vest in the Central Government free from such encumbrances or lease hold interest.

Despite attachment of such property and vesting of its title with the Central Government, it does not discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit of damages.

In order to manage the confiscated property the Central Government may by order published in the official gazette appoint as many of its officers not below the rank of Joint Secretary to the Government of India to perform the function of an Administrator.

The Administrator appointed by the Central Government is required to receive and manage the property in accordance with the rules made under this Act. He is also required to take such measures as the Central Government may direct to dispose of the property vested in the Central Government.

Reporting Entity to Maintain Records. [Section 12]

- (1) Every reporting entity shall —
 - (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
 - (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
 - (c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;
 - (d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;
 - (e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
- (2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.
- (3) The records referred to in clause (a) of sub-section (7) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.
- (4) The records referred to in clause (e) of sub-section (7) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.
- (5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.



Access to Information [Section 12A]

- (1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.
- (2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.
- (3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.

Powers of Director to impose fine (Sec 13)

- (1) The Director may, either of his own motion or on an application made by any authority, officer or person, make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter.
- (1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.
- (1B) The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the Central Government;
- (2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—
 - (a) issue a warning in writing; or
 - (b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
 - (c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
 - (d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.
- (3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

***Section 73(2) (clause)** of the Act empowers the Central Government to make rules for carrying out the provisions of this Act. In pursuance of this power, the Central Government vide GSR 444(E) dated 1st July 2005 notified the "The Prevention of Money Laundering(Maintenance of Records) Rules 2005 the prescribed value of transaction and nature of transaction required to be maintained by a Banking company, Financial Institution or Financial Intermediary are specified in rule 3 of the aforesaid rules. The value of all cash transactions is ₹10 lakh or its equivalent in foreign currency. In addition to all cash transactions records of all series of cash transactions integrally connected to each other which have been valued below ₹10 lakh or its equivalent in foreign currency where such series of transactions have taken place within a month are also required to be maintained **[Rule 3(b)]**

These records are to be maintained in the manner prescribed in **Rule 4** of the aforesaid Rules which includes information on—

- (a) Nature of the transactions;

- (b) The amount of the transaction and the currency in which it was denominated;
- (c) The date on which the transaction was conducted; and
- (d) The parties to the transaction.

The procedure and manner of maintaining the information are provided in **Rule 5**.

The information and records relating to such transactions are required to be maintained for a period of ten years from the date of transactions between the client and the banking company, financial institution or intermediary.

Every Banking Company, Financial Institution, Intermediary is required to communicate the name, designation and address of the Principal Officer to the Director.

It is the duty of every banking company, financial institution and intermediary to observe the procedure and the manner of furnishing the information.

Furnishing of information to the director

S. No	Officer concerned	Institutions	Nature of transactions	When to report	Report to whom	Due date
1	Principal officer	Banking company, a financial institution, an intermediary	Referred to in clause (A), (B) and (BA) of sub-rule (1) of rule 3	Every month	Director	By 15th day of the succeeding month
2	Principal officer	Banking company, a financial institution, an intermediary	Referred to in clause (C) of sub-rule (1) of rule 3	Date of occurrence of such transaction	Director (in writing or by fax or by electronic mail)	Not later than seven working days from date of occurrence
3	Principal officer	Banking company, a financial institution, an intermediary	Referred to in clause (D) of sub-rule (1) of rule 3	On being satisfied that the transaction is suspicious	Director (in writing or by fax or by electronic mail)	Not later than seven working days on being satisfied of suspicion

As per **Rule 9**, every banking company, financial institution is required to verify the identity of clients and obtain information on the purpose and intended nature of business relationship, and in all other cases, verify identity while carrying out –

- i. transactions of amount equal to or exceeding rupees fifty thousand, whether conducted as a single transaction or several transactions that appear to be connected, **or**
- ii. any international money transfer operations.

As per **Rule 10**, every banking company, or financial institution or intermediary is required to maintain a record of identity of its clients in both hard and soft copies.

The record of identity of the client is required to be maintained for a time period of 10 years counting from the date of ceases of the transaction between the client and the banking company or financial institution or intermediary.

Financial institutions like banks, insurance companies, stock markets, etc are most vulnerable to money laundering activities of criminals and other anti social elements and therefore the need to insulate these institutions from the effect of laundered money. This is intended to be achieved by implementation of Know Your Customers (KYC) policy, and Customer Due Diligence guidelines across the financial sector.



KYC instructions have been issued by the RBI to all the Banking companies, Financial Institutions and Intermediary to verify the identity of the clients and track the suspicious movement of illegitimate funds

The objective of KYC and CDD guidelines is to enable the managers to examine and assess their customer's financial dealings from anti-money laundering perspective, so as to make a proper risk assessment for preventing the tainted money from entering the institution and report the suspicious transaction immediately.

Formulation of KYC and CDD Guidelines and procedures specifying the objective of KYC framework by regulators like the RBI, the SEBI and IRDA are designed for appropriate customer identification, and to monitor transactions of suspicious nature. Risk Management and Monitoring Procedures have been specifically stated for having a system at ground level to exercise caution against the transaction suspected to be involving laundered money and for its identification and reporting to the FIU-IND through periodic reports.

Regulatory authorities on the basis of these guidelines and requirements under PMLA have issued instructions on KYC & CDD, to give proper effect to the said law in the financial sector. As already stated above as per the guidelines issued, financial institutions should undertake CDD measures, for establishing the identity of the customer by proper verification, particularly when initiating business relation, or carrying out occasional transaction, beyond the applicable threshold limit, or when there is a suspicion of money laundering or terrorist financing, or there is a doubt about the veracity or adequacy of previously obtained customer identification data.

Compliance with these standards of KYC and CDD by the financial institutions has been made mandatory through instructions issued by concerned regulators. These guidelines are essentially in the nature of filters having been introduced, and being operated at all the important entry points to the economy like bank, insurance, stock market. Penal provisions have made in the Act in case the Banks and Financial Institutions fails to maintain proper record of the client and send required information to the Regulating Agency.

As the offence of money laundering is a serious offence threatening not only the financial health of the country but also its integrity and unity, the Central Government has been mandated vide **section 43** of the Act to constitute special courts in consultation with the Chief Justice of High Court for speedy trial of money laundering cases.

In order to prevent vexatious search in the garb of preventing money laundering, any authority or officer exercising powers under this Act or any rules made there under, who without reasons recorded in writing-searches or cause to be searched any building or place or detains or searches or arrests any person, shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupee or both.

No Civil Proceedings against Banking Companies, financial institutions etc in certain cases (Sec 14)

Section 14 of the Prevention of Money Laundering Act, 2002 gives immunity to banking companies, financial institutions and intermediaries of securities market, etc., against civil proceedings for furnishing information . Sec 14 states,

"Save as otherwise provided in section 13, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12."

BURDEN OF PROOF (SEC 24)

In any proceeding relating to proceeds of crime under this Act,—

- (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
- (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

APPELLETE TRIBUNAL

Appeal to Appellate Tribunal [Sec 26]

- (1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.
- (2) Any reporting entity aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.
- (3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.
- (4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.
- (6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

Procedure and powers of Appellate Tribunal (Sec 35)

- (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.
- (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) reviewing its decisions;
 - (g) dismissing a representation for default or deciding it ex parte;
 - (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
 - (i) any other matter, which may be, prescribed by the Central Government.
- (3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose; the Appellate Tribunal shall have all the powers of a civil court.
- (4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.



- (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Right of appellant to take assistance of authorized representative and of Government to appoint presenting officers. (Sec 39)

- (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.
- Explanation.-For the purposes of this sub-section, the expression "authorised representative" shall have the same meaning as assigned to it under sub-section (2) of section 288 of the Income-tax Act, 1961 (43 of 1961).
- (2) The Central Government or the Director may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with before the Appellate Tribunal. Members, etc., to be public servants.

Civil court not to have jurisdiction (Sec 41)

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High Court (Sec 42)

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.- For the purposes of this section, "High Court" means-

- (i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
- (ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

Special Courts(Sec 43)

- (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation- In this sub-section, "High Court" means the High Court of the State in which a Session Court designated as Special Court was functioning immediately before such designation.

- (2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

OFFENCES TO BE COGNIZABLE AND NON-BAILABLE.(Sec 45)

- [(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless:-

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

- (i) the Director; or (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

[(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.]

AUTHORITIES UNDER ACT (Sec 48)

There shall be the following classes of authorities for the purposes of this Act, namely:- (a) Director or Additional Director or Joint Director, (b) Deputy Director, (c) Assistant Director, and (d) such other class of officers as may be appointed for the purposes of this Act.

OFFENCES BY COMPANIES (Sec 70)

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Such person shall not be liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken plea with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section,-

- (i) "company" means anybody corporate and includes a firm or other association of individuals; and (ii) "director", in relation to a firm, means a partner in the firm.

Let Us Recapitulate:

- The act of money laundering has been criminalized in India through the enactment of the Prevention of Money Laundering Act, 2002.
- Section 4 of the Act provide punishing of rigorous imprisonment ranging from 3 years to seven years and fine for indulging in money laundering activity or process.
- Formulation of KYC and CDD Guidelines and procedures specifying the objective of KYC framework by regulators like the RBI, the SEBI and IRDA are designed for appropriate customer identification, and to monitor transactions of suspicious nature.
- Right of appellant to take assistance of authorized representative and of Government to appoint presenting officers.
- Offences by companies are dealt in Section 70 of the Act.



5.4 THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Short title, extent, application and commencement [Section 1]

- (1) This Act may be called The Foreign Exchange Management Act, 1999.
- (2) It extends to the whole of India.
- (3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.
- (4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions [Section 2]

In this Act, unless the context otherwise requires,

- (a) "Adjudicating Authority" means an officer authorised under sub-section (1) of section 16;
- (b) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 18;
- (c) "authorised person" means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under sub-section (1) of section 10 to deal in foreign exchange or foreign securities;
- (d) "Bench" means a Bench of the Appellate Tribunal;
- (e) "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6;
- (f) "Chairperson" means the Chairperson of the Appellate Tribunal;
- (g) "chartered accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949);
- (h) "currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank;
- (i) "currency notes" means and includes cash in the form of coins and bank notes;
- (j) "current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,
 - (i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
 - (ii) payments due as interest on loans and as net income from investments,
 - (iii) remittances for living expenses of parents, spouse and children residing abroad, and
 - (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;
- (k) "Director of Enforcement" means the Director of Enforcement appointed under sub-section (1) of section 36;
- (l) "export", with its grammatical variations and cognate expressions, means,-
 - (i) the taking out of India to a place outside India any goods,
 - (ii) provision of services from India to any person outside India;

- (m) "foreign currency" means any currency other than Indian currency;
- (n) "foreign exchange" means foreign currency and includes,
 - (i) deposits, credits and balances payable in any foreign currency,
 - (ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
 - (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;
- (o) "foreign security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;
- (p) "import", with its grammatical variations and cognate expressions, means bringing into India any goods or services;
- (q) "Indian currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28-A of the Reserve Bank of India Act, 1934 (2 of 1934);
- (r) "legal practitioner" shall have the meaning assigned to it in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961);
- (s) "Member" means a Member of the Appellate Tribunal and includes the Chairperson thereof;
- (t) "notify" means to notify in the Official Gazette and the expression "notification" shall be construed accordingly;
- (u) "person" includes
 - (i) an individual,
 - (ii) a Hindu undivided family,
 - (iii) a company,
 - (iv) a firm,
 - (v) an association of persons or a body of individual, whether incorporated or not,
 - (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
 - (vii) any agency, office or branch owned or controlled by such person;
- (v) "person resident in India" means
 - (i) a person residing in India for more than one hundred and eightytwo days during the course of the preceding financial year but does not include
 - (A) a person who has gone out of India or who stays outside India, in either case
 - (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
 - (B) a person who has come to or stays in India, in either case, otherwise than
 - (a) for or on taking up employment in India, or
 - (b) for carrying on in India a business or vocation in India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
 - (ii) any person or body corporate registered or incorporated in India,



- (iii) an office, branch or agency in India owned or controlled by a person resident outside India;
 - (iv) an office, branch or agency outside India owned or controlled by a person resident in India;
 - (w) "person resident outside India" means a person who is not resident in India;
 - (x) "prescribed" means prescribed by rules made under this Act;
 - (y) "repatriate to India" means bringing into India the realised foreign exchange and
 - (i) the selling of such foreign exchange to an authorised person in India in exchange for rupees; or
 - (ii) the holding of realised amount in an account with an authorized person in India to the extent notified by the Reserve Bank,
- and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly;
- (z) "Reserve Bank" means the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
 - (za) "security" means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944 (18 of 1944), savings certificates to which the Government Savings Certificates Act, 1959 (46 of 1959) applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 (52 of 1963) or of any mutual fund and includes certificates of title to securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act;
 - (zb) "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;
 - (zc) "Special Director (Appeals)" means an officer appointed under section 18;
 - (zd) "specify" means to specify by regulations made under this Act and the expression "specified" shall be construed accordingly;
 - (ze) "transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

Dealing in foreign exchange, etc. [Section 3]

Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall-

- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;
- (b) make any payment to or for the credit of any person resident outside India in any manner;
- (c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation.-For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;

- (d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation.-For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

Holding of foreign exchange, etc. [Section 4]

Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

Current account transactions [Section 5]

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction.

Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed.

Capital account transactions [Section 6]

- (1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.
- (2) The Reserve Bank may, in consultation with the Central Government, specify
 - (a) any class or classes of capital account transactions which are permissible;
 - (b) the limit up to which foreign exchange shall be admissible for such transactions:

Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

- (3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following
 - (a) transfer or issue of any foreign security by a person resident in India;
 - (b) transfer or issue of any security by a person resident outside India;
 - (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
 - (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;
 - (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
 - (f) deposits between persons resident in India and persons resident outside India;
 - (g) export, import or holding of currency or currency notes;
 - (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
 - (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
 - (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred
 - (i) by a person resident in India and owed to a person resident outside India; or
 - (ii) by a person resident outside India.



- (4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.
- (5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.
- (6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

Export of goods and services [Section 7]

- (1) Every exporter of goods shall
 - (a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India;
 - (b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.
- (2) The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.
- (3) Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

Realisation and repatriation of foreign exchange [Section 8]

Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

Exemption from realisation and repatriation in certain cases [Section 9]

The provisions of sections 4 and 8 shall not apply to the following, namely:

- (a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;
- (b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;
- (c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;
- (d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising therefrom;

- (e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and
- (f) such other receipts in foreign exchange as the Reserve Bank may specify.

Authorised Person [Section 10]

- (1) The Reserve Bank may, on an application made to it in this behalf, authorise any person to be known as authorised person to deal in foreign exchange or in foreign securities, as an authorised dealer, money changer or off-shore banking unit or in any other manner as it deems fit.
- (2) An authorisation under this section shall be in writing and shall be subject to the conditions laid down therein.
- (3) An authorisation granted under sub-section (1) may be revoked by the Reserve Bank at any time if the Reserve Bank is satisfied that
 - (a) it is in public interest so to do; or
 - (b) the authorised person has failed to comply with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction or order made thereunder.

Provided that no such authorisation shall be revoked on any ground referred to in clause (b) unless the authorised person has been given a reasonable opportunity of making a representation in the matter.

- (4) An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.
- (5) An authorised person shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him that the transaction will not involve, and is not designed for the purpose of any contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, and where the said person refuses to comply with any such requirement or makes only unsatisfactory compliance therewith, the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.
- (6) Any person, other than an authorised person, who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5) does not use it for such purpose or does not surrender it to authorised person within the specified period or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder shall be deemed to have committed contravention of the provisions of the Act for the purpose of this section.

Reserve Bank's powers to issue directions to authorised person [Section 11]

- (1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.



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- (2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorised person to furnish such information, in such manner, as it deems fit.
 - (3) Where any authorised person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorised person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

Power of Reserve Bank to inspect authorised person [Section 12]

- (1) The Reserve Bank may, at any time, cause an inspection to be made, by any officer of the Reserve Bank specially authorised in writing by the Reserve Bank in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of
 - (a) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank;
 - (b) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so;
 - (c) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.
- (2) It shall be the duty of every authorised person, and where such person is a company or a firm, every director, partner or other officer of such company or firm, as the case may be, to produce to any officer making an inspection under sub-section (1), such books, accounts and other documents in his custody or power and to furnish any statement or information relating to the affairs of such person, company or firm as the said officer may require within such time and in such manner as the said officer may direct.

Penalties [Section 13]

- (1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.
- (2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation.-For the purposes of this sub-section, "property" in respect of which contravention has taken place, shall include

- (a) deposits in a bank, where the said property is converted into such deposits;
- (b) Indian currency, where the said property is converted into that currency; and
- (c) any other property which has resulted out of the conversion of that property.

Enforcement of the orders of Adjudicating Authority [Section 14]

- (1) Subject to the provisions of sub-section (2) of section 19, if any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.
- (2) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Adjudicating Authority has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Adjudicating Authority, for reasons in writing, is satisfied-
 - (a) that the defaulter, with the object or effect of obstructing the recovery of penalty, has after the issue of notice by the Adjudicating Authority, dishonestly transferred, concealed, or removed any part of his property, or
 - (b) that the defaulter has, or has had since the issuing of notice by the Adjudicating Authority, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.
- (3) Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the defaulter may be issued by the Adjudicating Authority if the Adjudicating Authority is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Adjudicating Authority.
- (4) Where appearance is not made pursuant to a notice issued and served under sub-section (1), the Adjudicating Authority may issue a warrant for the arrest of the defaulter.
- (5) A warrant of arrest issued by the Adjudicating Authority under sub-section (3) or sub-section (4) may also be executed by any other Adjudicating Authority within whose jurisdiction the defaulter may for the time being be found.
- (6) Every person arrested in pursuance of a warrant of arrest under this section shall be brought before the Adjudicating Authority issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey).
Provided that if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Explanation.-For the purposes of this sub-section, where the defaulter is a Hindu undivided family, the karta thereof shall be deemed to be the defaulter.

- (7) When a defaulter appears before the Adjudicating Authority pursuant to a notice to show cause or is brought before the Adjudicating Authority under this section, the Adjudicating Authority shall give the defaulter an opportunity showing cause why he should not be committed to the civil prison.

Pending the conclusion of the inquiry, the Adjudicating Authority may, in his discretion, order the defaulter to be detained in the custody of such officer as the Adjudicating Authority, may think fit or release him on his furnishing the security to the satisfaction of the Adjudicating Authority for his appearance as and when required.

- (8) Upon the conclusion of the inquiry, the Adjudicating Authority may make an order for the detention of the defaulter in the civil prison and shall in that even cause him to be arrested if he is not already under arrest.

Provided that in order to give a defaulter an opportunity of satisfying the arrears, the Adjudicating Authority may, before making the order of detention, leave the defaulter in the custody of the



officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Adjudicating Authority for his appearance at the expiration of the specified period if the arrears are not satisfied.

- (9) When the Adjudicating Authority does not make an order of detention under sub-section (9), he shall, if the defaulter is under arrest, direct his release.
- (10) Every person detained in the civil prison in execution of the certificate may be so detained?
 - (a) where the certificate is for a demand of an amount exceeding rupees one crore, up to three years, and
 - (b) in any other case, up to six months.
- (11) Provided that he shall be released from such detention on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison.
- (12) A defaulter released from detention under this section shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be arrested under the certificate in execution of which he was detained in the civil prison.
- (13) A detention order may be executed at any place in India in the manner provided for the execution of warrant of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

Power to compound contravention [Section 15]

- (1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed.
- (2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

Appointment of Adjudicating Authority [Section 16]

- (1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (3) (hereinafter in this section referred to as the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty.

Provided that where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

- (2) The Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the order published in the Official Gazette, their respective jurisdictions.
- (3) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.
- (4) The said person may appear either in person or take the assistance of a legal practitioner or a chartered accountant of his choice for presenting his case before the Adjudicating Authority.
- (5) Every Adjudicating Authority shall have the same powers of a Civil Court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and

- (a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);
 - (b) shall be deemed to be a Civil Court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).
- (6) Every Adjudicating Authority shall deal with the complaint under sub-section (2) as expeditiously as possible and endeavour shall be made to dispose of the complaint finally within one year from the date of receipt of the complaint;

Provided that where the complaint cannot be disposed of within the said period, the Adjudicating Authority shall record periodically the reasons in writing for not disposing of the complaint within the said period.

Appeal to Special Director (Appeals) [Section 17]

- (1) The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.
- (2) Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director of Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals).
- (3) Every appeal under sub-section (1) shall be filed within forty-five days from the date on which the copy of the order made by the Adjudicating Authority is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.

Provided that the Special Director (Appeals) may entertain an appeal after the expiry of the said period of forty-five days, if he is satisfied that there was sufficient cause for not filing it within that period.

- (4) On receipt of an appeal under sub-section (1), the Special Director (Appeals) may after giving the parties to the appeal an opportunity of being heard, pass such order thereon as he thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) The Special Director (Appeals) shall send a copy of every order made by him to the parties to appeal and to the concerned Adjudicating Authority.
- (6) The Special Director (Appeals) shall have the same powers of a Civil Court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and
 - (a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);
 - (b) shall be deemed to be a Civil Court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Establishment of Appellate Tribunal [Section 18]

The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Foreign Exchange to hear appeals against the orders of the Adjudicating Authorities and the Special Director (Appeals) under this Act.

Appeal to Appellate Tribunal [Section 19]

- (1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal.



Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government.

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

- (2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed.

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be.
- (5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal.

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

- (6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

Composition of Appellate Tribunal [Section 20]

- (1) The Appellate Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit.
- (2) Subject to the provisions of this Act,
- the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;
 - a Bench may be constituted by the Chairperson with one or more Members as the Chairperson may deem fit;
 - the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, notify;
 - the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.
- (3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.
- (4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two

Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

Qualifications for appointment of Chairperson, Member and Special Director (Appeals) [Section 21]

- (1) A person shall not be qualified for appointment as the Chairperson or a Member unless he
 - (a) in the case of Chairperson, is or has been, or is qualified to be, a Judge of a High Court; and
 - (b) in the case of a Member, is or has been, or is qualified to be, a District Judge.
- (2) A person shall not be qualified for appointment as a Special Director (Appeals) unless he
 - (a) has been a member of the Indian Legal Service and has held a post in Grade I of that Service; or
 - (b) has been a member of the Indian Revenue Service and has held a post equivalent to a Joint Secretary to the Government of India.

Term of office [Section 22]

The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office.

Provided that no Chairperson or other Member shall hold office as such after he has attained,

- (a) in the case of the Chairperson, the age of sixty-five years;
- (b) in the case of any other Member, the age of sixty-two years.

Terms and conditions of service [Section 23]

The salary and allowances payable to and the other terms and conditions of service of the Chairperson, other Members and the Special Director (Appeals) shall be such as may be prescribed.

Provided that neither the salary and allowances nor the other terms conditions of service of the Chairperson or a Member shall be varied to his disadvantage after appointment.

Vacancies [Section 24]

If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation and removal [Section 25]

- (1) The Chairperson or a Member may, by notice in writing under his hand addressed to the Central Government, resign his office.

Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

- (2) The Chairperson or a Member shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a Member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

Member to act as Chairperson in certain circumstances [Section 26]

- (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.



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- (2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Staff of Appellate Tribunal and Special Director (Appeals) [Section 27]

- (1) The Central Government shall provide the Appellate Tribunal and the Special Director (Appeals) with such officers and employees as it may deem fit.
- (2) The officers and employees of the Appellate Tribunal and office of the Special Director (Appeals) shall discharge their functions under the general superintendence of the Chairperson and the Special Director (Appeals), as the case may be.
- (3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and office of the Special Director (Appeals) shall be such as may be prescribed.

Procedure and powers of Appellate Tribunal and Special Director (Appeals) [Section 28]

- (1) The Appellate Tribunal and the Special Director (Appeals) shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal and the Special Director (Appeals) shall have powers to regulate its own procedure.
- (2) The Appellate Tribunal and the Special Director (Appeals) shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) reviewing its decisions;
 - (g) dismissing a representation of default or deciding it ex parte;
 - (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
 - (i) any other matter which may be prescribed by the Central Government.
- (3) An order made by the Appellate Tribunal or the Special Director (Appeals) under this Act shall be executable by the Appellate Tribunal or the Special Director (Appeals) as a decree of Civil Court and, for this purpose, the Appellate Tribunal and the Special Director (Appeals) shall have all the powers of a Civil Court.
- (4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal or the Special Director (Appeals) may transmit any order made by it to a Civil Court having local jurisdiction and such Civil Court shall execute the order as if it were a decree made by that Court.
- (5) All proceedings before the Appellate Tribunal and the Special Director (Appeals) shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a Civil Court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Distribution of business amongst Benches [Section 29]

Where Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of Chairperson to transfer cases [Section 30]

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be by majority [Section 31]

If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Right of appellant to take assistance of legal practitioner or chartered accountant and of Government, to appoint presenting officers [Section 32]

- (1) A person preferring an appeal to the Appellate Tribunal or the Special Director (Appeals) under this Act may either appear in person or take the assistance of a legal practitioner or a chartered accountant of his choice to present his case before the Appellate Tribunal or the Special Director (Appeals), as the case may be.
- (2) The Central Government may authorise one or more legal practitioners or chartered accountants or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal or the Special Director (Appeals), as the case may be.

Members, etc., to be public servants [Section 33]

The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Special Director (Appeals) and the Adjudicating Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Civil Court not to have jurisdiction [Section 34]

No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an Adjudicating Authority or the Appellate Tribunal or the Special Director (Appeals) is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to High Court [Section 35]

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.-In this section "High Court" means

- (a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
- (b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally work for gain.

Directorate of Enforcement [Section 36]



- (1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.
- (2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint Officers of Enforcement below the rank of an Assistant Director of Enforcement.
- (3) Subject to such conditions and limitations as the Central Government may impose, an Officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

Power of search, seizure, etc [Section 37]

- (1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.
- (2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.
- (3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.

Empowering other officers [Section 38]

- (1) The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any central excise officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be stated in the order.
- (2) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on the income-tax authorities under the Income-tax Act, 1961 (43 of 1961), subject to such conditions and limitations as the Central Government may impose.

Presumption as to documents in certain cases [Section 39]

Where any document

- (i) is produced or furnished by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law; or
- (ii) has been received from any place outside India (duly authenticated by such authority or person and in such manner as may be prescribed) in the course of investigation of any contravention under this Act alleged to have been committed by any person,

and such document is tendered in any proceeding under this Act in evidence against him, or against him and any other person who is proceeded against jointly with him, the Court or the Adjudicating Authority, as the case may be, shall

- (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;
- (c) in a case falling under clause (i), also presume, unless the contrary is proved, the truth of the contents of such document.

Suspension of operation of this Act [Section 40]

- (1) If the Central Government is satisfied that circumstances have arisen rendering it necessary that any permission granted or restriction imposed by this Act should cease to be granted or imposed, or if it considers necessary or expedient so to do in public interest, the Central Government may, by notification, suspend or relax to such extent either indefinitely or for such period as may be notified, the operation of all or any of the provisions of this Act.
- (2) Where the operation of any provision of this Act has under sub-section (1) been suspended or relaxed indefinitely, such suspension or relaxation may, at any time while this Act remains in force, be removed by the Central Government by notification.
- (3) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Power of Central Government to give directions [Section 41]

For the purposes of this Act, the Central Government may, from time to time, give to the Reserve Bank such general or special directions as it thinks fit, and the Reserve Bank shall, in the discharge of its functions under this Act, comply with any such directions.

Contravention by companies [Section 42]

- (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

- (2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section

- (i) "Company" means any body corporate and includes a firm or other association of individuals; and
- (ii) "director", in relation to a firm, means a partner in the firm.

Death or insolvency in certain cases [Section 43]

Any right, obligation, liability, proceeding or appeal arising in relation to the provisions of section 13 shall not abate by reason of death or insolvency of the person liable under that section and upon such death or insolvency such rights and obligations shall devolve on the legal representative of such person or the official receiver or the official assignee, as the case may be.

Provided that a legal representative of the deceased shall be liable only to the extent of the extent of the inheritance or estate of the deceased.



Bar of legal proceedings [Section 44]

No suit, prosecution or other legal proceeding shall lie against the Central Government or the Reserve Bank or any officer of that Government or of the Reserve Bank or any other person exercising any power or discharging any functions or performing any duties under this Act, for anything in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

Removal of difficulties [Section 45]

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with the provisions of this Act for the purpose of removing the difficulty.
Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Power to make rules [Section 46]

- (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for,
 - (a) the imposition of reasonable restrictions on current account transactions under section 5;
 - (b) the manner in which the contravention may be compounded under subsection (l) of section 15;
 - (c) the manner of holding an inquiry by the Adjudicating Authority under sub-section (1) of section 16;
 - (d) the form of appeal and fee for filing such appeal under sections 17 and 19;
 - (e) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals) under section 23;
 - (f) the salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and the office of the Special Director (Appeals) under sub-section (3) of section 27;
 - (g) the additional matters in respect of which the Appellate Tribunal and the Special Director (Appeals) may exercise the powers of a Civil Court under clause (i) of sub-section (2) of section 28;
 - (h) the authority or person and the manner in which any document may be authenticated under clause (ii) of section 39; and
 - (i) any other matter which is required to be, or may be, prescribed.

Power to make regulations [Section 47]

- (1) The Reserve Bank may, by notification, make regulations to carry out the provisions of this Act and the rules made thereunder.
- (2) Without prejudice to the generality of the foregoing power, such regulations may provide for,
 - (a) the permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions under section 6;
 - (b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of section 7;
 - (c) the period within which and the manner of repatriation of foreign exchange under section 8;
 - (d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;
 - (e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;

- (f) the limit up to which foreign exchange acquired may be exempted under clause (d) of section 9;
- (g) the limit up to which foreign exchange acquired may be retained under clause (e) of section 9;
- (h) any other matter which is required to be, or may be, specified.

Rules and regulations to be laid before Parliament [Section 48]

Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Repeal and saving [Section 49]

- (1) The Foreign Exchange Regulation Act, 1973 (46 of 1973) is hereby repealed and the Appellate Board constituted under sub-section (1) of section 52 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.
- (2) On the dissolution of the said Appellate Board, the person appointed as Chairman of the Appellate Board and every other person appointed as Member and holding office as such immediately before such date shall vacate their respective offices and no such Chairman or other person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.
- (3) Notwithstanding anything contained in any other law for the time being in force, no Court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act.
- (4) Subject to the provisions of sub-section (3) all offences committed under the repealed Act shall continue to be governed by the provisions of the repealed Act as if that Act had not been repealed.
- (5) Notwithstanding such repeal,
 - (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the Act hereby repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;
 - (b) any appeal preferred to the Appellate Board under sub-section (2) of section 52 of the repealed Act but not disposed of before the commencement of this Act shall stand transferred to and shall be disposed of by the Appellate Tribunal constituted under this Act;
 - (c) every appeal from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52 of the repealed Act shall, if not filed before the commencement of this Act, be filed before the High Court within a period of sixty days of such commencement. Provided that the High Court may entertain such appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period.
- (6) Save as otherwise provided in sub-section (3), the mention of particular matters in sub-sections (2), (4) and (5) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeal.

Study Note - 6

LAWS RELATED TO INSURANCE SECTOR



This Study Note includes

- 6.1 The Insurance Act, 1938**
- 6.2 The Insurance Regulatory and Development Authority Act, 1999**

6.1 THE INSURANCE ACT, 1938

Short title, extent and commencement [Section 1]

- (1) This Act may be called Insurance Act, 1938.
- (1-A) "Authority" means the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date³ as the Central Government may, by Notification in the Official Gazette, appoint in this behalf.

Definitions [Section 2]

In this Act, unless there is anything repugnant in the subject or context, -

- (1) "actuary" means an actuary as defined in clause (a) of sub-section (1) of section 2 of the Actuaries Act, 2006;
- (1A) "Authority" means the Insurance Regulatory and Development Authority of India established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999;
- (2) "policy-holder" includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition;
- (3) "approved securities," means-
 - (i) Government securities and other securities charged on the revenue of the Central Government or of the Government of a State or guaranteed fully as regards principal and interest by the Central Government or the Government of any State;
 - (ii) debentures or other securities for money issued under the authority of any Central Act or Act of a State Legislature by or on behalf of a port trust or municipal corporation or city improvement trust in any Presidency-town;
 - (iii) shares of a corporation established by law and guaranteed fully by the Central Government or the Government of a State as to the repayment of the principal and the payment of the divided;
 - (iv) securities issued or guaranteed fully as regards principal and interest by the Government of any Part B State and specified as approved securities for the purposes of this Act by the Central Government by notification in the Official Gazette; and
- (4) "Auditor" means a person qualified under the Chartered Accountants Act, 1949 (38 of 1949), to act as an auditor of companies ;

- (4A) "banking company" and "company" shall have the meanings respectively assigned in them in clauses (c) and (d) of sub-section (1) of Section 5 of the Banking Companies Act, 1949 (10 of 1949);
- (5) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer or a provident society as defined in Part III means certified by a principal officer of such insurer or provident society to be a true copy or a correct translation, as the case may be;
- (5A) ** Omitted**
- (5-B) "Controller of Insurance" means the officer appointed by the Central Government under section 2-B to exercise all the powers, discharge the functions and perform the duties of the Authority under this Act or the Life Insurance Corporation Act, 1956 (31 of 1956), or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or the Insurance Regulatory and Development Authority Act, 1999;]
- (6) "Court" means the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction;
- (6A) "fire insurance business" means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance Policies;
- (6B) "general insurance business" means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them;
- (6C) "health insurance business" means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover;
- (7) "Government security" means a Government security as defined in the Public Debt Act, 1944 (18 of 1944);
- (7A) "Indian insurance company" means any insurer, being a company which is limited by shares, and,—
 - (a) which is formed and registered under the Companies Act, 2013 as a public company or is converted into such a company within one year of the commencement of the Insurance Laws (Amendment) Act, 2015;
 - (b) in which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent. of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed.
- Explanation.—** For the purposes of this sub-clause, the expression "control" shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;
- (c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business;
- (8) **Omitted**
- (8A) "insurance co-operative society" means any insurer being a co-operative society,-
 - (a) which is registered on or after the commencement of the Insurance (Amendment) Act, 2002, as a co-operative society under the Co-operative Societies Act, 1912 (2 of 1912)



or under any other law for the time being in force in any State relating to Co-operative Societies or under the Multi-State Co-operative Societies Act, 1984 (51 or 1984);

- (b) having a minimum paid-up capital of rupees one hundred crore in case of life insurance business, general insurance business and health insurance business;
 - (c) in which no body corporate, whether incorporated or not, formed or registered outside India, either by itself or through its subsidiaries or nominees, at any time, holds more than twenty-six per cent of the capital of such Co-operative Society;
 - (d) whose sole purpose is to carry on life insurance business or general insurance business or health insurance business in India:
- (9) "Insurer" means —
- (a) an Indian Insurance Company, or
 - (b) a statutory body established by an Act of Parliament to carry on insurance business, or
 - (c) an insurance co-operative society, or
 - (d) a foreign company engaged in re-insurance business through a branch established in India.

Explanation.— For the purposes of this sub-clause, the expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd's established under the Lloyd's Act, 1871 (United Kingdom) or any of its Members;

- (10) "insurance agent" means an insurance agent who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance;
- (10A) "investment company" means a company whose principal business is the acquisition of shares, stocks debentures or other securities;
- (10B) "intermediary or insurance intermediary" shall have the meaning assigned to it in clause (f) of sub-section 2 of the Insurance Regularoty and Development Authority Act, 1999 (41 of 1999)
- (11) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—
- (a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance;
 - (b) the granting of annuities upon human life; and
 - (c) the granting of superannuation allowances and benefit payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons;

(12) **Omitted**

(13) **Omitted**

- (13A) "marine insurance business" means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit, by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies;

- (13B) "miscellaneous insurance business" means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in clause (6A), (11) and (13A);
- (14) "prescribed" means prescribed by rules made under this Act; and
- (15) **Omitted**
- (16) "private company" and "public company" have the meanings respectively assigned to them in Clauses (68) and (72) of Sec. 2 of the Companies Act, 2013;
- (16A) "regulations" means the regulations framed by the Insurance Regulatory and Development Authority of India established under the Insurance Regulatory and Development Authority Act, 1999;
- (16B) "re-insurance" means the insurance of part of one insurer's risk by another insurer who accepts the risk for a mutually acceptable premium;
- (16C) "Securities Appellate Tribunal" means the Securities Appellate Tribunal established under section 15K of the Securities and Exchange Board of India Act, 1992;
- (17) **Omitted**

Interpretation of certain words and expressions [Section 2A]

Interpretation of certain words and expressions.- Words and expressions used and not defined in this Act but defined in the Life Insurance Corporation Act, 1956 (31 of 1956), the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), and the Insurance Regulatory and Development Authority Act, 1999 shall have the meanings respectively assigned to them in those Acts.

Appointment of Authority of Insurance [Section 2B]

- (1) If at any time, the Authority is superseded under sub-section (1) of section 19 of the Insurance Regulatory and Development Authority Act, 1999, the Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance till such time the Authority is reconstituted under sub-section (3) of section 19 of that Act.
- (2) In making any appointment under this section, the Central Government shall have due regard to the following considerations, namely, whether the person to be appointed has had experience in industrial, commercial or insurance matter and whether such person has actuarial qualifications.

Prohibition of transaction of insurance business by certain persons [Section 2C]

- (1) Save as hereinafter provided, no person shall, after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), begin to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall after the expiry of one year from such commencement, continue to carry on any such business unless he is
 - (a) a public company, or
 - (b) a society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, or
 - (c) a body corporate incorporated under the law of any country outside India not being of the nature of a private company:

Provided that the Central Government may, by notification in the official Gazette, exempt from the operation of this section to such extent for such period and subject to such conditions as it may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause (c) of clause (11) of Section 2 or for the purpose of carrying on any general insurance business;

Provided further that in the case of an insurer carrying on any general insurance business no such notification shall be issued having effect for more than three years at any one time:



Provided also that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

- (2) Every notification issued under subsection (1) shall be laid before Parliament as soon as may be after it is issued.

Provided also that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.

- (3) Notwithstanding anything contained in sub-section (1), an insurance co-operative society may carry on any class of insurance business in India under this Act on or after the commencement of the Insurance (Amendment) Act, 2002

Insurers to be subject to this Act while liabilities remain unsatisfied [Section 2D]

Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in 3[India] in respect of business of that class remain unsatisfied or not otherwise provided for.

Registration [Section 3]

- (1) No person shall, after commencement of this Act, being to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Authority a certificate of registration for the particular class of insurance business:

Provided that in case of an insurer who was carrying on any class of insurance business in India at the commencement of this Act, failure to obtain a certificate of registration in accordance with the requirements of this sub-clause shall not operate to invalidate any contract of insurance entered into by him if before such date as may be fixed in this behalf by the Central Government by notification in the official Gazette, he has obtained that certificate:

Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made an application for such registration within the said period of three months, till the disposal of such application:

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act

Provided farther that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made an application for such registration within the said period of three months, till the disposal of such application.

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act

- (2) Every application for registration shall be made in such manner and shall be accompanied by such documents as may be specified by the regulations.

- (2A) If, on receipt of an application for registration and after making such inquiry as he deems fit, the Authority is satisfied that—
- (a) the financial condition and the general character of management of the applicant are sound;
 - (b) the volume of business likely to be available to, and the capital structure and earning prospects of, the applicant will be adequate;
 - (c) the interest of the general public will be served if the certificate of registration is granted to the applicant in respect of the class or classes of insurance business specified in the application; and
 - (d) the applicant has complied with the provisions of Sections 2-C, 5, and 31A and has fulfilled all the requirements of this section applicable to him, the Authority may register the applicant as an insurer and grant him a certificate of registration.
- (2AA) The Authority shall give preference to register the applicant and grant him a certificate of registration if such applicant agrees, in the form and manner as may be specified by the regulations made by the Authority, to carry on the life insurance business or general insurance business for providing health cover to individuals or group of individuals.
- (2B) Where the Authority refuses registration; he shall record the reasons for such decision and shall furnish a copy thereof to the applicant.
- (2C) Any person aggrieved by the decision of the Authority refusing registration may, within thirty days from the date on which a copy of the decision is received by him, appeal to the Securities Appellate Tribunal.
- (2D) ****Omitted****
- (3) In the case of any insurer having joint venture with a person having its principal place of business domiciled outside India or any insurer as defined in sub-clause (d) of clause (9) of section 2, the Authority may withhold registration already made if it is satisfied that in the country in which such person has been debarred by law or practice of that country to carry on insurance business.
- (4) The Authority may suspend or cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—
- (a) if the insurer fails, at any time, to comply with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities, or
 - (b) if the insurer is in liquidation or is adjudged as an insolvent, or
 - (c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer without the approval of the Authority, or
 - (d) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or any regulation or order made or, any direction issued thereunder, or
 - (e) if the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular court of law, or
 - (f) if the insurer carries on any business other than insurance business or any prescribed business, or
 - (g) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or



- (h) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 2013 or the General Insurance Business (Nationalisation) Act, 1972 or the Foreign Exchange Management Act, 1999 or the Prevention of Money Laundering Act, 2002, or
- (i) if the insurer fails to pay the annual fee required under section 3A, or
 - (j) if the insurer is convicted for an offence under any law for the time being in force, or
 - (k) if the insurer being a co-operative society set up under the relevant State laws or, as the case may be, the Multi-State Co-operative Societies Act, 2002, contravenes the provisions of law as may be applicable to the insurer.
- (5) When the Authority suspends or cancels any registration under clause (a), clause (d), clause (e), clause (f), clause (g) or clause (i) of sub-section (4), it shall give notice in writing to the insurer of its decision, and the decision shall take effect on such date as it may specify in that behalf in the notice, such date not being less than one month not more than two months from the date of the receipt of the notice in the ordinary course of transmission.
- (5A) When the Authority suspends or cancels any registration under clause (b), (c), (j) or (k) of sub-section (4), the suspension or cancellation, as the case may be, shall take effect on the date on which notice of the order of suspension or cancellation is served on the insurer.
- (5B) When a registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of sub-section (5D), continue as if the cancellation had not taken place.
- (5C) Where a registration is suspended or cancelled under clause (a), clause (d), clause (e), clause (f), clause (g) or clause (i) of sub-section (4), the Authority may at its discretion revive the registration, if the insurer within six months from the date on which the suspension or cancellation took effect complies with the provisions of section 64VA as to the excess of the value of his assets over the amount of his liabilities or has had an application under sub-section (4) of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (e) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority Act, 1999, or of any rule or any regulation, or any order made thereunder or any direction issued under those Acts, or that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by the Authority
- (5D) Where the registration of an insurance company is cancelled under sub-section (4), the Authority may, after expiry of six months from the date on which the cancellation took effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company has been revived under sub-section (5C) or an application for winding up the company has been already presented to the Court. The Court may proceed as if an application under this sub-section were an application under sub-section (2) of section 53, or sub-section (1) of Sec. 58, as the case may be.
- (5E) The Authority may, by order, suspend or cancel any registration in such manner as may be determined by the regulations made by it:
- Provided** that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.
- (6) [***]

- (7) The Authority may, on payment of such fee, not exceeding five thousand rupees, as may be determined by the regulations, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where the Authority is of opinion that the issue of duplicate certificate is necessary.

Payment of annual fee by insurer [Section 3A]

- (1) An insurer who has been granted a certificate of registration under section 3 shall pay such annual fee to the Authority in such manner as may be specified by the regulations.
- (2) Any failure to deposit the annual fee shall render the certificate of registration liable to be cancelled.

Certification of soundness of terms of life insurance business [Section 3B]

If, when considering an application for registration under section 3 or at any other time, it appears to the Authority that the Assured rates, advantages, terms and conditions offered or to be offered in connection with life insurance business are in any respect not workable or sound, he may require that a statement thereof shall be submitted to an actuary appointed by the insurer for the purpose and approved by the Authority, and may by order in writing further require the insurer to make within such time as may be specified in the order such modifications in the said rates, advantages, terms, or conditions, as the case may be, as the said actuary may report to be necessary to enable him to certify that the said rates, advantages, terms and conditions are workable and sound.

Minimum limits for annuities and other benefits secured by policies of life Insurance [Section 4]

- (I) The insurer shall pay or undertake to pay on any policy of life insurance or a group policy issued, a minimum annuity and other benefits as may be determined by regulations excluding any profit or bonus provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment of surrender value of any amount.

Restriction on name of insurer [Section 5]

- (1) An insurer shall not be registered by a name identical with that by which an insurer in existence is already registered, or so nearly resembling that name as to be calculated to deceive except when the insurer in existence is in the course of being dissolved and signifies his consent to the Authority.
- (2) If an insurer, through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first mentioned insurer shall, if called upon to do so by the Authority on the application of the second mentioned insurer, change his name within a time to be fixed by the Authority:

Provided that nothing in this section shall apply to any insurer carrying on business before the 27th day of January, 1937, under the Indian Life Assurance Companies Act, 1912 (6 of 1912):

Provided further that in the application of this section to any insurer who begins to carry on insurance business after the commencement of the Insurance (Amendment) Act, 1946 (6 of 1946), the references to an insurer in existence in sub-section (1) and this sub-section shall be construed as including references to a provident society (as defined in Part III in existence, whether or not the society is in course of being dissolved).

Requirements as to capital [Section 6]

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



- (i) a paid-up equity capital of rupees one hundred crore, in case of a person carrying on the business of life insurance or general insurance; or
- (ii) a paid-up equity capital of rupees one hundred crore, in case of a person carrying on exclusively the business of health insurance; or
- (iii) a paid-up equity capital of rupees two hundred crore, in case of a person carrying on exclusively the business as a re-insurer:

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

Provided further that in determining the paid-up equity capital, any preliminary expenses incurred in the formation and registration of any insurer as may be specified by the regulations made under this Act, shall be excluded.

- (2) No insurer, as defined in sub-clause (d) of clause (9) of section 2, shall be registered unless he has net owned funds of not less than rupees five thousand crore.

Requirements as to capital structure and voting rights and maintenance of registers of beneficial owners of shares [Section 6A]

- (1) No public company limited by shares having its registered office in India, shall carry on life insurance business or general insurance business or health insurance business or re-insurance business, unless it satisfies the following conditions, namely:—
 - (i) that the capital of the company shall consist of equity shares each having a single face value and such other form of capital, as may be specified by the regulations;
 - (ii) that the voting rights of shareholders are restricted to equity shares;
 - (iii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new:

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950, issued any shares other than ordinary shares each of which has a single face value or any shares, the paid-up amount whereof is not the same for all of them for a period of three years from such commencement;

- (2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association but subject to the other provisions contained in this section the voting right of every shareholder of any public company as aforesaid shall in all cases be strictly proportionate to the paid-up amount of the equity shares held by him.

(3) **Omitted**

- (4) A public company as aforesaid which carries on life insurance business, general and health insurance business and re-insurance business—
 - (a) shall, in addition to the register of members maintained under the Companies Act, 2013, maintain a register of shares in which the name, occupation and address of the beneficial owner of each share shall be entered including any change of beneficial owner declared to it within fourteen days from the receipt of such declaration;
 - (b) shall not register any transfer of its shares—
 - (i) unless, in addition to compliance being made with the provisions of section 56 of the

Companies Act, 2013, the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others and in the latter case giving the name, occupation and address of the beneficial owner or owners, and the extent of the beneficial interest of each;

- (ii) where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent. of its paid-up capital unless the previous approval of the Authority has been obtained to the transfer;
- (iii) where, the nominal value of the shares intended to be transferred by any individual, firm, group, constituents of a group, or body corporate under the same management, jointly or severally exceeds one per cent. of the paid-up equity capital of the insurer, unless the previous approval of the Authority has been obtained for the transfer.

Explanation.— For the purposes of this sub-clause, the expressions "group" and "same management" shall have the meanings respectively assigned to them in the Competition Act, 2002.

- (5) Every person who has any interest in any share of a company referred to in sub-section (4) which stands in the name of another person in the register of members of the company, shall, within thirty days from the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), or from the date on which he acquires such interest, whichever is later, make a declaration in the prescribed form (which shall be countersigned by the person in whose name the share is registered) to the company declaring his interest in such share, and notwithstanding anything contained in any other law or in any contract to the contrary, a person who fails to make a declaration as aforesaid in respect of any share shall be deemed to have no right or title whatsoever in that share:

Provided that nothing in this sub-section shall affect the right of a person who has an interest in any such share to establish in a court his right thereto, if the person, in whose name the share is registered, refuses to countersign the declaration as required by this sub-section:

Provided further that where any share, belonging to an individual who has made any such declaration as is referred to in this sub-section, is held by a company in its name in pursuance of any trust or for the purpose of safe custody or collection or realization of dividend, such individual shall, notwithstanding anything contained in the Companies Act, 2013, or in the memorandum or articles of association of the company which has issued the share, be deemed to be the holder of the said share for the purpose of exercising any voting rights under this section to the exclusion of any other person.

- (6) **Omitted**
- (7) **Omitted**
- (8) **Omitted**
- (9) **Omitted**
- (10) **Omitted**
- (11) The provisions of this section, shall, on and from the commencement of the Insurance (Amendment) Act, 1968, also apply to insurers carrying on general insurance business subject to the following notifications, namely:-
 - (i) that references in sub-sections (1), (3), (5) and (6) to the Insurance (Amendment) Act, 1950, (47 of 1950), shall be construed as reference to the Insurance (Amendment) Act, 1968;



Explanation -For the purposes of this section, the holding of a person in the shares of a company shall be deemed to include-

- (i) the total paid-up holding in such shares held by such person in the name of others; and
- (ii) if any shares of the company are held -
 - (a) by a public limited company, of which such person is a member holding more than ten per cent. of the paid-up capital, or
 - (b) by a private limited company, of which such person is a member, or
 - (c) by a company, of which such person is a managing director, manager, or in which he has a controlling interest, or
 - (d) by a firm in which such person is a partner, or
 - (e) by such person jointly with others,

such part of the total paid-up holding of the company or firm or of the total joint holding in those shares, as is proportionate to the contribution made by such person to the paid-up capital of the company, the paid-up capital of the firm or the joint holding, as the case may be.

Provision for securing compliance with requirements relating to capital structure [Section 6B]

- (1) For the purpose of enabling any public company carrying on life or general or health insurance or re-insurance business to bring its capital structure into conformity with the requirements of section 6A, an officer appointed in this behalf by the Authority may, notwithstanding anything contained in the Companies Act, 2013,—
 - (a) examine any scheme proposed for the purpose aforesaid by the directors of the company:

Provided that—

 - (i) the scheme has been placed before a meeting of the shareholders for their opinion and has been forwarded to the officer together with the opinion of the shareholders thereon, and
 - (ii) the scheme does not involve any diminution of the liability of the shareholders in respect of unpaid-up share capital;
 - (b) invite objections and suggestions in respect of the scheme so proposed; and
 - (c) after considering such objections and suggestions to the scheme so proposed, sanction it with such modifications as he may consider necessary or desirable.
- (2) Any shareholder or other person aggrieved by the decision of the officer sanctioning a scheme under sub-section (1) may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the Securities Appellate Tribunal within whose jurisdiction the registered office of the insurer is situate for the purpose of modifying or correcting any such scheme for the purpose specified in sub-section (1).
- (3) The decision of the Securities Appellate Tribunal where an appeal has been preferred to it under sub-section (2), or of the officer aforesaid where no such appeal has been preferred, shall be final and binding on all the shareholders and other persons concerned.
- (4) **Omitted**

Separation of accounts and funds [Section 10]

- (1) Where the insurer carries on business of more than one of the following classes, namely, life insurance, fire insurance, marine insurance or miscellaneous insurance, he shall keep a separate account of all receipts and payments in respect of each such class of insurances business and

where the insurer carries on business of miscellaneous insurance whether alone or in conjunction with business of another class, he shall, unless the Authority waives this requirement in writing, keep a separate account of all receipts and payments in respect of each of such sub-classes of miscellaneous insurance business as may be specified by the regulations:

Provided that no sub-class of miscellaneous insurance business shall be prescribed under this sub-section if the insurance business comprised in the sub-clause consist of insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which, if a claim arises, the insurer's liability to pay benefit ceases within one year of the date on which the claim arose.

- (2) Where the insurer carries on the business of life insurance all receipts due in respect of such business, shall be carried to and shall form a separate fund to be called the life insurance fund the assets of which shall, be kept distinct and separate from all other assets of the insurer and the deposit made by the insurer in respect of life insurance business shall be deemed to be part of the assets of such fund; and every insurer shall, within the time limited in sub-section (1) of section 15 in regard to the furnishing of the statements and accounts referred to in section 11, furnish to the Authority a statement showing in detail such assets as at the close of every calendar year duly certified by an auditor or by a person qualified to audit:

Provided that such statement shall, in the case of an insurer to whom section 11 applies, be set out as a part of the balance-sheet mentioned in clause (a) of sub-section (1) of that section:

Provided further that an insurer may show in such statement all the assets held in his life department, but at the same time showing any deductions on account of general reserves and other liabilities of that department:

Provided also that the Authority may call for a statement similarly certified of such assets as at any other date specified by him to be furnished within a period of three months from the date with reference to which the statement is called for

- (2A) No insurer carrying on life insurance business shall be entitled to be registered for any class of insurance business in addition to the class or classes for which he has been already registered unless the Authority is satisfied that the assets of the life insurance fund of the insurer are adequate to meet all his liabilities on policies of life insurance maturing for payment.
- (2AA) Where the insurer carries on the business of insurance, all receipts due in respect of each sub-class of such insurance business shall be carried to and shall form a separate fund, the assets of which shall be kept separate and distinct from other assets of the insurer and every insurer shall submit to the Authority the necessary details of such funds as may be required by the Authority from time to time and such funds shall not be applied directly or indirectly, save as expressly permitted under this Act or regulations made thereunder
- (3) The life insurance fund shall be as absolutely the security of the life policy-holders as though it belonged to an insurer carrying on no other business than life insurance business and shall not be liable for any contracts of the insurer for which it would not have been liable had the business of the insurer been only that of life insurance and shall not be applied directly or indirectly for any purposes other than those of the life insurance business of the insurer.

Accounts and balance- sheet [Section 11]

- (1) Every insurer, on or after the date of the commencement of the Insurance Laws (Amendment) Act, 2015, in respect of insurance business transacted by him and in respect of his shareholders' funds, shall, at the expiration of each financial year, prepare with reference to that year, balance sheet, a profit and loss account, a separate account of receipts and payments, a revenue account in accordance with the regulations as may be specified.
- (2) Every insurer shall keep separate accounts relating to funds of shareholders and policyholders.



- (3) Unless the insurer is a company as defined in clause (20) of section 2 of the Companies Act, 2013, the accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in case of an insurance cooperative society by the person in charge of the society and shall be accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report on the affairs of the business during that period.

Audit [Section 12]

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

Actuarial report and abstract [Section 13]

- (1) Every insurer carrying on life insurance business shall, once at least every year cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations:

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

Provided further that every insurer, on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999, shall cause an abstract of the report of the actuary to be made in such manner as may be specified by the regulations.

- (2) The provisions of sub-section (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public.
- (3) There shall be appended to every such abstract as is referred to in sub-section (1) or sub-section (2) a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

- (4) There shall be appended to every such abstract a statement prepared in such form and in such manner as may be specified by the regulations:

Provided that, if the investigation referred to in sub-sections (1) and (2) is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years.

- (5) Where an investigation into the financial conditions of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by this Act.
- (6) The provisions of this section relating to the life insurance business shall apply also to any such sub-class of insurance business included in the class "Miscellaneous Insurance" and the Authority may authorise such modifications and variations of regulations as may be necessary to facilitate their application to any such sub-class of insurance business:

Provided that, if the Authority is satisfied that the number and amount of the transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic

investigation and valuation unnecessary, it may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business.

Record of policies and claims [Section 14]

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

Submission of returns [Section 15]

- (1) The audited accounts and statements referred to in section 11 or sub- section (5) of section 13 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Authority within six months from the end of the period to which they refer.
- (2) Of the four copies so furnished, one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director by that managing director and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be.

Furnishing reports [Section 18]

Every insurer shall furnish to the Authority a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members or policy-holders, as the case may be.

Abstract of proceedings of general meetings [Section 19]

Every insurer, being a company or body incorporated under any law for the time being in force in India, shall furnish to the Authority a certified copy of the minutes of the proceedings of every general meeting, as entered in the Minutes Book of the insurer within thirty days from the holding of the meeting to which it relates.

Custody and inspection of documents and supply of copies [Section 20]

- (1) Every return furnished to the Authority or certified copy thereof shall be kept by the Authority and shall be open to inspection; and any person may procure a copy of any such return, or of any part thereof, on payment of such fee as may be specified by the regulations.
- (2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 shall, on the application of any shareholder or policy-holder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in India and in any other case within one month of such application.
- (3) A copy of the memorandum and articles of association of the insurer, if a company shall on the application of any policy-holder, be supplied to him by the Insurer on payment of such fee as may be specified by the regulations.



Powers of Authority regarding returns [Section 21]

- (1) If it appears to the Authority that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he may—
 - (a) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return;
 - (b) call upon the insurer to submit for his examination at the principal place of business of the insurer in India any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose;
 - (c) examine any officer of the insurer on oath in relation to the return;
 - (d) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer or of such further time as the Authority may specify in the requisition and if he declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 28 or section 28A or section 28B or section 64V relating to the furnishing of returns.
- (2) The Securities Appellate Tribunal may, on the application of an insurer and after hearing the Authority, cancel any order made by the Authority under clause (d) of sub-section (1) or may direct the acceptance of such a return which the Authority has declined to accept, if the insurer satisfies the Tribunal that the action of the Authority was in the circumstances unreasonable:
Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the date when the Authority made the order or declined to accept the return.

Powers of Authority to order revaluation [Section 22]

- (1) If it appears to the Authority that an investigation or valuation to which section 13 refers does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, he may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation alas at such date as the Authority may specify to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Authority and the insurer shall place at the disposal of the Actuary so appointed and approved all the material required by the Actuary for the purposes of the investigation and valuation within such period, not being less than three months, as the Authority may specify.
- (2) The provisions of subsections (1) and (4) of section 13, and of sub-sections (1) and (2) of section 15 shall apply in relation to an investigation and valuation under this section:

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Authority may specify.

Evidence of documents [Section 23]

- (1) Every return furnished to the Authority which has been certified by the Authority to be a return so furnished, shall be deemed to be a return so furnished.
- (2) Every document, purporting to be certified by the Authority to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.

Summary of returns to be published [Section 24]

[Repealed by the Insurance (Amendment) Act, 1941]

Returns to be published in statutory forms [Section 25]

No insurer shall publish in India any return in a form other than that in which it has been furnished to the Authority.

Provided that nothing contained in this section shall prevent an insurer from publishing a true and accurate abstract from such returns for the purposes of publicity.

Alterations in the particulars furnished with application for registration to be reported [Section 26]

Whenever any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 3 to accompany an application by an insurer for registration, the insurer shall forthwith furnish to the Authority full particulars of such alteration. All such particulars shall be authenticated in the manner required by that sub-section for the authentication of the matters therein referred to, and where the alteration affects the assured rates, advantages, terms and conditions offered in connection with life insurance policies, the actuarial certificate referred to in clause (f) of the said sub-section shall accompany the particulars of the alteration.

Investment of assets [Section 27]

- (1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of—
 - (a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and
 - (b) the amount required to meet the liability on policies of life insurance maturing for payment in India,
less—
 - (i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and
 - (ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability in the following manner, namely:—
 - (a) twenty-five per cent. of the said sum in Government securities, a further sum equal to not less than twenty-five per cent. of the said sum in Government securities or other approved securities; and
 - (b) the balance in any of the approved investments,
- as may be specified by the regulations subject to the limitations, conditions and restrictions specified therein.
- (2) In the case of an insurer carrying on general insurance business, twenty per cent. of the assets in Government Securities, a further sum equal to not less than ten per cent. of the assets in Government Securities or other approved securities and the balance in any other investment in accordance with the regulations of the Authority and subject to such limitations, conditions and restrictions as may be specified by the Authority in this regard.

Explanation.— In this section, the term “assets” means all the assets of insurer at their carrying value but does not include any assets specifically held against any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or miscellaneous expenditure or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.



- (3) For the purposes of sub-sections (1) and (2), any specified assets shall, subject to such conditions, if any, as may be specified, be deemed to be assets invested or kept invested in approved investments specified by regulations.
- (4) In computing the assets referred to in sub-sections (1) and (2), any investment made with reference to any currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurers in India with reference to that currency, to the extent of such excess, shall not be taken into account:
- Provided that nothing contained in this sub-section shall affect the operation of sub-section (2):
- Provided further that the Authority may, either generally or in any particular case, direct that any investment shall, subject to such conditions as may be imposed, be taken into account, in such manner as may be specified in computing the assets referred to in sub-sections (1) and (2) and where any direction has been issued under this proviso, copies thereof shall be laid before each house of Parliament as soon as may be after it is issued.
- (5) Where an insurer has accepted re-insurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded re-insurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (1) shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of the liability involved in such cession.
- (6) The Government securities and other approved securities in which assets are under sub-section (1) or sub-section (2) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien.
- (7) The assets required by this section to be held invested by an insurer incorporated or domiciled outside India shall, except to the extent of any part thereof which consists of foreign assets held outside India, be held in India and all such assets shall be held in trust for the discharge of the liabilities of the nature referred to in sub-section (1) and shall be vested in trustees resident in India and approved by the Authority, and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Authority and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation.— This sub-section shall apply to an insurer incorporated in India whose share capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of members domiciled elsewhere than in India.

Further provisions regarding investments [Section 27A]

- (1) No insurer carrying on life insurance business shall invest or keep invested any part of his controlled fund and no insurer carrying on general business shall invest or keep invested any part of his assets otherwise than in any of the approved investments as may be specified by the regulations subject to such limitations, conditions and restrictions therein.
- (2) Notwithstanding anything contained in sub-section (1) or sub-section (2) of section 27, an insurer may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund or assets otherwise than in an approved investment, if—
- (i) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent. of the sum referred to in sub-section (1) of section 27 or fifteen per cent. of the assets referred to in sub-section (2) as the case may be;
- (ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors then in India, and all such investments, including investments in which any director is interested, are reported

without delay to the Authority with full details of the investments and the extent of the director's interest in any such investment.

- (3) An insurer shall not out of his controlled fund or assets as referred to in section 27,—
 - (a) invest in the shares of any one banking company; or
 - (b) invest in the shares or debentures of any one company, more than the percentage specified by the regulations.
- (4) An insurer shall not out of his controlled fund or assets as referred to in sub-section (2) of section 27 invest or keep invested in the shares or debentures of any private limited company.
- (5) All assets forming the controlled fund or assets as referred to in sub-section (2) of section 27, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with this section, shall (except for a part thereof not exceeding one-tenth of the controlled fund or assets as referred to in sub-section (2) thereof in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien.
- (6) If at any time the Authority considers any one or more of the investments of an insurer to be unsuitable or undesirable, the Authority may, after giving the insurer an opportunity of being heard, direct him to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Authority.
- (7) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act, or Act of a State legislature

Explanation.— In this section "controlled fund" means—

- (a) in the case of any insurer carrying on life insurance business—
 - (i) all his funds, if he carries on no other class of insurance business;
 - (ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also.

Explanation.— For the purposes of sub-clauses (i) and (ii), the fund does not include any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion, as the case may be, is regulated by the law in force of any country outside India or it would not be in the interest of the insurer to apply the provisions of this section;

- (b) in the case of any other insurer carrying on life insurance business—
 - (i) all his funds in India, if he carries on no other class of insurance business;
 - (ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also; but does not include any fund or portion thereof in respect of which the Authority is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Authority is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.

Provisions regarding investments of assets of insurer carrying general insurance business. [Section 27B]

- (1) All assets of an insurer carrying on general insurance business shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in section 27.



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- (2) All assets shall (except for a part thereof not exceeding one-tenth of the total assets in value which may subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment or for payment of claims, or which may be kept as security deposit with the banks for acceptance of policies) be held free of any encumbrance, charge, hypothecation or lien.
 - (3) Without prejudice to the powers conferred on the Authority by sub-section (5) of section 27A nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) of section 27 after the commencement of the Insurance (Amendment) Act, 1968, which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

Investment by insurer in certain cases [Section 27C].

An insurer may invest not more than five per cent. in aggregate of his controlled fund or assets as referred to in sub-section (2) of section 27 in the companies belonging to the promoters, subject to such conditions as may be specified by the regulations.

Manner and condition of investment. [Section 27D]

- (1) Without prejudice to anything contained in this section, the Authority may, in the interests of the policyholders, specify by the regulations, the time, manner and other conditions of investment of assets to be held by an insurer for the purposes of this Act.
- (2) The Authority may give specific directions for the time, manner and other conditions subject to which the funds of policyholders shall be invested in the infrastructure and social sector as may be specified by the regulations and such regulations shall apply uniformly to all the insurers carrying on the business of life insurance, general insurance, or health insurance or re-insurance in India on or after the commencement of the Insurance Regulatory and Development Authority Act, 1999.
- (3) The Authority may, after taking into account the nature of business and to protect the interests of the policyholders, issue to an insurer the directions relating to the time, manner and other conditions of investment of assets to be held by him:

Provided that no direction under this sub-section shall be issued unless the insurer concerned has been given a reasonable opportunity of being heard.

Prohibition for investment of funds outside India. [Section 27E]

No insurer shall directly or indirectly invest outside India the funds of the policyholders.

Statement and return of investment of assets [Section 28]

Every insurer shall submit to the Authority returns giving details of investments made, in such form, time and manner including its authentication as may be specified by the regulations.

Prohibition of loans [Section 29]

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

Provided that nothing contained in this sub-section shall apply to such loans, made by an insurer to a banking company, as may be specified by the Authority:

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the

loan or advance is a subsidiary company if the previous approval of the Authority is obtained for such loan or advance.

- (2) The provisions of section 185 of the Companies Act, 2013 shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy.
- (3) Subject to the provisions of sub-section (1), no insurer shall grant—
 - (a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loans as may be specified by the regulations including the loans sanctioned as part of their salary package to the full-time employees of the insurer as per the scheme duly approved by its Board of Directors;
 - (b) temporary advances to any insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate the renewal commission earned by him during the immediately preceding year.
- (4) Where any event occurs giving rise to circumstances, the existence of which at the time of grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.
- (5) In case of default in complying with the provisions of sub-section (4), the director, manager, auditor, actuary, officer or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of three months.

Liability of directors, etc. for loss due to contraventions of Sections 27, 27A, 27B, 27C, 27D or Section 29 [Section 30]

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

Assets of insurer how to be kept [Section 31]

- (1) None of the assets in India of any insurer shall, except in so far as assets are required to be vested in trustees under sub-section (7) of section 27, be kept otherwise than in the name of a public officer approved by the Authority, or in the corporate name of the undertaking, if a company or an insurance co-operative society, as the case may be.
- (2) Nothing contained in this section shall be deemed to prohibit the endorsement in favour of a banking company of any security or other document solely for the purpose of collection or for realization of interest, bonus or dividend.

Provisions relating to managers, etc [Section 31A]

- (1) Notwithstanding anything to the contrary contained in the Companies Act, 2013, or in the articles of association of the insurer, if a company, or in any contract or agreement, no insurer shall after expiry of one year from the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950),
 - (a) be managed by a company or a firm, or
 - (b) be directed or managed by, or employ as manager, or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus or a share in the valuation surplus in respect of the life insurance business of the insurer, or



- (c) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the general insurance business of the insurer:

Provided that nothing in this sub-section shall be deemed to prohibit-

- (i) the payment of commission to an insurance agent, in respect of insurance business procured by or through him;
- (ii) **Omitted**
- (iii) the employment of any individual in a clerical or other subordinate capacity who, as an insurance agent, receives commission in respect of insurance business procured by him;
- (iv) the employment as an officer of any individual who receives renewal commission in respect of life insurance business procured by him in his capacity as an insurance agent or as an employer of agents before such employment, or before the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), whichever is later;
- (v) the payment of a share in the profits of general insurance business;
- (vi) the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration.

- (2) Notwithstanding anything to the contrary contained in the Companies Act, 2013, or in the articles of association of the insurer, being a company, or in any contract or agreement, no manager, managing director or any other person concerned in the management of an insurer's business shall be entitled to nominate a successor to his office, and no person so nominated, whether before or after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), shall be entitled to hold or to continue in such office.
- (3) If in the case of any insurance company provision is made by the articles of association of the company or by an agreement entered into between any person and the company for empowering a director or manager or other officer of the company to assign his office to any other person, any assignment of office made in pursuance of the said provision, shall, notwithstanding anything to the contrary contained in the said provisions or in any other law for the time being in force, be void.
- (4) No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any provision of this section.

Power to restrict payment of excessive remuneration [Section 31B]

- (1) No insurer shall in respect of insurance business transacted by him, shall pay to any person by way of remuneration, whether by way of commission or otherwise in excess of such sum as may be specified by the regulations.

Prohibition of common officers and requirement as to whole time officers [Section 32A]

A managing director or other officer of an insurer carrying on life insurance business shall not be a managing director or other officer of any other insurer carrying on life insurance business or of a banking company or of an investment company:

Provided that the Authority may permit such managing director or other officer to be a managing director or other officer of any other insurer carrying on life insurance business for the purpose of amalgamating the business of the two insurers or transferring the business of one insurer to the other.

Insurance business in rural or social sector [Section 32B]

Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority Act, 1999, undertake such percentages of life insurance business and general insurance business in the rural or social sectors, as may be specified, in the Official Gazette by the Authority, in this behalf.

Obligations of insurer in respect of rural or unorganized sector and backward classes [Section 32C]

Every insurer shall, after the commencement of the Insurance Regulatory and Development Authority act, 1999 discharge the obligations specified under section 32B to provide life insurance or general insurance policies to the persons residing in the rural sector, workers in the unorganized or informal sector or for economically vulnerable or backward classes of the society and other categories of persons as may be specified by regulations made by the Authority and such insurance policies shall include insurance for crops.

Obligation of insurer in respect of insurance business in third party risks of motor vehicles [Section 32D]

Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2015, underwrite such minimum percentage of insurance business in third party risks of motor vehicles as may be specified by the regulations:

Provided that the Authority may, by regulations, exempt any insurer who is primarily engaged in the business of health, re-insurance, agriculture, export credit guarantee, from the application of this section.

Power of investigation and inspection by Authority [Section 33]

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

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

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

(3) It shall be the duty of every manager, managing director or other officer of the insurer including a service provider, contractor of an insurer where services are outsourced by the insurer, or intermediary or insurance intermediary, as the case may be, to produce before the Investigating Officer directed to make the investigation under sub-section (1), or inspection under sub-section (2), all such books of account, registers, other documents and the database in his custody or power and to furnish him with any statement and information relating to the affairs of the insurer or intermediary or insurance intermediary, as the case may be, as the Investigating Officer may require of him within such time as the said Investigating Officer may specify.

(4) Any Investigating Officer, directed to make an investigation under sub- section (1), or inspection under sub-section (2), may examine on oath, any manager, managing director or other officer of the insurer including a service provider or contractor where the services are outsourced by the insurer or intermediary or insurance intermediary, as the case may be, in relation to his business.

(5) The Investigating Officer shall, if he has been directed by the Authority to cause an inspection to be made, make a report to the Authority on such inspection.



- (6) On receipt of any report under sub-section (1) or sub-section (5), the Authority may, after giving such opportunity to the insurer or intermediary or insurance intermediary, as the case may be, to make a representation in connection with the report as, in the opinion of the Authority, seems reasonable, by order in writing,—
- require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or
 - cancel the registration of the insurer or intermediary or insurance intermediary, as the case may be; or
 - direct any person to apply to the court for the winding up of the insurer or intermediary or insurance intermediary, as the case may be, if it is a company, whether the registration of the insurer or intermediary or insurance intermediary, as the case may be, has been cancelled under clause (b) or not.
- (7) The Authority may by the regulations made by it specify the minimum information to be maintained by insurers or intermediary or insurance intermediary, as the case may be, in their books, the manner in which such information shall be maintained, the checks and other verifications to be adopted by insurers or intermediary or insurance intermediary, as the case may be, in that connection and all other matters incidental thereto as are, in its opinion, necessary to enable the Investigating Officer to discharge satisfactorily his functions under this section.

Explanation.— For the purposes of this section, the expression "insurer" shall include in the case of an insurer incorporated in India—

- all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and
 - all its branches whether situated in India or outside India.
- (8) Any insurer or intermediary or insurance intermediary aggrieved by any order made under this section may prefer an appeal to the Securities Appellate Tribunal.
- (9) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer or intermediary or insurance intermediary, as the case may be, shall have priority over the debts due from the insurer and shall be recoverable as an arrear of land revenue.

Power to appoint staff [Section 33A]

The Authority may appoint such staff, and at such places as it or he may consider necessary, for the scrutiny of the returns, statements and information furnished by insurers under this Act and generally to ensure the efficient performance of the functions of the Authority under this Act.

Power of the Authority to issue directions [Section 34]

- (1) where the Authority is satisfied that
- in the public interest; or
 - to prevent the affairs of any insurer being conducted in a manner detrimental to the interests of the policy-holders or in a manner prejudicial to the interests of the insurer; or
 - generally to secure the proper management of any insurer, it is necessary to issue directions to insurers generally or to any insurer In particular, he may, from time to time, issue such directions as he deems fit, and the insurers or the insurer, as the case may be, shall be bound to comply with such directions:

Provided that no such directions shall be issued to any insurer in particular unless such insurer has been given a reasonable opportunity of being heard

- (2) The Authority may, on representation made to him or on his own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or canceling any directions, may impose such conditions as he thinks fit, subject to which the modification or cancellation shall have effect.

Amendment of provisions relating to appointments of managing directors, etc., to be subject to previous approval of the Authority [Section 34A]

- (1) In the case of an insurer,—

- (a) no amendment made, after the commencement of the Insurance (Amendment) Act, 1968 of any provision relating to the appointment, re-appointment, termination of appointment or remuneration of a managing or whole-time director, or of a manager or a chief executive officer, by whatever name called, whether that provision be contained in the insurers memorandum or articles of associations, or in an agreement entered into by him, or in any resolution passed by the insurer in general meeting or by his Board of Directors shall have effect unless approved by the Authority;
- (b) no appointment, re-appointment or termination of appointment made after the commencement of the Insurance (Amendment) Act, 1968, of a managing or whole-time director, or a manager or a chief executive officer, by whatever name called, shall have effect unless such appointment, reappointment or termination of appointment is made with the previous approval of the Authority.

Explanation- For the purposes of this sub-section, any provision conferring any benefit or providing any amenity or perquisite, in whatever form, whether during or after the termination of the term of office of the manager or the chief executive officer, by whatever name called or a managing or whole-time director, shall be deemed to be a provision relating to his remuneration.

- (2) Nothing contained in the relevant provisions of Companies Act, 2013 with reference to Section 2(94), 166, 197, 196, shall apply to any matter in respect of which the approval of the Authority has to be obtained under sub section (1).
- (3) No act done by a person as a managing or whole-time director or a director not liable to retire by rotation or a manager or a chief executive officer, by whatever name called, shall be deemed to be invalid on the ground that it is subsequently discovered that his appointment or re-appointment had not taken effect by reason of any of the provisions of this Act; but nothing in this subsection shall be construed as rendering valid any act done by such person after his appointment or re-appointment has been shown to the insurer not to have had effect.

Power of Authority to remove managerial persons from office [Section 34B]

- (1) Where the Authority is satisfied that in the public interest or for preventing the affairs of an insurer being conducted in a manner detrimental to the interests of the policy-holders or for securing the proper management of any insurer it is necessary so to do, he may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any director or the chief executive officer, by whatever name called, of the insurer.
- (2) No order under sub-section (1) shall be made unless the director or chief executive officer concerned has been given a reasonable opportunity of making a representation to the Authority against the proposed order:

Provided that if, in the opinion of the Authority, any delay would be detrimental to the interests of the insurer or his policy-holders, he may, at the time of giving the opportunity aforesaid or at any time thereafter, by order direct that, pending the consideration of the representation aforesaid, if any, the director or, as the case may be, chief executive officer, shall not, with effect from the date of such order,



- (a) act as such director or chief executive officer of the insurer;
 - (b) in any way, whether directly, indirectly, be concerned with, or take part in the management of the insurer.
- (3) Where any order is made in respect of a director or chief executive officer of an insurer under sub-section (1), he shall cease to be a director or as the case may be chief executive officer of the insurer and shall not, in any way, whether directly or indirectly, be concerned with, or take part in, the management of any insurer for such period not exceeding five years as may be specified in the order.
- (4) If any person in respect of whom an order is made by the Authority under sub-section (1) or under the proviso to sub-section (2), contravenes the provisions of this section, he shall be liable to a penalty of one lakh rupees for each day during which such contravention continues or one crore rupees, whichever is less.
- (5) Where an order under sub-section (1) has been made, the Authority may, by order in writing, appoint a suitable person in place of the director or chief executive officer who has been removed from his office under that sub-section, with effect from such date as may be specified in the order.
- (6) Any person appointed as director or chief executive officer under this section shall—
 - (a) hold office during the pleasure of the Authority and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Authority may specify;
 - (b) not incur any obligation or liability by reason only of his being a director or chief executive officer or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.
- (7) Notwithstanding anything contained in any law or in any contract, memorandum or articles of association, on the removal of a person from office under this section, that person shall not be entitled to claim any compensation for the loss or termination of office.

Power of Authority to appoint additional directors [Section 34C]

- (1) If the Authority is of opinion that in the public interest or in the interest of an insurer or his policyholders it is necessary so to do, it may, from time to time, by order in writing, appoint, in consultation with the Central Government with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the insurer:
- Provided** that the number of additional directors so appointed shall not, at any time, exceed five or one-third of the maximum strength fixed for the Board by the articles of association of the insurer, whichever is less.
- (2) Any person appointed as additional director in pursuance of this section,—
 - (a) shall hold office during the pleasure of the Authority, and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time as the Authority may specify;
 - (b) shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and
 - (c) shall not be required to hold qualification shares of the insurer.
- (3) For the purpose of reckoning any preparation of the total number of directors of the insurer, any additional director appointed under this section shall not be taken into account.

Sections 34B and 34C to override other laws [Section 34D]

Any appointment or removal of a director or chief executive officer in pursuance of Section 34B or Section 34C shall have effect notwithstanding anything to the contrary contained in the Companies Act, 2013, or any other law for the time being in force or in any contract or any other instrument.

Further powers [Section 34E]

The Authority may,—

- (a) caution or prohibit insurers generally or any insurer in particular against entering into any particular transaction or class of transactions, and generally give advice to any insurer;
- (b) at any time, if he is satisfied that in the public interest or in the interests of the insurer or for preventing the affairs of the insurer being conducted in a manner detrimental to the interests of the insurer or his policy-holders, it is necessary so to do, by order in writing and on such terms and conditions as may be specified therein,—
 - (i) require the insurer to call a meeting of his directors for the purpose of considering any matter relating to or arising out of the affairs of the insurer;
 - (ii) depute one or more of his officers to watch the proceedings at any meeting of the Board of Directors of the insurer or of any committee or of any other body constituted by it; require the insurer to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Authority;
 - (iii) require the Board of Directors of the insurer or any committee or any other body constituted by it to give in writing to any officer specified by the Authority in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;
 - (iv) appoint one or more of his officers to observe the manner in which the affairs of the insurer or of his offices or branches are being conducted and make a report thereon;
 - (v) require the insurer to make, within such time as may be specified in the order, such changes in the management as the Authority may consider necessary.

Power of Authority to issue directions regarding re-insurance treaties, etc [Section 34F]

- (1) Without prejudice to the generality of the powers conferred by sub-section (1) of Section 34, the Authority may, if he is of opinion that the terms or conditions of any re-insurance treaty or other re-insurance contract entered into by an insurer are not favourable to the insurer or are detrimental to the public interest, he may, by order, require, the insurer to make, at the time when the renewal of such treaty or contract becomes next due, such modifications in the terms and conditions of such treaty or contract as he may specify in the order or not to renew such treaty or contract, and, if the insurer fails to comply with such order, he shall be deemed to have failed to comply with the provisions of this Act.
- (2) The Authority may, if he has reason to believe that an insurer is entering into or is likely to enter into re-insurance treaties or other re-insurance contracts which are not favourable to the insurer or are detrimental to the public interest, he may, by order, direct that the insurer shall not enter into such re-insurance treaty or other re-insurance contract unless a copy of such treaty or contract has been furnished to him in advance and the terms and conditions thereof have been approved by him and if the insurer fails to comply with such order he shall be deemed to have failed to comply with the requirements of this Act.

Search and seizure [Section 34H]

- (1) Where the Chairperson of the Authority in consequence of information in his possession, has reason to believe that—
 - (a) any person who has been required under sub-section (2) of Sec. 33 to produce, or cause to be produced, any books, accounts or other documents in his custody or power has omitted



or failed to produce, or cause to be produced, such books, accounts or other documents, or

- (b) any person to whom a requisition to produce any books, accounts or other documents as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which will be useful for, or relevant to an investigation under sub-section (1) of Section 33 or an inspection under sub-section (1A) of that section, or
 - (c) a contravention of any provision of this Act has been committed or is likely to be committed by an insurer, or
 - (d) any claim which is due to be settled by an insurer, has been or is likely to be settled at a figure higher than a reasonable amount, or
 - (e) any claim which is due to be settled by an insurer, has been or is likely to be rejected or settled at a figure lower than a reasonable amount,
 - (f) any illegal rebate or commission has been paid or is likely to be paid by an insurer, or
 - (g) any books, accounts, receipts, vouchers, survey reports or other documents, belonging to an insurer are likely to be tampered with, falsified or manufactured, he may authorise any subordinate officer of his, not lower in rank than a Deputy Director or an equivalent officer (hereafter referred to as the authorised officer) to-
 - (i) enter and search any building or place where he has reason to suspect that such books, accounts or other documents, or any books or papers relating to any claim, rebate or commission or any receipts, vouchers, reports or other documents are kept;
 - (ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by Clause (i) where the keys thereof are not available;
 - (iii) seize all or any such books, accounts or other documents found as a result of such search;
 - (iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies there from.
- (2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition.
- (3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (1), serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.
- (4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act.
- (5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same recorded by him in writing and the approval of the Chairperson of the Authority for such retention is obtained:

Provided that the Chairperson of the Authority shall not authorise the retention of the books, accounts, papers, receipts, vouchers, reports, or other documents for a period exceeding thirty

days after all the proceedings under this Act for which the books, accounts, papers, receipts, vouchers, or other documents are relevant are completed.

- (6) The person from whose custody any books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may make copies thereof, or take extracts there from, in the presence of the authorised officer or any other person empowered by him in this behalf at such place and idle as the authorised officer may appoint in this behalf.
- (7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) objects for any reason to the approval given by the Chairperson of the Authority under sub-section (5), he may make an application to the Securities Appellate Tribunal stating therein the reasons for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, reports, or other documents.
- (8) On receipt of the application under sub-section (7) the Securities Appellate Tribunal may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.
- (9) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searchers and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1).
- (10) The Central Government may, by notification in the official Gazette, make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer,—
 - (i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;
 - (ii) for ensuring safe custody of any books, accounts, papers, receipts, vouchers, reports, or other documents seized under this section.

Amalgamation and transfer of insurance business [Section 35]

- (1) Notwithstanding anything contained in any other law for the time being in force, no insurance business of an insurer shall be transferred to or amalgamated with the insurance business of any other insurer except in accordance with a scheme prepared under this section and approved by the Authority.
- (2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.
- (3) Before an application is made to the Authority to approve any such scheme, notices of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason there for shall, at least two months before the application is made, be sent to the Authority and certified copies four in number, of each of the following documents shall be furnished to the Authority, and other such copies shall during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch offices and chief agencies of the insurers concerned, namely:-
 - (a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer;
 - (b) balance sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in such forms as may be specified by the regulations;
 - (c) actuarial reports and abstracts in respect of the life insurance business of each of the insurers so concerned, prepared in conformity with the regulations specified in this regard;



- (d) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been, professionally connected; with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report;
- (e) any other reports on which the scheme of amalgamation or transfer was founded.

The balance sheets, reports and abstracts referred to in Clauses (b), (c) and (d) shall all be prepared as at the date at which the amalgamation or transfer if approved by the Authority is to take effect, which date shall not be more than twelve months before the date on which the application to the Authority is made under this section:

Provided that if the Authority so directs in the case of any particular insurer there may be substituted respectively for the balance-sheet, report and abstract referred to in Clauses. (b) and (c) prepared in accordance with this sub-section certified copies of the last balance-sheet and last report and abstract prepared in accordance with Sections 11 and 13 of this Act or Sections 7 and 8 of the Indian Life Assurance Companies Act, 1912 (6 of 1912), if that balance-sheet is prepared as at a date not more than twelve months, and that report and abstract as at a date not more than five years, before the date on which the application to the Authority is made under this section.

Sanction of amalgamation and transfer by Authority [Section 36]

When any application under sub-section (3) of section 35 is made to the Authority, the Authority shall cause, a notice of the application to be given to the holders of any kind of policy of insurer concerned alongwith statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct, and, after hearing the directors and considering the objections of the policyholders and any other persons whom it considers entitled to be heard, may approve the arrangement, and shall make such consequential orders as are necessary to give effect to the arrangement.

Statements required after amalgamation and transfer [Section 37]

Where an amalgamation takes place between any two or more insurers, or where any business of an insurer is transferred, whether in accordance with a scheme confirmed by the Authority or otherwise, the insurer carrying on the amalgamated business or the person to whom the business is transferred, as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer, furnish in duplicate to the Authority-

- (a) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected, and
- (b) a declaration signed by every party concerned or in the case of a company by the chairman and the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer, and
- (c) where the amalgamation or transfer has not been made in accordance with a scheme approved by the Authority under Section 36-
 - (i) balance- sheet in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the Form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule, and
 - (ii) certified copies of any other reports on which the scheme of amalgamation or transfer was founded.

Power of the Authority to prepare scheme of Amalgamation [Section 37A]

- (1) If the Authority is satisfied that-
- (i) in the public interest; or
 - (ii) in the interests of the policy-holders; or
 - (iii) in order to secure the proper management of an insurer; or
 - (iv) in the interests of insurance business of the country as a whole;
- it is necessary so to do, he may prepare a scheme for the amalgamation of that insurer with any other insurer (hereinafter referred to in this section as the transferee insurer):
- Provided** that no such scheme shall be prepared unless the other insurer has given his written consent to the proposal for such amalgamation
- (2) The scheme aforesaid may contain provisions for all or any of the following matters, namely:
- (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, and the liabilities, duties and obligations of the transferee insurer;
 - (b) the transfer to the transferee insurer the business, properties, assets and liabilities of the insurer on such terms and conditions as may be specified in the scheme;
 - (c) any change in the Board of Directors, or the appointment of a new Board of directors of the transferee-insurer and the authority by whom, the manner in which, and the other terms and conditions on which such change or appointment shall be made, and in the case of appointment of a new Board of Director or of any director, the period for which such appointment shall be made;
 - (d) the alteration of the memorandum and articles of association of the transferee insurer for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the amalgamation;
 - (e) subject to the provisions of the scheme, the continuation by or against the transferee insurer, of any actions or proceedings pending against the insurer;
 - (f) the reduction of the interest or rights which the shareholders, policy holders and other creditors have in or against the insurer before the amalgamation to such extent as the Authority considers necessary in the public interest or in the interests of the shareholders, policy-holders and other creditors or for the maintenance of the business of the insurer;
 - (g) the payment in cash or otherwise to policy-holders, and other creditors in full satisfaction of their claim,-
 - (i) in respect of their interest or rights in or against the insurer before the amalgamation; or
 - (ii) where their interest or rights aforesaid in or against the insurer has or have been reduced under clause (f), in respect of such interest or rights as so reduced;
 - (h) the allotment to the shareholders of the insurer for shares held by them therein before the amalgamation Whether their interest in such shares has been reduced under clause (f) or not] of shares in the transferee insurer and where any shareholders claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any sharp holders the payment in cash to those shareholders in full satisfaction of their claim—
 - (i) in respect of their interest in shares in the insurer before the amalgamation; or
 - (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;



- (i) the continuance of their services of all the employees of the insurer (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme) in the transferee insurer at the same remuneration and on the same terms and conditions of service, which they were getting or, as the case may be, which they were being governed, immediately before the date of the amalgamation:

Provided that the scheme shall contain a provision that the transferee insurer shall pay or grant not later than the expiry of the period of three years, from the date of the amalgamation, to the said employees the same remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank on status of the transferee insurer subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee insurer:

Provided further that if in any case any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or are equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee insurer, the doubt or difference

- (j) notwithstanding anything contained in clause (i), where any of the employee, of the insurer not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme under clause (i) or where any employees of the insurer have by notice in writing given to the insurer or, as the case may be, the transferee insurer at any time before the expiry of one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee insurer, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund, or other retirement benefits ordinarily admissible to them under the rules or authorizations of the insurer immediately before the date of the amalgamation;
- (k) any other terms and conditions for the amalgamation of the insurer;
- (l) such incidental, consequential and supplemental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out.

- (3) (a) A copy of the scheme prepared by the Authority shall be sent in draft to the insurer and also to the transferee insurer and any other insurer concerned in the amalgamation, for suggestions and objections, if any, within such period as the Authority may specify for this purpose.

(b) The Authority may make such modifications, if any, in the draft scheme as he may consider necessary in the light of suggestions and objections received from the insurer and also from the transferee insurer, and any other insurer concerned in the amalgamation and from any shareholder, policyholder or other creditor of each of those insurers and the transferee insurer.

- (4) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may sanction the scheme without any modification or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may notify in this behalf in the Official Gazette:

Provided that different dates may be specified for different provisions of the scheme.

- (4A) Every policyholder or shareholder or member of each of the insurers, before amalgamation, shall have the same interest in, or rights against the insurer resulting from amalgamation as he had in the company of which he was originally a policyholder or shareholder or member:

Provided that where the interests or rights of any shareholder or member are less than his interest in, or rights against, the original insurer, he shall be entitled to compensation, which shall be assessed by the Authority in such manner as may be specified by the regulations.

- (4B) The compensation so assessed shall be paid to the shareholder or member by the insurance company resulting from such amalgamation.
- (4C) Any member or shareholder aggrieved by the assessment of compensation made by the Authority under sub-section (4A) may within thirty days from the publication of such assessment prefer an appeal to the Securities Appellate Tribunal:
- (5) The sanction accorded by the Central Government under sub-section (4) shall be conclusive evidence that all the requirements of this section relating to amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence to the same extent as the original scheme.
- (6) The Authority may, in like-manner, add to, amend or vary any scheme made under this section.
- (7) On and from the date of the coming into operation of the scheme or any provision thereof; the scheme or such provision shall be binding on the insurer or, as the case may be, on the transferee-insurer and any other insurer concerned in the amalgamation and also on all the shareholders, policy-holders and other creditors and employees of each of those insurers and of the transferee insurer, and on any other person having any right or liability in relation to any of those insurers or the transferee insurer.
- (8) On and from such date as may be specified by the Central Government in this behalf, their properties and assets of the insurer shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the insurer shall, by virtue of and to the extent provided in the scheme, stand transferred to and become the liabilities of, the transferee insurer.
- (9) If any difficulty arises in giving effect to the provisions of the scheme the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.
- (10) Copies of every scheme made under this section and of every order made under sub-section (9) shall be laid before each House of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government or, as the case may be, the order has been made.
- (11) Nothing in this section shall be deemed to prevent the amalgamation with an insurer by a single scheme of several insurers.
- (12) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.
- (13) The provisions of section 37 shall not apply to an amalgamation given effect to under provisions of this section.

Assignment and transfer of insurance policies [Section 38]

- (1) A transfer or assignment of a policy of insurance, wholly or in part, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment and the reasons thereof, the antecedents of the assignee and the terms on which the assignment is made.
- (2) An insurer may, accept the transfer or assignment, or decline to act upon any endorsement made under sub-section (1), where it has sufficient reason to believe that such transfer or assignment is not bona fide or is not in the interest of the policyholder or in public interest or is for the purpose of trading of insurance policy.



(3) The insurer shall, before refusing to act upon the endorsement, record in writing the reasons for such refusal and communicate the same to the policyholder not later than thirty days from the date of the policyholder giving notice of such transfer or assignment.

(4) Any person aggrieved by the decision of an insurer to decline to act upon such transfer or assignment may within a period of thirty days from the date of receipt of the communication from the insurer containing reasons for such refusal, prefer a claim to the Authority.

(5) Subject to the provisions in sub-section (2), the transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except, where the transfer or assignment is in favour of the insurer, shall not be operative as against an insurer, and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer:

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place where the policy is being serviced.

(6) The date on which the notice referred to in sub-section (5) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (5) are delivered:

Provided that if any dispute as to priority of payment arises as between assignees, the dispute shall be referred to the Authority.

(7) Upon the receipt of the notice referred to in sub-section (5), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of such fee as may be specified by the regulations, grant a written acknowledgement of the receipt of such notice; and any such acknowledgement shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgement relates.

(8) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (5), recognise the transferee or assignee named in the notice as the absolute transferee or assignee entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy, obtain a loan under the policy or surrender the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

Explanation.— Except where the endorsement referred to in sub-section (1) expressly indicates that the assignment or transfer is conditional in terms of sub- section (10) hereunder, every assignment or transfer shall be deemed to be an absolute assignment or transfer and the assignee or transferee, as the case may be, shall be deemed to be the absolute assignee or transferee respectively.

(9) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of the Insurance Laws (Amendment) Act, 2015 shall not be affected by the provisions of this section.

(10) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made upon the condition that—

- (a) the proceeds under the policy shall become payable to the policyholder or the nominee or nominees in the event of either the assignee or transferee predeceasing the insured; or
- (b) the insured surviving the term of the policy, shall be valid:

Provided that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender a policy.

- (11) In the case of the partial assignment or transfer of a policy of insurance under sub-section (1), the liability of the insurer shall be limited to the amount secured by partial assignment or transfer and such policyholder shall not be entitled to further assign or transfer the residual amount payable under the same policy.

Nomination by policyholder [Section 39]

- (1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that, where any nominee is a minor, it shall be lawful for the policyholder to appoint any person in the manner laid down by the insurer, to receive the money secured by the policy in the event of his death during the minority of the nominee.

- (2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

- (3) The insurer shall furnish to the policyholder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge such fee as may be specified by regulations for registering such cancellation or change.

- (4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy:

Provided further that the transfer or assignment of a policy, whether wholly or in part, in consideration of a loan advanced by the transferee or assignee to the policyholder, shall not cancel the nomination but shall affect the rights of the nominee only to the extent of the interest of the transferee or assignee, as the case may be, in the policy:

Provided also that the nomination, which has been automatically cancelled consequent upon the transfer or assignment, the same nomination shall stand automatically revived when the policy is reassigned by the assignee or retransferred by the transferee in favour of the policyholder on repayment of loan other than on a security of policy to the insurer.

- (5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policyholder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.



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- (6) Where the nominee or if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.
 - (7) Subject to the other provisions of this section, where the holder of a policy of insurance on his own life nominates his parents, or his spouse, or his children, or his spouse and children, or any of them, the nominee or nominees shall be beneficially entitled to the amount payable by the insurer to him or them under sub-section (6) unless it is proved that the holder of the policy, having regard to the nature of his title to the policy, could not have conferred any such beneficial title on the nominee.
 - (8) Subject as aforesaid, where the nominee, or if there are more nominees than one, a nominee or nominees, to whom sub-section (7) applies, die after the person whose life is insured but before the amount secured by the policy is paid, the amount secured by the policy, or so much of the amount secured by the policy as represents the share of the nominee or nominees so dying (as the case may be), shall be payable to the heirs or legal representatives of the nominee or nominees or the holder of a succession certificate, as the case may be, and they shall be beneficially entitled to such amount.
 - (9) Nothing in sub-sections (7) and (8) shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of life insurance.
 - (10) The provisions of sub-sections (7) and (8) shall apply to all policies of life insurance maturing for payment after the commencement of the Insurance Laws (Amendment) Act, 2015.
 - (11) Where a policyholder dies after the maturity of the policy but the proceeds and benefit of his policy has not been made to him because of his death, in such a case, his nominee shall be entitled to the proceeds and benefit of his policy.
 - (12) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance Laws (Amendment) Act, 2015, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

Prohibition of payment by way of commission or otherwise for procuring business [Section 40]

- (1) No person shall, pay or contract to pay any remuneration or reward, whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by the regulations.
- (2) No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard:

Provided that the Authority, while making regulations under sub-sections (1) and (2), shall take into consideration the nature and tenure of the policy and in particular the interest of the agents and other intermediaries concerned.

- (3) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections or the regulations framed in this regard, by an insurer, any insurance agent or intermediary or insurance intermediary who contravenes the said provisions shall be liable to a penalty which may extend to one lakh rupees.

Limitation of expenses of management in life insurance business [Section 40B]

No insurer shall, in respect of insurance business transacted by him in India, spend as expenses of management in any financial year any amount exceeding the amount as may be specified by the regulations made under this Act.

Limitation of expenses of management in general, health insurance and re-insurance business [Section 40C]

Every insurer transacting insurance business in India shall furnish to the Authority, the details of expenses of management in such manner and form as may be specified by the regulations made under this Act.

Prohibition of rebates [Section 41]

(1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer:

Provided that acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at the time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a bona fide insurance agent employed by the insurer.

(2) Any person making default in complying with the provisions of this section shall be liable for a penalty which may extend to ten lakh rupees.

Insurance agent or intermediary or insurance intermediary not to be director in insurance company [Section 48A]

No insurance agent or intermediary or insurance intermediary shall be eligible to be or remain a director in insurance company:

Provided that any director holding office at the commencement of the Insurance Laws (Amendment) Act, 2015 shall not become ineligible to remain a director by reason of this section until the expiry of six months from the date of commencement of the said Act:

Provided further that the Authority may permit an agent or intermediary or insurance intermediary to be on the Board of an insurance company subject to such conditions or restrictions as it may impose to protect the interest of policyholders or to avoid conflict of interest.

Further provision regarding directors [Section 48B]

- (1) An insurer specified in sub-clause (b) of clause (9) of section 2 and carrying on life insurance business shall not have a common director with another such insurer.
- (2) The Authority may, for such period, to such extent and subject to such conditions as it may specify, exempt from the operation of this section—
 - (a) any insurer, who is a subsidiary company of another insurer, or
 - (b) two or more insurers, for the purpose of facilitating their amalgamation or the transfer of business of one insurer to the other.



Appointment of additional directors [Section 48C]

[Repealed by the Insurance (Amendment) Act, 1968(62 of 1968).]

Restriction on dividends and bonuses [Section 49]

- (1) No insurer, who carries on the business of life insurance or any other class or subclass of insurance business to which Sec. 13 applies, shall, for the purpose of declaring or paying any dividend to shareholders or any bonus to policy-holders or of making any payment in services of any debentures, utilize directly or indirectly any portion of the life insurance fund or of the fund of such other class or sub-class of insurance business, as the case may be, except a surplus shown in the valuation balance-sheet in such form as may be specified by the regulations made by the Authority submitted to the Authority as part of the abstract referred to in Section 15 as a result of an actuarial valuation assets and liabilities of the insurer; nor shall he increase such surplus by contributions out of any reserve fund or otherwise unless such contributions have been brought in as revenue account applicable to that class or sub-class of insurance business on or before the date of the valuation aforesaid, except when the reserve fund is made up solely of transfers from similar surpluses disclosed by valuations in respect of which returns have been submitted to the Authority under Section 15 of this Act:

Provided that payments made out of any such surplus in service of any debentures shall not exceed fifty per cent. of such surplus including any payment by way of interest on the debentures, and interest paid on the debentures shall not exceed ten per cent of any such surplus except where the interest paid on the debentures is offset against the interest credited to the fund or funds concerned in deciding the interest basis adopted in the valuation disclosing the aforesaid surplus:

Provided further that the share of any such surplus allocated to or reserved for the shareholders (including any amount for the payment of dividends guaranteed to them, whether by way of first charge or otherwise) shall not exceed such sums as may be specified by the Authority and such share shall in no case exceed ten percent of such surplus in case of participating policies and in other cases the whole thereof.

- (2) For the purposes of sub-section (1) the actual amount of income-tax deducted at source during the period following the date as at which the last preceding valuation was made and preceding the date as at which the valuation in question is made may be added to such surplus after deducting an estimated amount for income-tax on such surplus, such addition and deduction being shown in an abstract of the report of the actuary referred to in sub-section (1) of section 13.

Notice of options available to the assured on the lapsing of a policy [Section 50]

An insurer shall, before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid, give notice to the policy-holder informing him of the options available to him unless these are set forth in the policy.

Supply of copies of proposals and medical reports [Section 51]

Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith.

Prohibition of business on dividing principle [Section 52]

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

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise.

When Administrator for management of insurance business may be appointed [Section 52A]

- (1) If at any time the Authority has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, it may, after giving such opportunity to the insurer to be heard appoint an Administrator to manage the affairs of the insurer under the direction and control of the Authority.
- (2) The Administrator shall receive such remuneration as the Authority may direct and the Authority may at any time cancel the appointment and appoint some other person as Administrator.

Powers and duties of the Administrator [Section 52B]

- (1) The Administrator shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency and shall, as soon as may be possible, file with the Authority a report stating which of the following courses is in the circumstances most advantageous to the general interests of the holders of life insurance policies, namely:-
 - (a) the transfer of the business of the insurer to some other insurer;
 - (b) the carrying on of its business by the insurer (whether with the policies of the business continued for the original sum insured with the addition of bonuses that attach to the policies or for reduced amounts);
 - (c) the winding up of the insurer; and
 - (d) such other course as he deems advisable.
- (2) On the filing of the report with the Authority, the Authority may take such action as he thinks fit for promoting the interests of the holders of life insurance policies in general.
- (3) Any order passed by the Authority under sub-section (2), shall be binding on all persons concerned, and shall have effect notwithstanding anything in the memorandum or articles of association of the insurer, or a company.

Powers of Administrator respecting property liable to attachment under Section 106 [Section 52BB]

- (1) If the Administrator is satisfied that any person has rendered himself liable to be proceeded against under Section 106, he may, pending the institution of proceedings against such person under that section, by order in writing, prohibit him or any other person from transferring or otherwise disposing of any property which, in the opinion of the Administrator, would be liable to attachment in proceedings under that section.
- (2) Any person aggrieved by an order made by the Administrator under sub-section (1) may, within fourteen days from the date on which the order is served on him, appeal against such order to the Securities Appellate Tribunal, and the Securities Appellate Tribunal may pass such order thereon as it thinks fit.
- (3) An order made by the Administrator under sub-section (1) shall, subject to any order made by the Securities Appellate Tribunal on appeal, be in force for a period of three months from the date of the order unless, before the expiry of the said period, an application is made under sub-section (1) of Sec. 106 to the Court competent to exercise jurisdiction under that sub-section, and when such an application is made, the order shall, subject to any order made by that Court, continue in force as if it were an order of attachment made by that Court in proceedings under that section.



(4) An order made by the Administrator under this section shall,—

- (a) in the case of an order affecting a corporation or firm, be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and
- (b) in the case of an order affecting a person not being a corporation or firm, be served on such person -
 - (i) personally, by delivering or tendering to him the order, or
 - (ii) by post, or
 - (iii) where the person cannot be found, by leaving a copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

and every such order shall also be published in the official Gazette.

(5) If any question arises whether a person was duly served with an order under sub-section (4), the publication of the order in the official Gazette shall be conclusive proof that the order was so served, and a failure to comply with the provisions of Clause (a) or Clause (b) of sub-section (4) shall not affect the validity of the order.

(6) Notwithstanding anything contained in this section any property in respect of which an order has been made by the Administrator may, with the previous permission of the Administrator and subject to such terms and conditions as he may impose, be transferred or otherwise disposed of.

(7) Notwithstanding anything contained in any other law for the time being in force, the transfer or other disposition of any property in contravention of any order made by the Administrator under this section or of any terms and conditions imposed by him shall be void.

(8) For the purpose of enabling him to form an opinion as to whether any property would be liable to attachment in proceedings under Sec. 106 or for the purpose of enabling him to institute proceedings under that section, the Administrator may require any person to furnish information on such points or matters as, in the opinion of the Administrator, may be relevant for the purpose, and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Sec. 176 of the Indian Penal Code (45 of 1860).

(9) The Administrator shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) requiring the production of documents; and
- (c) receiving evidence on affidavits,

and any proceeding before the Administrator under this section shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).

(10) Save as provided in this section or in Section 106, and notwithstanding anything contained in any other law for the time being in force,—

- (a) no suit or other legal proceeding shall lie in any Court to set aside or modify any order of the Administrator made under this section, and
- (b) no Court shall pass any decree, grant any injunction or make any other order which shall have the effect of nullifying or affecting in any way any such order.

Cancellation of contracts and agreements [Section 52C]

The Administrator may, at any time during the continuance of his appointment with respect to an insurer and after giving an opportunity to the persons concerned to be heard, cancel or vary (either unconditionally or subject to such conditions as he thinks fit to impose) any contract or agreement (other than a policy) between the insurer and any other person which the Administrator is satisfied is prejudicial to the interest of holders of life insurance policies.

Termination of appointment of Administrator [Section 52D]

If at any time, it appears to the Authority that the purpose of the order appointing the Administrator has been fulfilled or that, for any reason, it is undesirable that the order of appointment should remain in force, the Authority may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Authority, again vest in the person in whom it was vested immediately prior to the appointment of the Administrator or any other person appointed by the insurer in this behalf.

Finality of decision appointing Administrator [Section 52E]

Any order or decision of the Authority made in pursuance of Section 52-A or Section 52-D shall be final and shall not be called in question in any Court.

Penalty for withholding documents of property from Administrator [Section 52F]

If any director or officer of the insurer or any other person fails to deliver to the Administrator any books of account, registers, or any other documents in his custody relating to the business of the insurer the management of which has vested in the Administrator, or retains any property of such insurer, he shall be liable to penalty of rupees ten thousand each day during which such failure continues or rupees ten lakh, whichever is less.

Protection of action taken under Sections 52-A to 52-D [Section 52G]

- (1) No suit, prosecution or other legal proceeding shall lie against an Administrator for anything which is in good faith done or intended to be done in pursuance of Section 52-A, Section 52-B, Section 52-BB or Section 52-C.
- (2) No suit or other legal proceeding shall lie against the Authority for any damage caused- or likely to be caused by anything which is in good faith done or intended to be done under Section 52-A, Section 52-B, or Section 52-D.

Winding up by the Court [Section 53]

- (1) The Court may order the winding up in accordance with the Companies Act, 2013, of any insurance company and the provisions of that Act shall, subject to the provisions of this Act apply accordingly.

Explanation.— For the purpose of sections 53 to 61A, "Tribunal" means the National Company Law Tribunal constituted under sub-section (1) of section 408 of the Companies Act, 2013.

- (2) In addition to the grounds on which such an order may be based, the Court may order the winding up of an insurance company
 - (a) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one tenth of the whole share capital or by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or
 - (b) if the Authority, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely



- (i) **Omitted**;
- (ii) that the company having failed to comply with any requirement of this Act has continued such failure Nor having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure Nor contravention has been conveyed to the company by the Authority.
- (iii) that it appears from Many returns or statements furnished under the provisions of this Act or from the results of any investigation made there under that the company is, or is deemed to be, insolvent, or
- (iv) that the continuance of the company is prejudicial to the interest if the policy-holders or to the public interest generally

Unpaid-up share capital [Section 53A]

Notwithstanding anything contained in any other law, in ascertaining for any purpose of this Act the solvency or otherwise of an insurer no account shall be taken of any assets of the insurer consisting of unpaid-up share capital.

Voluntary winding up [Section 54]

Notwithstanding anything contained in the Companies Act, 2013, an insurance company shall not be wound up voluntarily except for the purpose of effecting an amalgamation or a re-construction of the company, or on the ground that by reason of its liabilities it cannot continue its business.

Valuation of liabilities [Section 55]

- (1) In the winding up of an insurance company or in the insolvency of any other insurer the value of the assets and the liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator or receiver in insolvency thinks fit, subject, so far as applicable, to the rule contained in the Seventh Schedule and to any directions which may be given by the Court.
- (2) For the purposes of any reduction by the Court of the amount of the contracts of any insurance company the value of the assets and liabilities of the company and all claims in respect of policies issued by it shall be ascertained in such manner and upon such basis as the Court thinks proper having regard to the rule aforesaid.
- (3) The rule in the Seventh Schedule shall be of the same force and may be repealed, altered or amended as if it were a rule made in pursuance of the Companies Act, 2013 and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies.

Application of surplus assets of life insurance fund in liquidation or insolvency [Section 56]

- (1) In the winding up of an insurance company and in the insolvency of any other insurer the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life-insurance business.
- (2) In the winding up of an insurance company carrying on the business of life insurance or in the insolvency of any other insurer carrying on such business where any proportion of the profits of the insurer was before the commencement of the winding up or insolvency allocated to policy-holders, if, when the assets and liabilities of the insurer have been ascertained, there is found to be a surplus of assets over liabilities (hereinafter referred to as a *prima facie* surplus) there shall be added to the liabilities of the insurer in respect of the life-insurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to shareholders and policy-holders as was allocated to policy-holders during the ten years immediately preceding the commencement of the winding up and the assets of

the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition:

Provided that-

- (a) if in any case there has been no such allocation or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct, and
- (b) for the purpose of the application of this sub-section to any case where before the commencement of the winding up or insolvency a proportion of such profits as aforesaid of a branch only of the life insurance business in question has been allocated to policy-holders, the value of the assets and liabilities of the insurer in respect of that branch shall be separately ascertained in like manner as the value of his assets and liabilities in respect to the life insurance business was ascertained, and the surplus so found, if any, of assets over liabilities shall, for the purpose of determining the amount to be added to :the liabilities of the insurer in respect of the life insurance business be deemed to be the *prima facie* surplus..

Winding up of secondary companies [Section 57]

- (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the principal company and may, by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company.
- (2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the secondary company.
- (3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributors in the case of the winding-up of a single company or as near thereto as circumstances admit.
- (4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary, the Court shall not direct the secondary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable.
- (5) An application may be made in relation to the winding up of any secondary company in conjunction with the principal company by any creditor of, or person interested in, the principal or secondary company.
- (6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.



Schemes for partial winding-up of insurance companies [Section 58]

- (1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the Company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act.
- (2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding-up) for any future rights of every class of policy-holders in respect of their policies and for the manner of winding-up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.
- (3) The provisions of this Act relating to the valuation of liabilities of insurers in liquidation and insolvency and to the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and any scheme under this section may apply with the necessary modifications any of the provisions of the Companies Act, 2013, relating to the winding up of companies.
- (4) An order of the Tribunal confirming a scheme under this section whereby the memorandum of a company is altered with respect to its objects shall as respects the alteration have effect as if it were an order confirmed under section 4 of the Companies Act, 2013, and the provisions of sections 7 and 17 of that Act shall apply accordingly.

Notice of policy values [Section 60]

In the winding up of an insurance company for the purposes of a cash distribution of the assets and in the insolvency of any other insurer the liquidator or assignee, as the case may be, in the case of all persons appearing by the books of the company or other insurer to be entitled to or interested in the policies granted by the company or other insurer shall ascertain the value of the liability of the company or other insurer to each such person and shall give notice of such value to those persons in such manner as the Court may direct and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in such manner and within such time as may be specified by a rule or order of the Court.

Power of Court to reduce contracts of insurance [Section 61]

- (1) where an insurance company is in liquidation or any other insurer is insolvent, the Court may make an order reducing the amount of the insurance contracts of the company or other insurer upon such terms and subject to such conditions as the Court thinks Just.
- (2) Where a company carrying on the business of life insurance has been proved to be insolvent, the Court may if it thinks fit in place of making a winding up order reduce the amount of the insurance contracts of the company upon such terms and subject to such conditions as the Court thinks fit.
- (3) Application for an order under this section may be made either by the liquidator or by or on behalf of the company or by a policy-holder, or by the Authority and the Authority and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application.

Power of Central Government to impose reciprocal disabilities on non-Indian companies [Section 62]

Where by the law or practice of any country outside India in which an insurer carrying on insurance business in India is constituted, incorporated or domiciled, insurance companies incorporated in India are required as a condition of carrying on insurance business in that country to comply with any special

requirement whether as to the keeping of deposits or assets in that country or otherwise which is not imposed upon insurers of that country under this Act, the Central Government shall, if satisfied of the existence of such special requirement, by notification in the official Gazette, direct that the same requirement or requirements, as similar thereto as may be, shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in India.

Particulars to be filled by insurers established outside India [Section 63]

Every insurer, having his principal place of business or domicile outside India, who establishes a place of business within India or appoints a representative in India with the object of obtaining insurance business shall within three months from the establishment of such place of business or the appointment of such representative file with the Authority.

- (a) a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instrument constituting or defining the constitution of the insurer, and, if the instrument is not written in the English language, a certified translation thereof.
 - (b) a list of the directors, if the insurer is a company,
 - (c) the name and address of some one or more persons resident in India authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer together with a copy of the power of attorney granted to him.
 - (d) the full address of the principal office of the insurer in India.
 - (e) a statement of the classes of insurance business to be carried on by the insurer, and
 - (f) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in Section 62 imposed in the country of origin of the insurer on Indian nationals,
- and, in the event of any alteration being made in the address of the principal office or in the classes of business to be carried on, or in any instrument here referred to, or in the name of any of the persons here referred to, or in the matters specified in Clause(f) above, the company shall forthwith furnish to the Authority particulars of such alteration.

Books to be kept by insurers established outside India [Section 64]

Every insurer having his principal place of business or domicile outside India shall keep at his principal office in India such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Authority in respect of the insurance business transacted by him, in India to be complied and if necessary, checked by the Authority and shall furnish to the Authority on or before the last day of January in every calendar year a certificate from an auditor to the effect that the said books of account, register and documents are being kept as required at the principal office of the insurer in India.

Councils of Life Insurance and General Insurance [Section 64C]

On and from the date of commencement of this Act,—

- (a) the existing Life Insurance Council, a representative body of the insurers, who carry on the life insurance business in India; and
 - (b) the existing General Insurance Council, a representative body of insurers, who carry on general, health insurance business and re-insurance in India,
- shall be deemed to have been constituted as the respective Councils under this Act.

Authorisation to represent in Councils [Section 64D]

It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any of its officer to act as the representative of such member at any meeting of the Council concerned.



6.2 THE INSURANCE REGULATORY & DEVELOPMENT AUTHORITY ACT, 1999

Short title, extent and commencement [Section 1]

- (1) This Act may be called THE INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY ACT, 1999.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date', as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions [Section 2]

- (1) In this Act, unless the context otherwise requires,--
 - (a) "appointed day" means the date on which the Authority is established under sub-section (1) of section 3;
 - (b) "Authority" means the Insurance Regulatory and Development Authority of India established under sub-section (1) of section 3;
 - (c) "Chairperson" means the Chairperson of the Authority;
 - (d) "Fund" means the Insurance Regulatory and Development Authority Fund constituted under sub-section (1) of section 16;
 - (e) "Interim Insurance Regulatory Authority" means the Insurance Regulatory Authority set up by the Central Government through Resolution No 17(2)1 94-Ins.-V, dated the 23rd January, 1996;
 - (f) "Intermediary" or "insurance intermediary" includes insurance brokers, re-insurance brokers, insurance consultants, corporate agents, third party administrator, surveyors and loss assessors and such other entities, as may be notified by the Authority from time to time;
 - (g) "member" means a whole-time or a part-time member of the Authority and includes the Chairperson;
 - (h) "notification" means a notification published in the Official Gazette;
 - (i) "prescribed" means prescribed by rules made under this Act; (o "regulations" means the regulations made by the Authority.
- (2) Words and expressions used and not defined in this Act but defined in the Insurance Act, 1938 (4 of 1938) or the Life Insurance Corporation Act, 1956 (31 of 1956) or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) shall have the meanings respectively assigned to them in those Acts.

REGULATORY AND DEVELOPMENT AUTHORITY

Establishment and incorporation of Authority [Section 3]

- (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purpose of this Act, an Authority to be called "the Insurance Regulatory and Development Authority of India."
- (2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

- (3) The head office of the Authority shall be at such place as the Central Government may decide from time to time.
- (4) The Authority may establish offices at other places in India.

Composition of Authority [Section 4]

The Authority shall consist of the following members, namely:-

- (a) a Chairperson;
- (b) not more than five whole-time members;
- (c) not more than four part-time members,

to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority:

Provided that the Central Government shall, while appointing the Chairperson and the whole-time members, ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science, respectively.

Tenure of office of Chairperson and other members [Section 5]

- (1) The Chairperson and every other whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment:
Provided that no person shall hold office as a Chairperson after he has attained the age of sixty-five years:
Provided further that no person shall hold office as a whole-time member after he has attained the age of sixty-two years.
- (2) A part-time member shall hold office for a term not exceeding five years from the date on which he enters upon his office.
- (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), a member may
 - (a) relinquish his office by giving in writing to the Central Government notice of not less than three months; or
 - (b) be removed from his office in accordance with the provisions of section 6.

Removal from office [Section 6]

- (1) The Central Government may remove from office any member who
 - (a) is, or at any time has been, adjudged as an insolvent; or
 - (b) has become physically or mentally incapable of acting as a member; or
 - (c) has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
 - (e) has so abused his position as to render his continuation in office detrimental to the public interest.
- (2) No such member shall be removed under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.



Salary and allowances of Chairperson and members [Section 7]

- (1) The salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members shall be such as may be prescribed.
- (2) The part-time members shall receive such allowances as may be prescribed.
- (3) The salary, allowances and other conditions of service of a member shall not be varied to his disadvantage after appointment.

Bar on future employment of members [Section 8]

The Chairperson and the whole-time members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept-

- (a) any employment either under the Central Government or under any State Government; or
- (c) any appointment in any company in the insurance sector.

Administrative powers of Chairperson [Section 9]

The Chairperson shall have the powers of general superintendence and direction in respect of all administrative matters of the Authority.

Meetings of Authority [Section 10]

- (1) The Authority shall meet at such time and places and shall observe such rules and procedures in regard to transaction of business at its meetings (including quorum at such meetings) as may be determined by the regulations.
- (2) The Chairperson, or if for any reason he is unable to attend a meeting of the Authority, any other member chosen by the members present from amongst themselves at the meeting, shall preside at the meeting.
- (3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting, and in the event of an equality of votes, the Chairperson, or in his absence, the person presiding shall have a second or casting vote.
- (4) The Authority may make regulations for the transaction of business at its meetings.

Vacancies, etc., not to invalidate proceedings of Authority [Section 11]

No act or proceeding of the Authority shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the constitution of, the Authority; or
- (b) any defect in the appointment of a person acting as a member of the Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Officers and employees of Authority [Section 12]

- (1) The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.
- (2) The terms and other conditions of service of officers and other employees of the Authority appointed under sub-section (1) shall be governed by regulations made under this Act.

Transfer of assets, liabilities, etc., of Interim Insurance Regulatory Authority [Section 13]

On the appointed day,-

- (a) all the assets and liabilities of the Interim Insurance Regulation Authority shall stand transferred to, and vested in, the Authority.

Explanation. -The assets of the Interim Insurance Regulatory Authority shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of the Interim Insurance Regulatory Authority and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

- (b) without prejudice to the provisions of clause (a), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Interim Insurance Regulatory Authority immediately before that day, for or in connection with the purpose of the said Regulatory Authority, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Authority;
- (c) all sums of money due to the Interim Insurance Regulatory Authority immediately before that day shall be deemed to be due to the Authority; and
- (d) all suits and other legal proceedings instituted or which could have been instituted by or against the Interim Insurance Regulatory Authority immediately before that day may be continued or may be instituted by or against the Authority.

Duties, powers and functions of Authority [Section 14]

- (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty to regulate, promote and ensure orderly growth of the insurance business and reinsurance business.
- (2) Without prejudice to the generality of the provisions contained in sub -section (1), the powers and functions of the Authority shall include,-
 - (a) issue to the applicant a certificate of registration, renew, modify, withdraw, suspend or cancel such registration;
 - (b) protection of the interests of the policy-holders in matters concerning assigning of policy, nomination by policy-holders, insurable interest, settlement of insurance claim, surrender value of policy, and other terms and conditions of contracts of insurance;
 - (c) specifying requisite qualifications, code of conduct and practical training for intermediary or insurance intermediaries and agents;
 - (d) specifying the code of conduct for surveyors and loss assessors;
 - (e) promoting efficiency in the conduct of insurance business;
 - (f) promoting and regulating professional organisations connected with the insurance and re-insurance business;
 - (g) levying fees and other charges for carrying out the purposes of this Act;
 - (h) calling for information from, undertaking inspection of, conducting enquiries and investigations including audit of the insurers, intermediaries, insurance intermediaries and other organisations connected with the insurance business;
 - (i) control and regulation of the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business not so controlled and regulated by the Tariff Advisory Committee under section 64-U of the Insurance Act, 1938 (4 of 1938);
 - (j) specifying the form and manner in which books of account shall be maintained and statement of accounts shall be rendered by insurers and other insurance intermediaries;
 - (k) regulating investment of funds by insurance companies;



- (l) regulating maintenance of margin of solvency;
- (m) adjudication of disputes between insurers and intermediaries or insurance intermediaries;
- (n) supervising the functioning of the Tariff Advisory Committee;
- (o) specifying the percentage of premium income of the insurer to finance schemes for promoting and regulating professional organisations referred to in clause (f);
- (p) specifying the percentage of life insurance business and general insurance business to be undertaken by the insurer in the rural or social sector; and
- (q) exercising such other powers as may be prescribed.

Grants by Central Government [Section 15]

The Central Government may, after due appropriation made by the Parliament by law in this behalf, make to the Authority grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

Constitution of Fund [Section 16]

- (1) There shall be constituted a fund to be called "the Insurance Regulatory and Development Authority Fund" and there shall be credited thereto--
 - (a) all Government grants, fees and charges received by the Authority;
 - (b) all sums received by the Authority from such other source as may be decided upon by the Central Government;
- (2) The Fund shall be applied for meeting--
 - (a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;
 - (b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

Accounts and audit [Section 17]

- (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
- (2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.
- (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.
- (4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Power of Central Government to issue directions [Section 18]

- (1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

- (2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

Power of Central Government to supersede Authority [Section 19]

- (1) if, at any time, the Central Government is of the opinion-

- (a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
- (b) that the Authority has persistently defaulted in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or
- (c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person to be the Controller of Insurance under section 2-B of the Insurance Act, 1938 (4 of 1938), if not already done:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

- (2) Upon the publication of a notification under sub-section (1) superseding the Authority,---

- (a) the Chairperson and other members shall, as from the date of supersession, vacate their offices as such;
- (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the Controller of Insurance; and
- (c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government.

- (3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed disqualified for re-appointment.

- (4) The Central Government cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Furnishing of returns, etc., to Central Government [Section 20]

- (1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed, or as the Central Government may direct to furnish such returns, state-



ments and other particulars in regard to any proposed or existing programme for the promotion and development of the insurance industry as the Central Government may, from time to time, require.

- (2) Without prejudice to the provisions of sub-section (1), the Authority shall, within nine months after the close of each financial year, submit to the Central Government a report giving a true and full account of its activities including the activities for promotion and development of the insurance business during the previous financial year.
- (3) Copies of the reports received under sub-section (2) shall be laid, as soon as may be after they are received, before each House of Parliament.

Chairperson, members, officers and other employees of Authority to be public servants [Section 21]

The Chairperson, members, officers and other employees of the Authority shall 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 (45 of 1860).

Protection of action taken in good faith [Section 22]

No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or any member, officer or other employee of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder:

Provided that nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

Delegation of powers [Section 23]

- (1) The Authority may, by general or special order in writing, delegate to the Chairperson or any other member or officer of the Authority subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary.
- (2) The Authority may, by a general or special order in writing, also form Committees of the members and delegate to them the powers and functions of the Authority as may be specified by the regulations.

Power to make rules [Section 24]

- (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -
 - (a) the salary and allowances payable to, and other terms and conditions of service of, the members other than part-time members under sub-section (1) of section 7;
 - (b) the allowances to be paid to the part-time members under sub-section (2) of section 7;
 - (c) such other powers that may be exercised by the Authority under clause (q) of sub-section (2) of section 14;
 - (d) the form of annual statement of accounts to be maintained by the Authority under sub-section (1) of section 17;
 - (e) the form and the manner in which and the time within which returns and statements and particulars are to be furnished to the Central Government under sub-section (l) of section 20;

- (f) the matters under sub-section (5) of section 25 on which the Insurance Advisory Committee shall advise the Authority;
- (g) any other matter which is required to be, or may be, prescribed, or in respect of which provision is to be or may be made by rules.

Establishment of Insurance Advisory Committee [Section 25]

- (1) The Authority may, by notification, establish with effect from such date as it may specify in such notification, a Committee to be known as the Insurance Advisory Committee.
- (2) The Insurance Advisory Committee shall consist of not more than twenty-five members excluding ex officio members to represent the interests of commerce, industry, transport, agriculture, consumer fora, surveyors, agents, intermediaries, organisations engaged in safety and loss prevention, research bodies and employees' association in the insurance sector.
- (3) The Chairperson and the members of the Authority shall be the ex officio Chairperson and ex officio members of the Insurance Advisory Committee.
- (4) The objects of the Insurance Advisory Committee shall be to advise the Authority on matters relating to the making of the regulations under section 26.
- (5) Without prejudice to the provisions of sub-section (4), the Insurance Advisory Committee may advise the Authority on such other matters as may be prescribed.

Power to make regulations [Section 26]

- (1) The Authority may, in consultation with the Insurance Advisory Committee, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-
 - (a) the time and places of meetings of the Authority and the procedure to be followed at such meetings including the quorum necessary for the transaction of business under sub-section (1) of section 10;
 - (b) the transaction of business at its meetings under sub -section (4) of section 10;
 - (c) the terms and other conditions of service of officers and other employees of the Authority under sub-section (2) of section 12;
 - (d) the powers and functions which may be delegated to Committees of the members under sub-section (2) of section 23; and
 - (e) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be or may be made by regulations.

Rules and regulations to be laid before Parliament [Section 27]

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.



Application of other laws not barred [Section 28]

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

Power to remove difficulties [Section 29]

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the appointed day.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendment of Act 4 of 1938 [Section 30]

The Insurance Act, 1938 shall be amended in the manner specified in the First Schedule to this Act.

Amendment of Act 31 of 1956 [Section 31]

The Life Insurance Corporation Act, 1956 shall be amended in the manner specified in the Second Schedule to this Act.

Amendment of Act 57 of 1972 [Section 32]

The General Insurance Business (Nationalisation) Act, 1972 shall be amended in the manner specified in the Third Schedule to this Act.

CONCEPT ON BASEL - I

OBJECTIVES

After going through this Chapter, the student would have some understanding of the following-

- The Basel Accord 1988 (Base I)
- Definition/Clarification of 'Bank' for the purpose of Basel accord, Commercial banks and Universal banks
- Shift from a 'Credit risk only' position which existed during 1988-1998
- Market risk - Recognition of the need for capital - Amendment of Basel I in 1996
- Commercial Banks & Securities firms - Universal Banks
- Segregation of Banking book & Trading book for holding Capital
- Banks to have independent Risk Management function and satisfy the 'Regulator' regarding its risk management practices

INTRODUCTION

As on date the provisions of Basel Accord of 1988 has undergone a number of changes made year after year. Though Basel II accord has become operational some of the covenants of Basel I (1988) are still relevant. Under the 1988 accord, Banks and security firms have been given different treatment. In the ensuing paragraphs we will focus on these developments.

THE BASEL ACCORD (BASEL I)

In 1988, the Basel Committee published a set of minimal capital requirements for banks. These became law in G-10 countries in 1992, with Japanese banks being permitted an extended transition period. The requirements have come to be known as the 1988 Basel Accord.

What is a 'Bank' for the purpose of Basel accord: To understand the scope of the 1988 accord, we need to clarify what we mean by 'bank.' This is because, some jurisdictions distinguished between banks and securities firms, and the Basel accord (Basel I) applied only to the former.

Commercial Banks and Universal Banks - Glass Steagal Act, USA (1933-1999)

Under its Glass-Steagal Act, the United States had quite some time back made a distinction between commercial banks and securities firms (investment banks or broker-dealers). Following World War II, Japan adopted a similar legal distinction. The United Kingdom also distinguished between banks and securities firms, although this was more a matter of custom than law. By comparison, Germany had a tradition of universal banking, which made no distinction between banks and securities firms. Under German law, securities firms were banks and a single regulatory authority oversaw banks. France and the Scandinavian countries had similar regimes. The USA revoked the Glass Steagal Act in 1999.

Exclusive Focus on Credit Risk During 1988-1998

The 1988 Basel Accord -Basel I- primarily addressed banking in the sense of deposit taking and lending (commercial banking under US law), so its focus was credit risk. Under this dispensation, bank assets were assigned 'risk weights.' Generally, G-10 government debt was weighted 0 per cent, G-10 bank debt was weighted 20 per cent, and other debt was weighted 100 per cent. Following this the Government of India Securities were assigned zero risk weight. Having assigned and aggregated the risk, Banks were required to hold capital equal to 8 per cent of the risk weighted value of assets. Additional rules applied to contingent obligations, such as letters of credit or derivatives.

MARKET RISK - RECOGNITION OF THE NEED FOR CAPITAL - AMENDMENT OF BASEL I IN 1996

With banks increasingly taking market risks, in the early 1990s, the Basel Committee decided to update



the 1988 accord to include bank capital requirements for market risk. This would have implications for non-bank securities firms. Any capital requirements the Basel Committee adopted for banks' market risk were to be incorporated into future updates of Europe's Capital Adequacy Directive (CAD) and thereby apply to Britain's non-bank securities firms. If the same framework were extended to non-bank securities firms outside Europe, then market risk capital requirements for banks, and, securities firms could be harmonized globally. In 1991, the Basel Committee entered discussions with the International Organization of Securities Commissions (TOSCO) to jointly develop such a framework. The two organizations formed a technical committee, and work commenced in January 1992.

COMMERCIAL BANKS & SECURITIES FIRMS - UNIVERSAL BANKS

Glass Steagal Act revocation in 1999 by USA: Historically, capital requirements for banks and securities firms had served different purposes.

1. Banks

Banks were primarily exposed to credit risk. They often held illiquid portfolios of loans supported by deposits. Such loans could be liquidated rapidly only at 'fire sale' prices. This placed banks at risk of 'runs.' If depositors feared that a bank might fail, they would withdraw their deposits. Forced to liquidate its loan portfolio, the bank would succumb to staggering losses on those sales.

Though Deposit insurance and lender-of-last-resort provisions implemented eliminated the risk of bank runs, they introduced a new problem. Depositors no longer had an incentive to consider a bank's financial viability before depositing funds. Without such marketplace discipline, regulators were forced to intervene often at huge cost to the exchequer. One solution was to impose minimum capital requirements on banks. Because of the high cost of liquidating a bank, such requirements were generally based upon the value of a bank as a going concern.

Securities Firms

The primary objective behind stipulation of capital requirements for securities firms was to protect clients who might have funds or securities on deposit with a firm. Securities firms were primarily exposed to market risk. They held liquid portfolios of marketable securities supported by secured financing such as repos. A troubled firm's portfolio could be unwound quickly at market prices. For this reason, capital requirements were based upon the liquidation value of a firm.

Capital for Banks & Securities Firms

In a nutshell, banks entailed systemic risk. It was thought then that Securities firms did not. Regulators would strive to keep a troubled bank afloat but would gladly unwind a troubled securities firm. Banks needed long-term capital in the form of equity or long-term subordinated debt. Securities firms could operate with more transient capital, including short-term subordinated debt.

SEGREGATION OF BANKING BOOK & TRADING BOOK FOR HOLDING CAPITAL

In April 1993, the Basel Committee released a package of proposed amendments to the 1988 accord. This included a document proposing minimum capital requirements for banks' market risk.

- Banks would be required to identify a trading book and hold capital for market risk under trading book and organization-wide foreign exchange exposures.
- Capital charges for the trading book would be based upon a crude value-at-risk (VaR) measure broadly consistent with a 10-day 95 per cent VaR metric. Similar to a VaR measure used by Europe's CAD, this partially recognized hedging effects but ignored diversification effects.
- Later VaR measure was changed modestly from the 1993 proposal, still reflecting a 10-day 95 per cent VaR metric. Market risk capital requirements were set equal to the greater of either the previous day's VaR, or the average VaR over the previous six days, multiplied by 3.

BANKS TO HAVE INDEPENDENT RISK MANAGEMENT FUNCTION AND SATISFY THE REGULATOR REGARDING ITS RISK MANAGEMENT PRACTICES

The Basel Committee's new proposal was adopted in 1996 as an amendment to the 1988 accord. It is known as the 1996 amendment. It went into effect in 1998.

Let Us Sum Up

The Basel Committee published a set of minimal capital requirements for banks and distinguished between banks and securities firms. Bank assets were assigned 'risk weights'. The primary purpose of capital requirements for securities firms was to protect clients who might have funds or securities on deposit with a firm.

Keywords

International Organization of Securities Commissions (IOSCO), Basel 1, Glass Steagel Act, Security firm, credit risk, market risk, risk weights, capital adequacy directive (CAD), deposit insurance, lender of last resort, Repos, trading book, value at risk (VaR), risk management practices

Check Your Progress

1. In the case of Value at Risk (VaR), the -
 - (a) VaR at 95 per cent confidence level, implies a 5 per cent probability of incurring the loss
 - (b) VaR at 95 per cent confidence level, implies a 95 per cent probability of incurring the loss
 - (c) It is the part of investment which is at risk
 - (d) None of the above

Ans. [a]
2. 'The Banking Book' includes assets and liabilities subjected to interest rate risk on their Maturities/re-pricing.
 - (a) True
 - (b) False

Ans. [a]
3. The Trading Book includes all the assets that are held with intention of trading that are marketable:
 - (a) True
 - (b) False Ans. [a]
4. 'Run' in banking terms means
 - (a) Banks running for deposits
 - (b) If depositors feared a bank might fail, they would withdraw their deposits
 - (c) Depositors running after banks for best price for their investment
 - (d) None of the above

Ans. [b]
5. Security firms are primarily exposed to
 - (a) credit risks
 - (b) market risks
 - (c) both the above
 - (d) None of the above

Ans. [b]



CONCEPT ON BASEL - II

OBJECTIVES

The objectives of this unit are to familiarize the readers with:

- Pillar I - Minimum Capital requirement for Credit risk, Market risk and Operational risk
- Pillar II - Supervisory review process - Capital adequacy assessment
- Pillar III - Market discipline [Transparency and Disclosure requirement by banks]

INTRODUCTION

The Basel Committee replaced the 1988 accord (amended in 1996 and adopted in 1998) in April 2006. This has been dubbed Basel II. It includes more sophisticated treatment of credit risk. Basel II also addressed 'Operational risk', among other things.

BASEL I WAS BASED ON UNIFORM ASSESSMENT METHODOLOGY FOR CAPITAL ADEQUACY

Basel II is based on 3 pillars as mentioned below: Pillar - I Minimum Capital requirements

Pillar - II Supervisory Review Process

Pillar - III Market Discipline

PILLAR - I MINIMUM CAPITAL REQUIREMENTS

A bank will have to determine the proportion of its capital that it must keep in reserve based on this calculation:

$$\frac{\text{Total Capital (Unchanged)}}{\text{Credit Risk+Market Risk+Operational Risk}} = \text{The Bank's Capital Ratio nor} = 8\% \\ [9\% \text{ for India}]$$

Credit risk capital is for 'Banking book'.

Market risk Capital is for 'Trading book'.

Operational risk - New rules introduced for Basel II

Market Risk Capital is for 'Trading book'.

Operational risk- New rules introduced for Basel II

PILLAR - II SUPERVISORY REVIEW PROCESS

Pillar II seeks to enhance the link between institution's [bank's] risk profile, its risk management and risk mitigation systems and its capital

Banks must ensure that they have a process in place to make sure that they hold adequate capital consistent with their risk profile and strategy.

The Internal Capital Adequacy Assessment Process [ICAAP] is the responsibility of the bank and they should own, develop and manage their risk management processes.

PILLAR - III MARKET DISCIPLINE [TRANSPARENCY & DISCLOSURES]

This sets out the 'minimum disclosure requirements for external reporting. A bank is expected to be transparent. It should disclose various information relating to its financial aspects including its risks at periodical intervals.

COMPARISON BETWEEN BASEL I AND BASEL

Introduction: In the previous paragraphs we have given the highlights of Basel I and Basel II. In this chapter we compare the two for better understanding.

Comparison between Basel I and Basel II

Basel - I(1988 and amended in 1996) – Based on Methodology for Capital Adequacy	Basel - II (to be in place by 2006 in G-10 countries and in India in 2008)- Basel II based on 3 pillars
1. Capital adequacy based on 'Risk Weighted Assets'	1. Capital adequacy based on 'Risk Weighted Assets)
2. Not risk sensitive. Prescriptive.	2. Risk sensitive.
3. All credit exposures carried risk weight of 100 per cent - except for some sovereign exposures and mortgages	3. Credit exposures carry risk weights based on credit qualities.
4. Risk Capital = Credit exposure * Risk Weights * 8 per cent	4. Risk capital: Similar to Basel I. But efficient Banks can have lesser capital than others
Implications were	Implications are
<ul style="list-style-type: none"> • Every bank had to maintain same 8 per cent capital. Thus Banks with good quality assets had no incentives. As a result credit quality had to be lowered to increase returns • Low rated exposures were subsidized by high rated exposures • No provision for economic pricing by banks 	<ul style="list-style-type: none"> • Banks with good quality assets have incentives because they can manage with lower capital • Better quality assets requires lesser capital • Risk pricing can be done by banks based on credit risk perception • Provision exists for economic pricing by banks

Let Us Sum Up

Basel II introduced in 2006 brought in a new concept - 'Operational risk'. Basel II also introduced the idea of 3 pillars for assessing and ensuring capital adequacy of banks.

Basel II was implemented from 2006 in G-10 countries. It was implemented in India in 2008.

Keywords

Pillars, Operational risk, minimum capital requirement, Transparency, Capital Ratio, Internal Capital Adequacy Assessment Process [ICAAP], Capital adequacy, Risk weighted assets, Risk capital.

Check Your Progress

1. Basel II is based on 3 pillars. The 3 pillars are
 - (a) Minimum Capital requirements, Supervisory Review Process and Market Discipline
 - (b) Transparency, minimum disclosures and financial aspects
 - (c) Banks. Credit risk. Operational risk
 - (d) None of the above

Ans. [a]
2. The minimum capital adequacy ratio for India is
 - (a) Higher than prescribed by Basel II
 - (b) Same as for other countries
 - (c) Lower than suggested by Basel II
 - (d) None of the above

Ans. [a]
3. ICAAP is a Supervisory review process for Capital adequacy assessment. This process is to be periodically done by
 - (a) The Central Bank of a country
 - (b) The Bank itself which is required to ensure its own capital adequacy
 - (c) The auditors

Ans. [b]
4. Credit exposures carry risk weights based on credit quality as per
 - (a) Basel I
 - (b) Basel II

Ans. [b]

Study Note - 7

LAWS RELATED TO POWER SECTOR



This Study Note includes

7.1 The Indian Electricity Act, 1910

7.1 THE INDIAN ELECTRICITY ACT, 1910

ABSTRACT

The Indian Electricity Sector has gone through a lot of metamorphosis. The three major acts concerning the electricity sector were the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998. With the changing times many of the acts had become passé and thus had to be reviewed. The Electricity Act 2003, enacted by the Parliament of India, received the President's assent on 26th May 2003 and came into force on June 10, 2003. The main aim of the Act was to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto. However even after many deliberations there are some major issues that were overlooked. They need to be addressed promptly so that the power sector can be truly the engine of growth for the Indian Economy. This paper will briefly try to point out the troublesome issues and will try to suggest remedial measures.

Introduction:

Electricity is one of the key inputs for the overall socio-economic development of the country. The basic responsibility of the power supply industry is to provide adequate electricity at economic cost, while ensuring reliability and quality of the supply. Despite significant progress in capacity addition since Independence, the demand for electricity continues to outstrip the supply with the result that energy and peaking shortages continue to plague the economy. With the increasing pace of economic development facilitated by the reforms initiated by the Government, the demand for power in both rural and urban areas is likely to increase rapidly in the coming years. The major task of the power sector will, therefore, be to ensure that the anticipated demand is met adequately and in a reliable and cost-effective manner.

The power sector is currently witnessing a critical phase. State Electricity Boards (SEBs) are responsible for providing electricity to the people. Most of the SEBs are cash strapped. They are not even able to earn a minimum Rate of Return (RoR) of 3% on their net fixed assets in servicing after providing for depreciation and interest charges in accordance with Section 59 of the Electricity (Supply) Act, 1948. The power sector in the country has accumulated a huge deficit, due to Central Power Generating Companies because of the deteriorating financial performance. The structure of the electricity industry in independent India was laid down by the Electricity (Supply) Act, 1948 that created the State Electricity Boards (SEBs). In their initial years, the SEBs performed yeomen service in carrying electric power everywhere, but over the years they have become unsustainable, thanks to their mismanagement and politicisation coupled with the economic and technological developments

of the past decade. It is high time that the electricity industry is denationalised, and restructured on commercial principles. Even though, the legal framework was amended in 1998 to facilitate private investment in generation and transmission, respectively, it enabled private entities to sell or transmit power only through long-term contracts with state-owned entities. Such contract-driven privatisation through state-owned monopolies can have little chance of enduring success. Similarly, the setting up of regulatory commissions under the 1998 Act, though a welcome move, only had a limited impact on the state-owned monopolies. It should surprise no one that these piecemeal changes in the name of reform have not been able to arrest the deterioration of this industry.

To overcome these teething problems that the sector faces, The Electricity Act, 2003 (referred to as The Act from here on) was introduced in the Indian parliament after a lot of political debate. The Act came into force (except for section 121) on June 10, 2003 is stated to be the 'distilled wisdom' of a series of commissioned international and national consultancy studies and seminars and conferences held at the all-India level during the last three years. It replaces the three existing legislations, namely, Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998. The objectives of the Act are to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal. It is acclaimed to be the roadmap for the electricity industry, which will help hasten the pace of economic reforms in the country. When the Bill on this subject was under consideration of the standing committee of parliament, a number of issues deserved closer examination. Several of these remain unattended. The Act, which is a halfway house, raises a number of new issues, which are likely to pose serious problems in the coming years.

The new Act seeks to free up distribution, the main stumbling block in the development of India's power sector. The Act brings together laws on generation, transmission, distribution, trading and use of electricity, liberalising generation, transmission and distribution and providing for penal action for theft of power or default on payment for power consumed. Captive plants have far greater freedom under the Act. Consumers are allowed to form bulk-purchasing groups and buy power directly from generating companies, traders or distribution companies. Non-government organisations, local bodies and user organisations too can distribute power in non-urban areas, purchasing power from the supplier of their choice. Open access has been permitted in transmission. Additional, limited open access has been provided for in the case of distribution as well, although the extent of actual competition in distribution will depend on the quality of state level regulation. The Act also seeks to set up an appellate tribunal to hear complaints against the central and state level regulatory commissions and to exercise general supervision and control over these bodies.

The present paper will identify the major features of the act and will point out the major shortcomings of the Act. The first section is the introduction. The Second section deals with power generation scenario, which will look at the major development in the electricity sector over the years. The third section looks at the salient features of the act. The fourth section will look at the regulation aspect and point out some of its shortcomings in the act. The fifth section is divided in two parts wherein the first section i.e. 5.1 will look at the Open Access. The second section i.e. 5.2 will look at the implications of the act for the electricity sector. The last section is the conclusion, which will summarise the paper and put forward some issues that need to be addressed.

THE ELECTRICITY ACT, 2003

An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies constitution of Central Electricity Authority, Regulatory



Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows: -

Short title, extent and commencement [Section 1]

- (1) This Act may be called the Electricity (Amendment) Act, 2007.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions [Section 2]

In this Act, unless the context otherwise requires,

- (1) "Appellate Tribunal" means the Appellate Tribunal for Electricity established under section 110;
- (2) "appointed date" means such date as the Central Government may, by notification, appoint;
- (3) "area of supply" means the area within which a distribution licensee is authorised by his licence to supply electricity;
- (4) "Appropriate Commission" means the Central Regulatory Commission referred to in sub-section (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Commission referred to in section 83, as the case may be ;
- (5) "Appropriate Government" means, -
 - (a) the Central Government, -
 - (i) in respect of a generating company wholly or partly owned by it;
 - (ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;
 - (iii) in respect of National Load Despatch Centre; and Regional Load Despatch Centre;
 - (iv) in relation to any works or electric installation belonging to it or under its control ;
 - (b) in any other case, the State Government, having jurisdiction under this Act;
- (6) "Authority" means the Central Electricity Authority referred to in sub-section (1) of section 70;
- (7) "Board" means, a State Electricity Board, constituted before the commencement of this Act, under sub-section (I) of section 5 of the 3 commencement of this Act, under sub-section (I) of section 5 of the Electricity (Supply) Act, 1948;
- (8) "Captive generating plant" means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;
- (9) "Central Commission" means the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76;

- (10) "Central Transmission Utility" means any Government company which the Central Government may notify under sub-section (1) of section 38;
- (11) "Chairperson" means the Chairperson of the Authority or Appropriate Commission or the Appellate Tribunal as the case may be;
- (12) "Cogeneration" means a process which simultaneously produces two or more forms of useful energy (including electricity);
- (13) "company" means a company formed and registered under the Companies Act, 1956 and includes anybody corporate under a Central, State or Provincial Act;
- (14) "Conservation" means any reduction in consumption of electricity as a result of increase in the efficiency in supply and use of electricity;
- (15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;
- (16) "Dedicated Transmission Lines" means any electric supply line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations or the load centre, as the case may be;
- (17) "Distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;
- (18) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;
- (19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;
- (20) "Electric line" means any line which is used for carrying electricity for any purpose and includes
 - (a) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and
 - (b) any apparatus connected to any such line for the purpose of carrying electricity;
- (21) "Electrical Inspector" means a person appointed as such by the Appropriate Government under sub-section (1) of section 162 and also includes Chief Electrical Inspector;
- (22) "electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include-
 - (a) An electric line; or
 - (b) A meter used for ascertaining the quantity of electricity supplied to any premises; or
 - (c) An electrical equipment, apparatus or appliance under the control of a consumer;
- (23) "Electricity" means electrical energy-
 - (a) Generated, transmitted, supplied or traded for any purpose; or
 - (b) Used for any purpose except the transmission of a message;
- (24) "Electricity Supply Code" means the Electricity Supply Code specified under section 50;



- (25) "electricity system" means a system under the control of a generating company or licensee, as the case may be, having one or more -
- Generating stations; or
 - Transmission lines; or
 - Electric lines and sub-stations; and when used in the context of a State or the Union, the entire electricity system within the territories thereof;
- (26) "Electricity trader" means a person who has been granted a licence to undertake trading in electricity under section 12;
- (27) "franchisee" means a persons authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply;
- (28) "generating company" means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;
- (29) "generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;
- (30) "generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switch yard, switch-gear, cables or other appurtenant equipment, if any used for that purpose and the site thereof, a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;
- (31) "Government company" shall have the meaning assigned to it in section 617 of the Companies Act, 1956;
- (32) "grid" means the high voltage backbone system of inter-connected transmission lines, sub-stations and generating plants;
- (33) "Grid Code" means the Grid Code specified by the Central Commission under clause (h) of sub-section (1) of section 79;
- (34) "Grid Standards" means the Grid Standards specified under clause (d) of section 73 by the Authority;
- (35) "high voltage line" means an electric line or cable of a nominal voltage as may be specified by the Authority from time to time;
- (36) "inter-State transmission system" includes -
- any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;
 - the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;
 - The transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by Central Transmission Utility.
- (37) "intra -State transmission system" means any system for transmission of electricity other than an inter-State transmission system ;
- (38) "licence" means a licence granted under section 14;

- (39) " licensee " means a person who has been granted a licence under section 14;
- (40) "line" means any wire, cable, tube , pipe, insulator, conductor or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity and includes any line which surrounds or supports, or is surrounded or supported by or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;
- (41) "local authority" means any Nagar Panchayat, Municipal Council, municipal corporation, panchayat constituted at the village, intermediate and district levels, body or port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;
- (42) "main" means any electric supply-`` line through which electricity is, or is intended to be, supplied;
- (43) "Member" means the Member of the Appropriate Commission or Authority or Joint Commission, or the Appellate Tribunal, as the case may be, and includes the Chairperson of such Commission or 6 may be, and includes the Chairperson of such Commission or Authority or appellate tribunal;
- (44) "National Electricity Plan" means the National Electricity Plan notified under sub-section (4) of section 3;
- (45) "National Load Despatch Centre" means the Centre established under sub-section (1) of section 26;
- (46) "notification" means notification published in the Official Gazette and the expression " notify" shall be construed accordingly;
- (47) "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;
- (48) "overhead line" means an electric line which is placed above the ground and in the open air but does not include live rails of a traction system;
- (49) "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (50) "power system" means all aspects of generation, transmission, distribution and supply of electricity and includes one or more of the following, namely:-
 - (a) generating stations;
 - (b) transmission or main transmission lines;
 - (c) sub-stations;
 - (d) tie-lines;
 - (e) load despatch activities;
 - (f) mains or distribution mains;
 - (g) electric supply-lines;
 - (h) overhead lines;
 - (i) service lines;
 - (j) works;
- (51) "premises" includes any land, building or structure;



- (52) "prescribed" means prescribed by rules made by the Appropriate Government under this Act; 7
- (53) "public lamp" means an electric lamp used for the lighting of any street;
- (54) "real time operation" means action to be taken at a given time at which information about the electricity system is made available to the concerned Load Despatch Centre;
- (55) "Regional Power Committee" means a committee established by resolution by the Central Government for a specified region for facilitating the integrated operation of the power systems in that region;
- (56) "Regional Load Despatch Centre" means the centre established under sub-section (1) of section 27;
- (57) "regulations" means regulations made under this Act;
- (58) "repealed laws" means the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 repealed by section 185;
- (59) "rules" means rules made under this Act;
- (60) "schedule" means the schedule to this Act;
- (61) "service-line" means any electric supply line through which electricity is, or is intended to be, supplied -
- (a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or
- (b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;
- (62) "specified" means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under this Act;
- (63) "stand alone system" means the electricity system set up to generate power and distribute electricity in a specified area without connection to the grid;
- (64) "State Commission" means the State Electricity Regulatory Commission constituted under sub-section (1) of section 82 and includes a Joint Commission constituted under sub-section (1) of section 83;
- (65) "State Grid Code" means the State Grid Code referred under clause (h) of sub-section (1) of section 86;
- (66) "State Load Despatch Centre" means the centre established under subsection (1) of section 31;
- (67) "State Transmission Utility" means the Board or the Government company specified as such by the State Government under sub-section (1) of section 39;
- (68) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway;
- (69) "sub-station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switchgears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;
- (70) "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;
- (71) "trading" means purchase of electricity for resale thereof and the expression "trade" shall be construed accordingly;

- (72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switchgear and other works;
- (73) "transmission licensee" means a licensee authorised to establish or operate transmission lines;
- (74) "transmit" means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;
- (75) "utility" means the electric lines or electrical plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of this Act;
- (76) "wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;
- (77) "works" includes electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit, distribute or supply electricity to the public and to carry into effect the objects of a licence or sanction granted under this Act or any other law for the time being in force.

NATIONAL ELECTRICITY POLICY AND PLAN

National Electricity policy and plan [Section 3]

- (1) The Central Government shall, from time to time, prepare the national electricity policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.
- (2) The Central Government shall publish National Electricity Policy and tariff policy from time to time.
- (3) The Central Government may, from time to time, in consultation with the State Governments and the Authority, review or revise, the National Electricity Policy and tariff policy referred to in sub-section (1).
- (4) The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five years:

Provided that the Authority in preparing the National Electricity Plan shall publish the draft National Electricity Plan and invite suggestions and objections thereon from licensees, generating companies and the public within such time as may be prescribed:

Provided further that the Authority shall -

- (a) notify the plan after obtaining the approval of the Central Government;
- (b) revise the plan incorporating therein the directions, if any, given by the Central Government while granting approval under clause (a).

- (5) The Authority may review or revise the National Electricity Plan in accordance with the National Electricity Policy.

National policy on standalone systems for rural areas and non-conventional energy systems [Section 4]

The Central Government shall, after consultation with the State Governments, prepare and notify a national policy, permitting stand alone systems (including those based on renewable sources of energy and non-conventional sources of energy) for rural areas.



National policy on electrification and local distribution in rural areas [Section 5]

The Central Government shall also formulate a national policy, in consultation with the State Governments and the State Commissions, for rural electrification and for bulk purchase of power and management of local distribution in rural areas through Panchayat Institutions, users' associations, co-operative societies, non-Governmental organisations or franchisees.

Joint responsibility of State Government and Central Government in rural electrification [Section 6]

The concerned State Government and the Central Government shall jointly endeavour to provide access to electricity to all areas including villages and hamlets through rural electricity infrastructure and electrification of households.

Generation Company and requirement for setting up of generating station [Section 7]

Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.

Hydro- electric generation [Section 8]

- (1) Notwithstanding anything contained in section 7, any generating company intending to set-up a hydro-generating station shall prepare and submit to the Authority for its concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification.
- (2) The Authority shall, before concurring in any scheme submitted to it under sub-section (1) have particular regard to, whether or not in its opinion,-
 - (a) the proposed river-works will prejudice the prospects for the best ultimate development of the river or its tributaries for power generation, consistent with the requirements of drinking water, irrigation, navigation, flood-control, or other public purposes, and for this purpose the Authority shall satisfy itself, after consultation with the State Government, the Central Government, or such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works;
 - (b) the proposed scheme meets, the norms regarding dam design and safety.
- (3) Where a multi-purpose scheme for the development of any river in any region is in operation, the State Government and the generating company shall co-ordinate their activities with the activities of the person responsible for such scheme in so far as they are inter-related.

Captive Generation [Section 9]

- (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:
Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under sub-section (2) of section 42.

- (2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

Duties of Generating Companies [Section 10]

- (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.
- (2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.
- (3) Every generating company shall -
 - (a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;
 - (b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.

Direction to generating companies [Section 11]

- (1) The Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.

Explanation.- For the purposes of this section, the expression "extraordinary circumstances" means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.

- (2) The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.

Authorised persons to transmit, supply, etc., electricity [Section 12]

- (a) transmit electricity; or
- (b) distribute electricity; or
- (c) undertake trading in electricity,

unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.

Power to exempt [Section 13]

The Appropriate Commission may, on the recommendations, of the Appropriate Government, in accordance with the national policy formulated under section 5 and in public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users' association, co-operative societies, nongovernmental organizations, or franchisees:

Grant of Licence [Section 14]

The Appropriate Commission may, on application made to it under section 15, grant any person licence to any person -

- (a) to transmit electricity as a transmission licensee; or
- (b) to distribute electricity as a distribution licensee; or



- (c) to undertake trading in electricity as an electricity trader, in any area which may be specified in the licence:

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements (including the capital adequacy, credit-worthiness, or code of conduct) as may be prescribed by the Central Government, and no such applicant who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53:

Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.

Procedure for Grant of Licence [Section 15]

- (1) Every application under section 14 shall be made in such form and in such manner as may be specified by the Appropriate Commission and shall be accompanied by such fee as may be prescribed.
- (2) Any person who has made an application for grant of licence shall, within seven days after

making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted -

- (i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it:

Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of such notice as aforesaid;

- (ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.

(3) A person intending to act as a transmission licensee shall, immediately on making the application, forward a copy of such application to the Central Transmission Utility or the State Transmission Utility, as the case may be.

(4) The Central Transmission Utility or the State Transmission Utility, as the case may be, shall, within thirty days after the receipt of the copy of the application referred to in sub-section (3), send its recommendations, if any, to the Appropriate Commission:

Provided that such recommendations shall not be binding on the Commission.

(5) Before granting a licence under section 14, the Appropriate Commission shall

- (a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name of the person to whom it proposes to issue the licence;
- (b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or State Transmission Utility, as the case may be.

(6) Where a person makes an application under sub-section (1) of section 14 to act as a licensee, the Appropriate Commission shall, as far as practicable, within ninety days after receipt of such application, -

- (a) issue a licence subject to the provisions of this Act and the rules and regulations made thereunder; or
- (b) reject the application for reasons to be recorded in writing if such application does not conform to the provisions of this Act or the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

(7) The Appropriate Commission shall, immediately after issue of licence, forward a copy of the licence to the Appropriate Government, Authority, local authority, and to such other person as the Appropriate Commission considers necessary.

(8) A licence shall continue to be in force for a period of twenty five years unless such licence is revoked.

Conditions of licence [Section 16]

The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence:

Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second,



third, fourth and fifth provisos to section 14 after the expiry of one year from the commencement of this Act.

Licensee not to do certain things [Section 17]

- (1) No licensee shall, without prior approval of the Appropriate Commission, -
 - (a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or
 - (b) merge his utility with the utility of any other licensee:
Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.
- (2) Every licensee shall, before obtaining the approval under subsection (1), give not less than one month's notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.
- (3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.
- (4) Any agreement relating to any transaction specified in subsection (1) or sub-section (3), unless made with, the prior approval of the Appropriate Commission, shall be void.

Amendment of licence [Section 18]

- (1) Where in its opinion the public interest so permits, the Appropriate Commission, may, on the application of the licensee or otherwise, make such alterations and amendments in the terms and conditions of a licence as it thinks fit:
Provided that no such alterations or amendments shall be made except with the consent of the licensee unless such consent has, in the opinion of the Appropriate Commission, been unreasonably withheld.
- (2) Before any alterations or amendments in the licence are made under this section, the following provisions shall have effect, namely:-
 - (a) where the licensee has made an application under sub-section (1) proposing any alteration or modifications in his licence, the licensee shall publish a notice of such application with such particulars and in such manner as may be specified;
 - (b) in the case of an application proposing alterations or modifications in the area of supply comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission shall not make any alterations or modifications except with the consent of the Central Government;
 - (c) where any alterations or modifications in a licence are proposed to be made otherwise than on the application of the licensee, the Appropriate Commission shall publish the proposed alterations or modifications with such particulars and in such manner as may be specified;
 - (d) the Appropriate Commission shall not make any alterations or modification unless all suggestions or objections received within thirty days from the date of the first publication of the notice have been considered.

Revocation of licence [Section 19]

- (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely:-

- (a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;
 - (b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;
 - (c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor –
 - (i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or and obligations imposed on him by his licence; or
 - (ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;
 - (d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.
- (2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.
- (3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months' notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.
- (4) The Appropriate Commission may, instead of revoking a licence under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.
- (5) Where the Commission revokes a licence under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.
- (6) Where an Appropriate Commission has given notice for revocation of licence under sub-section (5), without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under this Act, the licensee may, after prior approval of that Commission, sell his utility to any person who is found eligible by that Commission for grant of licence.

Sale of utilities of licensees [Section 20]

- (1) Where the Appropriate Commission revokes under section 19 the licence of any licensee, the following provisions shall apply, namely:-
- (a) the Appropriate Commission shall invite applications for acquiring the utility of the licensee whose licence has been revoked and determine which of such applications should be accepted, primarily on the basis of the highest and best price offered for the utility;
 - (b) the Appropriate Commission may, by notice in writing, require the licensee to sell his utility and thereupon the licensee shall sell his utility to the person (hereafter in this section referred to as the " purchaser") whose application has been accepted by that Commission;
 - (c) all the rights, duties, obligations and liabilities of the licensee, on and from the date of revocation of licence or on and from the date, if earlier, on which the utility of the licensee is sold to a purchaser, shall absolutely cease except for any liabilities which have accrued prior to that date;



- (d) the Appropriate Commission may make such interim arrangements in regard to the operation of the utility as may be considered appropriate including the appointment of Administrators;
 - (e) The Administrator appointed under clause (d) shall exercise such powers and discharge such functions as the Appropriate Commission may direct.
- (2) Where a utility is sold under sub-section (1), the purchaser shall pay to the licensee the purchase price of the utility in such manner as may be agreed upon.
- (3) Where the Appropriate Commission issues any notice under subsection (1) requiring the licensee to sell the utility, it may, by such notice, require the licensee to deliver the utility, and thereupon the licensee shall deliver on a date specified in the notice, the utility to the designated purchaser on payment of the purchase price thereof.
- (4) Where the licensee has delivered the utility referred to in subsection (3) to the purchaser but its sale has not been completed by the date fixed in the notice issued under that sub-section, the Appropriate Commission may, if it deems fit, permit the intending purchaser to operate and maintain the utility system pending the completion of the sale.

Vesting of utility in purchaser [Section 21]

Where a utility is sold under section 20 or section 24, then, upon completion of the sale or on the date on which the utility is delivered to the intending purchaser, as the case may be, whichever is earlier-

- (a) the utility shall vest in the purchaser or the intending purchaser, as the case may be, free from any debt, mortgage or similar obligation of the licensee or attaching to the utility:
Provided that any such debt, mortgage or similar obligation shall attach to the purchase money in substitution for the utility; and
- (b) the rights, powers, authorities, duties and obligations of the licensee under his licence shall stand transferred to the purchaser and such purchaser shall be deemed to be the licensee.

Provisions where no purchase takes place [Section 22]

- (1) If the utility is not sold in the manner provided under section 20 or section 24, the Appropriate Commission may, to protect the interest of consumers or in public interest, issue such directions or formulate such scheme as it may deem necessary for operation of the utility.
- (2) Where no directions are issued or scheme is formulated by the Appropriate Commission under sub-section (1), the licensee referred to in section 20 or section 24 may dispose of the utility in such manner as it may deem fit:

Provided that, if the licensee does not dispose of the utility, within a period of six months from the date of revocation under section 20 or section 24, the Appropriate Commission may cause the works of the licensee in, under, over, along, or across any street or public land to be removed and every such street or public land to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

Directions to licensees [Section 23]

If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof.

Suspension of distribution licence and sale of utility [Section 24]

- (1) If at any time the Appropriate Commission is of the opinion that a distribution licensee –
 - (a) has persistently failed to maintain uninterrupted supply of electricity conforming to standards regarding quality of electricity to the consumers; or

- (b) is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
- (c) has persistently defaulted in complying with any direction given by the Appropriate Commission under this Act; or
- (d) has broken the terms and conditions of licence,

and circumstances exist which render it necessary for it in public interest so to do, the Appropriate Commission may, for reasons to be recorded in writing, suspend, for a period not exceeding one year, the licence of the distribution licensee and appoint an Administrator to discharge the functions of the distribution licensee in accordance with the terms and conditions of licence:

Provided that before suspending a licence under this section, the Appropriate Commission shall give a reasonable opportunity to the distribution licensee to make representations against the proposed suspension of license and shall consider the representations, if any, of the distribution licensee.

- (2) Upon suspension of license under sub-section (1) the utilities of the distribution licensee shall vest in the Administrator for a period not exceeding one year or up to the date on which such utility is sold in accordance with the provisions contained in section 20, whichever is later.
- (3) The Appropriate Commission shall, within one year of appointment of the Administrator under sub-section (1) either revoke the licence in accordance with the provisions contained in section 19 or revoke suspension of the licence and restore the utility to the distribution licensee whose licence had been suspended, as the case may be.
- (4) In case where the Appropriate Commission revokes the licence under sub-section (3), the utility of the distribution licensee shall be sold within a period of one year from the date of revocation of the licence in accordance with the provisions of section 20 and the price after deducting the administrative and other expenses on sale of utilities be remitted to the distribution licensee.

Inter-State, regional and Inter-Regional transmission [Section 25]

For the purposes of this Part, the Central Government may, make regionwise demarcation of the country, and, from time to time, make such modifications therein as it may consider necessary for the efficient, economical and integrated transmission and supply of electricity, and in particular to facilitate voluntary interconnections and co-ordination of facilities for the inter-State, regional and interregional generation and transmission of electricity.

National Load Despatch centre [Section 26]

- (1) The Central Government may establish a centre at the national level, to be known as the National Load Despatch Centre for optimum scheduling and despatch of electricity among the Regional Load Despatch Centres.
- (2) The constitution and functions of the National Load Despatch Centre shall be such as may be prescribed by the Central Government:

Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity.
- (3) The National Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government.

Constitution of Regional Load Despatch Centre [Section 27]

- (1) The Central Government shall establish a centre for each region to be known as the Regional Load Despatch Centre having territorial jurisdiction as determined by the Central Government in



accordance with section 25 for the purposes of exercising the powers and discharging the power and discharging the functions under this Part.

- (2) The Regional Load Despatch Centre shall be operated by a Government Company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government:

Provided that until a Government company or authority or corporation referred to in this sub-section is notified by the Central Government, the Central Transmission Utility shall operate the Regional Load Despatch Centre: Provided further that no Regional Load Despatch Centre shall engage in the business of generation of electricity or trading in electricity.

Functions of Regional Load Despatch Centre [Section 28]

- (1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.
- (2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.
- (3) The Regional Load Despatch Centre shall -
 - (a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;
 - (b) monitor grid operations;
 - (c) keep accounts of the quantity of electricity transmitted through the regional grid;
 - (d) exercise supervision and control over the inter-State transmission system; and
 - (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.
- (4) The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.

Compliance of directions [Section 29]

- (1) The Regional Load Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.
- (2) Every licensee, generating company, generating station, substation and any other person connected with the operation of the power system shall comply with the direction issued by the Regional Load Despatch Centres under sub-section (1).
- (3) All directions issued by the Regional Load Despatch Centres to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter State transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied with the licensee or generating company or sub-station.
- (4) The Regional Power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.

- (5) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under sub-section (1), it shall be referred to the Central Commission for decision :

Provided that pending the decision of the Central Commission, the directions of the Regional Load Despatch Centre shall be complied with by the State Load Despatch Centre or the licensee or the generating company, as the case may be.

- (6) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (2) or sub-section (3), he shall be liable to penalty not exceeding rupees fifteen lacs.

INTRA-STATE TRANSMISSION

Transmission within a State [Section 30]

The State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilisation of the electricity.

Constitution of state Load Despatch Centres [Section 31]

- (1) The State Government shall establish a Centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under this Part.
- (2) The State Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any State Act, as may be notified by the State Government.

Provided that until a Government company or any authority or corporation is notified by the State Government, the State Transmission Utility shall operate the State Load Despatch Centre:

Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity.

Functions of state Load Despatch Centres [Section 32]

- (1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.
- (2) The State Load Despatch Centre shall -
- (a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;
 - (b) monitor grid operations;
 - (c) keep accounts of the quantity of electricity transmitted through the State grid;
 - (d) exercise supervision and control over the intra-state transmission system; and
 - (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.
- (3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.

Compliance of directions [Section 33]

- (1) The State Load Despatch Centre in a State may give such directions and exercise such supervision



and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.

- (2) Every licensee, generating company, generating station, substation and any other person connected with the operation of the power system shall comply with the direction issued by the State Load Depatch Centre under subsection (1).
- (3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.
- (4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1), it shall be referred to the State Commission for decision:
Provided that pending the decision of the State Commission, the direction of the State Load Despatch Centre shall be complied with by the licensee or generating company.
- (5) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section(1), he shall be liable to penalty not exceeding rupees five lacs.

Other provisions relating to transmission

Grid Standards [Section 34]

Every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance with the Grid Standards, as may be specified by the Authority.

Intervening transmission facilities [Section 35]

The Appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee.

Provided that any dispute regarding the extent of surplus capacity available with the licensee, shall be adjudicated upon by the Appropriate Commission.

Charges for intervening transmission facilities [Section 36]

- (1) Every licensee shall, on an order made under section 35, provided his intervening transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon :
Provided that the Appropriate Commission may specify rates, charges and terms and conditions if these cannot be mutually agreed upon by the licensees.
- (2) The rates, charges and terms and conditions referred to in subsection (1) shall be fair and reasonable, and may be allocated in proportion to the use of such facilities.

Explanation. - For the purposes of section 35 and 36, the expression “ intervening transmission facilities” means the electric lines owned or operated by a licensee where such electric lines can be utilised for transmitting electricity for and on behalf of another licensee at his request and on payment of a tariff or charge.

Direction by appropriate Government [Section 37]

The Appropriate Government may issue directions to the Regional Load Despatch Centres or State Load Despatch Centres, as the case may be, to take such measures as may be necessary for maintaining smooth and stable transmission and supply of electricity to any region or State.

Central Transmission Utility and functions [Section 38]

- (1) The Central Government may notify any Government company as the Central Transmission Utility:

Provided that the Central Transmission Utility shall not engage in the business of generation of electricity or trading in electricity:

Provided further that, the Central Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity of such Central Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as a transmission licensee, through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2) The functions of the Central Transmission Utility shall be -

- (a) to undertake transmission of electricity through inter-State transmission system;
- (b) to discharge all functions of planning and co-ordination relating to inter-state transmission system with -
 - (i) State Transmission Utilities;
 - (ii) Central Government;
 - (iii) State Governments;
 - (iv) generating companies;
 - (v) Regional Power Committees;
 - (vi) Authority;
 - (vii) licensees;
 - (viii) any other person notified by the Central Government in this behalf;
- (c) to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres;
- (d) to provide non-discriminatory open access to its transmission system for use by-
 - (i) any licensee or generating company on payment of the transmission charges; or
 - (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the Central Commission:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

State Transmission Utility and functions [Section 39]

(1) The State Government may notify the Board or a Government company as the State Transmission Utility:

Provided that the State Transmission Utility shall not engage in the business of trading in electricity:

Provided further that the State Government may transfer, and vest any property, interest



in property, rights and liabilities connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2) The functions of the State Transmission Utility shall be -

- (a) to undertake transmission of electricity through intra-State transmission system;
- (b) to discharge all functions of planning and co-ordination relating to intra-state transmission system with -
 - (i) Central Transmission Utility;
 - (ii) State Governments;
 - (iii) generating companies;
 - (iv) Regional Power Committees;
 - (v) Authority;
 - (vi) licensees;
 - (vii) any other person notified by the State Government in this behalf;
- (c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;
- (d) to provide non-discriminatory open access to its transmission system for use by-
 - (i) any licensee or generating company on payment of the transmission charges ; or
 - (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission.

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Duties of Transmission licensees [Section 40]

It shall be the duty of a transmission licensee -

- (a) to build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;
- (b) to comply with the directions of the Regional Load Despatch Centre and the State Load Despatch Centre as the may be;.
- (c) to provide non-discriminatory open access to its transmission system for use by-
 - (i) any licensee or generating company on payment of the transmission charges; or

- (ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission:
- Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:
- Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the Appropriate Commission:
- Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Appropriate Commission:
- Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Other business of Transmission Licensee [Section 41]

A transmission licensee may, with prior intimation to the Appropriate Commission , engage in any business for optimum utilisation of its assets:

Provided that a proportion of the revenues derived from such business shall, as may be specified by the Appropriate Commission, be utilised for reducing its charges for transmission and wheeling:

Provided further that the transmission licensee shall maintain separate accounts for each such business undertaking to ensure that transmission business neither subsidises in any way such business undertaking nor encumbers its transmission assets in any way to support such business:

Provided also that no transmission licensee shall enter into any contract or otherwise engage in the business to in trading electricity.

Provisions with respect to distribution licensees

Duties of distribution Licensee and open access [Section 42]

- (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.
- (2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission :

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee :

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

- (3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before



the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a Common carrier providing non-discriminatory open access.

- (4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.
- (5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.
- (6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.
- (7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.
- (8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.

Duty to supply on request [Section 43]

- (1) Save as Otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.-For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

- (2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission .

- (3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

Exceptions from duty to supply electricity [Section 44]

Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from doing so by cyclone, floods, storms or other occurrences beyond his control.

Power to recover charges [Section 45]

- (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.
- (2) The charges for electricity supplied by a distribution licensee shall be -
 - (a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;
 - (b) published in such manner so as to give adequate publicity for such charges and prices.
- (3) The charges for electricity supplied by a distribution licensee may include -
 - (a) a fixed charge in addition to the charge for the actual electricity supplied;
 - (b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.
- (4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.
- (5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

Power to recover expenditure [Section 46]

The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

Power to require security [Section 47]

- (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as determined by regulations, for the payment to him of all monies which may become due to him -
 - (a) in respect of the electricity supplied to such persons; or
 - (b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply or to provide the line or plant or meter for the period during which the failure continues.
- (2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.
- (3) If the person referred to in sub-section(2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.
- (4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.
- (5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-



section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

Additional terms of supply [Section 48]

A distribution licensee may require any person who requires a supply of electricity in pursuance of section 43 to accept -

- (a) any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with regulations made under section 53;
- (b) any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied.

Agreements with respect to supply or purchase of electricity [Section 49]

Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them.

The Electricity Supply Code [Section 50]

The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

Provisions with respect to electricity trader [Section 52]

- (1) Without prejudice to the provisions contained in clause (c) of section 12, the Appropriate Commission may, specify the technical requirement, capital adequacy requirement and credit worthiness for being an electricity trader.
- (2) Every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission.

Provisions relating to safety and electricity supply [Section 53]

- (1) The Authority may in consultation with the State Government, specify suitable measures for-
 - (a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;
 - (b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property ;
 - (c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;
 - (d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;
 - (e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;
 - (f) inspection of maps, plans and sections by any person authorized by it or by Electrical Inspector or by any person on payment of specified fee;

- (g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing a risk of personal injury or damage to property or interference with its use;

Control of transmission and use of electricity [Section 54]

- (1) Save as otherwise exempted under this Act, no person other than Central Transmission Utility or a State Transmission Utility, or a licensee shall transmit or use electricity at a rate exceeding two hundred and fifty watts and one hundred volts –

- (a) in any street, or
- (b) in any place,-
 - (i) in which one hundred or more persons are ordinarily likely to be assembled; or
 - (ii) which is a factory within the meaning of the Factories Act, 1948 or a mine within the meaning of the Mines Act, 1952; or
 - (iii) to which the State Government, by general or special order, declares the provisions of this sub-section to apply, without giving, before the commencement of transmission or use of electricity, not less than seven days' notice in writing of his intention to the Electrical Inspector and to the District Magistrate, or the Commissioner of Police, as the case may be, containing particulars of the electrical installation and plant, if any, the nature and the purpose of supply and complying with such of the provisions of Part XI of this Act, as may be applicable:

Provided that nothing in this section shall apply to electricity used for the public carriage of passengers, animals or goods, on, or for the lighting or ventilation of the rolling stock of any railway or tramway subject to the provisions of the Railways Act, 1989.

- (2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are ordinarily likely to be assembled, the matter shall be referred to the State Government, and the decision of the State Government thereon shall be final.
- (3) The provisions of this section shall be binding on the Government.

Use, etc., of meters [Section 55]

- (1) No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with regulations to be made in this behalf by the Authority:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter:

Provided further that the State Commission may, by notification extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.

- (2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading , as it may deem necessary.
- (3) If a person makes default in complying with the provisions contained in this section or regulations made under sub-section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default.



Disconnection of supply in default of payment [Section 56]

- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

- (a) an amount equal to the sum claimed from him, or
- (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

- (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:

Standard of performance of licensee [Section 57]

- (1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.
- (2) If a licensee fails to meet the standards specified under subsection (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission: Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.
- (3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.

Different Standards of performance by licensee [Section 58]

The Appropriate Commission may specify different standards under subsection (1) of section 57 for a class or classes of licensee.

Information with respect to levels of performance [Section 59]

- (1) Every licensee shall, within the period specified by the Appropriate Commission, furnish to the Commission the following information, namely:-
 - (a) the level of performance achieved under sub-section (1) of the section 57;
 - (b) the number of cases in which compensation was made under subsection (2) of section 57 and the aggregate amount of the compensation.
- (2) The Appropriate Commission shall at least once in every year arrange for the publication, in such form and manner as it considers appropriate, of such of the information furnished to it under sub-section (1).

Market destination [Section 60]

The Appropriate Commission may such issue directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry.

TARIFF

Tariff Regulations [Section 61]

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;
- (d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;
- (e) the principles rewarding efficiency in performance;
- (f) multi year tariff principles;
- (g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;
- (h) the promotion of co-generation and generation of electricity from renewable sources of energy;
- (i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

Determination of Tariff [Section 62]

- (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for –

- (a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

- (b) transmission of electricity ;
 - (c) wheeling of electricity;
 - (d) retail sale of electricity.

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.



- (2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.
- (3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.
- (4) No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.
- (5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.
- (6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

Determination of tariff by bidding process [Section 63]

Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

Procedure for tariff order [Section 64]

- (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.
- (2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.
- (3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public,-
 - (a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;
 - (b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:
Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.
- (4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.
- (5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling,

be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefore:

- (6) A tariff order shall, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order.

Provision of subsidy by State Government [Section 65]

If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, within in advance in the manner as may be specified , by the State Commission the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.

Development of market [Section 66]

The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in section 3 in this regard..

WORKS

Works of licensees

Provision as to opening up of streets, railways etc. [Section 67]

- (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as -
- (a) to open and break up the soil and pavement of any street, railway or tramway;
 - (b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
 - (c) to alter the position of any line or works or pipes, other than a main sewer pipe;
 - (d) to lay down and place electric lines, electrical plant and other works;
 - (e) to repair, alter or remove the same;
 - (f) to do all other acts necessary for transmission or supply of electricity.
- (2) The Appropriate Government may, by rules made by it in this behalf, specify, -
- (a) the cases and circumstances in which the consent in writing of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;
 - (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;
 - (c) the nature and period of notice to be given by the licensee before carrying out works;
 - (d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);
 - (e) the determination and payment of compensation or rent to the persons affected by works under this section;



- (f) the repairs and works to be carried out when emergency exists;
 - (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;
 - (h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;
 - (i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;
 - (j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;
 - (k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;
 - (l) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;
 - (m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;
 - (n) the manner of restoration of property affected by such works and maintenance thereof;
 - (o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and
 - (p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.
- (3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.
- (4) Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.
- (5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.

Provisions relating to overhead lines

Overhead lines [Section 68]

- (1) An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).
- (2) The provisions contained in sub-section (1) shall not apply-
 - (a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;
 - (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
 - (c) in such other cases as may be prescribed.
- (3) The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary

- (4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.
- (5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.
- (6) When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation. - For purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant.

Notice to telegraph authority [Section 69]

- (1) A licensee shall, before laying down or placing, within ten meters of any telegraph line, electric line, electrical plant or other works, not being either service lines, or electric lines or electrical plant, for the repair, renewal or amendment of existing works of which the character or position is not to be altered,-
 - (a) submit a proposal in case of a new installation to an authority to be designated by the Central Government and such authority shall take a decision on the proposal within thirty days;
 - (b) give not less than ten days' notice in writing to the telegraph authority in case of repair, renewal or amendment of existing works , specifying-
 - (i) the course of the works or alterations proposed ;
 - (ii) the manner in which the works are to be utilised ;
 - (iii) the amount and nature of the electricity to be transmitted;
 - (iv) the extent to, and the manner in which (if at all), earth returns are to be used , and the licensee shall conform to such reasonable requirements, either general or special, as may be laid down by the telegraph authority within that period for preventing any telegraph line from being injuriously affected by such works or alterations:

Provided that in case of emergency (which shall be stated by the licensee in writing to the telegraph authority) arising from defects in any of the electric lines or electrical plant or other works of the licensee, the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.
- (2) Where the works of the laying or placing of any service line is to be executed the licensee shall, not less than forty-eight hours before commencing the work, serve upon the telegraph authority a notice in writing of his intention to execute such works.

Grants, Fund, Accounts, Audit and Report

Grants and loans by Central Government [Section 98]

The Central Government may, after due appropriation made by Parliament in this behalf, make to the Central Commission grants and loans of such sums of money as that Government may consider necessary.



Establishment of Fund by Central Government [Section 99]

- (1) There shall be constituted a Fund to be called the Central Electricity Regulatory Commission Fund and there shall be credited thereto-
 - (a) any grants and loans made to the Central Commission by the Central Government under section 98;
 - (b) all fees received by the Central Commission under this Act;
 - (c) all sums received by the Central Commission from such other sources as may be decided upon by the Central Government.
- (2) The Fund shall be applied for meeting –
 - (a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the Central Commission;
 - (b) the expenses of the Central Commission in discharge of its function under section 79;
 - (c) the expenses on objects and for purposes authorised by this Act.
- (3) The Central Government may, in consultation with the Comptroller and Auditor-General of India, prescribe the manner of applying the Fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).

Accounts and Audit of Central Commission [Section 100]

- (1) The Central Commission shall maintain proper 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.
- (2) The accounts of the Central Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Commission to the Comptroller and Auditor General of India.
- (3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the auditing of the accounts of the Central Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Commission.
- (4) The accounts of the Central Commission, as certified by the Comptroller and Auditor- General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and that Government shall cause the same to be laid, as soon as may be after it is received, before each House of Parliament.

Annual Report of Central Commission [Section 101]

- (1) The Central Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Central Government.
- (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

Grants and Loans by State Government [Section 102]

The State Government may, after due appropriation made by Legislature of a State in this behalf, make to the State Commission grants and loans of such sums of money as that Government may consider necessary.

Establishment of Fund by state Government [Section 103]

- (1) There shall be constituted a Fund to be called the State Electricity Regulatory Commission fund and there shall be credited thereto-
 - (a) any grants and loans made to the State Commission by the State Government under Section 102;
 - (b) all fees received by the State Commission under this Act;
 - (c) all sums received by the State Commission from such other sources as may be decided upon by the State Government.
- (2) The Fund shall be applied for meeting –
 - (a) the salary, allowances and other remuneration of Chairperson, Members, Secretary, officers and other employees of the State Commission;
 - (b) the expenses of the State Commission in discharge of its function under Section 86; and
 - (c) the expenses on objects and for purposes authorised by this Act.
- (3) The State Government may, in consultation with the Comptroller and Auditor-General of India, prescribe the manner of applying the Fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).

Accounts and audit of State Commission [Section 104]

- (1) The State Commission shall maintain proper accounts and other relevant records and prepare annual statement of accounts in such forms as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.
- (2) The Accounts of the State Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General of India.
- (3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.
- (4) The accounts of the State Commission, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government and that Government shall cause the same to be laid, as soon as may be after it is received, before the State Legislature.

Annual report of State Commission [Section 105]

- (1) The State Commission shall prepare once every year in such form and at such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.
- (2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.



Budget of Appropriate Commission [Section 106]

The Appropriate Commission shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of that Commission and forward the same to the Appropriate Government.

Directions by Central Government [Section 107]

- (1) In the discharge of its functions, the Central Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing.
- (2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

Directions by State Government [Section 108]

- (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.
- (2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.

Directions to Joint Commission [Section 109]

Notwithstanding anything contained in this Act, where any Joint Commission is established under section 83 –

- (a) the Government of the State, for which the Joint Commission is established, shall be competent to give any direction under this Act only in cases where such direction relates to matter within the exclusive territorial jurisdiction of the State;
- (b) the Central Government alone shall be competent to give any direction under this Act where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to a Union territory if the participating Governments fail to reach an agreement or the participating States or majority of them request the Central Government to issue such directions.

Establishment of Appellate Tribunal [Section 110]

The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Appellate Tribunal for Electricity to hear appeals against the orders of the adjudicating officer or the Appropriate Commission under this Act.

Appeal to Appellate Tribunal [Section 111]

- (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of the adjudicating officer levying and penalty shall, while filling the appeal, deposit the amount of such penalty:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

- (2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

- (3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.
- (5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:
Provided that where any appeal could not be disposed off within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.
- (6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

Composition of Appellate Tribunal [Section 112]

- (1) The Appellate Tribunal shall consist of a Chairperson and three other Members.
- (2) Subject to the provisions of this Act,-
 - (a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;
 - (b) a Bench may be constituted by the Chairperson of the Appellate Tribunal with two or more Members of the Appellate Tribunal as the Chairperson of the Appellate Tribunal may deem fit:
Provided that every Bench constituted under this clause shall include at least one Judicial Member and one Technical Member;
 - (c) the Benches of the Appellate Tribunal shall ordinarily sit at Delhi and such other places as the Central Government may, in consultation with the Chairperson of the Appellate Tribunal, notify;
 - (d) the Central Government shall notify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.
- (3) Notwithstanding anything contained in sub-section (2), the Chairperson of the Appellate Tribunal may transfer a Member of the Appellate Tribunal from one Bench to another Bench.

Explanation.- For the purposes of this Chapter,-

- (i) "Judicial Member" means a Member of the Appellate Tribunal appointed as such under sub-clause (i) of clause (b) of sub-section (1) of section 113, and includes the Chairperson of the Appellate Tribunal;
- (ii) "Technical Member" means a Member of the Appellate Tribunal appointed as such under sub-clause (ii) or sub-clause (iii) of clause (b) of subsection (1) of section 113.

Qualifications for appointment of Chairperson and Member of the Appellate Tribunal [Section 113]

- (1) A person shall not be qualified for appointment as the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal unless he-
 - (a) in the case of the Chairperson of the Appellate Tribunal, is, or has been, a judge of the Supreme Court or the Chief Justice of a High Court; and



- (b) in the case of a Member of the Appellate Tribunal,-
- (i) is, or has been, or is qualified to be, a Judge of a High Court; or
 - (ii) is, or has been, a Secretary for at least one year in the Ministry or Department of the Central Government dealing with economic affairs or matters or infrastructure; or
 - (iii) is, or has been, a person of ability and standing, having adequate knowledge or experience in dealing with the matters relating to electricity generation, transmission and distribution and regulation or economics, commerce, law or management.
- (2) The Chairperson of the Appellate Tribunal shall be appointed by the Central Government after consultation with the Chief Justice of India.
- (3) The Members of the Appellate Tribunal shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.
- (4) Before appointing any person for appointment as Chairperson or other Member of the Appellate Tribunal, the Central Government shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as such Chairperson or Member.

Term of office [Section 114]

The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office as such for a term of three years from the date on which he enters upon his office:

Provided that such Chairperson or other Member shall be eligible for reappointment for a second term of three years:

Provided further that no Chairperson of the Appellate Tribunal or Member of the Appellate Tribunal shall hold office as such after he has attained,-

- (a) in the case of the Chairperson of the Appellate Tribunal , the age of seventy years;
- (b) in the case of a Member of the Appellate Tribunal, the age of sixty-five years.

Terms and conditions of service [Section 115]

The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson of the Appellate Tribunal and Members of the Appellate Tribunal shall be such as may be prescribed by the Central Government :

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall be varied to his disadvantage after appointment.

Vacancies [Section 116]

If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation and removal [Section 117]

- (1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.

- (2) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a judge of the Supreme Court as the Central Government may appoint for this purpose in which the Chairperson or a Member of the Appellate Tribunal concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

Member to act as Chairperson in certain circumstances [Section 118]

- (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.
- (2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the Appellate Tribunal shall discharge the functions of the Chairperson of the Appellate Tribunal until the date on which the Chairperson of the Appellate Tribunal resumes his duties.

Officers and other employees of Appellate Tribunal [Section 119]

- (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may deem fit.
- (2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson of the Appellate Tribunal.
- (3) The salaries and allowances and other terms and conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed by the Central Government.

Procedure and powers of Appellate Tribunal [Section 120]

- (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.
- (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) reviewing its decisions;
 - (g) dismissing a representation of default or deciding it ex parte;
 - (h) setting aside any order of dismissal or any representation for default or any order passed by it ex parte;
 - (i) any other matter which may be prescribed by the Central Government.



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- (3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.
 - (4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.
 - (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973.

Power of Chairperson of Appellate Tribunal [Section 121]

The Chairperson of the Appellate Tribunal shall exercise general power of super-intendance and control over the Appropriate Commission.

Distribution of business amongst Benches and transfer of cases from one Bench to another Bench [Section 122]

- (1) Where Benches are constituted, the Chairperson of the Appellate Tribunal may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.
- (2) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson of the Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be by majority [Section 123]

If the Members of the Appellate Tribunal of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson of the Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

Right of appellant to take assistance of legal practitioner and of Appropriate Commission to appoint presenting officers [Section 124]

- (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal, as the case may be.
- (2) The Appropriate Commission may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal, as the case may be.

Appeal to Supreme Court [Section 125]

Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Study Note - 8

CORPORATE GOVERNANCE



This Study Note includes

- 8.1 Overview-Issues and Concepts**
- 8.2 Corporate Governance Practices/Codes in - UK, Germany, Japan, India and USA**
- 8.3 Corporate Governance in Family Business**
- 8.4 Corporate Governance in State-owned Business - the MOU System**

8.1 OVERVIEW-ISSUES AND CONCEPTS

'Corporate Governance' has become one of the most commonly used phrases in the current global business vocabulary. This raises the question, 'is corporate governance a vital component of successful business or is it simply another fad that will fade away over time? The notorious collapse of Enron in 2001, one of America's largest companies, has focused international attention on company failures and the role that strong corporate governance needs to play them. The UK has responded by producing the Higgs Report (2003) and the Smith Report (2003), whereas the US produced the Sarbanes – Oxley Act (2002). Nations around the world are instigating far-reaching programmes for Corporate governance reform, as evidenced by the proliferation of Corporate Governance codes and policy documents, voluntary or mandatory, both at the national and supra-national level. We believe that the present focus on corporate governance will be maintained into the future and that, over time, corporate governance issues grow in importance, rather than fade into insignificance. The phenomenal growth of interest in Corporate Governance has been accompanied by a growing body of academic research. As the discipline matures, far greater definition and clarity are being achieved concerning the nature of corporate governance. In this chapter we consider the broad-ranging nature of corporate governance and the many ways of defining the subject. We discuss Corporate Governance from a theoretical perspective.

Concept and Definition

There is no single, accepted definition of Corporate Governance. There are substantial differences in definition according to which country we are considering. Arriving at 'a' definition of Corporate Governance is no easy task. Corporate Governance as a discipline in its own right is relatively new. We consider that the subject may be treated in a narrow or a broad manner, depending on the viewpoint of the policy maker, practitioner, researcher or theorist. It seems that existing definitions of Corporate Governance fall on to a spectrum, with 'narrow' views at one end and more inclusive, 'broad' views placed at the other. One approach toward Corporate Governance adopts a narrow view, where Corporate Governance is restricted to the relationship between a company and its shareholders. This is the traditional finance paradigm, expressed in 'agency theory'. At the other end of the spectrum, corporate governance may be seen as a web of relationships, not only between a company and its owners (shareholders) but also between a company and a broad range of other 'stakeholders': employees, customers, supplies, bondholders, to name but a few. such a view tends to be expressed in 'stakeholder theory'. This is a more inclusive and broad way of treating the subject of corporate governance and one which is gradually attracting greater attention.

Corporate governance is...

- The process of supervision and control intended to ensure that the company's management acts in accordance with the interests of shareholders (Parkinson, 1994). – Strongly agree
- The governance role is not concerned with the running of the business of the company per se, but with giving overall direction to the enterprise, with overseeing and controlling the executive actions of management and with satisfying legitimate expectations of accountability and regulation by interests beyond the corporate boundaries (Tricker, 1984). – Agree
- The governance of an enterprise is the sum of those activities that make up the internal regulation of the business in compliance with the obligations placed on the firm by legislation, ownership trusteeship of assets, their management and their deployment (cannon, 1994). – Agree
- The relationship between shareholders and their companies and the way in which shareholders act to encourage best practice (e.g., by voting at AMs and by regular meetings with companies' senior management). Increasingly, this includes shareholder 'activism' which involves a campaign by a shareholder or a group of shareholders to achieve change in companies (the Corporate Governance Handbook, 1996). – Some agreement
- The structures, process, cultures and systems that engender the successful operation of the Organization (Keasey and Wright, 1993). – Some agreement
- The system by which companies are directed and controlled (The Cadbury Report, 1992) – slight agreement

We consider some published definitions of corporate governance each of which adopt a different view of the subject and provide a consensus on the relative importance of these definitions. These definitions were not intended to discriminate completely between different views, but rather each was chosen to emphasize slightly different interpretations of the Corporate Governance function. The selection represents a range of definitions, starting from the narrowest which described the basic role of Corporate Governance (The Cadbury Report, 1992; see also, Cadbury, 2002) to a solely financial perspective involving only shareholders and company management (Parkinson, 1994) and extending to a broader definition that encompassed corporate accountability to a wide range of stakeholders and society at large (Tricker, 1984). We also included a definition that emphasized the importance of shareholder activism, as this allowed us to gauge institutional investors' views on their own role in Corporate Governance (The Corporate Governance Handbook, 1996). The selection also included definitions that were regulation-centered (Cannon, 1994) or focused on corporate success (Keasey and Wright, 1993). The definitions are ranked according to the institutional investors' views of their relative importance.

In general the definitions of Corporate Governance found in the literature tend to share certain characteristics, one of which is the notion of accountability. Narrow definitions are oriented around corporate accountability to shareholders. Some narrower, shareholder-oriented definitions of Corporate Governance focus specifically on the ability of a country's legal system to protect minority shareholder rights (e.g., La Porta et al., 1998). However, such definitions are mainly applicable to cross-country comparisons of Corporate Governance. We return to the legal influence on different systems of corporate governance around the world.

Broader definitions of Corporate Governance stress a broader level of accountability to shareholders and other stakeholders. We can see that Tricker's (1984) definition, encompassing accountability to a broader group of people than just the shareholders. This demonstrates an interest within the financial community in a broader, stakeholder- oriented approach to Corporate Governance. The broadest definitions consider that companies are accountable to the whole of society, future generations and the natural world. Relatively broad, definitions consider that companies are accountable to the whole of society, future generations and the natural world. We suggest that corporate governance is the system of checks and balances, both internal and external to companies, which ensures that companies discharge their accountability to all their stakeholders and act in a socially responsible way in all areas of their business activity.

Theoretical frameworks that suggest companies should be accountable only to their shareholders are not necessarily inconsistent with theoretical frameworks that champion stakeholder accountability. The reason underlying this argument is that shareholders' interest can only be satisfied by taking account of stakeholder interests, as companies that are accountable to all of their stakeholders are over the long term more successful and more prosperous. Definition of Corporate Governance therefore rests on the perception that companies can maximize value creation over the long term, by discharging their accountability to all of their stakeholders and by optimizing their system of Corporate Governance.

Overall, this perception is growing among the professional community and academic research is beginning to provide empirical support of this view of corporate governance, accountability and corporate profitability. However, this is the 'business case' for corporate governance and, more generally, for corporate social responsibility. Should companies improve corporate governance and discharge accountability to all of their stakeholders purely because it is ethical? We discuss these ethical issues in the subsection on stakeholder theory. In the real world, it is unlikely that businessmen and investors will be interested in acting ethically unless there are positive financial returns to be made from so doing, as there appears to be a strong business case underlying corporate governance reform and stakeholder accountability, then the corporate and financial communities are more likely to embrace these approaches.

8.2 CORPORATE GOVERNANCE PRACTICES/CODES IN - UK, GERMANY, JAPAN, INDIA AND USA

CORPORATE GOVERNANCE IN THE UK

The UK has a well-developed market with a diverse shareholder base including institutional investors, financial institutions, and individuals. The UK illustrates well the problems that may be associated with the separation of the ownership and control of corporations and hence has many of the associated agency problems. These agency problems, including misuse of corporate assets by directors and a lack of effective control over, and accountability of, directors' actions, contributed to a number of financial scandals in the UK.

As in other countries, the development of corporate governance in the UK was initially the findings of a trilogy of codes: the Cadbury Report (1992), the Greenbury Report (1995), and the Hampel Report (1998).

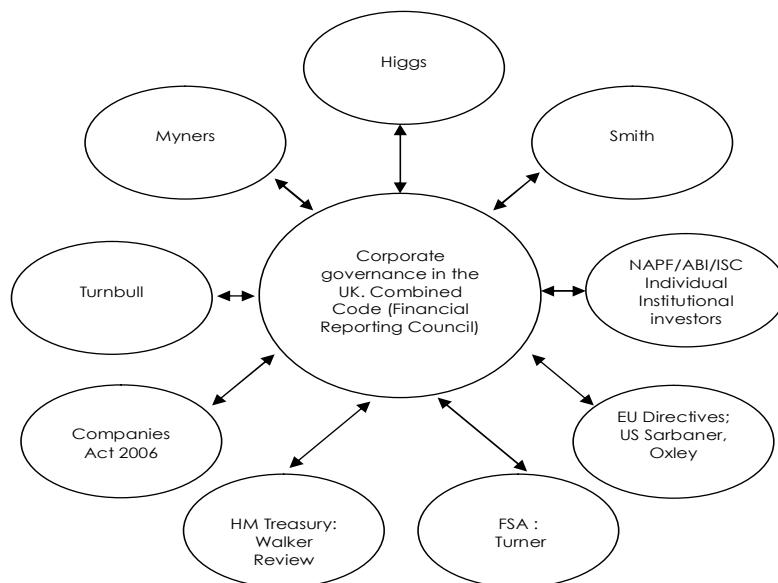


Figure: Development of corporate governance in the UK

Figure illustrates the development of corporate governance in the UK. The centre oval represents the Combined Code published in 2008 by the Financial Reporting Council. Around the centre oval, we can see the various influences since 1998 (the original Combined Code, published in 1998, encompassed the Cadbury, Greenbury, and Hampel report recommendations). These influences can be split into four broad areas. First, there are reports that have looked at specific areas of Corporate Governance: the Turnbull Report on Internal Controls the Myners review of Institutional Investment, the Higgs Review of the role and effectiveness of non-executive directors, and the Smith Review of Audit Committees. Secondly, there has been the influence of institutional investors and their representative groups. Thirdly, influences affecting the regulatory framework within which corporate governance in the UK operates have included the UK company law review, the Walker Review for HM Treasury and the Financial Services Authority Review. Fourthly, there have been what might be termed 'external influences' such as the EU review of company law and the US Sarbanes-Oxley Act. Each of these is now discussed in turn.

Various Reports on Governance:

Cadbury Report (1992)

Following various financial scandals and collapses (Coloroll and Polly Peck, to name but two) and a perceived general lack of confidence in the financial reporting of many UK companies, the Financial Reporting Council, the London Stock Exchange, and the accountancy profession established the Committee on the Financial Aspects of Corporate Governance in May 1991. After the Committee was set up, the scandals at BCCI and Maxwell happened, and as a result, the committee interpreted its remit more widely and looked beyond the financial aspects to Corporate Governance as a whole. The Committee was chaired by Sir Adrian Cadbury and, when the Committee reported in December 1992, the report became widely known as 'the Cadbury Report'.

The recommendations covered: the operation of the main board; the establishment, composition, and operation of key board committees; the importance of, and contribution that can be made by, non-executive directors; the reporting and control mechanisms of a business. The Cadbury Report recommended a code of Best Practice with which the boards of all listed companies registered in the UK should comply, and utilized a 'comply or explain' mechanism. This mechanism means that a company should comply with the code but, if it cannot comply with any particular aspect of it, then it should explain why it is unable to do so. This disclosure gives investors detailed information about any instances of non-compliance and enables them to decide whether the company's non-compliance is justified.

Greenbury Report (1995)

The Greenbury committee was set up in response to concern at both the size of directors' remuneration packages and their inconsistent and incomplete disclosure in companies' annual reports. It made, in 1995, comprehensive recommendations regarding disclosure of directors' remuneration packages. There has been much discussion about how much disclosure there should be of directors' remuneration and how useful detailed disclosures might be. Whilst the work of the Greenbury Committee focused on the directors of public limited companies, it hoped that both smaller listed companies and unlisted companies would find its recommendations useful.

Central to the Greenbury report recommendations were strengthening accountability and enhancing the performance of directors. These two aims were to be achieved by (i) the presence of a remuneration committee comprised of independent non-executive directors who would report fully to the shareholders each year about the company's executive remuneration policy, including full disclosure of the elements in the remuneration of individual directors; and (ii) the adoption of performance measures linking rewards to the performance of both the company and individual directors, so that the interests of directors and shareholders were more closely aligned.

Since that time (1995), disclosure of directors' remuneration has become quite prolific in UK company accounts.



Hampel Report (1998)

The Hampel Committee was set up in 1995 to review the implementation of the Cadbury and Greenbury Committee recommendations. The Hampel Committee reported in 1998. The Hampel Report said: 'We endorse the overwhelming majority of the findings of the two earlier committees'. There has been much discussion about the extent to which a company should consider the interests of various stakeholders, such as employees, customers, suppliers, providers of credit, the local community, etc., as well as the interests of its shareholders. The Hampel report stated that the directors as a board are responsible for relations with stakeholders; but they are accountable to the shareholders'. However, the report does also state that directors can meet their legal duties to shareholders, and can pursue the objective of long-term shareholder value successfully, only by developing and sustaining these stakeholder relationships'.

The Hampel Report, like its precursors, also emphasized the important role that institutional investors have to play in the companies in which they invest (investee companies). It is highly desirable that companies and institutional investors engage in dialogue and that institutional investors make considered use of their shares in other words, institutional investors should consider carefully the resolutions on which they have a right to vote and reach a decision based on careful thought, rather than engage in 'box ticking'.

Combined Code (1998)

The Combined Code drew together the recommendations of the Cadbury, Greenbury, and Hampel reports. It has two sections, one aimed at Companies and another aimed at Institutional Investors. The combined code operates on the 'comply or explain' basis mentioned above. In relation to the internal controls of the business, the combined code states that 'the board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets' and that 'the directors should, at least annually, conduct a review of the effectiveness of the group's system of internal control and should report to shareholders that they have done so. The review should cover all controls, including financial, operational, and compliance controls and risk management'. The Turnbull Report issued in 1999 gave directors guidance on carrying out this review.

Turnbull (1999)

The Turnbull Committee, chaired by Nigel Turnbull, was established by the Institute of Chartered Accountants in England and Wales (ICAEW) to provide guidance on the implementation of the internal control requirements of the Combined Code. The Turnbull Report confirms that it is the responsibility of the board of directors to ensure that the company has a sound system of internal control, and that the controls are working as they should. The board should assess the effectiveness of internal controls and report on them in the annual report. Of course, a company is subject to new risks both from the outside environment and as a result of decisions that the board makes about corporate strategy and objectives. In the managing of risk, boards will need to take into account the existing internal control system in the company and also whether any changes are required to ensure that new risks are adequately and effectively managed.

Myners (2001, 2008)

The Myners report on Institutional investment, issued in 2001 by HM Treasury, concentrated more on the trusteeship aspects of institutional investors and the legal requirements for trustees, with the aim of raising the standards and promoting greater shareholder activism. For example, the Myners report expects that institutional investors should be more proactive, especially in the stance they take with underperforming companies. Some institutional investors have already shown more of a willingness to engage actively with companies to try to ensure that shareholder value is not lost by underperforming companies.

In 2007, the NAPF published the results of its review of the extent to which Pension Fund trustees were complying with the principles. The report stated 'the recommendations set out in this report provide a

framework for developing further the Principles so that they remain relevant for the world in which pension fund trustees operate today'. Subsequently HM Treasury published *Updating the Myners Principles: A Response to Consultation* in 2008. There are six principles identified: effective decision-making; clear objectives; risk and liabilities; performance assessment; responsible ownership; transparency; and reporting. The report emphasized greater industry ownership of the principles and places the onus on trustees to report on their own practices.

Higgs (2003)

The Higgs Review, chaired by Derek Higgs, reported in January 2003 on the role and effectiveness of non-executive directors. Higgs offered support for the Combined Code whilst making some additional recommendations. These recommendations included : stating the number of meetings of the board and its main committees in the annual report, together with the attendance records of individual directors; that a chief executive director should not also become chairman of the same company; non-executive directors should meet as a group at least once a year without executive directors being present, and the annual report should indicate whether such meetings have occurred; chairmen and chief executives should consider implementing executive development programmes to train and develop suitable individuals in their companies for future director roles; the board should inform shareholders as to why they believe a certain individual should be appointed to a non-executive directorship and how they may meet the requirements of the role; there should be a comprehensive induction programme for new non-executive directors, and resources should be available for ongoing development of directors; the performance of the board, its committees and its individual members, should be evaluated at least once a year, the annual report should state whether these reviews are being held and how they are conducted; a full time executive director should not hold more than one non-executive directorship or become chairman of a major company; no one non-executive director should sit on all three principal board committees (audit, remuneration, nomination). There was substantial opposition to some of the recommendations but they nonetheless helped to inform the Combined Code. Good practice suggestions from the Higgs Report were published in 2006.

Following a recommendation in chapter 10 of the Higgs Review, a group led by Professor Laura Tyson, looked at how companies might utilize broader pools of talent with varied skills and experience, and different perspectives to enhance board effectiveness. The Tyson report was published in 2003.

Smith (2003)

the Smith Review of Audit Committees, a group appointed by the Financial reporting council, reported in January 2003. The review made clear the important role of the audit committee: 'While all directors have a duty to act in the interests of the company, the audit committee has a particular role, acting independently from the executive, to ensure that the interests of shareholders are properly protected in relation to financial reporting and internal control' . The review defined the audit committee's role in terms of a high-level overview-it needs to satisfy itself that there is an appropriate system of controls in place but it does not undertake the monitoring itself .

Combined Code (2003)

The revised Combined Code, published in July 2003, incorporated the substance of the Higgs and Smith reviews. However, rather than stating that no one non-executive director should sit on all three board committees, the Combined Code stated that 'undue reliance' should not be placed on particular individuals. The Combined Code also clarified the roles of the Chairman and the Senior Independent director (sid), emphasizing the Chairman's role in providing leadership to the non-executive directors and in communicating shareholders' views to the board; it also provided for a 'formal and rigorous annual evaluation' of the board's, the committees', and the individual directors' performance. At least half the board in larger listed companies was to be independent non-executive directors.

Revised Turnbull Guidance (2005)

In 2005, revised guidance on the Turnbull Report (1999) was published. There were few substantive



changes but boards were encouraged to review their application of the guidance on a continuing basis and to look on the internal control statement as an opportunity to communicate to their shareholders how they manage risk and internal control. They should notify shareholders, in the annual report, of how any 'significant failings or weaknesses' in the effectiveness of the internal control system have been dealt with.

Combined Code (2006)

An updated version of the Combined Code was issued in June 2006. There were three main changes made:

- (i) to allow the company chairman to serve on (but not to chair) the remuneration committee where he is considered independent on appointment as chairman;
- (ii) to provide a 'vote withheld' option on proxy appointment forms to enable a shareholder to indicate that they wish to withhold their vote;
- (iii) to recommend that companies publish on their website the details of proxies lodged at general meetings where votes were taken on a show of hands.

Combined Code (2008)

The findings of the Financial Reporting Council (FRC) Review of the Impact of the Combined Code were published in December 2007. The overall findings indicated that the Combined Code (2006) had general support and that the FRC would concentrate on improving the practical application of the Combined Code.

In June 2008, the FRC published a new edition of the Combined Code which introduced two changes. These changes were (i) to remove the restriction on an individual chairing more than one FTSE 100 company; and (ii) for listed companies outside the FTSE 350, to allow the company chairman to sit on the audit committee where he or she was considered independent on appointment.

The FRC stated on their website that The revised Code took effect at the same time as new FSA Rules implementing EU requirements relating to corporate governance statements and audit committees. The revised code and new rules will apply to accounting periods beginning on or after 29 June 2008. In practice this means most companies will begin to apply them in 2009, and will report against them for the first time in 2010.

Revised Smith Guidance (2008)

A new edition of the guidance was issued in October 2008. The main changes to the guidance as detailed on the FRC website are:

Audit committees are encouraged to consider the need to include the risk of the withdrawal of their auditor from the market in their risk evaluation and planning; companies are encouraged to include in the audit committee's report information on the appointment, reappointment or removal of the auditor, including supporting information on tendering frequency, the tenure of the incumbent auditor and any contractual obligations that acted to restrict the committee's choice of auditor; a small number of detailed changes have been made to the section dealing with the independence of the auditor, to bring the guidance in line with the Auditing Practices Board's Ethical Standards [2004, revised 2008] for auditors, which have been issued since the guidance was first published in 2003; and an appendix has been added containing guidance on the factors to be considered if a group is contemplating employing firms from more than one network to undertake the audit.

Institutional Investors and their Representative Groups

Large institutional investors, mainly insurance companies and pension funds, usually belong to one of two representative bodies that act as a professional group 'voice' for their views: the Association of British Insurers (ABI) and the national association of Pension Funds (NAPF). Both the ABI and the NAPF have best practice Corporate Governance guidelines that encompass the recommendations

of the Combined Code. They monitor the corporate governance activities of companies and provide advice to members.

Some large institutional investors are very active in their own right in terms of their corporate governance activities. Hermes is a case in point, and it has published the hermes Principles, which detail how it perceives its relationship with the companies in which it invests (investee companies), what its expectations are of investee companies, and what investee companies can expect from hermes.

Companies Act 2006

In the UK, the corporate law has been in need of a thorough review for some years and the Modern Company Law Review culminated in July 2002 in the publication of outline proposals for extensive modernization of company law, including various aspects of corporate governance. These proposals included: statutory codification of directors' common law duties; enhanced company reporting and audit requirements, including a requirement that economically significant companies produce an annual operating and financial review; disclosure on corporate websites of information relating to the annual report and accounts, and disclosure relating to voting.

The government published the Company Law Reform Bill in November 2005, and the Companies Act 2006 was enacted in late 2006. The Act updates previous Companies' Acts legislation, but does not completely replace them, and it contains some significant new provisions which impacts on various constituents including directors, shareholders, auditors and company secretaries. The act draws on the findings of the Company Law Review proposals'.

The main features are as follows:

- directors' duties are codified;
- companies can make greater use of electronic communications for communicating with shareholders;
- directors can file service addresses on public record rather than their private home addresses;
- shareholders will be able to agree limitations on directors' liability;
- there will be simpler model Articles of Association for private companies, to reflect the way in which small companies operate;
- private companies will not be required to have a company secretary;
- private companies will not need to hold an annual general meeting unless they agree to do so;
- the requirement for an operating and Financial review (OFR) has not been reinstated, rather companies are encouraged to produce a high quality Business Review;
- nominee shareholders can elect to receive information in hard copy form or electronically if they wish to do so;
- shareholders will receive more timely information;
- enhanced proxy rights will make it easier for shareholders to appoint theirs to attend and vote at general meetings;
- shareholders of quoted companies may have a shareholder proposal (resolution);
- circulated at the company's expense if received by the financial year end;
- whilst there has been significant encouragement over a number of years to encourage institutional investors to disclose how they use their votes, the act provides a power which could be used to require institutional investors to disclose how they have voted.

Overall there seems to be an increasing burden for quoted companies whilst on the other hand the burden seems to have been reduced for private companies. In terms of the rights of shareholders



these are enhanced in a number of ways including greater use of electronic communications, more information, enhanced proxy rights, and provision regarding the circulation of shareholder proposals at the company's expense. Equally there is a corresponding emphasis on shareholders' responsibilities with encouragement for institutional shareholders to be more active and to disclose how they have voted.

Financial Services Authority

In September 2002, the Financial Services Authority (FSA) launched a review of the listing regime with the main aim being to assess the existing rules and identify which should be retained, and which changed. The areas covered by the review were: Corporate Governance; continuing obligations (encompassing corporate communication, and shareholders' rights and obligations); financial information; the sponsor regime.

The FSA Review took place against the background of potentially significant changes in both the EU and UK regulatory environments, and although some changes were made, there was much continuity in the proposals introduced in 2005.

Following the global banking crisis, Lord Adair Turner, Chairman of the FSA, was asked by the Chancellor of the Exchequer to carry out a review and make recommendations for reforming UK and international approaches to the way banks are regulated. The Turner Review was published in the Spring 2008. Issues highlighted include remuneration policies designed to avoid incentives for undue risk taking; whether changes in governance structure are needed to increase the independence of risk management functions; and consideration of the skill and time commitment required for non-executive directors of large complex banks to effectively perform their role.

Financial Reporting Council

The Financial Reporting Council (FRC) has six operating bodies: the Accounting Standards Board (ASB), the Auditing Practices Board (APB), the Board for Actuarial Standards (BAS), the Professional oversight Board, the Financial Reporting Review Panel (FRRP), and the Accountancy and Actuarial Discipline Board (AADB).

The importance placed on corporate governance is evidenced by the fact that, in March 2004, the FRC set up a new committee to lead its work on corporate governance.

Overall, the FRC is responsible for promoting high standards of corporate governance. It aims to do so by:

- maintaining an effective Combined Code on Corporate Governance and promoting its widespread application;
- ensuring that related guidance, such as that on internal control, is current and relevant;
- influencing EU and Global Corporate Governance developments;
- helping to promote boardroom professionalism and diversity;
- encouraging constructive interaction between company boards and institutional shareholders.

The FRC has carried out several consultative reviews of the Combined Code which led to the amended Combined Code in 2006, and subsequently in 2008 (discussed earlier). The latest review took place in 2008. The frequency of the reviews are both an indicator of the FRC's responsibility for corporate governance of UK companies which involves leading public debate in the area and its response to the global financial crisis which has, in turn, affected confidence in aspects of corporate governance.

The FRC website mentions the independent review of the governance of banks and other financial institutions carried out by Sir David Walker. The Walker Review published its draft recommendations in July 2009, some of the recommendations could be taken forward through amendments to the Combined Code. The FRC is considering the extent to which the Walker Review recommendations may be applicable for some or all listed companies in other sectors.

'External' Influences

The report of the EU High Level Group of Company Law Experts had implications for company law across Europe including the UK, and is further discussed below in the context of an international development. The impact of recent legislation in the USA, the Sarbanes Oxley Act, has also made its influence felt in the UK, and is also discussed in detail below.

CORPORATE GOVERNANCE IN GERMANY

Charkham (1994) stated that 'if there were a spectrum with "confrontation" at one end and "co-operation" at the other, we would confidently place German attitudes and behaviour far closer to the "co-operation" end than, say, those of the British or Americans'. This is an important statement in the context of understanding the philosophy of the German approach to business and to companies, whereby the shareholders are but one of a wider set of stakeholder interest with the employees and customers being given more emphasis. Charkham (1994) finds this approach evidenced in the industrial relations of German companies: 'Good industrial relations . . . would not be prominent in works on corporate governance systems in most countries, or at best would be regarded as peripheral. In Germany, however, good industrial relations are much nearer centre stage.' This is evidenced in the Works Constitution Act 1972, which sets out the rights of the works council and, broadly speaking, deals with all matters pertaining to the employees' conditions of employment. Works councils are part of the co-operative process between workers and employers, the idea being that **co-determination** (the right to be kept informed about the company's activities and to participate in decisions that may affect the workers) means that there is a basis for more trust and co-operation between workforce and employers. The Co-determination Act 1976 defines the proportion of employee and shareholder representatives on the supervisory board (*Aufsichtsrat*) and also stipulates that the management board has special responsibility for labour-related matters.

The business structure in Germany is detailed in Wymeersch (1998) where he identifies the most used business types in various continental European states. In Germany, as far as the larger business entities are concerned, the business types tend to be either public (*Aktiengesellschaft AG*) or private companies limited by shares (*Gesellschaft mit beschränkter Haftung, GmbH*). However, he identifies a hybrid that is also used in Germany- specifically, a hybrid of the *GmbH & Co. KG*, combining the advantages of the unincorporated *Kommanditgesellschaft* and the limited liability of *GmbH*.

In Germany, as in many continental European countries and the UK, there is a trend away from individual share ownership. The most influential shareholders are financial and non-financial companies, and there are significant cross-holdings, which mean that when analysing share ownership and control in Germany, one needs to look also at the links between companies. Banks, and especially a few large banks, play a central role in German corporate governance with representation on the supervisory boards of companies and links with other companies. Charkham (1994) identifies a number of reasons as to why banks are influential in Germany. First, there is direct ownership of company shares by banks; second, German shareholders generally lodge their shares with banks authorized to carry out their voting instructions (deposited share voting rights, or DSVR); third, banks tend to lend for the long term and hence develop a longer term relationship with the company (relationship lending); fourth, banks offer a wide range of services that the company may find it useful to draw upon. Given these factors, banks tend to build up a longer term, deeper relationship with companies, and their expertise is welcomed on the supervisory boards. hence the German corporate governance system could be termed an 'insider' system.

The German Corporate Governance system is based around a dual board system, and essentially, the dual board system comprises a management board (*Vorstand*) and a supervisory board (*Aufsichtsrat*). The management board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise and the chairman of the management board co-ordinates the work of the management board. On the other hand, the supervisory board appoints, supervises, and advises the members of the management board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the supervisory board co-ordinates the work of the



supervisory board. The members of the supervisory board are elected by the shareholders in general meetings. The co-determination principle provides for compulsory employees representation. So, for firms or companies which have more than five hundred or two thousand employees in Germany, employees are also represented in the supervisory board which then comprises one-third employee representative or one-half employee representative respectively. The representatives elected by the shareholders and representatives of the employees are equally obliged to act in the enterprise's best interests.

The idea of employee representation on boards is not always seen as a good thing because the employee representatives on the supervisory board may hold back decisions being made that are in the best interests of the company as a whole but not necessarily in the best interests of the employees as a group. An example, would be where a company wishes to rationalize its operations and close a factory but the practicalities of trying to get such a decision approved by employee representatives on the supervisory board, and the repercussions of such a decision on labour relations, prove too great for the strategy to be made a reality.

Table Key characteristics influencing German corporate governance

Feature	Key characteristic
Main business form	Public or private companies limited by shares
Predominant ownership structure	Financial and non-financial companies
Legal system	civil law
Board structure	dual
Important aspect	compulsory employee representation on supervisory board.

The committee on corporate governance in Germany was chaired by dr Gerhard cromme and is usually referred to as the Cromme Report or Cromme Code. The code harmonizes a wide variety of laws and regulations and contains recommendations and also suggestions for complying with international best practice on Corporate Governance.

The Cromme Code was published in 2002 and is split into a number of sections, starting with a section on shareholders and the general meeting. The Cromme Code also reflects some of the latest developments in technology. The Cromme Code was amended in 2005. Whilst it remains substantially the same, there are some significant changes, which are shown in bold in the relevant sections (i)-(vi) below.

(i) Shareholders and the general meeting

At the general meeting, the management board submits the annual, and consolidated, financial statement, and the general meeting decides on the appropriation of net income and approves the decisions of the management board and the supervisory board. An important aspect of the general meeting is that it elects the shareholders representatives to the supervisory board and also, generally, the auditors.

Interestingly, the Cromme Code makes explicit provision that the management board shall not only provide the report and accounts and other documents required by law for the general meeting but should also publish them on the company's website together with the agenda. Similarly, the use of technology is encouraged as the general meeting should be capable of being followed on the internet or similar media.

The shareholders' right to vote is facilitated in a number of ways, including by the personal exercise of shareholders voting rights, and by the use of proxies.

(ii) Co-operation between the management board and the supervisory board

It is essential that the management board and the supervisory board co-operate closely for the benefit of the enterprise. The Cromme Code defines the management board's role as to

co-ordinate the enterprise's strategic approach with the supervisory board and to discuss the implementation of strategy with the supervisory board at regular intervals. There are certain situations, such as those relating to the enterprise's planning, business development, risk situation, and risk management, when the management board should inform the supervisory board immediately of any issues.

The supervisory board is able to specify the management board's information and reporting duties in more detail. It is essential that there is open discussion between the management board and supervisory board as well as amongst the members within each of those two boards. The management board and the supervisory board report each year on the enterprise's corporate governance in the annual report and they should explain any deviations from the Cromme Code. The company shall keep previous declarations of conformity with the Code available for viewing on its website for five years.

(iii) Management board

The composition of the management board is determined by the supervisory board, and should be reported in the notes to the accounts. Any conflict of interest should be disclosed to the supervisory board. The Cromme Code states that 'the management board is responsible for independently managing the enterprise' with a view to acting in the enterprise's best interest, and endeavouring to increase the sustainable value of the enterprise. As mentioned earlier, the management board develops the enterprise's strategy and co-ordinates with the supervisory board on this issue.

The Cromme Report provides for the compensation to be comprised of a fixed salary and variable component. As in many other countries, the variable compensation element should be linked to the business performance as well as long-term incentives. Stock options are mentioned as one possible element of variable compensation components and these should be linked to certain performance criteria such as the achievement of predetermined share prices.

(iv) Supervisory board

It is important that the composition of the supervisory board reflects a suitable level of knowledge, ability, and experience to be able properly to carry out the tasks relevant to the business. There should be an adequate number of independent members.

'Independence' will mean no business or personal relations with the company or its management board which cause a conflict of interest. To help maintain its independence, not more than two former members of the management board should be members of the supervisory board. the former management board chairman or a management board member should not generally become supervisory board chairman or chairman of a supervisory board committee. Supervisory board members should not have directorships or similar positions or indeed have advisory roles with important competitors of the enterprise.

The supervisory board carries out a number of important functions as follows:

- (i) it provides independent advice and supervision regularly to the management board on the management of the business;
- (ii) the management board and the supervisory board should ensure that there is a long-term succession plan in place;
- (iii) the supervisory board may delegate some duties to other committees, which include compensation and audit committees;
- (iv) the chairman of the supervisory board, who should not be the chairman of the audit committee, co-ordinates work within the supervisory board and chairs its meetings and attends to the affairs of the supervisory board externally.

It is worth elaborating on the committees that may be formed with a remit for various delegated



areas. These may include the audit committee (the chairman of the audit committee should not be a former member of the management board of the company); the chairman of the audit committee should have specialist knowledge and experience in the application of accounting principles and internal control processes, and a compensation committee to look at the compensation of the management board. This committee may also look at the appointment of members of the management board.

The Cromme Code also states that members of the management board of a listed company should not be on more than five supervisory boards in non-group listed companies. The compensation of members of the supervisory board is specified either by a resolution of the general meeting or in the articles of association. Members of the supervisory board may receive performance-related compensation as well as fixed compensation. The compensation of the supervisory board members should be disclosed in the Corporate Governance Report.

An interesting disclosure required by the Cromme Code is that if a supervisory board member takes part in less than half of the meetings of the supervisory board in a financial year, then this will be noted in the report of the supervisory board. Any conflicts of interest should be reported to the supervisory board and the supervisory board would then inform the general meeting of any conflicts of interest together with how these conflicts have been treated.

(v) Transparency

The code provides that the management board should disclose immediately any facts that might affect the enterprise's activities and which are not publicly known. The report emphasizes that all shareholders should be treated equally in respect of information disclosure and that the company may use appropriate media, such as the internet, to inform the shareholders and investors in an efficient and timely manner. There is disclosure required in terms of the shareholdings, including options and derivatives, that are held by individual management board and supervisory board members. These must be reported if they directly or indirectly exceed 1 per cent of the shares issued by the company. The code also states: 'If the entire holdings of all members of the management board and supervisory board exceed 1 per cent of the shares issued by the company, these shall be reported separately according to the management board and supervisory board.' These disclosures should all be included in the corporate Governance report.

(vi) Reporting and audit of the annual financial statements

The code states that the supervisory board or the audit committee should obtain a statement from the proposed auditor clarifying whether there are any 'professional, financial or other relationships' that might call the auditor's independence into question.

Interestingly, this statement should include the extent to which other services have been performed for the company in the past year, especially in the field of consultancy, or which are contracted for the following year. It is the supervisory board that concludes agreement on the auditors fee.

From the discussion above, it can be seen that the defining feature of Germany's corporate governance system is the significant role played by the supervisory board. In addition, the supervisory board has compulsory representation of workers via the co-determination rules. This can have an important impact on key strategic decisions, for example, if a German company decides that it needs to close one of its subsidiaries, then it may prefer to close down a subsidiary overseas, in a country such as the UK, which has a unitary board structure and hence no supervisory board with employee representation. Employees in the UK would therefore be in a weaker position than their German counterparts, and have less influence over any closure decision.

It is interesting to note that Charkham (2005), in reviewing corporate governance developments in Germany, is of the opinion that 'internal and external developments have put pressure on it, but its main provisions remain intact. The factors for change have been the diminishing role of the banks, the international governance codes and principles, and the international capital markets'.

In November 2005, Germany abolished the requirement for shares to be blocked in advance of a shareholder meeting. Blocking had meant that shares could not be traded for a period of time before a company's general meeting, if the holder of the shares wished to be able to vote on the resolutions tabled for the general meeting. therefore, it had effectively been a deterrent to voting because institutional investors often could not afford to be in a position whereby they were unable to trade their shares.

Recent legal changes now require companies to disclose pay details for executive directors, effective for annual reports for 2006 onwards. However, company management may propose that disclosure is limited and if the proposal is approved by 75 per cent of its shareholders, then the additional disclosure does not have to be given. An amended version of the German corporate Governance code was published in 2006 and recommended that various executive remuneration disclosures should be made in the corporate Governance report. Companies would be obliged to disclose if they were to deviate from these recommendations.

There were minor amendments to the German Corporate Governance Code in 2007 and 2008. In the forward to each of these codes, it is mentioned that the European company or Society Europaean (SE) gives German enterprises the opportunity to opt for the unitary board system in which case the form that co-determination would take would be a matter for agreement between the company management and the employees. Also there is now a recommendation in the section on the 'supervisory Board' that the supervisory board should form a nomination committee composed exclusively of shareholder representatives which should propose suitable candidates to the supervisory board for recommendation to the company's general meeting.

Goergen et al. (2008) review the governance role of large shareholders, creditors, the product market and the supervisory board, and also discuss the importance of mergers and acquisitions, the market in block trades, and the lack of a hostile takeover market. They find that, the German system is characterised by a market for partial corporate control, large shareholders and bank/ creditor monitoring, a two-tier (management and supervisory) board with co-determination between shareholders and employees on the supervisory board, a disciplinary product-market, and Corporate Governance regulation largely based on EU directives but with deep roots in the German codes and legal doctrine. Another important feature of the German system is its Corporate Governance efficiency criterion which is focused on the maximisation of stakeholder value rather than shareholder value. However, the German corporate governance system has experienced many important changes over the last decade. First, the relationship between ownership or control concentration and profitability has changed over time. Second, the pay- for-performance relation is unfluenced by large shareholder control: in firms with controlling blockholders and when a universal bank is simultaneously an equity- and debtholder, the pay-for-performance relation is lower than in widely-held firms or blockholder-controlled firms. Third, since 1995 several major regulatory initiatives (including voluntary codes) have increased transparency and accountability.

Odenius (2008) reviews Germany's corporate governance system and the effectiveness of recent reforms. He states that since the early 1990s far-reaching reforms have complemented the traditional stakeholder system with important elements of the shareholder system. he raises the important question of whether these reforms have created sufficient flexibility for the market to optimize its corporate governance structure within well established social and legal norms. he concludes that there is scope for enhancing flexibility in three core areas, relating to: firstly internal control mechanisms, especially the flexibility of board structures; secondly self-dealing; and thirdly external control, particularly take-over activity.

CORPORATE GOVERNANCE IN JAPAN

Japan's economy developed very rapidly during the second half of the twentieth century. Particularly during the period 1985-89, there was a 'bubble economy', characterized by a sharp increase in share prices and the value of land; the early 1990s saw the bubble burst as share prices fell and land was devalued, as well as shareholders and landowners finding themselves losing vast fortunes, banks found



that they had severe problems too. During the bubble period, the banks had lent large amounts of money against the value of land and, as the repayments and the banks were left with large non-performing loans. The effect of the fall in share prices and land values spread through the Japanese economy, which became quite stagnant, and the effects spread to other countries' economies, precipitating a regional recession.

The Japanese government wished to restore confidence in the Japanese economy and in the stock market, and to attract foreign direct investment to help regenerate growth in companies. Improved corporate governance was seen as a very necessary step in this process.

Japan's Corporate Governance System is often likened to that of Germany because banks can play an influential role in companies in both countries. However, there are fundamental differences between the systems, driven partly by culture and partly by the Japanese shareholding structure with the influence of the keiretsu (broadly, associations of companies). Charkham (1994) sums up three main concepts that affect Japanese attitudes towards Corporate Governance: obligation, family, and consensus. The first of these, obligation, is evidenced by the Japanese feeling of obligation to family, a company, or country; the second, family, is the strong feeling of being part of a 'family' whether this is a family person, or a company; finally, the third concept, consensus, means that there is an emphasis on agreement rather than antagonism. These three concepts deeply influence the Japanese approach to Corporate Governance.

The keiretsu sprang out of the zaibatsu. Okumura (2002) states: 'Before World War II, when zaibatsu (giant pre-war conglomerates) dominated the Japanese economy, individuals or families governed companies as major stockholders. By contrast, after the war, by virtue of corporate capitalism, companies in the form of corporations became large stockowners, and companies became major stockholders of each other's stock.' The companies forming the keiretsu may be in different industries, forming a cluster often with a bank at the centre. Charkham (1994) states that 'banks are said to have encouraged the formation and development of groups of this kind, as a source of mutual strength and reciprocal help'. Indeed, banks themselves have a special relationship with the companies they lend to, particularly if they are the lead or main bank for a given company. Banks often buy shares in their customer companies to firm up the relationship between company and bank. However, they are limited to as per cent holding in a given company but, in practice, the combination of the traditional bank relationship with its client and the shareholding mean that they can be influential, and often very helpful, if the company is in financial difficulties, viewing it as part of their obligation to the company to try to help it find a way out of its difficulties.

When compared to the German system, it should be noted that there is no automatic provision for employees to sit on the supervisory board. However, employees have traditionally come to expect that they will have lifelong employment with the same company - unfortunately, in times of economic downturn, this can no longer be guaranteed.

The Japan Corporate Governance Committee published its revised Corporate Governance Code in 2001. The code had six chapters, which contained a total of 14 principles. The code had an interesting introduction, part of which stated 'a good company maximizes the profits of its shareholders by efficiently creating value, and in the process contributes to the creation of a more prosperous society by enriching the lives of its employees and improving the welfare of its other stakeholders'.

Summary of key characteristics influencing Japanese Corporate Governance

Feature Key characteristic

Main business form Public limited company

Predominant ownership structure Keiretsu; but institutional investor ownership is increasing

Legal system civil law

Board structure dual

Important aspect Influence of keiretsu

Hence the Code tried to take a balanced view of what a company is all about, and clearly the consideration of stakeholders is seen to be an important aspect. The foreword to the Code discussed and explained some of the basic tenets of Corporate Governance to help familiarize readers of the code with areas including the role and function of the board of directors, the supervisory body, independent directors, incentive-based compensation, disclosure, and investor relations.

(i) Mission and role of the board of directors

This first chapter contained five principles relating to: the position and purpose of the board of directors; the function and powers of the board of directors; the organization of the board of directors; outside directors and their independence; the role of the leader of the board of directors.

The board should be comprised of outside directors (someone who has never been a full-time director, executive, or employee of the company)- preferably a majority- and inside directors (executives or employees of the company). Independent directors are outside directors who can make their decisions independently. The board of directors' role is seen as one of management supervision including approving important strategic decisions, nominating candidates for director positions, appointment and removal of the CEO, and general oversight of accounting and auditing. the board of directors may also be required to approve certain decisions made by the CEO.

(ii) Mission and role of the committees established within the board of directors

The board is recommended to establish various committees including an audit committee, compensation committee, and nominating committee,. Each committee established should comprise at least three directors, and an outside director appointed as chair of each committee. The majority of directors on the audit committee should be independent directors, whilst the majority of directors on the audit committee should be independent directors, whilst the majority of directors on the other two committees should be outside directors, of whom at least one should be an independent director.

The roles of the various committees are broadly defined and cover the usual areas that one would expect for each of these committees.

(iii) Leadership responsibility of the CEO

The CEO'S role is to formulate management strategies with the aim of maximizing corporate value in the long term. The CEO is supervised by the board of directors. the CEO may set up an executive management committee to assist him in conducting all aspects of the business. The CEO may not be a member of the committees listed above in (ii).

(iv) Addressing Shareholder Derivative Litigation

A litigation committee, comprised a majority of independent directors, may be established to determine whether litigation action should be made against directors or executives against whom the company/ shareholders may have a claim.

(v) Securing fairness and transparency for executive management

Two important areas were covered in this section of the Code: internal control and disclosure. The CEO should ensure that there is an effective Corporate Governance System with adequate internal control. the audit committee should evaluate the CEO's policies on internal audit and control. The CEO should prepare an annual report about the internal audit and control, which should preferably be audited by a certified public accountant.

Disclosure should be made by the CEO of any information that may influence share prices; also information should be disclosed to the various stakeholder groups as appropriate.



(vi) Reporting To The Shareholders And Communicating With Investors

The shareholders' general meeting is seen as an opportunity for shareholders to listen to the reports of the directors and executives, and to obtain further information about the company through asking questions. Should the questions go unanswered in the general meeting, then the answer should be put on the company's website subsequent to the general meeting.

The company's executives are encouraged to meet analysts and others who can convey information to investors and shareholders about the company. Information should also be posted on the internet to try to ensure equality of access to information amongst the various investors.

The Commercial Code in Japan provides for the appointment of statutory auditors to monitor the various aspects of the company's activities. However, in 2002, there was an extensive revision of the commercial code essentially providing companies with the option of adopting a 'Us-style' corporate governance structure. The US-style structure would have a main board of directors to carry out the oversight function, and involve the establishment of audit, remuneration, and nomination committees, each with at least three members, a majority of whom should be non-executive. A board of corporate executive officers would also be appointed who would be in charge of the day to-day business operations. Under the Us-style structure, the board of statutory auditors would be abolished. It can be seen that the Japanese Corporate Governance Committee's Code's recommendations dovetailed with the revised Commercial Code.

In 2004, the Tokyo Stock Exchange issued the *Principles of Corporate Governance for Listed Companies*. In the preface, the purpose of the Principles is described as being 'to provide a necessary common base for recognition, thereby enhancing corporate governance through the integration of voluntary activities by listed companies and demands by shareholders and investors'. The five principles are based around the OECD Principles of corporate Governance.

The first principle relates to exercising various rights of shareholders, including the right to participate and vote in general meetings, voting on such issues as the election and dismissal of directors and auditors, and fundamental corporate changes, the basic right to share various profits such as dividends, and the special right to make derivative lawsuits and injunction of activities in contravention of laws, regulations, and other rules. The voting environment should be developed and improved so that shareholders can exercise their votes appropriately and participate in general meetings of shareholders.

The second principle relates to the equitable treatment of shareholders, including minority and foreign shareholders. To this end, there should be an adequate system to prohibit transactions through the abuse of officers, employees, and controlling share holders, which are against the primary interests of the company or shareholders. There should be enhanced disclosure where it seems that such actions might occur, and there should be prohibition of special benefits to specified shareholders.

The third principle is the relationship with stakeholders in corporate governance. Whilst Corporate Governance should help to create corporate value and jobs, the fact that companies sustain and improve their strengths and enhance value over time is 'the result of the provision of company resources by all stakeholders', so the establishment of good relationships with stakeholders is important. To this end, companies should cultivate a corporate culture and internal systems, which respect the various stakeholder groups and ensure timely and accurate disclosure of information relating to them.

The fourth principle relates to disclosure and transparency. Companies should ensure timely and accurate disclosure on all material matters, including the financial state and performance of the company and ownership distribution, through both quantitative and qualitative disclosures. The company should seek to ensure that investors can access information easily and that there is equal access to information. Internal systems should seem to ensure the accuracy and timeliness of disclosure.

The final principle relates to the responsibilities of the board of directors, auditors, board of corporate auditors, and other relevant groups. Corporate governance should enhance the supervision of management by the aforementioned groups and ensure their accountability to shareholders. Systems should be developed, or enhanced, to ensure that these requirements can be met.

Finally, it is important to note that the legal framework in Japan, via the Commercial Code Revision on Boards (2003), provides for two corporate governance structures: a corporate auditors' system, consisting of general meetings with shareholders, the board of directors, representative directors, executive directors, corporate auditors, and the board of corporate auditors, and a committees system, where there are general meetings of the shareholders, the board of directors, and committees composed of members of the board of directors (nomination committee, audit committee, and compensation committee), representative executive officers, and executive officers. It is up to the company which system it chooses. In each case, the general meeting of shareholders is the decision-making body on matters of fundamental importance to the company. A key difference between the two structures is that companies with a committee system need to re-elect their directors annually through the general meeting of shareholders, because the board of directors has the authority regarding the definitive plan for the distribution of profit, whereas in the corporate auditors' system, this power lies with the general meetings of shareholders.

Charkham (2005) discusses the various changes that have taken place in the context of Corporate Governance in Japan and states:

The important part the banks played has greatly diminished. In its place there are now better structured boards, more effective company auditors, and occasionally more active shareholders. An increase of interest, and, where appropriate, action on their part, might restore the balance that the banks' withdrawal from the scene has impaired.

Ahmadjian and Okumura (2006) also discuss the changes that have taken place in Japan in recent years:

Over the last decade, the debate on corporate governance has contrasted two extremes - whether to become "like the US" or retain the post-war Japanese system of governance. Yet, as we noted earlier, retaining the "traditional" post-war governance system is no longer an option, since it has been severely weakened by the demise of the role of the main bank, unwinding of cross-shareholdings, changes in accounting standards and increased investment by foreigners.

It is interesting to note that Japan is now using poison pills much more to ward off hostile takeover bids (an undesirable development), whereas it does not have the huge problems associated with perceived excessive director remuneration as its directors are not paid the vast multiples of the salary of the ordinary employees as this would be considered culturally unacceptable.

In 2008, the Asian Corporate Governance Association (ACGA) published its 'White Paper on Corporate Governance in Japan'. It states, While a number of leading companies in Japan have made strides in corporate governance in recent years, we submit that the system of governance in most listed companies is not meeting the needs of stakeholders or the nation at large in three ways:

- By not providing for adequate supervision of corporate strategy;
- By protecting management from the discipline of the market, thus rendering the development of a healthy and efficient market in corporate control all but impossible;
- By failing to provide the returns that are vitally necessary to protect Japan's safety net - its pension system.

It then advocates six areas for improvement: shareholders acting as owners; utilizing capital efficiently; independent supervision of management; pre-emption rights; poison pills and takeover defences; shareholder meetings and voting.



CORPORATE GOVERNANCE OF LISTING AGREEMENT IN INDIA

Applicability of Clause 49

The Clause 49 of the Listing Agreement shall be applicable to all companies whose equity shares are listed on a recognized stock exchange. However, compliance with the provisions of Clause 49 shall not be mandatory, for the time being, in respect of the following class of companies:

- a. Companies having paid up equity share capital not exceeding ₹10 crore and Net Worth not exceeding ₹25 crore, as on the last day of the previous financial year;
Provided that where the provisions of Clause 49 becomes applicable to a company at a later date, such company shall comply with the requirements of Clause 49 within six months from the date on which the provisions became applicable to the company.
- b. Companies whose equity share capital is listed exclusively on the SME and SME-ITP Platforms.

The company agrees to comply with the provisions of Clause 49 which shall be implemented in a manner so as to achieve the objectives of the principles as mentioned below. In case of any ambiguity, the said provisions shall be interpreted and applied in alignment with the principles.

A. The Rights of Shareholders

The company should seek to protect and facilitate the exercise of shareholders' rights. The company should provide adequate and timely information to shareholders. The company should ensure equitable treatment of all shareholders, including minority and foreign shareholders.

B. Role of stakeholders in Corporate Governance

The company should recognise the rights of stakeholders and encourage cooperation between company and the stakeholders.

C. Disclosure and transparency

The company should ensure timely and accurate disclosure on all material matters including the financial situation, performance, ownership, and governance of the company.

D. Responsibilities of the Board

Members of the Board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.

The Board and top management should conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture for good decision-making.

E. Composition of Board

The Board of Directors of the company shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the Board of Directors comprising non-executive directors.

Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise independent directors and in case the company does not have a regular non-executive Chairman, at least half of the Board should comprise independent directors.

Provided that where the regular non-executive Chairman is a promoter of the company or is related to any promoter or person occupying management positions at the Board level or at one level below the Board, at least one-half of the Board of the company shall consist of independent directors.

F. Independent Directors

For the purpose of the clause A, the expression 'independent director' shall mean a non-executive director, other than a nominee director of the company:

- (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- (c) apart from receiving director's remuneration, has or had no material pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;
- (d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

G. Limit on number of directorships

A person shall not serve as an independent director in more than seven listed companies. Further, any person who is serving as a whole time director in any listed company shall serve as an independent director in not more than three listed companies.

H. Maximum tenure of Independent Directors

The maximum tenure of Independent Directors shall be in accordance with the Companies Act, 2013 and clarifications/circulars issued by the Ministry of Corporate Affairs, in this regard, from time to time.

I. Non-executive Directors' compensation and disclosures

All fees / compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate.

Provided that the requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.

Provided further that independent directors shall not be entitled to any stock option.

J. Audit Committee

(i) Qualified and Independent Audit Committee

A qualified and independent audit committee shall be set up, giving the terms of reference subject to the following:

1. The audit committee shall have minimum three directors as members. Two-thirds of the members of audit committee shall be independent directors.
2. All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
3. The Chairman of the Audit Committee shall be an independent director;
4. The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries;



5. The Audit Committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee;
6. The Company Secretary shall act as the secretary to the committee.

(ii) Meeting of Audit Committee

The Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

(iii) Powers of Audit Committee

The Audit Committee shall have powers, which should include the following:

1. To investigate any activity within its terms of reference.
2. To seek information from any employee.
3. To obtain outside legal or other professional advice.
4. To secure attendance of outsiders with relevant expertise, if it considers necessary.

(iv) Role of Audit Committee

The role of the Audit Committee shall include the following:

1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible;
2. Recommendation for appointment, remuneration and terms of appointment of auditors of the company;
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors;
4. Reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:
 - (a) Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (c) of sub-section 3 of section 134 of the Companies Act, 2013
 - (b) Changes, if any, in accounting policies and practices and reasons for the same
 - (c) Major accounting entries involving estimates based on the exercise of judgment by management
 - (d) Significant adjustments made in the financial statements arising out of audit findings
 - (e) Compliance with listing and other legal requirements relating to financial statements
 - (f) Disclosure of any related party transactions
 - (g) Qualifications in the draft audit report
5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval;
6. Reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds

utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter;

K. Nomination and Remuneration Committee

The company through its Board of Directors shall constitute the nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director.

Provided that the chairperson of the company (whether executive or nonexecutive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

L. Subsidiary Companies

At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material non-listed Indian subsidiary company.

The Audit Committee of the listed holding company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company.

The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company. The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

M. Related Party Transactions

A related party transaction is a transfer of resources, services or obligations between a company and a related party, regardless of whether a price is charged.

For the purpose of Clause 49 (VII), an entity shall be considered as related to the company if:

- (i) such entity is a related party under Section 2(76) of the Companies Act, 2013; or
- (ii) such entity is a related party under the applicable accounting standards.

N. Disclosures

Disclosure relating to –

- A. Related Party Transactions
- B. Disclosure of Accounting Treatment
- C. Remuneration of Directors
- D. Management
- E. Shareholders
- F. Proceeds from public issues, rights issue, preferential issues, etc.

O. CEO/CFO certification

The CEO or the Managing Director or manager or in their absence, a Whole Time Director appointed in terms of Companies Act, 2013 and the CFO shall certify to the Board that:

- (i) They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief :
 - 1. these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - 2. these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.



- (ii) There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company's code of conduct.
- (iii) They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- (iv) They have indicated to the auditors and the Audit committee:
 1. significant changes in internal control over financial reporting during the year;
 2. significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
 3. instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company's internal control system over financial reporting.

P. Report on Corporate Governance

There shall be a separate section on Corporate Governance in the Annual Reports of company, with a detailed compliance report on Corporate Governance. Non-compliance of any mandatory requirement of this clause with reasons thereof and the extent to which the non-mandatory requirements have been adopted should be specifically highlighted. The suggested list of items to be included in this report is given in **Annexure - XII to the Listing Agreement** and list of non-mandatory requirements is given in **Annexure - XIII to the Listing Agreement**.

The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format given in **Annexure - XI to the Listing Agreement**. The report shall be signed either by the Compliance Officer or the Chief Executive Officer of the company.

Q. Compliance

The company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.

The non-mandatory requirements given in **Annexure - XIII to the Listing Agreement** may be implemented as per the discretion of the company. However, the disclosures of the compliance with mandatory requirements and adoption (and compliance) / non-adoption of the non-mandatory requirements shall be made in the section on corporate governance of the Annual Report.

CORPORATE GOVERNANCE IN USA

"The world moves forward on the character of good men" —Rev. Edmund A. Walsh. S. J.

The period between Thursday, August 2, 2012 and Saturday, August 4, 2012 was an auspicious time in the practice of internal auditing in Ghana. During that time, The Institute of Internal Auditors (Ghana), hosted Mr. Philip Tarling, the 2012-2013 Global Chairman of the Institute of Internal Auditors (IIA) worldwide, the first by a Global Chairman. During his visit, Mr. Tarling delivered a public lecture at the British Council Hall, Accra, on the topic "Expanding the Frontiers of Internal Auditing – A perspective from the Global Chairman". He also held sessions with key stakeholders of the profession in the country including chief executive officers, their chief internal auditors and IIA representatives from the West African Institutes. A presidential dinner was held in his honour.

The Institute of Internal Auditors is the global body for the internal audit profession. Established in 1941, The Institute of Internal Auditors (IIA) is an international professional association with global headquarters in Altamonte Springs, Florida, USA. The IIA is the internal audit profession's global voice, recognized authority, acknowledged leader, chief advocate, and principal educator. Generally, members work in internal auditing, risk management, governance, internal control, information technology audit, education, and security. Historians have traced the roots of internal auditing to ancient times, as merchants verified receipts for grain brought to market. The real growth of the profession occurred in the 19th and 20th centuries with the expansion of corporate business. Demand grew for systems of control in companies conducting operations in many locations and employing thousands of people. Traditionally, internal auditing has been concerned with accounting and financial activities. Historically, internal auditing emerged to satisfy some well defined management needs in the areas of accounting and financial matters. Management needed to satisfy itself whether:

- (a) The assets of the entity were properly protected;
- (b) The policies of the entity were being complied with;
- (c) Financial records were accurate and reliable.

Additionally, prevention and detection of fraud was a major focus of management. In that environment, the internal auditor was a financially oriented person with limited responsibility in the management process. He was seen more as a policeman and a checker and less as a co-worker. Internal auditing was also seen as an extension of external auditing.

The role of the internal auditor has been changing greatly over a period of time, leading to a greater reliance on him by management and the expansion of the internal audit function. This has resulted from the complexity of modern day businesses which are taking the form of multiple multi-national business units as well as the additional demands on management from various stakeholders. Competition dictates that organizations should be managed more effectively and efficiently if they are to survive and achieve growth. There is the need to optimize business performance and obtain operational excellence through greater effectiveness and efficiency. Cost reduction schemes must be implemented. Introduction of information technology into business operations have also brought its own challenges. There is therefore the need for greater protection against inefficiency, misconduct and fraudulent and illegal practices. Along the line, the realization dawned that the internal auditor could play an enhanced role in offering expanded protection all the new challenges facing management have therefore dictated the changing role of the internal auditing. Modern internal auditing today reflects two broad roles: assurance and consulting. Today, internal auditing has moved from the more routine compliance level when it used to be integrated with regular accounting activities where it was carried out entirely or substantially only in the strictly financial areas to higher levels in all operational areas of management where it has established itself as a valued and respected part of top management practice. Apart from compliance reviews and analysis of financial information, the modern internal auditor performs other functions as the examination and assessment of risk management, emerging technologies, and global issues.

The year 1941 marked a major turning point. Victor Z. Brink authored the first major book on internal auditing. And at the same time, John B. Thurston, internal auditor for the North American Company in New York, had been contemplating establishing an organization for internal auditors. He and Robert B. Milne had served together on an internal auditing subcommittee formed jointly by the Edison Electric Institute and the American Gas Association, and they agreed that further progress in bringing internal auditing to its proper level of recognition would be best made possible by forming an independent organization for internal auditors. When Brink's book came to the attention of Thurston, the three men got together and found they had a mutual interest in furthering the role of internal auditing.

As an organizing committee, Brink, Milne, Thurston, contacted a small group of internal audit practitioners throughout the United States who expressed interest in forming a national – even international – organization for internal auditors. The IIA's certificate of incorporation was filed on November 17, 1941, and just prior to the first annual meeting on December 9, 1941, the Williams Club located at 24 East 39th Street in New York City, 24 charter members were accepted for membership. Thurston was elected as the first president of The IIA. Membership grew quickly. It went from the original 24 members to 104 by



the end of the first year, to 1,018 at the end of five years. By 1957, membership had expanded to 3,700 and 20 percent were located outside of the United States. More than 70 years later, the IIA is a dynamic global organization with more than 175,000 members worldwide. Today, many people associate the genesis of modern internal auditing with the establishment of the IIA.

The Institute of Internal Auditors (Ghana) was formally registered in April 2001 in Ghana under the Professional Bodies Registration Decree, 1973 (NRCD 143) as a professional association dedicated to the promotion and development of the practice of internal auditing in Ghana. The institute was formally inaugurated on Friday, May 13, 2005 by the then Hon. Minister of Finance & Economic Planning on behalf of His Excellency the President of the Republic of Ghana. The IIA (Ghana) is a full-fledged member institute of the Global internal audit family. It also actively pursues collaboration and partnership with sister national institutes, particularly the African Institutes. IIA Ghana is a founding member of AFIIA – the African Federation of Institutes of Internal Audit, and currently represents West Africa on its governing council.

IIA Ghana is governed by a nine-member council supported by the immediate Past-President of the Institute who is an ex-officio member. The present Council (2011-2012) comprising the following members, was elected in February 2011 and will serve until the 2012 annual General Meeting, which will be held in February 2013:

- (a) Eric N. Yankah (**President**);
- (b) Richard Ntim (**Vice President**);
- (c) Juliet Aboagye-Wiafe (Mrs.);
- (d) Thomas M. Atuam;
- (e) Elsie Bunyan (Mrs.);
- (f) Leonard B.L. Donkoh;
- (g) Rebecca A. Lomo (Ms.)
- (h) Kofi Okofo-Dartey;
- (i) Daniel Kwame Opare;
- (j) John Djanie (**Immediate Past President**)

BY Kwame Gyasi

On November 16, 2012, Institutional Shareholder Services Inc. ("ISS") released the 2013 Updates to its U.S. **Corporate Governance** Policy (the "2013 Updates"). The 2013 Updates will be effective for shareholder meetings on or after February 1, 2013, unless otherwise noted below.

Issues affecting advisory votes on executive compensation

Investors continue to rank executive compensation as the top **corporate governance** topic. The 2013 Updates to the pay-for-performance evaluation undertaken in advance of an advisory "say-on-pay" vote on executive compensation refine how the subject companies' peer groups are selected, adjusting the criteria in an effort to include within the relevant peer group companies that have more in common with the subject company. The 2013 Updates also add the concept of "realizable pay" to the qualitative analysis for large cap companies.

Peer Groups

The 2013 Updates generally retain the methodology used by ISS in 2012 to evaluate a say-on-pay proposal, utilizing both a quantitative and qualitative analysis to assess the alignment between pay and performance and determine the recommendation of ISS on the proposal. As part of the quantitative analysis, the previous methodology focused the selection of a peer group on the subject company's Global Industry Classification Standard ("GICS") industry group. The GICS classification, however, does not always capture the multiple business lines in which a company operates, which may lead to the omission of direct competitors from a company's peer group or the inclusion of companies without much relation to the business of the subject company.

The 2013 Updates expand the scope of companies selected for a peer group. Instead of relying on only the company's GICS classification, the 2013 Updates provide for use of the peers from the subject company's GICS group as well as from GICS industry groups represented in the peer group the company has self-selected in benchmarking its executive compensation, while maintaining approximate proportions of these industries in the final peer group. The new methodology additionally focuses initially at an 8-digit GICS level rather than more specific levels, to be better aligned in terms of industry. ISS will prioritize for inclusion peers that (a) maintain the subject company near the median of the peer group in revenue/asset size, (b) are in the subject company's peer group and (c) have chosen the subject company as a peer. ISS' selection criteria will continue to focus on companies that are reasonably similar in industry profile, size and capitalization.

Other changes to the peer group methodology include using slightly relaxed size requirements, especially at very small and very large companies, and using revenue instead of assets for certain financial companies.

Realizable Pay

The 2013 Updates expand the list of qualitative factors used to analyze pay-for-performance alignment at large cap companies to include "realizable pay", which may ultimately mitigate or exacerbate pay-for-performance concerns. While the grant date pay disclosed in a company's summary compensation Table reflects the intent of the Compensation Committee's pay decisions, it does not necessarily reflect the final payouts of performance awards or changes in value due to gains or losses in the subject company's stock price.

Realizable pay will consist of the sum of relevant cash and equity-based grants and awards made during the specific performance period being measured, based on equity award values for actual earned awards, or target values for ongoing awards, calculated using the stock price at the end of the performance measurement period. Stock options and SARs will be re-valued using the remaining term and updated assumptions, as of the performance period, using the Black-Scholes option pricing model.

Golden Parachute Proposals

The Dodd-Frank Act requires companies to hold separate shareholder votes on potential "golden parachute" payments when they seek approval for mergers, sales and certain other transactions. In determining the recommendation with respect to a golden parachute proposal, the 2013 Updates include the consideration of any existing change-in-control arrangements maintained with named executive officers, rather than focusing only on the new or extended arrangements. The list of features considered problematic has been refined. Recent amendments that incorporate problematic features will tend to carry more weight in the overall analysis. However, close scrutiny will also be given if multiple legacy problematic features are present.

Issues affecting votes on Director Nominees in Uncontested elections

Hedging and Pledging

Current ISS policy provides for the recommendation of a negative vote for directors, whether individually or as part of a committee or the entire board, due to material failures of risk oversight at the company. The 2013 Updates expand the examples of a failure of "risk oversight" to include, among other things, the hedging of company stock and the significant pledging of company stock as collateral for a loan.

These practices are seen as severing the alignment of interests between the officers and directors and the shareholders. Hedging of company stock at any level and in any form poses enough of a problem to warrant a negative vote recommendation. For companies in which officers or directors have pledged company stock as collateral, ISS considers the following factors in determining vote recommendations for the election of directors:

- Presence in the company's proxy statement of an anti-pledging policy that prohibits future pledging activity;



- Magnitude of aggregate pledged shares in terms of total common shares outstanding or market value or trading volume;
- Disclosure of progress or lack thereof in reducing the magnitude of aggregate pledged shares over time;
- Disclosure in the proxy statement that shares subject to stock ownership and holding requirements do not include pledged company stock; and
- Any other relevant factors.

Majority Supported Shareholder Proposals

As the expectations of institutional investors, and the responsiveness of issuers, regarding majority supported shareholder proposals continue to advance, ISS has adjusted its policies accordingly. Beginning with board elections in 2014, ISS will recommend a negative vote on individual directors, committee members or the entire board, as appropriate, when the board has failed to take sufficient action on a shareholder proposal that received the support of a majority of the shares cast on such proposal in the previous year.

The 2013 Updates allow for greater flexibility in recommending a vote against only certain board members, rather than the full board. The 2013 Updates also provide more guidance for evaluating the sufficiency of a company's response to a majority supported shareholder proposal. Responses that involve less than full implementation of the proposal will be evaluated on a case-by-case basis, considering the following the factors:

- The subject matter of the proposal;
- The level of support and opposition provided to the resolution in past meetings;
- Disclosed outreach efforts by the board to shareholders in the wake of the vote;
- Actions taken by the board in response to its engagement with shareholders;
- The continuation of the underlying issue as a voting item on the ballot (as either shareholder or management proposals); and
- Other factors as appropriate.

The revised FAQs to be issued by ISS in December may provide more guidance with respect to the implementation evaluation.

Overboarded Directors

Current ISS policy recommends a negative vote on directors who are CEOs of other public companies and sit on boards of more than two public companies besides their own – with the withhold recommendation only covering their outside boards. The 2013 Updates eliminate the previous exception that counted the boards of a public company parent and its public company subsidiary as a single board so long

As the parent owned at least 20% of the subsidiary. The 2013 Updates now count these parent and subsidiary boards as two separate boards.

Shareholder Proposals Addressing Social and Environmental Issues

Environmental, Social, and Governance Compensation-Related Proposals

The 2013 Updates modify ISS policy from generally recommending a vote against to making a vote recommendation on a case-by-case basis with respect to proposals that link executive compensation to sustainability criteria, including various environmental and social criteria. As these non-financial performance metrics become more common among certain industries, specifically the extractive industry sectors, and are increasingly addressed in international investor initiatives, the 2013 Updates recognize the increasing interest of institutional investors in sustainability issues as part of the evaluation process.

Lobbying

The 2013 Updates provide for vote recommendations on a case-by-case basis when evaluating proposals requesting information on a company's lobbying activities. The 2013 Updates clarify the

scope and focus of lobbying activities covered, adding indirect lobbying activities as well as lobbying procedures and principles to the list that previously included only direct lobbying and grassroots lobbying within the specific policy.

New corporate legislation comes into effect in the Netherlands on 1 October 2012 and 1 January 2013.

It is important to be aware of this as it concerns, amongst other things, **Corporate Governance** issues.

The new management and supervision act (including the one tier board)

As of 1 January 2013 there will be a new **Corporate Governance** and supervision act. it affects public companies ("NVs") and private companies with limited liability ("BVs"); some clauses are also applicable to foundations.

The most important changes are:

- One tier board versus two tier board: in addition to the two tier board, the one tier board is now established. Until today, only a two tier board, with the management board and the supervisory board as a separate body, was laid down in dutch law. This new law brings the possibility, with certain limitations, to create a board with executive management board members and non executive (supervisory) management board members, both with their own duties. We are coming closer to the US and the UK. The one tier board differs from the two tier board in that the non-executive members in a one-tier board system are part of the management board and are therefore subject to director's liability.
- Conflict of Interest: the members of the management board and the supervisory board who have an (in) direct conflict of interest can no longer be part of the decision-making process regarding the underlying specific subject.
- Composition: for so called large entities there are new rules relating to the composition of the management and supervisory board. The number of permitted positions is limited. Furthermore, in large nvs and Bvs (and structure regimes) at least 30% of the positions on the management board and supervisory board must be held by women and at least 30% by men. This is done to stimulate the appointment of women on the company boards. It is, initially, a temporary rule (up to 1 January 2016).
- Responsibility: on the basis of the new legislation reference can be made to allocation of tasks in the articles of association. Although under Dutch law a division of tasks does not prejudice the joint responsibility of all members of the management board, it might under circumstances help by the so called individual exculpation possibility.
- Employment: management board members of listed companies will no longer be protected against dismissals or in case of illness, as the relationship between a board member and a listed company can no longer be based upon an employment agreement (but only on a management (service) agreement).

There are transitional provisions, but some clauses will apply immediately.

A Dutch BV is much more flexible as per 1 October 2012

On 1 October 2012 the Flex BV act entered into force. This Flex BV act brings major changes for BVs.

Some corporate provisions have changed while other have been deleted.

Amongst other things, amendments relate to the introduction of non-voting shares, capital requirements, the appointment of directors and supervisory board members, distributions, capital reduction, repurchase, vacancy of managing directors, financial assistance and convening general meetings.

The new legislation applies to all Bv's as of 1 october 2012.

Conclusion

Please review the current articles and decision making arrangements of your Dutch BV/NV in light of the possible consequences, and consider bringing the articles of association in line with new (coming) dutch law.



8.3 CORPORATE GOVERNANCE IN FAMILY BUSINESS

Introduction

The dominant form of business around the world is the family-owned business. In many instances, the family-owned business takes the form of a small family business whilst in other cases, it is a large business interest employing hundreds, or even thousands, of staff. The family-owned business can encompass sole traders, partnerships, private companies, and public companies. In fact, family ownership is prevalent not only amongst privately held firms but also in publicly traded firms in many countries across the globe. However, whatever the size of the business, it can benefit from having a good governance structure. Firms with effective governance structures will tend to have a more focused view of the business, be willing to take into account, and benefit from, the views of 'outsiders' (that is, non-family members), and be in a better position to evolve and grow into the future.

Ownership structures around the world

La Porta *et al.* (1999) analysed the ownership structure in a number of countries and found that the family-owned firm is quite common. Analysing a sample of large firms in 27 countries, La Porta *et al.* used as one of their criteria, a 10 per cent chain definition of control. This means that they analysed the shareholdings to see if there were 'chains' of ownership: for example, if company B held shares in company C, who then held company B's shares. On this 10 per cent chain definition of control, only 24 per cent of the large companies are widely held, compared to 35 per cent that are family-controlled, and 20 per cent state-controlled. Overall, they show that:

- (1) Controlling shareholders often have control rights in excess of their cash flow rights.
 - (2) This is true of families, who are so often the controlling shareholders.
 - (3) Controlling families participate in the management of the firms they own.
 - (4) Banks do not exercise much control over firms as shareholders...
 - (5) Other large shareholders are usually not there to monitor the controlling share-holders.
- Family control of firms appears to be common, significant, and typically unchallenged by other equity holders.

La Porta *et al.*'s paper made an important contribution to our understanding of the prevalence of family-owned/controlled firms in many countries across the world.

A key influence on the type of ownership and control structure is the legal system. Traditionally, common law legal systems, such as in the UK and USA, have better protection of minority shareholders' rights than do civil law systems, such as those of France, Germany, and Russia. Often, if the legal environment does not have good protection of shareholders' rights, then this discourages a diverse shareholder base whilst being more conducive to family-owned firms where a relatively small group of individuals can retain ownership, power, and control. For example, in the UK and USA, where the rights of minority shareholders are well protected by the legal system, there are many more companies with diversified shareholder bases and family-controlled businesses are much less common.

However, research by Franks *et al.* (2004 and 2005) highlighted that, in the UK in the first half of the twentieth century, there was an absence of minority investor protection as we know it today, and yet there still occurred a move from family ownership to a more dispersed share ownership. This was attributable to the issuance of shares through acquisitions and mergers, although families tried to retain control of the board by holding a majority of the seats. Franks *et al.* (2004) state, the rise of hostile takeovers and institutional shareholders made it increasingly difficult for families to maintain control without challenge. Potential targets attempted to protect themselves through dual class shares and strategic share blocks but these were dismantled in response to opposition by institutional shareholders and the London Stock Exchange. The result was a regulated market in corporate control and a capital market that looked very different from its European counterparts. Thus, while acquisitions facilitated the growth of family controlled firms in the first half of the century, they also diluted their ownership and ultimately their control in the second half.

On the other hand, in many countries, including European countries such as France, many Asian

countries, and South American countries, the legal protection of minority shareholders is today still either non-existent or ineffective, and so families often retain control in companies because non-family investors will not find the businesses an attractive investment when their rights are not protected.

However, many countries are recognizing that, as the business grows and needs external finance to pursue its expansion, then non-family investors will only be attracted to the business if there is protection of their rights, both in the context of the country's legal framework and also in the corporate governance of the individual companies in which they invest. This is leading to increasing pressure both for legal reforms to protect shareholders' rights and for corporate governance reforms within the individual companies. On the other hand, balanced against the pressures for reform are the, often very powerful, voices of family shareholders with controlling interests who may not wish to see reform to give better protection to minority interests because this would effectively dilute their control.

Family-owned firms and governance

Whilst a family-owned business is relatively small, the family members themselves will be able to manage and direct it. One advantage of a family-owned firm is that there should be less chance of the type of agency problems discussed in Chapter 2. This is because ownership and control rather than being split are still one and the same, and so the problems of information asymmetry and opportunistic behaviour should (in theory, at least) be lessened. As a result of this overlap of ownership and control, one would hope for higher levels of trust and hence less monitoring of management activity should be necessary. However, problems may still occur and especially in terms of potential for minority shareholder oppression, which may be more acute in family-owned firms. Morck and Yeung (2003) point out some of the potential agency costs in family-owned firms:

In family business group firms, the concern is that managers may act for the controlling family, but not for shareholders in general. These agency issues are: the use of pyramidal groups to separate ownership from control, the entrenchment of controlling families, and non-arm's-length transactions (aka 'tunneling') between related companies that are detrimental to public investors.

In some countries, remedies such as formal shareholder agreements, in which the nature of each shareholder's participation in the company is recorded, may be utilized as a mechanism to help resolve the potential oppression of minorities. Furthermore, the EU Commission's proposed Shareholder Rights Directive, issued in January 2006, is designed to help strengthen the role of shareholders by ensuring that they have relevant information in a timely manner and are able to vote in an informed way. Although the proposed directive is aimed at listed companies, and so likely primarily to affect institutional investors, Member States are free to extend to non-listed companies some or all of the provisions of the proposed Directive.

Another advantage of family-owned firms may be their ability to be less driven by the short-term demands of the market. Of course, they still ultimately need to be able to make a profit but they may have more flexibility as to when and how they do so.

However, even when a family business is still relatively small, there may be tensions and divisions within the family as different members may wish to take different courses of action that will affect the day-to-day way the business operates and its longer term development. In the same way as different generations of a family will have diverse views on various aspects of life, so they will in the business context as well. Similarly, as siblings may argue about various things, so they will most probably differ in their views of who should hold power within the business and how the business should develop. Even in the early stages of a family firm, it is wise to have some sort of forum where the views of family members regarding the business and its development can be expressed. One such mechanism is the family meeting or assembly, where family members can meet, often on a formal pre-arranged basis, to express their views. As time goes by and the family expands with family by marriage and new generations, then the establishment of a family council may be advisable. Neubauer and Lank (1998) suggest that a family council may be advisable once there are more than 30-40 family members.



When a business is at the stage where family relationships are impeding its efficient operation and development, or even if family members just realize that they are no longer managing the business as effectively as they might, then it is definitely time to develop a more formal governance structure. There may be an intermediate stage where the family are advised by an advisory board, although this would not provide the same benefits to the family firm as a defined board structure with independent non-executive directors. Figure 5.1 illustrates the possible stages in a family firm's governance development.

Cadbury (2000) states that establishing a board of directors in a family firm is a means of progressing from an organisation based on family relationships to one that is based primarily on business relationships. The structure of a family firm in its formative years is likely to be informal and to owe more to past history than to present needs. Once the firm has moved beyond the stage where authority is vested in the founders, it becomes necessary to clarify responsibilities and the process for taking decisions.

The advantages of a formal governance structure are several. First of all, there is a defined structure with defined channels for decision-making and clear lines of responsibility. Secondly, the board can tackle areas that may be sensitive from a family viewpoint but which nonetheless need to be dealt with - succession planning is a case in point (deciding who would be best to fill key roles in the business should the existing incumbents move on, retire, or die). Succession planning is important too in the context of raising external equity because, once a family business starts to seek external equity investment, then shareholders will usually want to know that succession planning is in place. The third advantage of a formal governance structure is also one in which external shareholders would take a keen interest: the appointment of non-executive directors. It may be that the family firm, depending on its size, appoints just one, or maybe two, non-executive directors. The key point about the non-executive director appointments is that the persons appointed should be independent; it is this trait that will make their contribution to the family firm a significant one. Of course, the independent non-executive directors should be appointed on the basis of the knowledge and experience that they can bring to the family firm: their business experience,



Possible stages in a family firm's governance

or a particular knowledge or functional specialism of relevance to the firm, which will enable them to 'add value' and contribute to the strategic development of the family firm.

Cadbury (2000) sums up the three requisites for family firms to manage successfully the impacts of growth: 'They need to be able to recruit and retain the very best people for the business, they need to be able to develop a culture of trust and transparency, and they need to define logical and efficient organisational structures'. A good governance system will help family firms to achieve these requisites.

Bammens and Voordeckers (2009), in a study of family firms in Belgium, find that 'contrary to traditional agency wisdom, family firm boards devote substantial attention to controlling the management team... those family firms that employ trust and control in a complementary manner will be most effective'.

In the context of succession planning, Bennedsen et al (2006), in a study of family firms in Denmark, report that their empirical results demonstrate that professional, non-family CEOs provide extremely valuable services to the organizations they head. On the other hand, they report that family CEO underperformance is particularly large in fast-growing industries, industries with a highly skilled labor force and relatively large firms.

Smaller quoted companies

In the UK, many firms with family control will be smaller quoted companies, either on the main market or on the UK's Alternative Investment Market (AIM), which can be seen as a way for smaller firms to

obtain market recognition and access to external sources of finance, often before moving on to the main market.

The Combined Code 2008 forms part of the UK Listing Authority's Rules and is applicable to all UK listed companies. This means that there should be no distinction between the governance standards expected of larger and smaller companies. The Combined Code states that it encourages smaller companies to adopt the Code's approach. However, in relation to smaller companies (those outside the FTSE 350), it states that they should have at least two independent non-executive directors (rather than half the board being independent non-executive directors, which is the requirement for larger companies); and also for listed companies outside the FTSE 350, it allows the company chairman to sit on the audit committee where he or she was considered independent on appointment.

The Quoted Companies Alliance (QCA), formerly the City Group for Smaller Companies (CISCO), is an association representing the interests of smaller companies and their advisers. The QCA fully embraces the principles of corporate governance contained in the Combined Code and advocates that these principles should be adopted by all public quoted companies in so far as it is practicable for their size. QCA Guidance for Smaller Companies (2001), updated in 2004, urges smaller companies to comply with the Combined Code as far as they are able, but where they are unable to comply fully, then they should explain why they are unable to comply. The QCA Corporate Governance Committee (2005, updated in 2007) published a corporate governance guide for AIM companies to help smaller companies seeking to develop their governance, or to meet the expectations of institutional investors.

There has been a distinct lack of research into aspects of corporate governance in small companies, with a few exceptions being Collier (1997) on audit committees in smaller listed companies, and Mallin and Ow-Yong (1998a, 1998b) on corporate governance in AIM companies and corporate governance in small companies on the main market. Mallin and Ow-Yong (2008) carried out a further study of corporate governance in AIM companies and highlighted a concern that 'with the rapid expansion of AIM and the increasing number of overseas companies, from countries whose culture of good governance may be weaker than that of the UK, a damaging financial scandal or collapse is only a matter of time'. They recommended that the role of the NOMAD [nominated advisor] be re-examined; the admission of overseas companies to AIM should be more closely scrutinized; small boards which may not be able to institute all the features of 'good' corporate governance should consider increasing the number of directors on their board, subject to resource constraints; and the regulatory authorities should monitor more closely the governance of AIM companies which have yet to start trading.

Another strand of the literature concentrates on firm-level characteristics that may serve to differentiate large and small firms. Larger firms tend to be more complex, whereas smaller firms adopt simpler systems and structures; smaller firms tend to have more concentrated leadership, whilst in a larger firm control may be more diffuse, or more subject to question by a larger board (Fama and Jensen 1983; Begley and Boyd 1987). In terms of the impact on corporate governance structures, it can be expected that in general, small and medium-sized firms will have simpler corporate governance structures than large firms - this may include: combining various of the key committees (audit, remuneration, nomination); a smaller number of non-executive directors (NEDs); a combined chair/CEO; longer contractual terms for directors due to the more difficult labour market for director appointments into small and medium-sized companies.

The role and importance of NEDs was emphasized in the Cadbury Report (1992) and in the Code of Best Practice it is stated that NEDs 'should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct'. Similarly, the Hampel Report (1998) stated: 'Some smaller companies have claimed that they cannot find a sufficient number of independent non-executive directors of suitable calibre. This is a real difficulty, but the need for a robust independent voice on the board is as strong in smaller companies as in large ones'. The importance of the NED selection process is also emphasized: they 'should be selected



through a formal process and both this process and their appointment should be a matter for the board as a whole'.

From the above diagram, it can be seen that the areas where potential difficulties are most likely to arise tend to be those relating to the appointment of directors, particularly non-executive directors, which has implications for board structure. These differences arise partly because of the difficulties of attracting and retaining suitable non-executive directors in small companies.

Mallin and Ow-Yong (1998b) found that the most important attribute for small businesses when recruiting non-executive directors was their business skills and experience. Overall, the inference could be made that the ability to 'add value' to the business is the most important factor influencing NED appointments, which is in line with a study by Collier (1997). Similarly, the Hampel Committee (1998) stated 'particularly in smaller companies, non-executive directors may contribute valuable expertise not otherwise available to management'.

Areas of the Combined Code that may prove difficult for smaller companies

Combined Code recommendations	Potential difficulty
Minimum two independent NEDs	Recruiting and remunerating independent NEDs
Split roles of chair/CEO	May not be enough directors to split the roles
Audit committee comprised of two NEDs	Audit committee may include executive directors
NEDs should be appointed for specific terms	NEDs often appointed for term

However, many small companies do not have a nomination committee, and therefore non-executive director appointments are often made by the whole board. Interestingly, Mallin and Ow-Yong (2008) found that the factor that was considered to be most influential when making non-executive director appointments was considered to be 'objectivity and integrity' followed by 'relevant business skills and experience'. This perhaps highlights the impact of various corporate scandals and collapses in bringing to the fore the importance of these characteristics of objectivity and integrity.

In terms of the adoption of board committees, such as audit, remuneration, and nomination committees, small companies tend to have adopted audit and remuneration committees fairly widely but not nomination committees. In some smaller companies, the committees may carry out combined roles where, for example, the remuneration and nomination committees are combined into one committee; often the board as a whole will carry out the function of the nomination committee rather than trying to establish a separate committee from a small pool of non-executive directors.

A word of caution should be sounded though in relation to quoted companies where there is still a large block of family ownership (or indeed any other form of controlling shareholder). Charkham and Simpson (1999) point out:

the controlling shareholders' role as guardians is potentially compromised by their interest as managers. Caution is needed. The boards may be superb and they may therefore be fortunate enough to participate in a wonderful success, but such businesses can decline at an alarming rate so that the option of escape through what is frequently an illiquid market anyway may be unattractive.

The points made are twofold: first, that despite a good governance structure on paper, in practice, controlling shareholders may effectively be able to disenfranchise the minority shareholders; secondly, that in a family-owned business, or other business with a controlling shareholder, the option to sell one's shares may not be either attractive or viable at a given point in time.

Conclusions

In many countries, family-owned firms are prevalent. Corporate governance is of relevance to family-owned firms, which can encompass a number of business forms including private and publicly quoted companies, for a number of reasons. Corporate governance structures can help the company to develop successfully - they can provide the means for defined lines of decision-making and

accountability, enable the family firm to benefit from the contribution of independent non-executive directors, and help to ensure a more transparent and fair approach to the way the business is organized and managed. Family-owned firms may face difficulties in initially finding appropriate independent non-executive directors but the benefits that such directors can bring is worth the time and financial investment that the family-owned firm will need to make.

SUMMARY

- Family ownership of firms is the prevalent form of ownership in many countries around the globe.
- The legal system of a country tends to influence the type of ownership that develops, so that in common law countries with good protection for minority shareholders' rights, the shareholder base is more diverse, whereas in civil law countries with poor protection for minority shareholders' rights, there tends to be more family ownership and control.
- The governance structure of a family firm may develop in various stages such as starting with a family assembly, then a family council, advisory board, and finally, a defined board structure with independent non-executive directors.
- The advantages to the family firm of a sound governance structure are that it can provide a mechanism for defined lines of decision-making and accountability, enable the family firm to benefit from the contribution of independent non-executive directors, and help to ensure a more transparent and fair approach to the way the business is organized and managed.

Example: Cadbury plc; UK

This is an example of a family firm that grew over time, developed an appropriate governance and became an international business.

Today, Cadbury is a household name in homes across the world. It was founded in the first part of the nineteenth century when John Cadbury decided to establish a business based on the manufacture and marketing of cocoa. His two sons joined the firm in 1861 and, over the years, more family members joined, and subsequently the firm became a private limited liability company, Cadbury Brothers Ltd. A board of directors was formed comprising of members of the family.

Non-family directors were first appointed to the firm in 1943, and in 1962, the firm became a publicly quoted company with the family members still being the majority on the board and holding a controlling interest (50 per cent plus) in the shares. Cadbury merged with Schweppes in the late 1960s, and over the next 40 years, Cadbury Schweppes developed a diverse shareholder base and a board of directors appointed from the wider business community. The direct family involvement, via either large shareholdings or board membership, therefore declined over the years. In the Spring of 2007, Cadbury Schweppes revealed plans to split its business into two separate entities: one focusing on its main chocolate and confectionery market; the other on its US drinks business. The demerger took effect in May 2008 so that Cadbury Schweppes plc became Cadbury plc (focusing on the former market) and Dr Pepper Snapple Group Inc: (focusing on the US drinks business).

In 2009, Kraft launched a hostile takeover bid for Cadbury. Cadbury decided to fight to retain its independence.

Example: Hutchison Whampoa, Hong Kong

This is an example of an international company where there is controlling ownership by a family via a pyramid shareholding.

Hutchison Whampoa is a multinational conglomerate with five core businesses including ports and related services, property and hotels, telecommunications, retail and manufacturing, energy and infrastructure. It ranks as one of the most valuable companies in Hong Kong and a large proportion of it is controlled by Cheung Kong Holdings in which the Li Ka Shing family have a significant interest which



means that the Li Ka Shing family has significant influence over both companies, one through direct ownership, the other via an indirect, or pyramid, shareholding.

Hutchison Whampoa has, for many years, been the recipient of various awards and accolades. In 2005, it was voted the best-managed company in Hong Kong in a poll of institutional investors and equity analysts carried out for the Finance Asia annual awards. In the same poll, it was voted Asia's Best Conglomerate and its CFO received the Best CFO Award in Hong Kong. The Hong Kong Institute of Certified Public Accountants awarded its significant improvement Award in the Hang Seng Index Category to Hutchison Whampoa in 2005 for its 'very clear and positive approach to upgrading its corporate governance practice'. Whilst having a controlling family interest, Hutchison Whampoa is committed to good corporate governance and to its wider shareholder base. More recently, in 2008, it was recognized by Corporate Governance Asia as one of 'The Best of Asia', that is one of Asia's Best Companies for Corporate Governance.

Mini case study: Fiat, Italy

This is a good example of a firm where the founding family still have significant influence through a complex shareholding structure.

Fabbrica Italiana Automobile Torino, better known as Fiat, was founded in 1899 by a group of investors including Giovanni Agnelli. Fiat automobiles were immediately popular not just in Italy but internationally too. Fiat expanded rapidly in the 1950s and, in 1966, the founder's grandson, also Giovanni Agnelli, became the company's chairman. As well as cars, Fiat's business empire included commercial vehicles, agricultural, and construction equipment, insurance, aviation, the press, electric power and natural gas distribution. In past years, it has achieved enormous financial success.

More than 90 per cent of Italian registered companies are family owned, with many companies being run by Italian families who wield great power. Traditionally, control has been achieved, often with the minimum of capital outlay, through a complex structure involving a series of holding companies. In the case of Fiat, control by the Agnelli family is via pyramids (indirect holdings) and voting trusts particularly Ifi (a financial holding company) in which the Agnelli family have control of all the votes.

By 2002, Fiat had significant financial problems with losses of US\$1.2 billion in 2002. General Motors, which had acquired a 20 per cent shareholding in Fiat at a cost of US\$2.4 billion, was asked to invest further in Fiat but was reluctant to do so. In 2003, the group restructured its core business area by again focusing manufacturing and service activities on the traditional motor vehicle sector.

In 2003, Umberto Agnelli died, and in 2004, Luca Cordero di Montezemolo was nominated as Chairman. Also in 2004, Sergio Marchionne was appointed as Chief Executive of Fiat and this marked a turning point in the company's fortunes. An astute and experienced businessman, Mr Marchionne oversaw changes to various areas of the Fiat business. At the beginning of 2005, Fiat announced the creation of fiat Powertrain Technologies, a new industrial unit designed to integrate the groups' innovation capabilities and expertise in engines and transmissions. In February 2005, the boards of directors of Fiat and General Motors met to approve a contract to terminate the master agreement and related joint ventures between the two companies. The Chairman of Fiat, Luca Cordero di Montezemolo, said:

We are delighted to have been able to conclude this agreement with General Motors. While highly beneficial to both Fiat and GM since 2000, the arrangements had become too confining for the development of Fiat Auto in today's market environment. We now have all the necessary freedom to develop strategic growth alternatives for Fiat Auto, while retaining a base on which to build a much more constructive relationship with GM in the future.

There were also important changes to Fiat's corporate governance structure in June 2005, with Fiat extending its board of directors to 15 members, so that the board comprised a majority of independent non-executive directors. At the same time, Fiat strengthened its independence requirements for directors. In its press release, it stated:

After a thorough review of current international practice on this issue, the Company has adopted a set of criteria which are designed to ensure that the independence qualification is held to the highest possible standard. As an example, directors who have served on the Board for more than nine years, even though not consecutively, are deemed not to be independent. Furthermore, board members who are executive directors of other companies on whose board[s] sit executive board members of Fiat are also deemed not to be independent.

In January 2006, Fiat announced another significant strategic change with the signing of an agreement to co-operate on dealer networks with Tata Motors Ltd., which meant that Fiat cars could be distributed via the Tata network in India. Late in January 2006, Fiat announced that it had seen its first positive quarterly trading profit after 17 successive quarters of losses.

With the revision of Italian corporate governance provisions, the Fiat Group adopted and abides by the Corporate Governance Code of Italian Listed Companies issued in March 2006. Fiat provides information regarding how it meets the individual principles and criteria of the Corporate Governance code by providing a reprise of the individual principles and criteria, and then summarizing how each of these is implemented at Fiat.

2006 saw the strengthening of Fiat's presence in Europe and the gain no of access into markets including China, India, and Russia. In 2007, Sergio Marchionne announced the 2007-2010 plan geared towards growth. In 2009 he unveiled his plan to put Fiat at the heart of the car-making industry globally by forging an alliance with the giant troubled US car manufacturers Chrysler and General Motors (Opel, the European arm) in June 2009, Fiat and Chrysler announced that they had finalised a global strategic partnership to begin immediately. The ultimate success of the alliance will depend on many factors and will likely have implications for the workforces in the various countries affected including Germany and the UK.

8.4 CORPORATE GOVERNANCE IN STATE-OWNED BUSINESS - THE MOU SYSTEM

Most of the industrialization in developing countries was initiated by governments due to the inherent problems associated with the mobilization of capital for the purpose of industrialization. Also, the pursuit of economic systems and ideologies such as socialism or communism required such countries either to wholly depend on or at least sustain with the initiatives of the public sector. While many countries initiated steps to gradually do away with the whole concept of the public sector except in strategically important areas such as defence or space research like the US or UK, the Government of India has been following a policy where the public sector co-exists with the private sector even though a great deal of effort has been taken at privatization of government-owned enterprises or part divestment of government stakes in the public sector companies. Corporate governance has become applicable to many of the public sector enterprises (PSEs) as they have chosen to raise funds from the capital markets, either through public offers of equity capital or through a process of divestment of equity in favour of private corporate bodies or institutional investors.

Difficulties Encountered in Governance

While routine governance regulations become applicable for public sector companies formed under the Companies Act, 1956 and come under the purview of SEBI regulations the moment they mobilize funds from the public, the typical organizational structure of PSUs makes it difficult for the implementation of corporate governance practices as applicable to other publicly-listed private enterprises. The typical difficulties faced are:

- The board of directors will comprise essentially of bureaucrats drawn from various ministries which are interested in the PSU. In addition, there may be nominee directors from banks or financial institutions who have loan or equity exposures to the unit. The effect will be to have a board much beyond the required size, rendering decision-making a difficult process.



- The chief executive or managing director (or chairman and managing director) and other functional directors are likely to be bureaucrats and not necessarily professionals with the required expertise. This can affect the efficient running of the enterprise.
- Difficult to attract expert professionals as independent directors. The laws and regulations may necessitate a percentage of independent component on the board; but many professionals may not be enthused as there are serious limitations on the impact they can make.
- Due to their very nature, there are difficulties in implementing better governance practices. Many public sector corporations are managed and governed according to the whims and fancies of politicians and bureaucrats. Many of them view PSUs as a means to their ends. A lot of them have turned sick due to overdoses of political interference, even when their areas of operations offered enormous opportunities for advancement and growth. And when the economy was opened up, many of them lacked the competitiveness to fight it out with their counterparts from the private sector.

OECD Guidelines for Corporate Governance of State-owned Enterprises

Many of the developing countries still continue to have a dominant presence of state-owned enterprises. Hence, OECD thought it appropriate to evolve a set of governance guidelines for the state-owned enterprises as it did for the private enterprises in member countries. According to OECD, A major challenge is to find a balance between the state's responsibility for actively exercising its ownership functions, such as, the nomination and election of the board, while at the same time refraining from imposing undue political interference in the management of the company. Another important challenge is to ensure that there is a level playing field in markets where private sector companies can compete with the state-owned enterprises, and that governments do not distort competition in the way they use their regulatory or supervisory powers.'

According to OECD, the guidelines 'suggest that the state should exercise its ownership functions through a centralized ownership entity, or effectively co-ordinated entities, which should act independently and in accordance with a publicly disclosed ownership policy. The guidelines also suggest the strict separation of the state's ownership and regulatory functions. If properly implemented, these and other recommended reforms would go a long way to ensure that state ownership is exercised in a professional and accountable manner, and that the state plays a positive role in improving corporate governance across all sectors of our economies. The result would be healthier, more competitive, and transparent enterprises'.

The major recommendations in OECD guidelines are as discussed below.

Ensuring an effective legal and regulatory framework for state-owned enterprises

- There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.
- SOEs should not be exempt from the application of general laws and regulations. Stakeholders including competitors, should have access to efficient redress and an even-handed ruling when they believe that their rights have been violated.
- SOEs should face competitive conditions regarding access to finance. Their relations with state-owned banks, state-owned financial institutions, and other state-owned companies, should be based on purely commercial grounds.

State acting as an owner

The state should act as an informed and active owner, and establish a clear and consistent ownership policy, ensuring that governance of state-owned enterprises is carried out in a transparent and accountable manner with the necessary degree of professionalism and effectiveness.

- The government should develop and issue an ownership policy that defines the overall objectives of state ownership, the state's role in corporate governance of SOEs, and how it will implement its ownership policy.
- The government should not be involved in the day-to-day management of SOEs and allow them full operational autonomy to achieve their defined objectives.
- The state should let SOE boards exercise their responsibilities and respect their independence.
- The state should exercise its ownership rights according to the legal structure of each company. Keeping this in mind, it should ensure that remuneration schemes for SOE board members foster the long-term interest of the company, and can attract and motivate qualified professionals.

Equitable treatment of shareholders

The SOEs should recognize the rights of all shareholders and in accordance with the OECD principles of corporate governance, ensure their equitable treatment and equal access to corporate information.

- SOEs should observe a high degree of transparency towards all shareholders.
- The co-ordinating or ownership entity and SOEs should ensure that all shareholders are treated equally.
- The participation of minority shareholders in shareholder meetings should be facilitated in order to allow them to take part in fundamental corporate decisions, such as board election.

Relations with stakeholders

The state ownership policy should fully recognize the state-owned enterprises' responsibilities towards stakeholders and report their relations with them.

- Listed on large SOEs, as well as SOEs pursuing important public policy objectives, should report on stakeholder relations.

Transparency and disclosure

State-owned enterprises should observe high standards of transparency in accordance with the OECD Principles of Corporate Governance.

- SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent company organ.
- SOEs, especially large ones, should be subject to an annual independent external audit based on international standards. The existence of specific state control procedures does not substitute for an independent external audit.

Responsibilities of the boards of state-owned enterprises

The boards of state-owned enterprises should have the necessary authority, competencies, and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.

- The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the company's performance. The board should be fully accountable to the owners, act in the best interest of the company, and treat all shareholders equally.
- SOE boards should carry out their functions of monitoring of management and strategic guidance, subject to the objectives set by the government and the ownership entity. They should have the power to appoint and remove the CEO.



- The boards of SOEs should be so composed that they can exercise objective and independent judgement. Good practice calls for the chair to be separate from the CEO.
- SOE boards should carry out an annual evaluation to appraise their performance.

Conflicts of Interest

Conflicts of interest are a major challenge to the establishment and maintenance of good governance practices, and can occur and exist irrespective of the ownership structures. While some of the conflicts may be similar in nature, others may be typical to the type of ownership structure.

Most of the conflicts of interest in PSUs occur because of the roles played by bureaucrats and politicians in the running and management of the enterprise. For example, politicians or bureaucrats may try to have their candidate as the chairman and/or managing director in order to push through their private agendas rather than getting the best professional to run the PSU. There have also been many instances where the chairman and/or managing director, or other senior executives of the PSU has placed orders or awarded contracts at rates higher than the best prices, and earned hefty commissions on these. Orders or contracts may also be given to those who do not have the necessary capabilities to execute them. What is best for the PSU usually gets neglected. There may also be issues such as ministers or politicians yielding to recommendations of their cadre and sometimes even creating positions or designations that are not at all needed, leading the PSU to have a bloated workforce and driving it into the sick category. Politicians or bureaucrats may even harp on the flimsy reason that PSUs have employment generation as one of their aims. Most of the conflicts of interest with regard to PSUs dwell on the area of decision-making, which is very often not founded on merit.

Public Sector Enterprises and the Memorandum Of Understanding:

After Independence, Public Sector Enterprises (CPSEs) were set up in India with an objective to promote rapid economic development through the creation and expansion of infrastructure by the government. With different phases of development, the role of CPSEs has changed and their operations have extended to a wide range of activities in manufacturing, engineering, steel, heavy machinery, machine tools, fertilizers, drugs, textiles, pharmaceuticals, petro-chemicals, extraction and refining of crude oil and services such as telecommunication, trading, tourism, warehousing, etc. as well as a range of consultancy services. While there have been many CPSEs that have performed very well in competition with private sector enterprises, there are also many CPSEs that have performed very poorly. In an economic environment that has changed considerably in the last two decades, the role of CPSEs has changed and they have been increasingly guided to reduce their dependence on the Government. They have been listed on the stock exchange and few of them have been privatized. The Government has provided CPSEs the necessary flexibility and autonomy to operate effectively in a competitive environment. However, there are a few issues with the operation and management of CPSEs which still persist and need to be attended to. There is a need to develop a mechanism on how government can get an efficient Indian presence in the sectors where the private sector investments are not forthcoming especially in strategic areas where developing capabilities is essential if India has to play its rightful role among the nations of the world.

Governance in India: The Path Ahead

The Indian economy on the eve of the Twelfth Plan is characterized by strong macro-fundamentals and good performance over the Eleventh Plan period, though clouded by some slowdown in growth in the current year with continuing concern about inflation and a sudden increase in uncertainty about the global economy. The objective of the Eleventh Plan was faster and inclusive growth and the initiatives taken in the Eleventh Plan period have resulted in substantial progress towards both objectives. Inevitably, there are some weaknesses that need to be addressed and new challenges that need to be faced. Some of the challenges themselves emanate from the economy's transition to a higher and more inclusive growth path, the structural changes that come with it and the expectations it generates. There are external challenges also arising from the fact that the global economic environment is much

less favourable than it was at the start of the Eleventh Plan. These challenges call for renewed efforts on multiple fronts, learning from the experience gained, and keeping in mind global developments. We focus on the backdrop of target setting and areas of focus of the Eleventh Plan. India entered the Eleventh Plan period (2007-2012) with an impressive record of economic growth. The vision for the Eleventh Plan prominently included an improvement in governance. Over the years, the governments at the Centre and the States have launched a large number of initiatives at substantial public expense to achieve the objectives of growth with poverty alleviation and inclusiveness. Experience suggests that many of these initiatives have floundered because of poor design, insufficient accountability and also corruption at various levels. Increasingly, there is demand for effective implementation without which expanded government intervention will be infructuous. The strategy for the Eleventh Plan was therefore aimed at bringing about major improvements in governance which would make government-funded programmes in critical areas more effective and efficient. The best possible way of achieving this objective may be by involving communities in both the design and implementation of such programmes, although such involvement may vary from sector to sector. For achieving the vision of the Eleventh Plan, it is extremely important to experiment with programme design to give more flexibility to decision making at the local level. It is especially important to improve evaluation of the effectiveness of how government programmes work and to inject a commitment to change their designs in the light of the experience gained. Evaluation must be based on proper benchmarks and be scientifically designed to generate evidence-based assessment of different aspects of programme design. Along with greater transparency and feedback from community participation, this is particularly important in the case of programmes delivering services directly to the poor. Accountability and transparency are critical elements of good governance. The Right to Information Act (RTI) enacted in 2005 empowers people to get information and constitutes a big step towards transparency and accountability.

MoU in India

Notwithstanding the spectacular performance of CPSEs in several areas, there has been a sense of disillusionment with some aspects of CPSE performance such as low profitability and lack of competitiveness. The extensive regulation of CPSEs by government had stifled the initiative and growth of public sector. The Economic Administration Reforms Commission (Chairman: L. K. Jha) had dwelt on issue of autonomy and accountability. The Commission had recommended a careful re-consideration of extant concepts and instrumentalities relating to the accountability of public enterprises with a view to ensuring (a) that they do not erode the autonomy of public enterprises and thus hampers the very objectives and purposes for which these enterprises have been set up and given corporate shape and for which they are to be accountable; and (b) accountability has to be secured in the wider sense of answerability for the performance of tasks and achievements of results (EARC-II/Report No. 4, p. 22). The adoption of MoU system in India could be seen as an attempt to operationalize this very vital recommendation.

Memorandum of Understanding: In Retrospect

The concept of Memorandum of Understanding (MoU) has been designed to provide flexibility and autonomy to Central Public Sector Enterprises (CPSEs) such that it facilitates them in pursuing the objectives and purposes, for which the enterprises have been set up. Accountability has to be understood in a wider sense by associating it with answerability for the performance of the tasks and the achievement of targets negotiated mutually between the Government and the CPSE. The rationale for MoU could be derived from principal/agent theory. The principal (administrative ministry on behalf of real owners- the people) can only observe outcomes and cannot measure accurately the efforts expended by the agent (CPSE managers). Also the Principal can only, to a limited extent, distinguish the effects of influences from other factors, which affect the performance (Laffont and Tirole 1993). Therefore extensive intervention by administrators, who might not be too knowledgeable about the nature of problems confronting the enterprises, not only impacts productivity and profitability but also makes it impossible to fix accountability for non-achievement of targets.



A negotiated incentive contract (MoU), hence, is viewed as a device to reveal information and motivate managers to exert effort. Proponents argue that the contract can translate multiple objectives into targets which can be measured by specified criteria and could be given weights to reflect priorities. Moreover, targets can be set to take into account circumstances where CPSE managers have less control over their firms than their counterparts in the private sector. For example, performance might be judged against the firm's past trends, rather than against an industry standard, to take account of situations where the firm's performance is sub-standard because of government imposed constraints (such as prohibitions on layoffs, price controls, etc.).

By specifying targets and evaluating results ex post, the MoU is seen by its advocates as a way to encourage governments to reduce ex ante controls, giving managers more freedom and motivation to improve operating efficiency.

Hence, it is strongly felt that Performance Contracts will improve performance only if they elicit both the Government's and the Firms' commitment. Since Government is both a signatory and the enforcer of the contract, it is especially important that its commitment remains credible. Political determinants may preclude the design of incentive contracts and impede CPSEs in producing the sort of productivity gains being achieved by the private firms. These findings suggest that effort in designing a framework of MoU on consistent basis can produce good results.

The Memorandum of Understanding (MoU) System in India was introduced in the year 1986, after the recommendations of the Arjun Sengupta Committee Report (1984). Twenty six years after its inception, the MoU system has evolved and is being strengthened, through regular reviews, to become a management tool that helps in performance evaluation as well as performance enhancement of CPSEs in the country.

In the backdrop of the dynamic external environment, "world-wide competition" and globalization, it is critical that the MoU system is strengthened such that it facilitates the CPSEs in becoming economically viable through efficient management and control. Hence, the MoU system aims at offering autonomy to CPSEs and is designed such that it can aid in the assessment of the extent to which mutually agreed objectives (Mandal, 2012) are achieved. This section of the report traces the evolution of the MoU system through various committee reports and highlights the major observations, along with the actions taken thereafter. This would act as an indicator of the developments that have happened in the MoU system in India and, through the study of extant literature, would also highlight the areas of concern raised after each study.

The various committees formed over the years are:

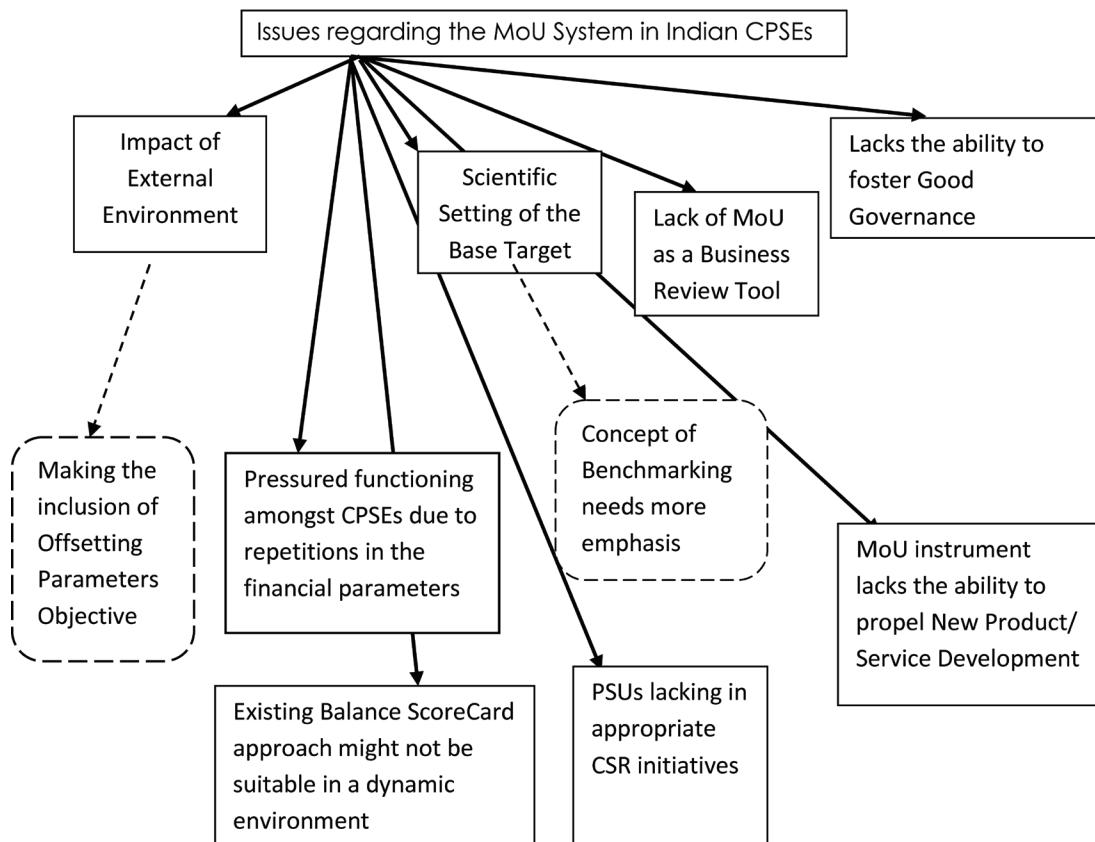
1. Arjun Sengupta Committee Report (1984)
2. National Council of Applied Economic Research (2004)
3. Report of the Working Group (2008)
4. S.K. Roongta Committee Report (2011)
5. Mankad Committee and Task Force (2012)

Concerns Regarding Memorandum of Understanding (MoU)

Thematic analysis has been applied, in this study, as a qualitative research method and the emergent issues/ challenges with the current MoU system have been clearly identified. Each issue is highlighted in the concrete box while sub-issues have been highlighted in dotted boxes. The Initial Thematic Web is presented in Figure below

Figure clearly brings out the several challenges which the MoU system in India, currently faces. These issues and challenges have also been highlighted by various committee reports and extant literature.

- Dark Lines Connect Broad Themes (Issues)
- Dotted lines connect Sub-Themes (Issues)



Conclusion:

It has been established through the discussion that from the year of its inception - 1986 till today (2013), the Memorandum of Understanding system in India has been consistently moving towards improvement to eventually become a management tool. The tool not only measures the performance of CPSEs on financial parameters but also on strategic, non-financial parameters. However, the existing literature, nationally as well as internationally, highlights the areas of improvement in the MoU framework and the present study group, attempts to fill the identified gaps through scientific research.

As corporate governance practices need to be understood as a significant part of the broader CPSE reform and renewal programme rather than as a separate stand-alone exercise, the study group recommends that the MoU System for CPSEs needs to inject the following good governance practices to enhance the autonomy as well as efficiency of the CPSEs:

- Professionalizing the CPSE Boards by including managers from the private sector in the CPSE Boards as independent directors;
- Rolling out leadership development programmes which would be compulsory for the Board members; and
- Increasing transparency of the CPSEs by making internal controls and audit strong, as well as carrying out supplementary audits on a timely basis.

Study Note - 9

SOCIAL, ENVIRONMENTAL AND ECONOMIC RESPONSIBILITIES OF BUSINESS



This Study Note includes

- 9.1 Corporate Social Responsibility [Section 135]**
- 9.2 The Companies (Corporate Social Responsibility Policy) Rules, 2014**
- 9.3 Corporate Social Responsibility— Perspectives and Best Practices**
- 9.4 Whole Life Costing - Assessment of Socio-economic impact of Strategic and Operational Decisions of Business**

9.1 CORPORATE SOCIAL RESPONSIBILITY [Section 135]

- (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
- (2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
- (3) The Corporate Social Responsibility Committee shall,—
 - (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
 - (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
 - (c) monitor the Corporate Social Responsibility Policy of the company from time to time.
- (4) The Board of every company referred to in sub-section (1) shall,—
 - (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
 - (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.
- (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.

SCHEDULE VII

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:—

- (i) eradicating extreme hunger and poverty;
- (ii) promotion of education;
- (iii) promoting gender equality and empowering women;
- (iv) reducing child mortality and improving maternal health;
- (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- (vi) ensuring environmental sustainability;
- (vii) employment enhancing vocational skills;
- (viii) social business projects;
- (ix) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- (x) such other matters as may be prescribed.



Summary at Glance

- Company having
 - Net Worth \geq ₹500 Crores, or
 - Turnover \geq ₹1,000 Crores, or
 - Net Profit \geq ₹5 Crores
- Constitute a Corporate Social Responsibility (CSR) Committee of the Board consisting at least 3 directors, out of which at least one director shall be an independent director;
- CSR Committee shall make CSR policy which shall indicate the activities to be undertaken, recommend the amount of expenditure to be incurred and monitor the CSR policy;
- The Board shall approve CSR policy and disclose contents of such policy in its report;
- Company should spend atleast 2% of average net profit of the company made during the three immediately preceding financial years as per the policy;
- If fails to spend such amount, the board shall, in its report specify the reason for not spending the amount.

General Circular No. 21/2014

Clarifications with respect to representations received in the Ministry on Corporate Social Responsibility (herein after referred as ('CSR') are as under:-

- (i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.
- (ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.
- (iii) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.
- (iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.
- (v) "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.
- (vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.
- (vii) 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.
- (viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

Annexure Referred to at para (i) of General Circular No. 21/2014 dated 18.06.2014

Sl. No.	Additional items requested to be included in Schedule VII or to be clarified as already being covered under Schedule VII of the Act	Whether covered under Schedule VII of the Act
1.	<p>Promotion of Road Safety through CSR:</p> <ul style="list-style-type: none"> (i) (a) Promotion of Education, "Education the masses and Promotion of Road Safety awareness in all facets of road usage. (b) Drivers' training, (c) Training to enforcement personnel, (d) Safety traffic engineering and awareness through print, audio and visual media" should be included. <p>(ii) Social Business projects: "giving medical and Legal aid, treatment to road accident victims" should be included.</p>	<ul style="list-style-type: none"> (i) (a) Schedule VII (ii) under "Promoting education". (b) For drivers training etc. Schedule VII (ii) under "vocational skills". (c) It is establishment functions of government (cannot be covered). (d) Schedule VII (ii) under "promoting education". <ul style="list-style-type: none"> (ii) Schedule VII (i) under 'promoting health care including preventive health care'.
2.	Provisions for aids and appliances to the differently- able persons - 'Request for inclusion'	Schedule VII (i) under 'promoting health care including preventive health care.'
3.	<p>The company contemplates of setting up ARTIIC (Applied Research Training and Innovation Centre) at Nasik. Centre will cover the following aspects as CSR initiatives for the benefit of the predominately rural farming community:</p> <ul style="list-style-type: none"> (a) Capacity building for farmers covering best sustainable farm management practices. (b) Training Agriculture Labour on skill development. (c) Doing our own research on the field for individual crops to find out the most cost optimum and Agri-ecological sustainable farm practices. (Applied research) with a focus on water management. (d) To do Product Life Cycle analysis from the soil conservation point of view. 	<p>Item no. (ii) of Schedule VII under the head of "promoting education" and "vocational skills" and "rural development".</p> <ul style="list-style-type: none"> (a) "Vocational skill" livelihood enhancement projects. (b) "Vocational skill" (c) 'Ecological balance; 'maintaining quality of soil, air and water' (d) "Conservation of natural resource" and 'maintaining quality of soil, air and water';



4.	To make "Consumer Protection Services" eligible under CSR. (Reference received by Dr. V.G. Patel, Chairman of Consumer Education and Research Centre). (i) Providing effective consumer grievance redressal mechanism. (ii) Protecting consumer's health and safety, sustainable consumption, consumer service, support and complaint resolution. (iii) Consumer protection activities. (iv) Consumer Rights to be mandated. (v) all consumer protection programs and activities" on the same lines as Rural Development, Education etc.	Consumer education and awareness can be covered under Schedule VII (ii) "promoting education".
5.	(a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would qualify as "promoting education" and hence eligible for compliance of companies with Corporate Social Responsibility. (b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as "protection of national heritage, art and culture, including restoration of buildings and sites of historical importance" and hence eligible for compliance of companies with CSR.	Conservation and renovation of school buildings and classrooms relates to CSR activities under Schedule VII as "promoting education".
6.	Non Academic Technopark TBI not located within an academic Institution but approved and supported by Department of Science and technology.	Schedule VII (ii) under "promoting education", if approved by Department of Science and Technology.
7.	Disaster Relief	Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example, (i) Medical aid can be covered under 'promoting health care including preventive health care.' (ii) food supply can be covered under eradicating hunger, poverty and malnutrition. (iii) supply of clean water can be covered under 'sanitation and making available safe drinking water'.

8.	Trauma care around highways in case of road accidents.	Under 'health care'.
9.	Clarity on "rural development projects"	Any project meant for the development of rural India will be covered under this.
10.	Supplementing of Govt. schemes like mid-day meal by corporate through additional nutrition would qualify under Schedule VII.	Yes. Under Schedule VII, item no. (i) under 'poverty and malnutrition'.
11.	Research and Studies in the areas specified in Schedule VII.	Yes, under the respective areas of items defined in Schedule VII. Otherwise under 'promoting education'.
12.	Capacity building of government officials and elected representatives – both in the area of PPPs and urban infrastructure.	No.
13.	Sustainable urban development and urban public transport systems	Not covered.
14.	Enabling access to, or improving the delivery of, public health systems be considered under the head "preventive healthcare" or "measures for reducing inequalities faced by socially & economically backward groups"?	Can be covered under both the heads of "healthcare" or "measures for reducing inequalities faced by socially & economically backward groups", depending on the context.
15.	Likewise, could slum re-development or EWS housing be covered under "measures for reducing inequalities faced by socially & economically backward groups"?	Yes.
16.	Renewable energy projects	Under 'Environmental sustainability, ecological balance and conservation of natural resources'.
17.	(i) are the initiatives mentioned in Schedule VII exhaustive? (ii) Incase a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count (as per 2 (c) (ii) of the Final Rules, they will count)?	(i) & (ii) Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the schedule.
18.	US-India Physicians Exchange Program – broadly speaking, this would be program that provides for the professional exchange of physicians between India and the United States.	No.



9.2 THE COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) RULES, 2014

In exercise of the powers conferred under section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the Companies (Corporate Social Responsibility Policy) Rules, 2014 vide **G.S.R. 129(E)** dated 27th February, 2014 which is come into force on or from the 1st day of April, 2014 as under:-

1. Short title and commencement

- (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Rules, 2014.
- (2) They shall come into force on the 1st day of April, 2014.

2. Definitions.-

- (1) In these rules, unless the context otherwise requires,-
 - (a) "Act" means the Companies Act, 2013;
 - (b) "Annexure" means the Annexure appended to these rules;
 - (c) "Corporate Social Responsibility (CSR)" means and includes but is not limited to :
 - (i) Projects or programs relating to activities specified in Schedule VII to the Act; or
 - (ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act.
 - (d) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act.
 - (e) "CSR Policy" relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company;
 - (f) "Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely :-
 - (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
 - (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, shall not be required to be re-calculated in accordance with the provisions of the Act:

Provided further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of subsection (1) of section 381 read with section 198 of the Act.

- (2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Corporate Social Responsibility

- (1) Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

Provided that net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

- (2) Every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years shall not be required to ~
- (a) constitute a CSR Committee; and
 - (b) comply with the provisions contained in sub-section (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135.

4. CSR Activities.-

- (1) The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities (either new or ongoing), excluding activities undertaken in pursuance of its normal course of business.

- (2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise:

Provided that—

- (i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;
- (ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.

- (3) A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these rules.

- (4) Subject to provisions of sub-section (5) of section 135 of the Act, the CSR projects or programs' or activities undertaken in India only shall amount to CSR Expenditure.

- (5) The CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act. 892 GI/w-v.

- (6) Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure including expenditure on administrative overheads shall not exceed five percent, of total CSR expenditure of the company in one financial year.

- (7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.



5. CSR Committees.-

- (1) The companies mentioned in the rule 3 shall constitute CSR Committee as under.-
 - (i) an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;
 - (ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors;
 - (iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.
- (2) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

6. CSR Policy.-

- (1) The CSR Policy of the company shall, inter-alia, include the following, namely :-
 - (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
 - (b) monitoring process of such projects or programs:

Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.

Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.
- (2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

7. CSR Expenditure..

CSR expenditure shall include all expenditure including contribution to corpus, for projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

8. CSR Reporting.-

- (1) The Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure.
- (2) In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

9. Display of CSR activities on its website. -

The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any, as per the particulars specified in the Annexure.

9.3 CORPORATE SOCIAL RESPONSIBILITY – PERSPECTIVES AND BEST PRACTICES

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Case Study I

Name: ACC Limited

Thematic Areas: Education, Health, Environment, Livelihood and Waste Management

Case Study:

In 2007 several CSR initiatives were taken to meet the requirements of various stakeholder groups.

Community development

We commenced a fresh round of Community Needs Assessment studies by external agencies for those living in the vicinity of all our plants across India.

An important partnership was forged with Development Alternatives, a reputed NGO, to help launch a Sustainable Community Development programme for those living near our Wadi Plant in Karnataka.

The time-bound plan spread over 3 years targets the building of local institutional and human capacities, creation of local enterprise-based livelihoods, healthier habitats with adequate community physical infrastructure, household services and village institution building.

HIV/AIDS Programme

ACC's effort to participate in the national effort against HIV/AIDS included the establishment of a treatment center at Wadi, and partnership with Christian Medical College, Vellore both of which address the challenges in the two states where this virus is most prevalent. The Wadi Anti Retroviral Treatment Center for HIV/AIDS commenced regular operations in March last year.

It has a complement of trained medical and para-medical staff and caters exclusively to the general public. We became the first corporate in the country to have established a standalone center of this kind. It is also the first outside the Government sector to be included in the list of NACO's approved ART Centers in the country.

Knowledge Development

The prestigious Sumant Moolgaokar Technical Institute at Kymore was opened with a new educational curriculum to complement the education provided at ITI's.



Similarly the focus of the Regional Training Center in Jamul, Chattisgarh was redirected to offer professional technical courses of relevance to manufacturing sectors such as cement.

A state-of-the-art Learning Center, ACC Academy, was opened at our Thane complex. We began work on partnering with the government and industry to upgrade the 7 ITI's located near our plants.

Sustainable Construction

We are partnering with Holcim Foundation for Sustainable Construction to promote the concept of sustainable construction in India.

We signed an understanding with Development Alternatives to create a Center of Excellence to pursue solutions for sustainable housing and rural infrastructure, by providing innovation support, capacity building and outreach services to the construction industry and to enable the creation of livelihood opportunities and provide support to small rural entrepreneurs in rural habitat and infrastructure.

Other initiatives Sustainable Development

Other significant achievements included promotion of nation-wide services in Waste Management, and the commissioning of a Wind Farm in Tamil Nadu.

Planning and measuring effectiveness

A CSR Business plan and roadmap has been made listing yearly targets, priority areas and tasks from 2008 till 2011. We adopted 2 good participative practices last year. The first is a model that helps matches areas which are of concern to various stakeholder groups with their impact on the company.

The second is a scorecard that attempts a qualitative assessment of the impact and efficacy of individual community development schemes. We have tested this process successfully and will henceforth use it to measure the effectiveness of all major schemes.

Case Study II

Name: Ambuja Cements Limited

Thematic Areas: Poverty Reduction, Reducing Child Mortality, HIV/AIDS, Education and Environment

Case Study:

Ambuja Cements Ltd. established a foundation, called the Ambuja Cement Foundation in 1993. With its cement plants being situated in the rural areas, the Company realised the need to address the needs of the rural people. These people formed direct or indirect stakeholders of the Company and therefore were important for the Company's sustainability.

Consequently, the ACF's focus has been on integrated rural development programmes. The Foundation works with the mission to "energies, involve and enable communities to realize their potential".

It upholds as its guiding light the parent company's core values and alongside pays due attention to international trends in social development, expressed through guidelines like the Millennium Developmental Goals. Poverty alleviation, achieving universal primary education, reducing child mortality, improving maternal health, combating HIV/AIDS and ensuring environmental sustainability are all integral to the work of the Company and its Foundation.

The Foundation in each location begins by working at the micro level/in a small way with the villages impacted by the Company's operations and gradually over time as partnerships develop expands its area and scope of work. The Foundation at present reaches out to over 1.2 million people in about 670 villages spread across ten states in India.

The large chunk of work of the Foundation is carried out by a team of well-trained and experienced professionals. The range of work of the Foundation is expansive/ diverse and though there are common programmes run across locations, regional variations due to local needs exist.

Provision of preventive and curative health services including reproductive and child health, promotion of education and generation of alternate sources of livelihood coupled with capacity building are some of the key areas of intervention of the Foundation.

Natural Resource Management (NRM) by far forms the largest part of the community initiatives of the Company. NRM includes activities centered on conservation and management of water, land, energy and livestock. Water being the prime mover in rural life and an essential factor for overall rural development, presets their work in the area of water re-source management.

In all its endeavors, ACF has since inception made it a mandatory practice to include people's participation in its activities. Those who are stakeholders in the social setting are consciously and regularly included in programmes that are principally meant for them.

They engage with their communities at all levels. Programmes are decided based on the needs expressed by the people during Participatory Rural Appraisals (PRAs). Implementation is carried out with the participation of the people - whether direct or indirect, financial or non-financial. This helps in developing a sense of belonging to the programmes and makes the programmes sustainable.

Natural Resource Management, especially water management, forms a significant part of their work in the rural sector. Water management and conservation is a very broad area of intervention.

The diverse geographical, climatic, topographical and cultural variations across the states have made it necessary for them to make suitable modifications in their water projects to cater to the particular requirements and problems of different regions. Substantial water resource management activities are conducted in 4 states –Gujarat, Rajasthan, Maharashtra and Himachal Pradesh.

Each of these states faced specific water- related problems which they have tried to address through their scientifically grounded, economically viable and socially acceptable techniques. A brief description of the water projects in these states follows.

Salinity Ingress Reduction

In the state of Gujarat the rural communities are situated along the coastal belt in Junagadh and Amreli Districts. Due to over-utilisation and over-exploitation of ground water over years, these areas faced a serious salinity ingress problem. The rivers in this area were seasonal and the ponds that were fed by these rivers also dried up by the time winter arrived making the water problem even worse.

To tackle these problems, ACF adopted innovative techniques like interlinking of water bodies, tidal regulators and rivers through link water channels. This technique proved to be effective in collecting the run-offs of the rivers and consequently increased the quantity of water being saved and stored.

Ground water was recharged and the salinity levels of the underground water declined to improve the quality of water. The mined out pits of the Company have been converted into water reservoirs creating a store of 11.04 MCM of water for the use of the people.

Parts of Rajasthan being desert areas have for centuries had chronic water scarcity. The rainfall in the state is scanty and often uncertain. Rivers are seasonal and traditional ponds have over the years become silted and hold lesser and lesser quantities of water with each passing year.

The ground water is characterised by high fluoride and other salts contents that are known to be hazardous to health. ACF is situated in the Jaitaran block of Pali and Mundwa block of Nagaur District in this State.

The water problems here were addressed in 2 ways – by revival of old water reservoirs and construction of new structures to collect water. Traditional ponds were deepened and de-silted so that they would hold water for upto10–12 months in the year as opposed to only 3–4 months.

Dykes were constructed in the rivers that directly impacted the ground water level and at the same time the river banks were de-silted. These immediately raised the water level by an average of 14 feet.



Agricultural productivity increased. As in Gujarat, Roof Rain Water Harvesting (RRWHS) structures were constructed in Rajasthan too. These structures helped households collect monsoon water and store it for use through the year.

In the hilly state of Himachal Pradesh, the local people depend heavily on the forests for their livelihood. The terrain makes storage of water and conservation of the top soil issues of serious consideration. NRM in the State is aimed at enabling the people to manage their own resources and derive a fair share from them. Water shed development covered 9000 Ha in the last 4 years.

As a result of decreased soil erosion and increased moisture, the agricultural production has gone up. The water and soil conservation programme along with forestation have shown good results. Farmers are able to grow more than one crop a year. Their cropping pattern has diversified and consequently their incomes have increased. Wastelands have been developed as pasture lands, which have benefited villagers owning cattle. The milk yield of the cattle has also seen an improvement as a result of this.

ACF is active in Rajura, Korpana and Jivati blocks of Chandrapur District in Maharashtra. The focus in this State has been improving access and availability of potable water. For this, old ponds were renovated and brought into use once again. Streams and rivers were de-silted. Wherever possible check dams were built, bore wells dug and storage structures constructed. To address soil erosion, large tracts were collected under bunding and gully plugging. A fall out of these activities was that the availability of water for agricultural and household uses improved and a positive impact on agricultural productivity was noted.

Detailing specific project: Salinity Ingress Mitigation

The water resource management work has been going on for the longest duration in Kodinar, Junagadh District, Gujarat. The scope of work being done here is extensive. As a result of numerous factors, salinity ingress is a serious problem in this location. With the increase in the population, demands on existent water resources have increased and therefore there has been an over-exploitation of these resources.

With the fragmentation of the joint family system, each of the nuclear family unit involved in agriculture is increasing the number of wells and extensively using pumps to meet their increasing water demands.

Water intensive crops have been artificially introduced in the area, sharply increasing the demand on water for agricultural purposes. Mismanagement and misuse of water along with recurrent droughts have further worsened the situation.

The cumulative impact of all these occurrences has been that the villagers have been facing water shortage along with salinity ingress in this area.

Taking into consideration the scale of the problem, multiple interventions were planned and implemented by ACF and the rural people. This multi-pronged approach included the following:

Interlinking of rivers and canals

They initiated an innovative intervention technique of inter-linking local rivers and canals. This was done in a relatively limited geographical area where the distance between the rivers and /or canals wasn't too large.

A large amount of water in Kodnar gets wasted because it gets drained into the sea.

This water was diverted into nearby water bodies through channels. In interlinking, excess water from one source flows into the next, almost completely eliminating water wastage.

Water conservation structures like check dams have been made at appropriate places along the rivers and streams increasing recharge of the entire area. Villagers provided crucial information for this project. Having inhabited the area for generations, they were able to help locate the potential sinks and the shortest routes to these, which were essential for identifying watershed dynamics.

There have been direct benefits of this project. The crops in the region have diversified because of increased availability of water; and there is now a sustained water table. Farmers are now also growing crops and vegetables which are less water intensive.

The household income of the farming families has resultantly increased. We have been successful in changing the farming practices of the cultivators. The crop yields have also increased.

Pond deepening and interlinking

In 1999–2000 an interlinking project was undertaken that involved five adjacent villages. The village ponds in these villages were identified and deepened to increase their capacity and interlinking canals were constructed between villages.

During monsoons, the stream overflowed and the excess water got collected in these ponds. After the water level passed a stipulated height in one pond, it automatically got diverted to the next interlinked pond, thereby preventing wastage of water.

The total storage capacity of 0.42 million cubic meters benefited 339 wells and 1161 hectares of parched land thereby benefiting 316 farmers of the region. A lot of water that used to flow into the sea in the past has now been diverted into the downstream ponds which were previously starved of water. An analysis of the impact of this project showed a drastic reduction in the salinity in the area and farmers are now able to cultivate three crops in a year, as against one earlier. Due to the reduction in the salinity, now farmers also require 30–60 percent less seeds for sowing as compared to earlier, while yield in Kg/Ha increase by an average of 55 percent for the 5 major crops being grown in this area.

Utilising mined out pits

ACL uses open cast mines to obtain limestone and marl that are essential for cement production. Owing to the mining, large pits measuring between 12 to 15 meters in depth are created. Generally these pits are reclaimed by filling, afforestation, pastureland development.

Tidal regulator

Tidal regulators were constructed by the Government to act as a barrier between the agricultural land and salinity. The regulators reverse the natural flow of water from the sea to the land. To further augment the benefits of the regulators, ACF excavated link canals from the tidal regulators to the villages.

This has given the villagers numerous benefits of the project. In just one village Panch Pipalwa 67 farmers covering an area of 234Ha benefited, with all their wells being recharged. There is now multi-cropping in the area and agriculture yields are higher by at least 30 percent and the salinity in drinking water wells has reduced.

Roof Rain Water Harvesting Structures

The droughts and water salinity in Kodinar area created a serious drinking water crisis for many years. Villagers were forced to either walk unreasonable distances to collect water or had to depend on the uncertain tanker water provided by the local authorities.

In almost all cases without exception, the women and girls in the families had to shoulder the responsibility of collecting water. This meant a large chunk of daytime was spent on this activity and very often young girls had to drop out of school to help out in this chore.

ACF has promoted a simple and cost effective means to deal with the problem. Roof Rain Water Harvesting Structures (RRWHS) have been built in homes. RRWHS are simple structures that collect fresh rain water during the monsoons and store it in underground tanks for use throughout the year.

In addition to the RRWHS, ACF has also renovated wells to provide drinking water to the villagers. The renovation of wells has greatly improved the quality of the water in these wells. In conclusion,



Their work in water management and salinity mitigation in Gujarat has become a model for them. They have applied some of the water management techniques to other locations and found them to be just as effective.

Their projects have been appreciated by their people and governmental and non-governmental organisations. They would be very keen in sharing their experiences and learning with other organisations working in the same field.

Case Study III

Name: Apollo Tyres Limited

Thematic Areas: Health

HIV-AIDS Programme in Apollo Tyres Ltd.

Background

Apollo started its fight against HIV-AIDS in a project called Healthy Highways. The project was in partnership with DFID and started in Sanjay Gandhi Transport Nagar in the year 2000.

Today Apollo has a comprehensive programme on HIV-AIDS focusing on its employees, customers and supply chain.

The programme focus is on building awareness and prevention aspect of the epidemic. The approach is to forge strategic tie-ups with organisations, which bring the technical skills and capacity building aspects in to the partnership.

Apollo Tyres Health Care Centers

Apollo Tyres Health Care Centers are targeted interventions for truckers. The location for clinics is identified on the HIV prevalence, density of trucking and mobile population and the current level of work being done by other organisations in the area. Currently, the company has 7 clinics running in North, West & South of India. All clinics are strategically located in transport nagars. Attached to HIV-AIDS, however the focus of the services provided is on HIV-AIDS.

The main components of the programme are:

(a) Behaviour Change Communication (BCC)

The communication is directed at increasing awareness regarding the basics of HIV/AIDS. The communication addresses the modes of transmission, myths regarding HIV, connection between sexually transmitted diseases and HIV through one-to-one and one-to-group interactions.

(b) Peer Educators

Building an effective peer educator network is the most important link of the entire program. The peer educators become imperative given the geographical spread of the transportnagars and the mobile nature of the population.

(c) Condom Promotion

Condom promotion takes place through free distribution as well as social marketing of condoms. These condoms are available at various outlets and strategic points within the transport nagars.

Also the outreach workers and the peer educators emphasize and educate the target audience on the correct usage and disposal of condoms.

Sexually Transmitted Diseases and Infection Identification and Treatment

The outreach workers and the peer educators are trained in the identification of sexually transmitted diseases and infections. There is a strong referral system in place and patients are guided by the outreach workers and peer educators to the clinic.

The clinics provide treatment for sexually transmitted diseases and infections only. In case the doctor or the counselors are not satisfied they refer the patient for voluntary testing at the government hospitals. The pre and post test counseling is available at all Apollo Tyres Health Care Centers.

Workplace Programme

In June 2006 a workplace sensitisation programme was rolled out in partnership with International Labour Organisation. The programme targets 7500 employees across all locations of the company.

The programme started with a half day sensitisation of the top management of Apollo. A steering committee was formed post the sensitisation of the top management. About 26 ambassadors were identified and trained as master trainers in a two day workshop and simultaneously a survey to gauge the existing knowledge in the company was undertaken.

So far over 5000 employees have been covered under the programme. The next level of this programme is targeting contract workers.

Integration with Supply Chain

Extension of the HIV programme into the supply chain was a natural progression for ATL. Under this Apollo has taken the prevention and awareness programme across its supply chain.

The model is similar to the employee engagement programme wherein a peer educator network is trained by Apollo's master trainers. The objective is to create a chain which has a multiplier effect in carrying the message on prevention forward.

Monitoring, Reporting & Evaluation

- The reporting system is standardised and a common format is available with all clinics to file a monthly report. The reports capture all details of BCC, STI and counseling at the centers. The reports provide both quantitative and qualitative aspect
- A monthly report is filed by the master trainers for the workplace programme as per ILO's format
- A monthly report is received from supply chain partners and also by Apollo
- A six monthly detailed report is filed to steering committee on the entire committee

A study on an annual basis is undertaken to gauge the impact of the programme across the target segments. The first one has been conducted in December 2007

Case Study IV

Name: Bharat Petroleum

Thematic Areas: Health, Education, Infrastructure, Income Generation, Vocational Guidance, Livelihood & Environment Conservation

Case Study:

Community Development at village 'Ramthenga', Jajpur Dist, Orissa

Community participation

- (i) To help the village become socially conscious
- (ii) To improve the general health of the villagers
- (iii) To improve community participation
- (iv) To help them become self-reliant.

This village is dominated by the tribal population – 'Santhal Tribe'. Their socioeconomic status was highly impoverished. Most of the villagers worked in the neighboring mines. Due to prolonged and non-conducive working environment, they had developed severe respiratory / skin infections.



The children did not attend any school and the nutrition status of the children was very poor. There was also a severe problem of alcohol abuse amongst the men. The women were suppressed and worked in the farm as well as in the mines. Lack of availability of water was also one of the main concerns of the villagers. There were bore wells but they were non-functional.

Major interventions were required in the area of:

- Health
- Education
- Awareness about health/ sanitation/ hazards of working in the mines
- Precautions to prevent respiratory illness
- Making water available

Having understood the need of the community, BPCL constituted a team to implement the work in the community. The main participants in the project were :

- Villagers
- NGO partner – Research Analysis Consultants
- BPCL LPG Team based in Bhuvaneshwar and Khurda headed by TM Khurda
- BPCL HR Team at Kolkata headed by HR Chief and CSR co-ordinator
- BPCL Corporate CSR Team headed by GM (Admin)

Strategy & Execution

A plethora of activities were undertaken in the village. How-ever, depending upon the need at that particular time, the activities were phased out. The activity matrix developed was very strategically planned and executed.

Phase 1

A visit was made to the village by BPCL Kurda Team. There was lot of inhibition among the villagers to discuss and participate. However with repeated visits the villagers began to open up.

Since there was a need to execute the project very professionally, the BPCL Khurda Team identified an NGO with its main office in Bhuvaneshwar. The NGO had extensive experience of having worked in the mentioned areas and implemented community development projects.

The NGO did a need assessment of the village with complete village participation. Assistance for providing health services and primary education emerged as one of the main needs.

Also what emerged from the need assessment was to enable the formation of Self Help Groups. The general participation level among the villagers was very high.

Phase 2

BPCL supported the project through NGO RAC by:

Providing the services of a doctor (from neighboring area)

The Homeopathic Doctor would check the patients for free thrice in a week. Since the medicines were sweet there was less resistance among the villagers and children to eat the same. Moreover for the problems that they were more succumbing to, like respiratory illness, skin infections, homeopathic medicines were much more effective.

Initiating a Balwadi (pre-primary) for children within the village

This put the children into the habit of attending school especially when their parents would go to work in the mine. The teacher for the village was identified from within the village. She was subsequently trained about innovative methods in teaching and needs of pre primary children. She was also the main force in convincing the parents to put the children in main school after their pre primary.

Phase 3

Once the basic trust level amongst the villagers was attained, then:

Awareness was created about precautions for working in the mines

Awareness was created amongst the villagers about the precautions they need to take while working in the mines nearby. The modes of communication were through street plays, skits during village festivals, drawing competitions for children.

The homeopathic doctor played a vital role in creating this awareness. A lot of awareness was also created about alcohol abuse.

Deepening of village pond and encouraged fishery

There was a pond in the village, which had to be cleaned. With support from RAC the villagers engaged in cleaning the pond and also dredging the same. With the help of Central Institute of Fresh Acqua Culture, Bhuvaneshwar, the villagers were trained of fishery management. It was a community pond, and the fishes caught were shared by the villagers this activity was more favored by villagers during monsoon, when there is ample of water in pond.

Need for formation of Self Help Groups (SHG's)

The fishery management activity established the need for the formation of Self Help Groups – A group which would be trained in activities that can generate income. Meetings were held in the village for formation of Self Help Groups.

Repair and maintenance of Bore wells

Availability of water was an area of concern for the villagers. There were bore wells in the village, but they were non-functional. With the help of volunteers from the village, the bore wells were repaired and the villagers were also trained to maintain the same. Now there is ample water to sustain throughout the year.

Phase 4

The first batch of SHG was formed comprising of mainly women.

Formation of 1st SHG in the village

The group comprised mainly of women. They had mutually agreed to learn stitching and appliqué work (a form of embroidery famous in Easter India). BPCL supported by way of providing teacher from the nearby village and also 4 sewing machines. Initially the women used to learn stitching work etc in the spare time they got after working in the mines.

Subsequently when the first batch finished the course, simultaneously a course was conducted on marketing the stitched products. A group of women were trained to market the stitched products in the local haats (local bazaar). The course included:

- Communication skills
- Perceiving the market requirements
- Quality of stitched products
- Pricing the clothes stitched
- Co-ordination within SHG
- Roles and responsibilities

The group slowly began to generate income through stitching and that made a breakthrough in the village.

The women from the SHG were able to, though in very small way, substitute the family income which came mainly from mining and agriculture. More and more women began to learn stitching and discontinued the mining job.



Promoting Mushroom Cultivation

The NGO assisted the villagers through the SHG to initiate mushroom cultivation. The SHG would purchase mushroom sponge at INR 17 a packet from 'Orissa Institute of Agriculture and Technology' Bhuvaneshwar.

Each packet of sponge would generate approximately 1.5 kg of mushroom. This mushroom when sold generates INR 80 from the INR 17 per packet.

The villagers who had very poor health, especially the children were encouraged to include mushroom in their diet and the extra ones were sold in the local market. This activity also generated income for the SHG.

Phase 5

There were 2 well-functioning SHG's in the village. The success of the women's group SHG was instrumental in the formation of the 2nd group, which was a mixed group of men and women.

The good work done by SHG's in this village was duly recognised by the Block Development Officer (BDO), who in turn has rewarded them with the "BEST SHG AWARD" in the District. As an incentive they were given a sum of ₹ 2 lakhs. With this, the SHG has bought a stone-cutting machine, which is in turn fetching the SHG INR 15,000 to 20,000 per month.

Where working in the mines the villagers used to earn a meager amount of INR 50 per day, and were employed hardly for 10 to 12 days in a month, now the members of the SHG earn INR 2000 per month, through the various activities of the SHG.

Phase 6

A new group of 20 villagers has been formed in the village, wherein they have been enrolled in an income generation programme – 'Agro Based'. They have been given 2000 banana plantations. The plantations are being grown on 2 hectares of a common land.

The offshoots of the plantations would be given to another 20 families free of cost. Once the fruit comes, a market linkage for the same has already been created. Through this activity the results are that each household is getting an additional income of INR 7,000 to 8,000 in the first year.

Another group of 20 villagers are being supported in poultry. In the first year itself all the group members will benefit. How-ever from the second year offspring of the nurtured animals will be freely distributed to other needy villagers and the process will continue.

Phase 7

Already necessary approvals have been obtained to support another set of 20 and 20 families by way of papaya cultivation under agro-based initiatives and goatry under non-farm sector.

This way the entire village will have been roped into diverse activities and each family can earn extra income for the sustenance of the entire family.

The education of pre-primary students, which was initiated and supported by BPCL, has been withdrawn. The pre-primary education has now been taken over under central Government ICDS scheme.

This way the Corporations fund were more channelised to-wards health support, formation of SHG's and developing in-come generation programmes.

Evaluation of Success/Results

The impact of the whole programme has been overwhelming. In another two years, BPCL would be in a position to withdraw all the financial support being extended to this village, and extend its support to some other deserving village.

- Where the entire village was mainly into mining work, now there are hardly a couple of families
- There are two registered SHG's functioning very well with good co-ordination

- BPCL initiated pre-primary school and mid-day meal scheme, which has now been withdrawn and through the NGO made village, children receive the same benefit from central Governments ICDS scheme
- The State health workers are involved in creating awareness about health and hygiene issues in the village
- All the bore wells of the village are functional and there is no scarcity of water even during summers
- The pond, which was a breeding ground for mosquitoes, is now being utilised for fishery
- The SHG group members are earning a steady income of INR 2000 per month
- The members of the banana plantations and poultry are earning an additional income of INR 7,000 to 8,000 per annum
- The work done by SHG's in this village has been recognised by the Block Development Officer (BDO), who in turn has rewarded them with the "BEST SHG AWARD" in the District.

The entire project has created goodwill for the company in the hearts of villagers in and around Ramthenga. More so the success from this project has given us the confidence about project replication in other regions.

Case Study V

Name: Coca-Cola India Inc

Thematic Areas: Health, Environment, Education, Livelihood

Case Study:

According to Atul Singh, President & CEO, Coca-Cola India, "We at Coca-Cola are committed to refresh the lives of communities on an everyday, all-day basis. As part of the same strategy, sustainable water management remains our top priority. We will continue to find innovative solutions in all areas of water management through our integrated 4 R strategy. Starting in 2000, over the last 7 years, we have taken the lead in improving water use efficiency by nearly 30 percent in our operations across India."

They identify partners primarily on the basis of the need of a specific project, understand their experience and expertise in specific fields; their ability to deal/engage with the community; their working relationships with other stakeholders such as the government at state/local or district level; their commitment to make the project sustainable; manage crisis as and when they arise etc.

They form a group comprising of experts from (within the system) departments such as Technical, Public Affairs & Communications, Regional bottling units and the implementing agency; visit the project sites; interact with the community frequently; understand the progress and impact of the project.

So far, the Company's water initiatives have improved the lives of more than 140,000 Indians and made millions more aware of the crucial importance of water conservation.

The Company's aim is to return whatever water it has been drawing from the ground by 2009 through water conservation projects.

To this effect, they have taken the lead in improving water use efficiency by nearly 30 percent in our operations across India and have returned 85 percent of the total water that we have returned approximately 85 percent of the water that they have drawn from the ground"

Their key activities include:

(a) Rain Water Harvesting

Working alongside local NGOs and communities, Coca Cola India has been installing rooftop rainwater harvesting projects at all of its bottling plants in India besides other communities and has also has been installing checkdams, recharge shafts etc in rural areas.



In Delhi alone, the existing RWH structures have the potential to harvest over 100 million liters of rain water.

Other key water sustainability projects that have run along side the rainwater harvesting programmes are the construction of check dams.

(b) **Check dams**

In Andhra Pradesh, in partnership with the Hyderabad Urban Development Agency, local village committees and NGOs, Coca-Cola India has helped 16,000 villagers of Saroor Nayar restore existing "check dam" water catchment areas.

The project involved removing silt, recreating the pond and making the check dam with strengthened stone in order to stop the decline in groundwater levels.

In Bangalore, Karnataka, the Company recently dedicated a Check Dam at Kurubarakarena Halli.

With a capacity to harvest 1080 Kilo liters (1080000 litres) of rain water per annum, this Check Dam with a catchment area of 2 Sq Km will benefit 3000 people in the villages around. The system helps in recharging (improving water levels) of 30 bore wells around the check dam area.

(c) **Recharge Shafts**

Also in Rajasthan, in its many arid open areas, the Company has undertaken the construction of more than 100 Recharge Shafts where rainwater collects but does not percolate into the ground due to the nature of the soil.

Today, nearly 15,000 villagers are reaping the benefits of a steady or increasing water table without having the need to further deepen their existing bore wells.

The result of the water programmes is an increase in the amount of ground water available to local residents. Studies of the Rajasthan State Ground Water Board, for example, show the 2005 Kaladera ground water level was 21.85 meters below the ground, up from 22.23 meters in 2004.

(d) **Restoring Old Water Bodies**

In Rajasthan, one of the driest states of India, Coca-Cola has aided the restoration of a series of ancient and historic "Bawari", or step well, water catchment systems.

The 400-year-old Sarai Bawari and Kala Hanuman ki Bawari, both located on the Delhi-Jaipur Highway in Jaipur, have both been completed and residents in the nearby communities are now able to draw drinking water from them.

The restoration project of Kale Hanuman ki Bawari witnessed active community involvement in the selection of the project site, design, source of supply for labor and material, implementation and creation of awareness for the project.

The actual restoration work included the removal of silt, rubble and algae, repairs to the infrastructure in the traditional "Jaipuri" style, and re-opening of the facility for use.

Today, thousands of gallons of water flow into the step wells from underground pores or streams, and the storage and recharge capacity has reached more than 8m liters of water. More than 3,000 villagers near each of the Bawari now have a sustained source of clean water. In addition, both step wells are now fully restored heritage sites and tourist attractions.

Facilitating Water Access

In its aim to provide access to clean drinking for the under-privileged in and around Chennai and in northern parts of Tamil Nadu covering the districts of Thiruvannamalai, Vellore, Kanchipuram and Chengelpet, the Company has launched Elixir of Life, which is a convergence of the vision of the 2 partners – Rotary International and Coca-Cola India, and is an extension of the Rotary's 'Schools into Smiles' project that envisages betterment of the quality of lives of students.

Elixir of Life is enhancing the quality of life of students in these schools as unsafe water is the root cause for most of the health hazards and fatal diseases affecting young children, and in particular those from the underprivileged sections in the country.

These children are more susceptible to the water-borne diseases and the project is helping to realise one of their distant dreams by making clean drinking water available to them.

The unique aspects of the Elixir of Life project include a pioneering initiative to maintain the system for the next 3 years. In addition to this, a comprehensive maintenance and servicing protocol has been prepared for ensuring the ongoing success of this project.

This includes fortnightly inspection, cleaning of raw and treated water tanks, rinsing and flushing of micron filters, apart from emergency breakdown and repair service.

When Rotary celebrated the 100th year during 2004–05, RI District 3230 planned to execute a landmark project to commemorate the centenary year. The team surveyed 1,200 schools in five northern districts of Tamil Nadu and selected the 100 worst schools.

Thereafter, these schools were adopted through different Rotary Clubs which reconstructed the schools and added new class rooms, compound walls, good toilet/water facilities, besides providing noon meal kitchens, desks and benches.

The Schools into Smiles project is being continued this year by adding more schools but, at the same time, in order to improve the existing schools which have already been renovated, the Elixir of Life project has been launched with the support of Coca-Cola India so that every child gets access to potable water.

As of now the project has been completed in 20 Schools impacting the lives of around 10,000 children.

Creating Awareness

Besides the quantitative results, Coca-Cola's water initiatives in India have ushered in a new wave of water consciousness. Millions of Indians are being made aware of the importance of water management through the Company's marketing activities and other different fora in partnership with key institutions across the country.

Seminars/Workshops; Jal Yatra; Jaldhara Karavan; Jal Bima Abhiyan; Jal Sanchay Abhiyan; Film on Water Conservation, Community Mobilisation Programme, India celebrations on Water Day and World Environment Day, key events with Assocham, CII, FICCI, Rotary etc.

Playing the Role of a Mentor

The Company would be happy to play the role of a mentor in setting up water conservation projects on which it has developed core expertise.

Case Study VI

Name: DLF Limited

Thematic Areas: Rural Development, Urban Community Development, Education and Environment

Case Study:

While DLF continues to create world class infrastructure throughout India, it has not lost sight of its responsibilities as a change agent for accelerating the pace of social and economic transformation across various segments.

Even though there has been tremendous improvement in construction technology and quality, it is distressing to note that the people who actually make all the glitzy buildings are a neglected lot and are often required to do so in inhuman conditions. The sight of construction workers and their children living in jhuggies without even the basic facilities at most of the construction sites is not uncommon.



At DLF it has been our constant endeavor to improve the living conditions of our construction workers by providing them all the basic necessities at the site itself by efficient and effective space management.

DLF seized the initiative in this respect and became a pioneer in providing all necessary facilities to its construction workers on site when it tied up with Laing O Rourke for construction projects.

As a pilot project the site selected was an area of approximately 42 acres in village Silokhera district Gurgaon where an IT Park of 10 million sq feet was to come up. The construction on this site is slated to be completed by 2010.

The total workforce currently deployed at the site consists of about 6000 people. Out of this 5500 are essentially construction labor, with 500 supervisors. Further 1500 people are with families and 3500 are single. There are a total of 4200 men, 1800 women and 2000 children.

Before commencement of the construction a suitable location was identified on site for construction of hutments to house the workforce for the entire duration of the project. Instead of constructing makeshift or temporary accommodation, a budget of INR 6 crores was sanctioned to build a mix of cemented hutments and dormitories for the workers.

The entire area was paved to ensure easy access even during the monsoons and the work of sanitation and housekeeping was outsourced to a third party namely M/s Lion Services.

All the residential accommodation is provided with electricity, water, fans, beds and linen, and separate areas have been provided for toilets and washing. In order to take care of the children of the workers mobile crèches have been made available on site through a strategic tie up with an NGO.

A subsidised canteen manned by a third party has also been made available on site to ensure hygienic and good quality food on site. Medical help is available on site along with a 24 hour ambulance to take care of emergencies.

In order to improve the skills of the workers as well as train potential workers on site a non-profit residential "Apprentice Training Centre" for imparting skills in carpentry and masonry has also been constructed.

This model is being replicated in 17 sites all over India catering to a workforce of approximately 20,000 workers. It is proposed to extend this model to all future sites being developed by DLF.

If all construction companies were to adopt a similar approach then the construction workers would not be forced to live in inhuman conditions on site for the duration of the time they spend in creating the infrastructure which becomes the pride of the nation.

Case Study VII

Name: Dr Reddy's Laboratories

Thematic Areas: Microfinance, Education, Health, Environment, Livelihood and Social Entrepreneurship

Case Study:

Dr. Reddy's purpose is to help people lead healthier lives. This, combined with a clear commitment to their values and ethical practices, forms the foundation of sustainability or CSR.

Being a pharmaceutical company they are deeply sensitive to the needs of accessibility and affordability of medicines in developing and developed countries. They define their strategy and determine their impact.

In an era when increasing demands are being made on healthcare services, generic medicines provide a major benefit to society by ensuring patient access to quality, safe and effective medicines while reducing the cost of healthcare.

Generic medicines cost a fraction of the original products, which is good news for patients and means greater access for more people.

Their active pharmaceutical ingredients (API) and generics businesses focus on affordability by providing lower cost alternatives. They are addressing access needs by investing in innovation with emphasis on New Chemical Entity (NCE) Research and Differentiated Product Development that address unmet and poorly met medical needs.

Their product development effort with example of innovation in making medicines affordable and accessible. In addition, the triple bottom line approach enables us to deliver sustained value with equal emphasis on people, planet and profits through environmentally friendly and socially responsible operations.

Their CSR efforts encompass sustainable business practices, safety, health and environment (SHE) systems, patient assistance programmes, community development, people practices and citizenship.

Dr Reddy's was one of the earliest in establishing a zero liquid discharge facility to ensure 100 percent effluent recycling. They have significant improvements in process development with growing emphasis on green chemistry. Energy saving initiatives and awareness communication on Climate Change is being accelerated in the company Programmes like Sparsh, betaCare, Sarathi, deliver assistance to doctors, pharmacists and patients by improving access to medicines and patient education. These efforts complement our commitment to product responsibility addressing quality and safety of our products.

Dr. Reddy's Execution Excellence Model (DREEM) has spawned focus action in Lean Manufacturing ("doing more with less") in both finished dosage and active pharmaceuticals. Organisational redesign of teams has increased throughput, provided higher quality, lower cost and integration of Intellectual Property in product development.

The community development efforts are evident in places where we live and work, with specific focus on manufacturing locations, implemented by CSR teams in each facility. With a combination of approaches communities in the neighborhood are being assisted to access healthcare, improved education opportunities and sustainable livelihoods.

They encourage employee giving in association with Naandi foundation, an organisation co-founded by Dr Reddy's. 6000 employees contribute to The Power of Ten, the employee giving programme.

Employees are encouraged to volunteer by forming specific interest groups and also join volunteering programmes with Dr Reddy's Foundation.

The Foundation, setup by the company, demonstrates their Citizenship work in the area of poverty alleviation, with specific emphasis on quality in education and sustainable livelihoods.

Over 100,000 sustainable livelihoods with Livelihood Advancement Business School (LABS) programme and out-reach to over 34,000 children in government run schools through School Community Partnerships in Education (SCOPE).

Sustainability involves almost every aspect of a company. It ranges from purpose and values, marketplace and innovation, workplace safety, people practices, environment management, human rights to community contribution.

Dr Reddy's embraces the principles of sustainability to drive responsibility and to create the capacity to re-invent, sustain and thrive through changing generations of technology, managers, shareholders and society.

Dr. Reddy's is the only Indian pharmaceutical company to publish a Sustainability Report and among the few Indian companies to do so. The report is prepared according to guidelines recommended by Global Reporting Initiatives.



Case Study VIII

Name: Infosys Technologies Limited

Thematic Areas: Education, Health, Environment, Livelihood

Case Study:

Infosys was founded in 1981 with the view that sustainability and the success of the organisation would depend on how much wealth they create for their customers, employees and the society in which they operate.

They have been responsible for creating multiple frameworks involving corporate governance, education, infrastructure, and inclusive growth. They believe that corporations must reach out to the society if they want longevity.

It is this belief that drives their commitment to be fair and transparent to their stakeholders, to help people and communities enhance their living conditions, and to improve the quality of education and healthcare through various community development programmes.

Their CSR activities are carried out at 4 different levels – at the Infosys group level, through the Infosys Foundation, through the Internal Board of Directors and by the Infosys Employees at an individual or team level.

Infosys as an organisation runs global initiatives to develop human capital by creating sustainable frameworks with educational institutes for training students and faculty. At the Infosys Foundation level, Mrs. Sudha Murty, Trustee and Chairperson, manages a team of dedicated members to reach out to the underprivileged and enrich their lives.

At the Board level, the members lead by example, by participating in the advisory councils of NGOs and civil bodies, donating their time, money and effort to various causes. At the employee level, there are location-wise CSR teams to cater to local requirements.

The 5 major CSR themes at Infosys include education, healthcare, art and culture, rural upliftment and inclusive growth. They identify partners and beneficiaries based on their goals, credibility, performance and alignment to Infosys vision and values.

They are the first Indian company to emphasise strong Corporate Governance practices and they have expanded their practices significantly beyond the norms.

They complied with the US GAAP accounting requirements and were first to incorporate a number of innovative disclosures in financial reporting including human resources valuation, brand valuation, value added statement and EVA reports.

They are very committed to supplementing Government efforts in branding India in global forums. As a strategic partner of the World Economic Forum (WEF) they lead discussions on social and economic issues.

They help the forum shape its agenda by actively participating in the "Forum of Young Global Leader" and the "Global Growth Companies" programmes. They are prime sponsors at several flagship events like Gartner Summit, Sapphire, Oracle Open World, and World Wide Webs Consortium's W3C Conference.

They have recently initiated the Infosys Young Indians (INFYi), the first corporate chapter of Confederation of Indian Industry (CII) which will strive to provide a platform for social entrepreneurs by undertaking activities in the areas of economy, education, environment, and healthcare and youth affairs. They also participate actively in pro bono engagements.

Their mission to go beyond business translates into every Infoscion and the Internal Board Of Directors (IBOD) the sense of being responsible corporate citizens.

The IBOD serves as member of advisory council / founder trustee in various Government and non-profit organisations to establish views or codes on corporate governance, global warming, education and training, social welfare, healthcare, infrastructure management and rural upliftment.

They have always been the forerunners in providing assistance when disaster strikes – be it the Tsunami, the Gujarat earthquake or Katrina.

As responsible corporate citizens, they not only rushed funds but their employees personally helped the relief operations undertaken by Infosys Foundation and other NGOs.

They have been recognised in fora where CSR is also one of the parameters to measure a company's success:

- Citizen Award – 2001
- Helen Keller Award – 2006, 2007
- NASSCOM – India Today award for gender inclusivity – 2007
- Ranked the “Business world most respected Company” in a survey
- Named the “Most Admired Company” for the sixth consecutive survey by Asia Wall Street Journal

They touched the lives of 150,000 beneficiaries during 2007 and the will continue to conduct business responsibly and ethically in the years to come.

Case Study IX

Name: JSW Steel

Thematics: Women Empowerment

Case Study:

Data Halli – Building and Running a Rural BPO for Women The JSW Group of Companies has interests in core manufacturing, energy and infrastructure areas. In almost all areas, the manufacturing facility/ operation is in remote locations, far from the cities.

The primary source of income in these areas is farming. As new manufacturing facilities are built in these areas, the skill sets of the population around the facilities do not always meet the requirements of the operations. Providing meaningful employment to the local population is thus seen as a challenge.

In order to provide a sustainable and alternate livelihood to the population around the facilities, JSW Foundation, which manages the CSR activities of the JSW Group, embarked upon a novel approach of building a BPO at these remote locations? This gave an alternative employment avenue to the rural men and women, thus empowering them socially and economically.

The idea was spearheaded by Mrs. Sangita Jindal, Chairperson of JSW Foundation. The first BPO at Toranagallu was inaugurated on 15th August 2006. The BPO focuses on non-voice activities and is located adjacent to the JSW Steel Ltd.'s Toranagallu facilities, near Bellary, Karnataka. Starting with a mere 40 men and women, the BPO now employs about 200 women.

The concept of a rural BPO sounds unique and challenging, primarily because BPOs are typically associated with cities. This unique innovation turns this concept on its head and has demonstrated that the stigma associated with BPOs can be challenged and proven otherwise. Considering the location and activities carried out at the BPOs, the name Data Halli was selected. Halli, in Kannada, means village.

Focusing on womenfolk in the rural areas, where education levels are also lower than in the cities, the rural BPO provides an avenue for these womenfolk to work outside their conventional livelihood and enrich their lives, with the aim of empowering women socially and economically.



JSoft Solutions Ltd., the IT & ITES Company in the JSW Group, currently runs a non-voice BPO at Toranagallu, next to the JSW Steel Ltd.'s Integrated Steel Plant at the same location. The BPO focuses on data entry activities for multiple clients and employs about 200 women.

Plans are afoot to open more such BPOs across the country.

Most women come with little or no exposure to computers. A computer skill is therefore not mandatory. The eligibility criteria are simple - should be 18 years or above and should have passed the SSLC examination.

Upon joining the BPO, the women are given training for a period of 3 to 6 months, depending on their grasping ability, on basic typing, English reading etc. - skills that enable them to be productive, earn a decent living and deliver value at the BPO. In addition, professional training, specific to the projects on hand, is provided for up to 2 months.

Most women come from the near-by villages, from up to a radius of about 60 km. Buses are provided for pick-up and drop from the village to the work spot. In order to take the skills development to the doorsteps, the requisite software is also installed at the village schools where JSW Foundation runs Computer-aided Learning Centers (CALCs).

These are supervised by the BPO women from the same village. Potential candidates therefore do not need to travel to the BPO to develop the requisite skills.

The rural BPO has had a positive impact on many persons. As the nature of the initiative suggests, this impact has been significant on the employees of the BPO. Some of the impact areas are:

- Transformed simple village girls into matured, positive, confident and economically independent professionals who hold a respectable place in their homes and are looked upon as examples of transformation in the villages
- Encouraged village girls to continue their education up to 10th or 12th Standard, an impossible task prior to the BPO
- Has given them the courage to postpone their marriages which would have otherwise made them wives and mothers at the young ages of 14 or 15
- Teaching of English and Personality Development has boosted their self-confidence and has made them socially known figures in their society as they are now affiliated with a large entity, namely, the JSW Group
- Sowed the seeds of leadership in these ladies by giving them job responsibilities of Supervisors, Trainers, etc., through which they lead their respective teams which has in turn helped in showing them a career path
- Equal employment opportunity is given to quite a few physically challenged ladies who have carved their own identity
- Providing a springboard to look for better work opportunities in the vicinity

Along the way, there have been many challenges – social barriers, resistance from the men folk at home, training, technology, quality of work, transportation, shift working, etc.

Some of the challenges faced were:

Internal Challenges

Skepticism about viability of the Concept

Overcome by focused efforts to streamline the processes, attack the issues on hand and hire managerial talent with BPO experience. All this led to a turn-around in the operations and show-casing of the BPO for everyone to see the success.

Lack of infrastructure (IT, space, people, etc.) to handle the daily stream of potential candidates

Overcome by taking the skills development to the villages via the CALCs, thus building a resource pipeline.

External Challenges

Lower Quality and Throughput

Overcome by providing adequate training, dummy projects and hand-holding. With the implementation of a batch tracking software, Individual performance and throughput is also monitored and tracked

Hesitation by the village folk to send their women folk away from their villages

Overcome by arranging for transport up to the villages and making the BPO an all-women

Case Study X

Name: Reliance Industries Limited

Thematic Areas: Microfinance, Education, Environment, Health, Livelihood, Community Development, Child Welfare and Infrastructure Development

Case Study:

Vision: What is good for India is good for Reliance

Reliance Industries Limited has embraced sustainability as a core business strategy and regards sustainability as a foundation for lasting economic success. After all, sustainability is about meeting the needs of the present generation without diluting the ability of the future generation to meet their needs.

Their commitment to sustainability is backed by active initiatives on the ground, together with a detailed reporting system with third party external assurance certification. Further, they actively engage with their stakeholders (along with their partners who are associated with their various CSR projects) to take their feedback and monitor the progress of the work.

Their maiden Corporate Sustainability Report (2004-05) report was the first Corporate Sustainability Report from the Indian Oil & Gas sector. Further, this report obtained "in-accordance" 2002-guidelines status from the Global Reporting Initiative (GRI) - the official collaborating centre of the United Nations Environment Program (UNEP).

Pursuing their goal of continual improvement in their reporting, the report for FY 2005-06 has an enhanced scope based upon the feedback received for its maiden CSR. Further, it focuses on "issues" and "stakeholders" and includes numerous case studies from different locations and divisions. This report is the only "GRI Checked A+ level" rating report from India.

Their belief, "What is good for India is good for Reliance", drives their effort in positively impacting the life of more than one billion Indians.

They will use sustainability to drive process innovation, new product development, improving manufacturing efficiencies and reducing material and energy consumptions.

They manufacture products that have made a positive impact on millions of people in the country, i.e. fuels for transportation, plastic bags to fiber optics, synthetic fabrics to name a few. Continuing this strategy is their plan to provide a cleaner fuel to millions of households by way of natural gas.

On the health front, they have the distinction of being the founder member of the India Business Alliance of the World Economic Forum. They have resolved to share the responsibility of combating diseases such as Tuberculosis (TB) and HIV/AIDS.

To achieve this, they have collaborated with a large number of agencies working on these issues to create some rather unique Public-Private Partnerships (PPP).



In addition to setting up hospitals at some of their manufacturing locations, they offer medical services at all their manufacturing facilities and offices.

These includes free outdoor medical services for nearby communities, outreach mobile medical services, family planning camps, blood donation drives, antenatal check-ups, vaccination centers, pulse polio camps, school health check-ups, diagnostic multidisciplinary camps, eye camps and other out-reach programmes.

On December 28, 2006, over 40,000 villagers and other stakeholders located near their Dahej Manufacturing Division, Gujarat State, got a unique 'Gift of Life' from this manufacturing facility. In a unique public-private partnership initiative, Dahej Manufacturing Division in partnership with the State Government of Gujarat adopted the existing Public Health Centre (PHC). This is the only nearest public health centre located in this vicinity. The other nearest one is at least 45 to 50 kms away, located at district Bharuch.

Aligned with the goals and vision of the management, several educational initiatives have been proposed/ established as leaps into the future. These ventures aim at building confidence, capacity, global mindsets and communication skills among young people. Their growth will shape and give direction to the growth of our country.

Reliance Rural Development Trust has undertaken a unique corporate initiative to create infrastructure facilities in rural areas. The projects undertaken in rural areas are construction of roads, anganwadis (kindergarten school), panchayat offices and community halls. These are some basic development priorities of rural areas.

In order to give focused attention to the needs of surrounding rural communities, Baroda Manufacturing Division, Gujarat State, initiated a collective action programme by setting up a voluntary society SVADES with the co-operation of all the neighboring industries in Vadodara.

SVADES is a collective endeavor that binds industry and rural community together towards socioeconomic development in the rural areas surrounding the industry. SVADES works in 40 villages covering a population of nearly 200,000.

At Reliance a clean environment for sustainable development is of prime concern. At all their manufacturing sites lush greenery has been developed utilising treated effluents.

Some of their leading Other Community Initiatives

Road at Dwarka, guest house for devotees, electronic security services and maintenance at Dwarka; Gardening of air-port waste land; Gaushala (Cow shed); Cultural promotion programmes for all races; Road safety and emergency services on state highways; Greening and lighting of road divers; Sheets and Pipes for Jaipur Foot and Prostheses with Bhagawan Mahaveer Viklang Sahayata Samiti, Jaipur; Community meals / providing potable water; Empowering women through formation of Mahila Mandals organising vocational training courses for women.

Further, Dhirubhai Ambani Foundation (DAF) - founded under the Patronage of Shri Dhirubhai Ambani (registered under the Bombay Public Trust Act in August 1995) - has been working in partnership with RIL in most of its social initiatives. Smt. Nita Mukesh Ambani leads the CSR initiative at DAF and RIL.

The overall objective of the Foundation is to make philanthropic interventions for the welfare of Indian Society and promote sustainable development of its people through initiatives in the fields of: Health, Hygiene and Sanitation, Education.

Community Revitalisation, Promotion of Social and Economic welfare of and upliftment of the People; Conservation of Natural Resources, Environmental and Ecological Protection; Rural Development and Assistance to other organisations with similar objectives.

The DAF joined hands with the management of Sir Hukisondas Nurrotumdas Hospital and Research Centre in December 1997 with the commitment to restore the hospital to its erstwhile glory. Consequently

the hospital services were restructured and state-of-the-art healthcare technology, conforming to international standards was set up.

Project Drishti, launched, in 2003, in association with the National Association for the Blind (NAB - a non-profit institution serving the blind in India for over five decades) – is a nation-wide corneal grafting drive to bring light in the lives of visually challenged from the underprivileged segment of the society - has illuminated lives of over 5,000 Indians – all free of cost.

This project is the largest (corneal grafting surgery) project undertaken by any corporate entity in the country. Presently, this project has conducted corneal grafting surgeries in over 16 cities in India and efforts are on to spread to far-flung mofussil areas of the country.

Dhirubhai Ambani International School, Mumbai, provides international educational opportunities in the context of the emerging educational needs of students.

The school prepares students for the Indian Certificate of Secondary Education (ICSE), Cambridge University's International General Certificate of Secondary Education (IGCSE) and the International Baccalaureate Diploma (IB) examinations.

Faculty members with rich experience in national and international curricula, educate, mentor and guide the children through these developmentally critical years of growth.

Case Study XI

Name: Tata Steel Limited

Thematic Areas: Microfinance, Education, Environment, Health, Livelihood and Relief during calamities

Case Study:

Vision: To improve the quality of life of the employees and the communities we serve

Tata Steel Ltd, established in 1907, is India's first and fully-integrated steel plant located in Jamshedpur, having employee strength of over 42,000.

As a conscious Corporate Citizen, Tata Steel Ltd is committed to improving the quality of life of its employees and also of the citizens residing in and around the Steel Works in Jamshedpur and the various out locations scattered in different states in the country as well as abroad.

These dual interventions in workplace and community have a far reaching impact. This responsible corporate citizenship is reinforced by the organisation by being a signatory to Global Compact and accepting and practicing the "Ten Principles" in total as well as being a Member of Global Business Coalition on HIV/AIDS.

HIV/AIDS is a disease that threatens to affect communities all over the world and especially the young and productive industrial workforce.

Tata Steel Ltd's involvement vis-à-vis preventing HIV/AIDS dates back to early 1990s when the organisation realised that the disease had acquired epidemic proportions and accepted that its control or prevention was not the sole responsibility of the government.

It decided to respond to the situation by taking appropriate initiatives to safeguard health of the community and prevent spread of the disease.

Tata Steel Ltd., fully mindful of its role, promptly mobilised its resources and evolved a policy on control of HIV/AIDS. The policy is revisited every couple of years with inputs from HIV+ people, and the need of the stakeholders. It also formulated a strategy of creating mass awareness and educating the society to prevent and combat the menace of HIV/AIDS.

In 1994, the management of Tata Steel Ltd evolved a Corporate Sector Model to prevent STD/HIV/AIDS and constituted a Core Group – AIDS and Nodal Centre – AIDS to focus on this disease and formulate strategies for its control and prevention.



The members of Core Group – AIDS comprise experts from various divisions of the company e.g., Community Development & Social Welfare Department, Centre for Family Initiatives, Personnel, Tata Steel Rural Development Society, Tribal Cultural Society, Public Health & Medical Division as well as invitees from local governmental and private organisations. Convener Core Group – AIDS, a technical person, was assigned full time by the Company to run the HIV/AIDS initiatives.

The members conduct AIDS Awareness Programmes especially for women and youth, using various IEC (Information-Education-Communication) media and forum, not only among the citizens in and around the Steel City, but also for those re-siding in (700) villages around its out-locations.

Feedback from the target group acts as input to further improve the programmes. Each year International Candlelight Memorial and World AIDS Day are observed to express solidarity with those affected by HIV/AIDS.

Testimony to Tata Steel Ltd's commitment to prevent and check HIV/AIDS disease is amply provided by the adoption of practice of non-discrimination between HIV infected employees and other employees. The Company firmly believes that by continuously informing and educating various levels of society, adequate awareness can be built in the community, which in turn would take appropriate preventive measures against the disease.

There is no pre-employment screening for HIV status. Confidentiality of HIV+ employees is maintained with continuation of their employment. They are re-located to assignments that are best suited to their physical ability and continue till they are medically fit to work.

Workplace programmes are conducted regularly with the help of HR Personnel for both the permanent employees as well as the contract labor which also helps sensitise employees and reduces stigma and discrimination. Approximately 250 AIDS Awareness Programmes are conducted every year in the workplace.

Comprehensive counseling, treatment and care including the Preventing Parent To Child Transmission Plus programme is provided through all health centers of Tata Steel such as:

Tata Main Hospital, an 850-bed modern specialty hospital and has an Out-patients Department in all specialties and provides "treatment without discrimination" to all positive people. All HIV+ employees or their dependents are provided with HAART free of cost by the Company

12 Out-patients clinics in Jamshedpur Township attached to Tata Main Hospital

21 Maternal & Child Health clinics of Tata Steel Family Initiatives Foundation and

4 Clinics of Tata Steel's Community Development & Social Welfare

Jamshedpur Blood Bank encourages voluntary blood donation which ensures availability of "safe blood."

A "Single window" health delivery concept, Sneh Kendra, was started to provide care and support to those affected by STI/HIV/AIDS. All cases detected HIV+ and their family members are finally referred here by above-mentioned agencies for on-going support. The family members of these patients regularly come for counseling, group support and life skills training.

They are also benefiting from programmes on vocational training, economic support for education of children, formation of Self Help Group for economic rehabilitation and sustainability.

To increase the reach of the programmes Peer leaders are identified in the community and trained. Internal and external experts are invited to conduct training and workshops for capacity building of knowledge and skills of all stakeholders in health and community-based care and support services on a regular basis.

Tata Steel Ltd believes in networking with like-minded agencies e.g. National AIDS Control Organisation (NACO), UN-AIDS, Global Business Coalition on HIV/AIDS (Tata Steel received an award for its HIV/AIDS

initiatives in the community in 2003), ILO, CII-Indian Business Trust, WHO, JSACS, Transport Corporation of India Foundation (TCIF), PFI, The David & Lucile Packard Foundation to share resources.

To help the district health services Core Group – AIDS introduced computer-based Health Information Management System (HIMS) in Jamshedpur. Each month statistics on new HIV+ cases from local Health Institutions is collated in the Civil Surgeon's office.

Tata Steel Ltd is a recipient of Global Business Coalition on HIV/AIDS Award 2003 for its initiatives on HIV/AIDS in the community.

9.4 WHOLE LIFE COSTING - ASSESSMENT OF SOCIO-ECONOMIC IMPACT OF STRATEGIC AND OPERATIONAL DECISIONS OF BUSINESS

Introduction

Value for money is a concept that is frequently considered when an individual or an organisation is seeking to make a purchase or investment. When acquiring a new car, for example, we may consider the costs of ownership (fuel economy, insurance, maintenance, availability of replacement parts, etc.) when deciding between options. Implicitly then, we consider the long-term costs of ownership in the decision making process.

Furthermore, it could be argued that the larger the capital cost of a product, the more important it is to consider these long-term costs. Buildings are a prime example of high cost purchases, yet consideration of long-term costs is not given the attention it deserves. The past 30 years have seen many attempts to encourage a holistic approach to what is in effect 'whole life' cost analysis, but with limited success, particularly in the United Kingdom.

One such technique that is currently emerging in the industry is whole life-cycle costing (WLCC).

Whole life-cycle costing is a relatively new concept to the construction industry, albeit based upon the foundations of analytical techniques that have been in existence for some time. It is in essence an evolution of lifecycle costing (LCC) techniques that are now commonly used in many areas of procurement. Like LCC, the primary purpose of WLCC is to aid capital investment decision making by providing forecasts of the long-term costs of construction and ownership of a building or structure. However, unlike LCC it is also a dynamic approach, and can provide up-to-date forecasts on cost and performance throughout the life of the building. Some of the ideas behind the justification for WLCC are synonymous with key issues in today's construction industry:

- Meeting clients' expectations Clients (especially in the public sector) now require buildings that are efficient during and after construction. WLCC techniques can demonstrate real cost savings in design solutions
- Sustainability Achieving sustainable design solutions relies on the consideration of long-term operational costs and performance of building components
- Monitoring performance of constructed assets For example, are PFI/PPP (Private Finance Initiative/ Public–Private Partnerships) projects really cost effective? Only by considering the whole life-cycle costs can this be assessed. Using WLCC also supports benchmarking and key performance indicators.
- Monitoring cost effectiveness of constructed assets
- Lean Construction: By considering long-term cost and physical performance , waste is minimized both during construction and through the life of the building.

Whole life-cycle costing: a brief history

Prior to the 1970s, most clients, developers and professionals involved in building procurement made capital investment decisions solely on the basis of capital cost. Outside the construction industry, it was



appreciated in some quarters that making decisions solely on capital cost could be folly. They believed that by possibly spending more in capital cost, the long term would realise substantial cost savings when compared with a cheaper alternative.

This school of thought was known as 'terotechnology', and it was in effect the beginnings of whole life-cycle cost theory. Within the construction industry, nevertheless, terotechnology was largely ignored. Some of the reasons behind this included an ignorance of the importance of whole life-cycle costs, lack of available data and data collection mechanisms, and the fact that those providing the capital generally had no interest in the subsequent operational costs of the building. In the early 1970s, the term 'cost-in-use' began to cost effective? Only by considering the whole life-cycle costs can this be assessed. Using WLCC also supports benchmarking and key performance indicators

- Monitoring cost effectiveness of constructed assets WLCC provides the means by which to constantly review this and base future capital investment on this information
- Lean construction By considering long-term cost and physical performance, waste is minimised both during construction and through the life of the building.

The aim of this chapter therefore is to provide a general overview of the fundamental ideas and principles behind WLCC and to demonstrate how it can be of benefit to the construction industry practitioner. The chapter initially examines the history of LCC and its various definitions, moving on to show how WLCC has evolved from LCC as a new and innovative cost analysis tool. The failings of previous LCC methodologies are examined by definition of the innovative aspects of WLCC. appear in the industry and the literature. Cost-in-use refers to the expenditure related to the operation of an asset. Although not related specifically to the construction industry, it was recognised that the underlying principles of costing use could apply to buildings and critical structures. What cost-in-use failed to consider, though, was the necessity for accurate future cost forecasting. It became clear then that some kind of technique was required to facilitate this.

It was not until the mid to late 1970s that LCC emerged as a solution to this problem. LCC fostered a wide-ranging approach to cost appraisal, encompassing all perceivable costs from construction through to eventual disposal –

'the whole life'. Using a variety of forecasting techniques, the analyst was able to demonstrate how increased capital cost could be offset by long-term cost savings. LCC sounded good in theory, but the practical implementation within the construction industry did not reflect this. In terms of the enlargement of life-cycle costing theory, the major factor which frustrated its development was lack of good quality cost-in-use and performance data. This proved to be the principal dissatisfaction felt by those who showed some willingness to employ life-cycle costing techniques.

In 1971, the Royal Institution of Chartered Surveyors established the Building Maintenance Cost Information Service (BMCIS) as a method of collecting operational and running cost data. Its main aim was to adopt a single classification system, which could then be disseminated among subscribers in a common demeanour. Although the BMCIS went some way to addressing the implementation problems of life-cycle costing, it did not address the need for a coherent framework and structure in which to deal most effectively with this information.

In 1977, the then UK Department of Industry published *Life-cycle costing in the management of assets* which presented one of the earliest definitions of LCC:

'A concept which brings together a number of techniques – engineering, accounting, mathematical and statistical – to take account of all significant net expenditures arising during the ownership of an asset. Life-cycle costing is concerned with quantifying options to ascertain the optimum choice of asset configuration. It enables the total life-cycle cost and the trade-off between cost elements, during the asset life phases to be studied and for their optimum selection use and replacement.' Since 1977, LCC has become widely reported on, with a diversity of models and techniques existing. In 1983, two eminent researchers in LCC, Roger Flanagan and George Norman, developed a framework for

collecting data, which could then be used to build up the life-cycle cost of a project. By 1992, LCC was a familiar concept to building economists throughout the world, and as such became a recognised standard in the UK under British Standard BS 3843 (1992):

'The costs associated with acquiring, using, caring for and disposing of physical assets, including feasibility studies, research and development, design, production, maintenance, replacement and disposal; as well as all the support, training and operations costs generated by the acquisition, use, maintenance, and replacement of permanent physical assets.'

In 2000, this definition was revised and incorporated into ISO 15686 Part 1 – Service Life Planning which cites LCC as (ISO 2000):

'A technique which enables comparative cost assessments to be made over a specified period of time, taking into account all relevant economic factors both in terms of initial capital costs and future operational costs.'

The BS/ISO definition, although authoritative, is a daunting and perhaps vague definition given the plethora of cost items that could be included within each cost category. Principally, the authors believe this to be one of the reasons why LCC is still rarely used to the extent that it was initiated for, although others argue that the lack of quality data is the principal reason.

Additionally, the plethora of cost models and definitions associated with LCC has been significant in creating an 'air of confusion' over the subject. Ambiguity and inconsistency were identified in Newton (1991), where consideration of the problem of model classification and the inability to compare models on a like-for-like basis are discussed. Furthermore, the individual perception of the life-cycle model raises many concerns. This is validated in Smith (1999), which highlights how LCC has for some time become an important issue in the overall cost picture, but has not featured in the decision making process to the same extent. This lends weight to the argument in Kirkham *et al.*

(1999) that in some respects LCC has remained an academic rather than a practical tool, and that presently the financial burden of implementing an LCC approach outweighs the advocated benefits.

By way of example, consider the application of LCC in other sectors. It has been widely used in the procurement of United States and Australian defence contracts for some time now (Australian National Audit Office 1998; US Department of Defense 1997, 2001). The sheer cost involved in these kinds of projects emphasises the need for LCC; that is, the possibility that significant capital outlay needs to be justified by the longer-term benefits. In some respects, research has shown that LCC has only been applied to projects that have a very high capital cost. In a significant amount of cases, it has been found that ignoring the likely future costs in the conception stage can lead to a significantly more costly endeavour in the future (Smith 1999).

Towards the late 1990s, the concepts of 'whole life costing' (WLC) and 'whole life-cycle costing' (WLCC) emerged. The terms whole life costing and whole life-cycle costing are interchangeable. WLCC is a new term that appears to have been adopted by many building economists involved in the preparation of forecasts for the long-term cost assessments of capital projects.

There has been debate amongst academics and practitioners as to whether a difference really does exist between WLCC and LCC. The key emphasis in most of the definitions lies in the implication that LCC is only concerned with the economic life of the building, in other words the period of commercial interest. It could be argued that WLCC forms the attempt by academia and practitioners to overcome some of the problems of LCC. Moreover, it takes into account the costs of running and operating a building over its entire life span – 'the whole life' – as opposed to over a specified period of time, which is a feature of LCC models. Notwithstanding, some have argued that WLCC is simply synonymous with LCC. Others have specified that a difference exists (Bourke & Davis 1999). In this book, the contention is that the concepts are indeed different and to justify this assumption an online survey was conducted (Boussabaine & Kirkham 2000). The authors sought to assess the opinions of academics and practitioners involved in LCC/WLCC, and to establish if the majority of individuals thought that there



was real difference between the concepts. This survey forms part of the backbone of the definition of whole life-cycle costing taken in this book.

Defining whole life-cycle costing

The online survey revealed a broad spectrum of opinion about the difference (if any) between WLCC and LCC. The following are random examples of the responses:

'The term... is whole life costing (WLC) and if you believe the old life-cycle costing (LCC) also included all capital and revenue costs for the whole business case/project and not merely elements, e.g. cladding, ceilings etc. then LCC and WLC are... the same thing.'

'By rights they should mean the same thing, with the "whole" being superfluous. When one considers a "life-cycle", its wholeness is implied. However, it [may be] possible that when some refer to LCC, they may be referring to the consideration of only costs incurred up to the point when the asset is no longer economically viable and ignoring the issues that relate to asset disposal – which is considered to be part of WLCC.'

'If LCC is anything like life-cycle assessment, its completeness is a continuum... In practice, LCAs suffer dramatically from incompleteness, because environmental impacts have to be traced many transactions upstream. This is not a problem for LCC... I can't imagine what the problem would be regarding a small amount of information about the scope of LCC. Australian and New Zealand standards I have seen on LCC do not define WLCC. [Why] would the additional term be required?'

'I believe that WLC is simply the modern [equivalent] of LCC. Cost-in-use remains something different. There may be a shift in emphasis to suggest that WLC is not a one-off calculation, but may also be reviewed during the life of the building.'

'As I understand it, WLCC goes slightly beyond that to include costs beyond working life – in the case of a building project therefore demolition costs for example would be included...'

'In practice, we refer to WLC as the total operating costs of the building, including energy/utilities costs and facilities management elements that relate to the building, such as maintenance and cleaning. LCC refers to replacement building components within the building such as windows, fan coil units, etc. Over and above this are facilities management costs, such as security and catering.'

'Theoretically speaking, there is no difference between LCC and WLCC. Each sector adopts a different term. For example, the manufacturing and military [sectors] use LCC, whilst the construction industry may use WLCC and... oil, gas and prime contracting [companies] use through life cost (TLC). However, in the concept of the Private Finance Initiative (PFI), LCC means life-cycle replacement cost which is a part of WLC.'

It would be fair to speculate, after consideration of the points above, whether we really know what WLCC represents. In the absence of any internationally recognised standard on WLCC, it remains a subjective opinion based upon experience, field of work/study and economic standpoint. Of greatest importance is that not one of the respondents in the survey defined WLCC in similar terms; some though pointed out that LCC and WLCC were two of the same thing. In the absence of any national/international standard, who is to say that the above views are at worst incorrect or at least misguided? Although several institutions within the UK are currently working on WLCC-related projects, how can a wider understanding amongst practitioners and academics be initiated, when the research community as a whole is still confused about terms? Naturally it follows that an urgent need exists to define WLCC.

It is the authors' belief that a tangible difference exists between WLCC and LCC. We see WLCC as an evolution of LCC and not a re-invention of the wheel in terms of its association to LCC. Many have rightly noted that a fundamental problem with LCC is the aspect of uncertainty, the risk that is inherent in future forecasting. Some have gone so far as to say that LCC is based on 'guesswork' and 'speculation'. True, we will never be able to state with a very high degree of certainty how a building will perform economically in terms of operation, maintenance and such like. However, it is possible to

quantify that risk, to enable stakeholders and decision makers to base capital investment proposals on a basis by which they are aware of the uncertainty in the forecasts. We are also concerned about the fact that the elemental deterioration of building components and the characteristics of the building itself are not integrated into the WLCC decision making process.

In consideration of the results of the survey, and based upon the previous research activities of the various institutions in the UK and elsewhere, the authors advocate the following definition as that of WLCC:

'Whole life-cycle costing (WLCC) is a dynamic and ongoing process which enables the stochastic assessment of the performance of constructed facilities from feasibility to disposal. The WLCC assessment process takes into account the characteristics of the constructed facility, reusability, sustainability, maintainability and obsolescence as well as the capital, maintenance, operational, finance, residual and disposal costs. The result of this stochastic assessment forms the basis for a series of economic and noneconomic performance indicators relating to the various stakeholders' interests and objectives throughout the life-cycle of a project.'

The WLCC assessment components included in the above definition will serve as the guiding principles for this book. WLCC and risk assessment are but part of the overall management of the whole life-cycle of project processes that comprise the art and science of decision analysis. This book addresses the risk assessment-related aspects of decision making in the process of WLCC. The aim is to convey to the reader the fundamental principles of WLCC and risk assessment and the enveloping processes.

Risk and uncertainty in WLCC

In the previous section, attention has been drawn to the importance of dealing with risk and uncertainty in WLCC analyses. This importance is reflected in the new definition. However, this leads us to a salient point. Is there a difference between uncertainty and risk?

The authors believe there is a great difference. The terms risk and uncertainty are often used interchangeably, although a distinction can be drawn by noting that the concept of risk deals with measurable probabilities while the concept of uncertainty does not. An event contains an element of risk where a probability distribution can be defined. An event is uncertain when no probabilities can be developed concerning its occurrence. Risk refers to probabilities of errors in decisions and WLCC forecasts throughout the life-cycle of a project, or the probabilities of occurrence of events. Risk assessment deals with the likelihood and expectation of possible WLCC outcomes using probability concepts. If computed in terms of the probability of success or failure to achieve the return on investment, the risk is seen as an objective risk. It is an uncertainty when the probability cannot mathematically be indicated but there is enough knowledge to make a subjective judgement about the WLCC decisions. The more explicitly the risk is defined, the greater the possibility for the decision maker to have confidence in using the results of the WLCC analysis.

Subjectivity in WLCC

The issue of subjectivity and vagueness is also a very important facet of WLCC. Subjectiveness, vagueness and ambiguity (used interchangeably in this book) are different from randomness. Randomness deals with uncertainty (in terms of probability) concerning the occurrence or non-occurrence of an event. Subjectivity, on the other hand, has to do with the imprecision and inexactness of events and judgements, including probability judgements. Many WLCC decision problems involve variables and relationships that are difficult, if not impossible, to measure precisely. For example, probability judgements about issues like inflation, operation costs, etc. are not always precise in WLCC and often cost analysts use subjective expressions to express their probability judgements. This applies to probability judgements as well as the costs and benefits in many WLCC decision problems. The requirement for high levels of precision may cause WLCC models to lose part of their relevance to the real world by ignoring some of the relevant decision attributes because these variables are incapable of precise measurement or because their inclusion may increase the complexity of the models. Hence, the key to successful WLCC and risk assessment is to build models that require little information – no more than the users can provide. This is a challenge, but it is a challenge that is addressed through the chapters of this book.



Summary

In this chapter we have looked at the evolution of WLCC and introduced some of the basic principles behind the technique. A working definition of WLCC is proposed, based upon the results of a survey, and we have also briefly introduced the importance of considering risk, uncertainty and subjectivity. In the following chapters we will look in closer detail at the techniques and procedures that are commonly used in WLCC modeling and how these techniques can be modified to cope with risk.

Dealing with risk and uncertainty in WLCC should be the cornerstone of the analysts' approach to WLCC decision making. The uncertainty of forecasting has always been a key problem with practitioners, so by providing information and quantifying the risk element, stakeholders should be more confident in the information that WLCC can provide.

Why has the construction industry failed to embrace WLCC?

Currently, the application of WLCC in the construction industry is still hindered significantly by the lack of standard methods and the excuse of lack of sound data upon which to arrive at accurate decisions. As a result, the output from WLCC models is looked on as unreliable. A government report issued by the Building Research Establishment (Clift & Bourke 1998) on whole life costing identified several factors that presently act as barriers to applying WLCC:

WHOLE LIFE-CYCLE COSTING RISK MANAGEMENT

Introduction

Contemporary developments in the construction industry since the mid 1990s have highlighted the benefits that the whole life-cycle cost approach to investment appraisal can bring to the construction industry. Several reports, including those of Latham (1994) and Egan (1998), have strongly advocated the need to consider the long-term cost of design decisions. Guidance from other agencies has also stressed directly the need for design to encompass a WLCC approach. WLCC has been identified specifically as it gives the analyst the ability to generate tangible evidence of the sustainability of building facilities. It also allows insight into the economic efficiency and performance of the asset.

Recent guidance for projects procured using the Private Finance Initiative (PFI) route advocates the use of WLCC techniques specifically as they provide an assessment of the long-term cost effectiveness of a project. Investments in facilities are long-lived and necessarily involve uncertainty about project life, operating and maintenance costs, and many more factors that affect facilities economics. If there is substantial uncertainty concerning cost and time information, a WLCC analysis may have little value for decision makers. Therefore, it is essential to assess the degree of uncertainty associated with the WLCC results and to take that additional information into account when making decisions. Thus, risk management should form an integral part of the WLCC process. This chapter presents a framework for dealing with WLCC risk management.

Why Construction Industry fails to embrace WLCC

Currently, the application of WLCC in the construction industry is still hindered significantly by the lack of standard method and the excuse of lack of sound data upon which to arrive at accurate decisions. As a result, the output from WLCC models is looked on as unreliable. A Government report issued by the Building Research Establishment on Whole Life Costing identified several factors that presently act as barriers to applying WLCC:

- The lack of universal methods and standard formats for calculating whole life costs
- The difficulty in integration of operating and maintenance strategies at the design phase
- The scale of the data collection exercise, data inconsistency
- The requirement for an independently maintained database on performance and cost of building components.

These barriers might be directly related to the absence of adequate knowledge of WLCC processes and mechanisms. There may also be a lack of willingness from stakeholders to set up appropriate mechanisms to solve these problems. If, for example, all building occupiers were required to submit annual running cost profiles, the risk associated with WLCC techniques could be significantly reduced (Bird 1987). In fact, White (1991) argues the case for 'performance profiles' and in particular, highlights again the requirements for a universal construction data information system. One could argue that a plethora of WLCC models does exist but the common denominator in practical application and development is lack of appropriate information or know-how to use and develop models with existing information.

It seems to be worth noting how both the academic and practical 'schools of thought' in the industry need to get their own houses in order if significant steps are to be taken in the wider applications of WLCC. Newton (1991) in his work in cost modelling procedures highlights the need for a methodological and organised framework for such research activities. The sheer complexity of many models lends little to practical application and in many cases, if not the majority, the lack of available good quality data prohibits further development. In terms of the practitioners, they need to be willing to encourage clients and building occupiers into adopting a more holistic approach to running cost control so that procedures can be put in place to aid all those requiring WLCC cost profiles.

Why risk assessment in whole life costing?

Combined with WLCC, risk assessment should form a major element in the strategic decision making process during project procurement and also in value analysis, especially in today's highly uncertain business environment. WLCC decisions are complex (the complexity level is usually determined by the scale, funding and financial environment surrounding the scheme, amongst other factors), and usually comprise an array of significant factors affecting the ultimate cost decisions. WLCC decisions generally have multiple objectives and alternatives, long-term impacts, multiple constituencies in the procurement of construction projects, generally involve multiple disciplines and numerous decision makers, and always involve various degrees of risk and uncertainty. Project cost, design and operational decision parameters are often established very early in the life of a given building project. Often, these parameters are chosen based on owner's and project team's personal experiences or on an ad hoc static economic analysis of the anticipated project costs. While these approaches are common, they do not provide a robust framework for dealing with the risks and decisions that are taken in the evaluation process. Nor do they allow for a systematic evaluation of all the parameters that are considered important in the examination of the WLCC aspects of a project. The existing methods also do not adequately quantify the true economic impacts of many quantitative and qualitative parameters.

Capital costs and future costs must be quantified, analysed and presented as part of the strategic decision making process in today's business environment. Cost analysis and value analysis techniques are used to quantify and assess the economic implications of investment in building facilities in general. These techniques have typically concentrated on utilising life-cycle and comparative cost procedures to determine either the lowest initial cost alternative or the highest investment return alternative. While these techniques do provide a basis for making project cost decisions, they most often do not account for many of the parameters which may affect the actual project value or cost\ (Plenty et al. 1999). The existing methods also do not use formal decision making processes and risk assessment methods in performing cost benefit analysis.

It is not surprising that the BRE report (Clift & Bourke 1998) found that clients have a lack of interest and trust in the value of whole cost exercises. This might be due to the fact that WLCC analysis that is not supplemented with risk assessment of all aspects of decision making involved in this process has little value to any decision maker. Risk assessment should be an integral part of the WLCC process. A significant effort is being invested in developing a framework for data collection but data collection on its own, without the correct methods and tools to identify important decisions in the WLCC process and associated risks, is of little value to clients or other interested parties. Clients did not know what to



do with information when received and practitioners did not understand the process or the benefits of WLCC (Clift & Bourke 1998).

A framework that uses formal decision making processes and risk assessment of each aspect of the decision to be taken in performing WLCC life-cycle analysis can help owners, design teams and cost planners in making strategic decisions based on analysis results that truly reflect the inherent risks and costs related to the project. Alternative building decisions can be evaluated and compared early in the project development stage. Simply choosing an alternative as being 'better' than the others, based on the traditional approach of life-cycle costing, may not be strictly correct. The confidence of the decision maker's choice depends on the level of uncertainty in the variables and decisions considered. If the WLCC computation results were aided with probabilistic information on the potential costs and risks of the various decisions that are taken throughout the whole life-cycle process of a facility, the confidence in the process of whole life-cycle costing would probably be increased. The subsequent chapters in this book are intended to provide this.

Data requirements in whole life-cycle costing and risk assessment

Flanagan and Norman (1983) highlighted three fundamental requirements in successfully implementing a life-cycle costing methodology:

- A system by which the technologies can be used: a set of rules and procedures
- Data for the proposed project under consideration: estimates of initial and running costs of elemental life-cycles, discount rates, inflation indices, periods of occupancy, energy consumption, cleaning and the like. The data required to carry out WLCC analysis can be derived from a range of possible sources (Bennett & Ferry 1987):
 - Direct estimation from known costs and components
 - Historical data from typical applications
 - Models based on expected performance, average, etc.
 - Best guesses of the future trends in technology, market application
 - Professional skill and judgement.

All these factors have some bearing on the quality of data that is collected and how it is used in modelling and decision making processes. Whilst WLCC is now becoming widely used as a valuable tool in the design process, probably two key factors have undersized its potential impact (Flanagan et al. 1987; Bird 1987):

- A suspicion that life-cycle cost estimates are in some sense inaccurate or based merely on guesswork
- The absence of sufficient and appropriate cost and performance data.

Data sources

It has been highlighted how important the data and its composition are to WLCC, but where can this data be obtained? Ferry and Brandon (1991) highlighted six main outputs:

- Technical press
- Builder's price books
- Information services such as the Building Cost Information Service (BCIS)
- Government research literature such as from the National Economic Development Office (NEDO)
- University research
- Technical information services.

Flanagan and Norman (1983) defined these into four subgroups:

- Manufacturers' data
- Suppliers and contractors
- Modelling techniques
- Historical data.

The availability of data has a significant impact upon the types of modeling techniques available to the analyst. For instance, monthly data for energy costs can be used to develop time-series forecasts, annual data can be used to model probabilistic distributions, etc.

Manufacturers' data

A unique aspect of the building process is its individuality and specialist requirement. Many building materials and indeed processes are subcontracted out to individual specialists. These specialists as a rule will have detailed breakdowns of the life-cycle of the product, its material components and its performance characteristics.

This data can also be obtained from other authorities that are responsible for testing the integrity and materials for construction. The British Board of Agrément is a UK government testing body which carries out independent testing of materials used in the industry. Materials that meet a set specification and performance are issued with Agrément certificates, which give details on service lives and other critical information. The Building Research Establishment also carries out testing on materials and can be a useful source of information. Furthermore, the American Society of Civil Engineers regularly publishes papers on building material life spans for use in cost profiling (Ehlen 1997).

Forecasts from models

In the absence of any historical or suppliers' data/feedback, models can be used as a way to analyse the WLCC implications of particular design decisions or choices of materials. The concept behind modelling is to facilitate and introduce a higher degree of accuracy in the estimates made by cost analysts when drawing up life-cycle cost profiles. Some dispute the validity of model forecasts but one school of thought advocates that simulated forecasts are as good if not better than historical data due to the following reasons (Ferry & Brandon 1991).

- Historical data by definition relates to the past, whereas simulated data refers to the future. The argument is that for maintenance and servicing costs, data recorded previously would be a poor guide as in the future more sophisticated facilities management techniques and higher quality products and reliability would provide for a different cost structure.
- It is very fortunate to obtain historical data that has not been trained or recorded for other purposes. Typically, in dealing with life-cycle costs, data may be required about a particular element but data may only be available generally for a whole group of elements. Simulation could provide this data in the required format.
- It is also believed that historical data can be inaccurate if those job-sheets and other forms filled in on a 'Friday afternoon' are maintained in a slipshod manner.

These idiosyncrasies can be dealt with, however, using a variety of statistical techniques to reduce data noise, data outliers and other characteristics which are likely to incorrectly skew the results. For example, outliers might be determined using box plots; missing or erroneous data sets are corrected using local means (averages). However, a thorough knowledge of the data used in the modelling should be acquired to ensure that the techniques used are valid and not likely to introduce biases into the modelling process.



Historical data

Historical data can be obtained from a variety of sources such as the BMCIS, clients and building occupiers and in some cases the design team themselves. The value of historical data is relevant in that the values of initial capital cost and subsequent running cost can be categorised for certain groups of element in the building and this comparison can then be used to identify the elements which will benefit from a life-cycle cost approach. For instance, if a building element has a high initial capital cost and then subsequently low maintenance and running costs, a life-cycle approach would gain little use. However, elements with significant running costs could, through design change, for instance, benefit from life-cycle cost savings.

Specifying a comprehensive set of objectives and measures for each WLCC component

The authors advocate, for this purpose, the use of operational research (OR) and methods described in risk assessment and decision making in business and industry (Pilcher 1992; Koller 1999). OR methods consist of a number of well-defined scientific steps:

- (1) Formulation of the problem, establishing the objectives and any constraints that may apply
- (2) Building a model that represents the system under analysis
- (3) Using the model in order to obtain a solution to the problem
- (4) Comparing a solution obtained by means of the model with that in current use
- (5) Evaluating the results and monitoring the performance of the system through changing conditions.

The above steps must be applied to every aspect of the WLCC. Therefore, the interactive steps that are involved in this process are:

Service life

The prediction of component service life is a very important aspect in WLCC assessment. One such methodology currently in use is the factor method.

The ISO/CD 15686-1 factor method for the estimation of the service life of components or assembly (facility) under specific conditions treats the service life as a deterministic value. In reality the service life has a big scatter and should be treated as a stochastic quantity. Here the authors advocate that at early stages of the project (design) this approach should be used but in conjunction with uncertainty and risk assessment for each of the involved factors. The objectives that need to be assessed include:

- Assumptions about the service life of the major facility components
- Risk of failure of components
- Quality of fabrication and production
- Assumption about the updating and maintenance management plans
- Cost constraints
- Assumptions about frequency and time intervals of maintenance and replacement.

At operation stage the requirements are different and necessitate a completely different method of assessment. The process here is concerned with the prediction of the remaining service life of the facility components and the forecasting of the rate of their deterioration and the maintenance budget required to bring the state of the facility to an operational standard. For this purpose the authors advocate the use of the Markov theory (explained in detail in Chapter 5). The objectives that need to be identified and assessed at this stage include:

- Survey condition of the existing facility components
- Assumption about the remaining service lives of components

- Updating budget requirement
- Priority of components updating – critical components
- Quality of maintenance and replacement components
- Assumption about time-lag replacement or maintenance delays
- The effect of delayed maintenance on budget and deterioration of facility
- Evaluating the economic viability with a view to disposal.

Obsolescence and end of use

Societal and business environments are characterised by rapid changes in technology and user patterns, which also result in changes in the requirements for infrastructure. Changes in use, trends in fashion (this is more likely to be in housing), and the emergence of new technologies (mainly mechanical services and IT) will have a direct effect on the life expectancy of components and facilities in general. Facilities should be designed and constructed with flexibility in mind to allow future adjustments for anticipated and/or likely changes. The objectives that should be identified and assessed include:

- Intangible costs, such as access disruption to building activities or other costs borne by other than clients, which will also be considered under this section
- Birth, growth and death of firms (business). This can be achieved by projecting the number of years that a business is viable. This will have a direct effect on the functional life expectancy of a facility. This assumption can be used for preparing a life-cycle cost analysis
- Physical obsolescence
- Economic obsolescence
- Technological obsolescence
- Functional obsolescence
- Legal and social obsolescence
- Disposal and decommissioning methods
- Demolition, retain or refurbish options
- Asset reuse or recycle of components
- Waste disposal implications
- Site and land clean-up procedures.

Capital costs

Returns on invested capital costs are essential in making decisions on investment scenarios. This requires a combination of knowledge about the investment in question, skill for analysis and elicitation of decisions from the existing information, experience and judgement. The capital cost for acquiring a facility will not be known with certainty until the facility is developed and handed over for operation. Hence, the information required for carrying out whole life-cycle cost and economic viability analysis relies on the availability of previously documented cases and speculative assumptions. The capital cost objectives that need to be assessed include:

- Land acquisition cost. The location, and land viability may have a direct effect on the whole life cost and life expectancy of a facility
- Predesign costs. The amounts of time and quality of information generated (development of the brief and facility specification) at this stage have great consequences on the quality and operation of a facility. The investors have a good opportunity to optimise the whole life cost of a facility through the selection of component and functional flexibility. Ideally, the issues relating to obsolescence should be investigated, accounted for as costs at this stage



- Design costs. The quality of design in terms of error, detailing and buildability will have a direct effect on the cost of production and operation. A high quality building might also require higher costs in use in order to maintain its high aesthetic quality in use (Ashworth & Hogg 2000)
- Development and production costs. The quality of workmanship is directly related to the level of maintenance. It is important to ensure that quality control is in place to ensure sound construction practices are used
- Fees
- Risk costs
- Financial costs, tax, interest, etc.

Operational costs

Operational costs are less certain as the time span increases due to uncertainties in energy costs, maintenance, fees, staff and regulatory changes. It is important to view operational cost estimates in their holistic state; several qualitative factors will have an important effect on the total operational costs.

The operational cost objectives that need to be assessed include:

- Factors which contribute significantly to the total operational costs
- Optimum balance between capital and operational costs
- Operational risk management systems
- Optimum asset cleaning procedures
- Optimum waste management procedures
- Optimum utilities management procedures
- Optimum staffing level
- Minimum disruption due to denial use of the asset.

Maintenance costs

The costs and priority of required maintenance, rehabilitation and replacement can be obtained from historical data but base cost estimates have to be supplemented with expert opinions in order to perform whole life-cycle analysis and risk assessment. The maintenance cost objectives that need to be assessed include (some are from Kirk & Dell'Isola 1995):

- Performance indicators for the assessment of maintenance costs
- Remaining service life of facility components
- Frequency and replacement costs
- In-house or subcontracted maintenance
- Selection of exterior and interior materials and surfaces
- Selection of light fixtures with minimum routine repair and replacement requirements
- Type of preventive maintenance programme.

Financing costs and revenues

The objective here is to deal with WLCC input parameters of discount, inflation rates, taxes, expenses, etc. Critical analysis of investments must include both initial and ongoing costs and returns over the period of the investment. This will allow stakeholders to compare different options and decide which offers the best return for the investment. Usually discount rate is used for computing the value of future

revenues. This includes a large degree of risk return. For example, if the discount rate is set too high or too low then future costs may appear insignificant; this could result in high operational costs and capital costs, which will discourage investment. Also, if inflation is different from the selected rates this may lead to inappropriate investment choices. The financing cost objectives that need to be assessed include assumptions about:

- Inflation rates, interest and taxes
- Level of returns and risks
- Optimum discount rate
- Economic activity. This has a direct effect on the economic obsolescence of facilities
- Level of risk financing
- Cash inflows versus outflows
- Different rates, time periods and cash flows.

Asset characteristics

The characteristics (i.e. physical and functional) of new or existing facilities are very important aspects of WLCC computation. The research community has largely ignored this aspect of WLCC. For example, a relationship may exist between building function and mechanical services costs, a particularly important feature of modern facilities. Little research has been published with regard to the impact of building characteristics on WLCC. Experience shows that an indirect link exists through many aspects, including energy costs for example. A poorly insulated building will consume more energy, thus increasing WLCC and possible downtime costs in maintenance (Department of Industry 1977). The characteristics that should be assessed and included in the computation of WLCC include:

- Layout and location
- Functionality
- Construction technology
- Gross floor area
- Number of storeys and storey height
- Glazing area
- Occupancy (m²/person)
- Shape of the facility
- Aesthetics
- Energy-saving measures
- Quality of components
- Type and quality of public health systems
- Type and quality of superstructure building fabric
- Type and quality of internal fabric
- Type and quality of electrical and mechanical services
- Extent of site works.

Economic performance measures

The procurement of building facilities involves a variety of decision makers who decide on alternatives that generate capital and ongoing costs during a project's life. These capital costs generate value



for different stakeholders and potential for returns to the project owner which should be durable over the life-cycle of the asset. Conventional investment appraisal techniques, which focus on cash flows represented by the costs and expected returns of a project discounted to a common base period, do not reflect the total value of capital expenditure choices which include intangible and non-monetary benefits as well as reduction of future costs and financial returns (Plenty et al. 1999). Usually these economic measures are not supported by any risk assessment analysis. Therefore, economic performance measurement in WLCC is very important for decision makers to evaluate and allocate identifiable value from capital and continuing costs to relevant stakeholders in the life-cycle of a facility. This will allow the consideration of different stakeholders' objectives in the assessment of the WLCC. The objectives that should be assessed under this heading should include:

- What type of performance indicators should be used to aid in the selection of alternatives
- The boundaries of these indicators, i.e. minimum and maximum values that the stakeholders are prepared to work to
- The best measures of performance in terms of WLCC outputs
- Mechanisms for WLCC benchmarking
- Measures for mitigating economic risks.

A framework for whole life costing risk management

WLCC risk management is one of the important issues facing building assets executives today. As spending on building assets rises, asset owners become increasingly worried about WLCC optimisation throughout the life span of facilities; consequently, they become highly vulnerable to the risk of operational costs. Usually, when decision makers are faced with an investment choice under uncertain conditions, their main concern is to avoid projects whose actual economic outcome might be less favourable than what is acceptable, resulting in the risk of missing out on potential investment opportunities.

Thus, the objective of WLCC risk management should be to assist decision makers in evaluating whole life alternatives so that investment success is maximised. Usually traditional methods are used to optimise this process. However, traditional approaches to risk management have failed miserably because of their demand for mysterious statistical data that the end user does not have (Koller 1999). The key to successful WLCC risk-process and risk modelling is to build a WLCC framework that requires from the user nothing more than they presently can provide. This can be a challenge that can be addressed through the use of a variety of techniques. That is why it is important to use a combination of risk management techniques (depending on the stage of assessment) for risk assessment in WLCC, ranging from simple deterministic approaches to uncertainty assessment (e.g. sensitivity and break even analysis methods which are easy to use and understand and require no additional methods of computation beyond the ones used in LCC analysis), to very sophisticated methods based on probabilities, artificial intelligence (AI) and a hybrid of both techniques.

There has been a great emphasis on the techniques that are used to model risks but there has been little work on the integration of the whole process of risk identification, quantification, response and management strategies. We believe strongly that these interlinked processes are essential ingredients for any successful risk framework in the life-cycle of assets. Figure 2.2 shows the interaction between these processes.

The whole life-cycle risk process for each stage of the project might be divided into five interactive steps, as shown in Fig. 2.2. This framework does not emphasise any one particular component (though identification is deemed to be the most important) of the WLCC risk management process but concentrates on the sequential and iterative linkage of the five components to make up the entire process of WLCC risk management. If WLCC risk is addressed in this fashion it should enable stakeholders to smoothly move forward and backward from one component to another by identifying and understanding the possible courses of action in the different steps. Such a framework should

provide whole life risk managers with a comprehensive view of the overall WLCC risk management strategies. The framework, integrating the five iterative steps, is presented in Fig. 2.2 and explained in the following sections.

Whole life risk identification

The process starts with a qualitative stage that focuses on identification of risks related to each of the whole life-cycle processes. Risks that are unidentified and not quantified are unmanaged risks that can have a significant negative outcome on projects and organisations. If any of the unidentified risks occur at any stage of the project life-cycle, this may have serious consequences on stakeholders' financial status. Hence, perhaps the most important step in the whole life-cycle risk process is the process of risk identification. The quality of this process has a direct effect on the quality and accuracy of risk analysis, quantification, and development of risk strategy responses, and on the management of risk throughout the life span of projects. The output of risk identification will inform the second quantitative analysis process that focuses on evaluation and assessment of risks associated with each aspect of the life-cycle span of projects.

Whole life risk analysis

Several methodologies are available to deal with WLCC risk analysis. The techniques that can be used in WLCC risk assessment decision making might be summarised as deterministic, probabilistic and AI. Deterministic methods measure the impact on project outcomes of changing one uncertain key value or a combination of values at a time. In contrast, probabilistic methods are based on the assumption that no single figure can adequately represent the full range of possible outcomes of a risky investment (Fuller & Petersen 1996). Rather, a large number of alternative outcomes must be considered and each possibility must be accompanied by an associated probability from a probability distribution, followed by a statistical analysis to measure the degree of risk. Using a deterministic approach, the analyst determines the degree of risk on a subjective basis. AI methods differ from the above approaches and use historical data to model cost and uncertainty in WLCC analysis. None of these techniques can be applied to every situation. The best method depends on the relative size of the project, availability of data and resources, computational aids and skills, and user understanding of the technique being applied. We have not provided here a detailed explanation of all the risk analysis methodologies as these are adequately discussed in Chapter 5.

Whole life risk responses

Developing responses to reduce WLCC risks is the third step in the integrated WLCC risk management framework. Once the building assets and the many different risks and threats to which they are exposed are identified and quantified and the related life-cycle vulnerabilities assessed, necessary steps should be taken to ensure that the entire investment is protected from all sources of external and internal threats. Thus, the third stage is concerned with the identification of strategies that mitigate the effect of anticipated threats to the greatest extent possible. This should be based on the following universal rules: risk avoidance, risk reduction, risk absorption and risk transfer. The various risk responses that may be implemented to mitigate WLCC risks are explained in Chapters 9, 11 and 12.

Whole life risk management plan

Following the identification, quantification and development of risk responses, the related vulnerabilities of building assets need to be determined and planned for. This provides the basis on which risk management plans and decisions are made. The risk management planning process is concerned with putting in place the procedure for:

- What response actions are needed
- When these response actions are needed
- How these actions are implemented
- Who is responsible for the implementation, control and monitoring of the actual progress of risk responses and management strategies that have been developed to deal with the identified risk.



Whole life risk monitoring and feedback

The issue of risk monitoring is essential for ensuring effective implementation of risk control measures. Active risk monitoring ensures that effective response measures to manage the risks are appropriately implemented. Since we are dealing with the life-cycle of projects, the initial decision conditions may change over time, which could lead to the change of risks. Hence, a feedback and continuous assessment of risk through the entire life span of the project is very important in the process of whole life-cycle costing. This process should include tracking the effectiveness of the planned risk responses, reviewing any changes in priority of response management, monitoring the state of the risks, updating the whole life-cycle analysis accordingly and reviewing the economic performance indicators to check whether the investment decision is still valid or otherwise. In this way risk monitoring not only evaluates the performance of risk response strategies but also serves as a continuing feedback or audit mechanism.

The application of the above framework should take place during the early stages of asset development as well as at every project milestone, and should continue throughout the whole life of the asset. The information generated from the WLCC risk management framework should inform decision makers on which input data has the most impact on the WLCC result and how robust the final decisions are.

Summary

Evidence from research and practitioners alike has indicated strongly why WLCC has been treated with mistrust – the failure of models to adequately deal with uncertainty. Forecasts by their very nature can be risky to varying degrees, and stakeholders will imperil investment in capital projects if they are not fully equipped with the facts surrounding this uncertainty. It is therefore the responsibility of the analyst to ensure that the WLCC framework deals effectively with risk and provides the necessary information required to make effective decisions. In later chapters of this book we will look at the techniques and procedures that are available to the analyst to develop well-rounded WLCC models that are reliable and accurate.

