



**Directorate of Distance Education
NALSAR University of Law, Hyderabad**

Reading Material

**Post-Graduate Diploma in Financial Services
& Legislations**

1.1.2 - Financial Legislations

By:

Dr.Y.V.Ramana Murthy

Associate Professor of Management
Centre for Management Studies
NALSAR University of Law

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MODULE-I

BANKING & NBFC LEGISLATIONS

HISTORY OF BANKING INDIA:

Modern banking in India originated in the last decade of the 18th century. Among the first banks were the Bank of Hindustan, which was established in 1770 and liquidated in 1829–32; and the General Bank of India, established in 1786 but failed in 1791

The largest bank and the oldest still in existence is the State Bank of India (S.B.I). It originated and started working as the Bank of Calcutta in mid-June 1806. In 1809, it was renamed as the Bank of Bengal. This was one of the three banks founded by a presidency government, the other two were the Bank of Bombay in 1840 and the Bank of Madras in 1843. The three banks were merged in 1921 to form the Imperial Bank of India, which upon India's independence, became the State Bank of India in 1955. For many years the presidency banks had acted as quasi-central banks, as did their successors, until the Reserve Bank of India was established in 1935, under the Reserve Bank of India Act, 1934. Southeast Asia's biggest bank DBS Group Holdings (DBSM.SI) is getting ready to enter India's credit card market in 2020 according to a senior company executive.

In 1960, the State Banks of India was given control of eight state-associated banks under the State Bank of India (Subsidiary Banks) Act, 1959. These are now called its associate banks. In 1969 the Indian government nationalised 14 major private banks; one of the big banks was Bank of India. In 1980, 6 more private banks were nationalised. These nationalised banks are the majority of lenders in the Indian economy. They dominate the banking sector because of their large size and widespread networks.

The Indian banking sector is broadly classified into scheduled and non-scheduled banks. The scheduled banks are those included under the 2nd Schedule of the Reserve Bank of India Act, 1934. The scheduled banks are further classified into: nationalised banks; State Bank of India and its associates; Regional Rural Banks (RRBs); foreign banks; and other Indian private sector banks. The term commercial banks refers to both scheduled and non-scheduled commercial banks regulated under the Banking Regulation Act, 1949.

Generally the supply, product range and reach of banking in India is fairly mature-even though reach in rural India and to the poor still remains a challenge. The government has developed initiatives to address this through the State Bank of India expanding its branch network and through the National Bank for Agriculture and Rural Development (NABARD) with facilities like microfinance.

Banking in ancient India:

The Vedas (2000–1400 BCE) are the earliest Indian texts to mention the concept of usury, with the word *kusidin* translated as "usurer". The Sutras (700–100 BCE) and the Jatakas (600–400 BCE) also mention usury. Texts of this period also condemned usury: Vasishtha forbade Brahmin and Kshatriya varnas from participating in usury. By the 2nd century CE, usury became more acceptable. The Manusmriti considered usury an acceptable means of acquiring wealth or leading a livelihood. It also considered money lending above a certain rate and different ceiling rates for different castes a grave sin.

The Jatakas, Dharmashastras and Kautilya also mention the existence of loan deeds, called *rnapatra*, *rnapanna*, or *rnalekhaya*.

Later during the Mauryan period (321–185 BCE), an instrument called *adesha* was in use, which was an order on a banker directing him to pay the sum on the note to a third person, which corresponds to the definition of a modern bill of exchange. The considerable use of these instruments has been recorded. In large towns, merchants also gave letters of credit to one another.

Medieval era

The use of loan deeds continued into the Mughal era and were called *dastawez*. Two types of loan deeds have been recorded. The *dastawez-e-indultalab* was payable on demand and *dastawez-e-miadi* was payable after a stipulated time. The use of payment orders by royal treasuries, called *barattes*, have been also recorded. There are also records of Indian bankers using bills of exchange on foreign countries. The evolution of *hundis*, a type of credit instrument, also occurred during this period and remain in use.

Colonial era

During the period of British rule merchants established the Union Bank of Calcutta in 1829,^[17] first as a private joint stock association, then partnership. Its proprietors were the owners of the earlier Commercial Bank and the Calcutta Bank, who by mutual consent created Union Bank to replace these two banks. In 1840 it established an agency at Singapore, and closed the one at Mirzapore that it had opened in the previous year. Also in 1840 the Bank revealed that it had been the subject of a fraud by the bank's accountant. Union Bank was incorporated in 1845 but failed in 1848, having been insolvent for some time and having used new money from depositors to pay its dividends.

The Allahabad Bank, established in 1865 and still functioning today, is the oldest Joint Stock bank in India, it was not the first though. That honour belongs to the Bank of Upper India, which was established in 1863 and survived until 1913, when it failed, with some of its assets and liabilities being transferred to the Alliance Bank of Simla.

Foreign banks too started to appear, particularly in Calcutta, in the 1860s. Grindlays Bank opened its first branch in Calcutta in 1864. The Comptoir d'Escompte de Paris opened a branch in Calcutta in 1860, and another in Bombay in 1862; branches followed in Madras and Pondicherry, then a French possession. HSBC established itself in Bengal in 1869. Calcutta was the most active trading port in India, mainly due to the trade of the British Empire, and so became a banking centre.

The first entirely Indian joint stock bank was the Oudh Commercial Bank, established in 1881 in Faizabad. It failed in 1958. The next was the Punjab National Bank, established in Lahore in 1894, which has survived to the present and is now one of the largest banks in India.

Around the turn of the 20th Century, the Indian economy was passing through a relative period of stability. Around five decades had elapsed since the Indian rebellion, and the social, industrial and other infrastructure had improved. Indians had established small banks, most of which served particular ethnic and religious communities.

The presidency banks dominated banking in India but there were also some exchange banks and a number of Indian joint stock banks. All these banks operated in different segments of the economy. The exchange banks, mostly owned by Europeans, concentrated on financing foreign trade. Indian joint stock banks were generally under capitalised and lacked the experience and maturity to compete with the presidency and exchange banks. This segmentation let Lord Curzon to observe, "In respect of banking it seems we are behind the times. We are like some old fashioned sailing ship, divided by solid wooden bulkheads into separate and cumbersome compartments.

The period between 1906 and 1911 saw the establishment of banks inspired by the Swadeshi movement. The Swadeshi movement inspired local businessmen and political figures to found banks of and for the Indian community. A number of banks established then have survived to the present such as Catholic Syrian Bank, The South Indian Bank, Bank of India, Corporation Bank, Indian Bank, Bank of Baroda, Canara Bank and Central Bank of India.

The fervour of Swadeshi movement led to the establishment of many private banks in Dakshina Kannada and Udupi district, which were unified earlier and known by the name South Canara (South Kanara) district. Four nationalised banks started in this district and also a leading private sector bank. Hence undivided Dakshina Kannada district is known as "Cradle of Indian Banking".

The inaugural officeholder was the Britisher Sir Osborne Smith(1 April 1935), while C. D. Deshmukh(11 August 1943) was the first Indian governor. On December 12, 2018, Shaktikanta Das, who was the finance secretary with the Government of India, begins his journey as the new RBI Governor, taking charge from Urjit R Patel.

During the First World War (1914–1918) through the end of the Second World War (1939–1945), and two years thereafter until the independence of India were challenging for Indian banking. The years of the First World War were turbulent, and it took its toll with banks simply collapsing despite the Indian economy gaining indirect boost due to war-related economic activities. At least 94 banks in India failed between 1913 and 1918 as indicated in the following table:

Years	Number of banks that failed	Authorised Capital (₹ Lakhs)	Paid-up Capital (₹ Lakhs)
1913	12	274	35
1914	42	710	109
1915	11	56	5
1916	13	231	4
1917	9	76	25
1918	7	209	1

Source: Wikipedia

Post-Independence

During 1938-46, bank branch offices trebled to 3,469^[20] and deposits quadrupled to ₹962 crore. Nevertheless, the partition of India in 1947 adversely impacted the economies of Punjab and West Bengal, paralysing banking activities for months. India's independence marked the end of a regime of the Laissez-faire for the Indian banking. The Government of India initiated measures to play an active role in the economic life of the nation, and the Industrial Policy Resolution adopted by the government in 1948 envisaged a mixed economy. This resulted in greater involvement of the state in different segments of the economy including banking and finance. The major steps to regulate banking included:

- The Reserve Bank of India, India's central banking authority, was established in April 1935, but was nationalized on 1 January 1949 under the terms of the Reserve Bank of India (Transfer to Public Ownership) Act, 1948 (RBI, 2005b).
- In 1949, the Banking Regulation Act was enacted, which empowered the Reserve Bank of India (RBI) to regulate, control, and inspect the banks in India.
- The Banking Regulation Act also provided that no new bank or branch of an existing bank could be opened without a license from the RBI, and no two banks could have common directors.

Nationalisation in 1969 and 1980

Despite the provisions, control and regulations of the Reserve Bank of India, banks in India except the State Bank of India (SBI), remain owned and operated by private persons. By the 1960s, the Indian banking industry had become an important tool to facilitate the development of the Indian economy. At the same time, it had emerged as a large employer, and a debate had ensued about the nationalisation of the banking industry. Indira Gandhi, the then Prime Minister of India, expressed the intention of the Government of India in the annual conference of the All India Congress Meeting in a paper entitled *Stray thoughts on Bank Nationalization*.

Thereafter, the Government of India issued the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969 and nationalised the 14 largest commercial banks with effect from the midnight of 19 July 1969. These banks contained 85 percent of bank deposits in the country. Within two weeks of the issue of the ordinance, the Parliament passed the Banking Companies (Acquisition and Transfer of Undertaking) Bill, and it received presidential approval on 9 August 1969.

The following banks were nationalised in 1969:

- Allahabad Bank
- Bank of Baroda
- Bank of India
- Bank of Maharashtra
- Central Bank of India
- Canara Bank
- Dena Bank
- Indian Bank

- Indian Overseas Bank
- Punjab National Bank
- Syndicate Bank
- UCO Bank
- Union Bank
- United Bank of India

A second round of nationalisations of six more commercial banks followed in 1980. The stated reason for the nationalisation was to give the government more control of credit delivery. With the second round of nationalisations, the Government of India controlled around 91% of the banking business of India.

The following banks were nationalised in 1980:

- Punjab and Sind Bank
- Vijaya Bank
- Oriental Bank of India
- Corporate Bank
- Andhra Bank
- New Bank of India

Later on, in the year 1993, the government merged New Bank of India with Punjab National Bank. It was the only merger between nationalised banks and resulted in the reduction of the number of nationalised banks from 20 to 19. Until the 1990s, the nationalised banks grew at a pace of around 4%, closer to the average growth rate of the Indian economy.

Liberalisation in the 1990s

In the early 1990s, the then government embarked on a policy of liberalisation, licensing a small number of private banks. These came to be known as *New Generation tech-savvy banks*, and included Global Trust Bank (the first of such new generation banks to be set up), which later amalgamated with Oriental Bank of Commerce, IndusInd Bank, UTI Bank (since renamed Axis Bank), ICICI Bank and HDFC Bank. This move, along with the rapid growth in the economy of India, revitalised the banking sector in India, which has seen rapid growth with strong contribution from all the three sectors of banks, namely, government banks, private banks and foreign banks.

The next stage for the Indian banking has been set up, with proposed relaxation of norms for foreign direct investment. All foreign investors in banks may be given voting rights that could exceed the present cap of 10% at present. It has gone up to 74% with some restrictions.

The new policy shook the Banking sector in India completely. Bankers, till this time, were used to the 4–6–4 method (borrow at 4%; lend at 6%; go home at 4) of functioning. The new wave ushered in a modern outlook and tech-savvy methods of working for traditional banks. All this led to the retail boom in India. People demanded more from their banks and received more.

The Indian banking sector is broadly classified into scheduled banks and non-scheduled banks. All banks included in the Second Schedule to the Reserve Bank of India Act, 1934 are Scheduled Banks. These banks comprise Scheduled Commercial Banks and Scheduled Co-operative Banks. Scheduled Co-operative Banks consist of Scheduled State Co-operative Banks and Scheduled Urban Cooperative Banks.

In the bank group-wise classification, IDBI Bank Ltd. is included in the category of other public sector bank.

Growth of Banking in India of Scheduled Commercial Banks

Indicators	31 March of								
	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of Commercial Banks	284	218	178	169	166	163	163	169	151
Number of Branches	70,373	72,072	74,653	78,787	82,897	88,203	94,019	102,377	109,811
Population per Banks (in thousands)	16	16	15	15	15	14	13	13	12
Aggregate Deposits	₹17,002 billion(US\$250 billion)	₹21,090 billion(US\$310 billion)	₹26,119 billion(US\$380 billion)	₹31,969 billion(US\$460 billion)	₹38,341 billion(US\$550 billion)	₹44,928 billion(US\$650 billion)	₹52,078 billion(US\$750 billion)	₹59,091 billion(US\$850 billion)	₹67,504.54 billion(US\$980 billion)
Bank	₹11,004	₹15,071	₹19,312	₹23,619	₹27,755	₹32,448	₹39,421	₹46,119	₹52,605

Growth of Banking in India of Scheduled Commercial Banks

Indicators	31 March of								
	2005	2006	2007	2008	2009	2010	2011	2012	2013
Credit	billion(US\$160 billion)	billion(US\$220 billion)	billion(US\$280 billion)	billion(US\$340 billion)	billion(US\$400 billion)	billion(US\$470 billion)	billion(US\$570 billion)	billion(US\$670 billion)	billion(US\$760 billion)
Deposit as percentage to GNP (at factor cost)	62%	64%	69%	73%	77%	78%	78%	78%	79%
Per Capita Deposit	₹16,281	₹19,130	₹23,382	₹28,610	₹33,919	₹39,107	₹45,505	₹50,183	₹56,380
Per Capita Credit	₹10,752	₹13,869	₹17,541	₹21,218	₹24,617	₹28,431	₹34,187	₹38,874	₹44,028
Credit Deposit Ratio	63%	70%	74%	75%	74%	74%	76%	79%	79%

Source: Wikipedia

By 2010, the supply, product range and reach of banking in India was generally fairly mature-even though reach in rural India still remains a challenge for the private sector and foreign banks. In quality of assets and capital adequacy, Indian banks are considered to have clean, strong and transparent balance sheets relative to other banks in comparable economies in its region. The Reserve Bank of India is an autonomous body, with minimal pressure from the government.

With the growth in the Indian economy expected to be strong for quite some time-especially in its services sector-the demand for banking services, especially retail banking, mortgages and investment services are expected to be strong. One may also expect M&As, takeovers, and asset sales.

In March 2006, the Reserve Bank of India allowed Warburg Pincus to increase its stake in Kotak Mahindra Bank (a private sector bank) to 10%. This is the first time an investor has been allowed to hold more than 5% in a private sector bank since the RBI announced norms in 2005 that any stake exceeding 5% in the private sector banks would need to be vetted by them.

In recent years critics have charged that the non-government owned banks are too aggressive in their loan recovery efforts in connexion with housing, vehicle and personal loans. There are press reports that the banks' loan recovery efforts have driven defaulting borrowers to suicide.

By 2013 the Indian Banking Industry employed 1,175,149 employees and had a total of 109,811 branches in India and 171 branches abroad and manages an aggregate deposit of ₹67,504.54 billion (US\$980 billion or €870 billion) and bank credit of ₹52,604.59 billion (US\$760 billion or €680 billion). The net profit of the banks operating in India was ₹1,027.51 billion (US\$15 billion or €13 billion) against a turnover of ₹9,148.59 billion (US\$130 billion or €120 billion) for the financial year 2012–13.

Pradhan Mantri Jan Dhan Yojana is a scheme for comprehensive financial inclusion launched by the Prime Minister of India, Narendra Modi, in 2014. Run by Department of Financial Services, Ministry of Finance, on the inauguration day, 1.5 Crore (15 million) bank accounts were opened under this scheme. By 15 July 2015, 16.92 crore accounts were opened, with around ₹20,288.37 crore (US\$2.9 billion) were deposited under the scheme, which also has an option for opening new bank accounts with zero balance.

Payment Bank

Payments bank is a new model of banks conceptualised by the Reserve Bank of India (RBI). These banks can accept a restricted deposit, which is currently limited to ₹1 lakh per customer. These banks may not issue loans or credit cards, but may offer both current and savings accounts. Payments banks may issue ATM and debit cards, and offer net-banking and mobile-banking. The banks will be licensed as payments banks under Section 22 of the Banking Regulation Act, 1949, and will be registered as public limited company under the Companies Act, 2013.

There are six payments banks

1. Aditya Birla Idea Paymnts Bank Ltd. (Shut down in 2019)
2. Airtel Payments Banks Ltd.
3. Fino Payments Bank Ltd.
4. India Post Payments Bank Ltd.
5. Jio Payments Bank Ltd.

6. PayTm Payments Bank Ltd.

Small finance banks

To further the objective of financial inclusion, the RBI granted approval in 2016 to ten entities to set up small finance banks. Since then, all ten have received the necessary licenses. A small finance bank is a niche type of bank to cater to the needs of people who traditionally have not used scheduled banks. Each of these banks is to open at least 25% of its branches in areas that do not have any other bank branches (unbanked regions). A small finance bank should hold 75% of its net credits in loans to firms in priority sector lending, and 50% of the loans in its portfolio must be less than ₹25 lakh (US\$38,000).

There are ten small finance banks

1. AU Small Finance Bank Ltd.
2. Capital Small Finance Bank Ltd.
3. Equitas Small Finance Bank Ltd.
4. ESAF Small Finance Bank Ltd.
5. Fincare Small Finance Bank Ltd.
6. Jana Small Finance Bank Ltd.
7. North East Small Finance Bank Ltd.
8. Suryoday Small Finance Bank Ltd.
9. Ujjivan Small Finance Bank Ltd.
10. Utkarsh Small Finance Bank Ltd.

Merger of Public Sector Banks in India

The consolidation of SBI associated banks started first by merging State Bank of Saurashtra to it. The merger happened on 13 August 2008. Then after State Bank of Indore was acquired by State Bank of India on August 27, 2010. The remaining 27 nationalised banks were merged into 12 banks from 2017-19. The State Bank of Bikaner & Jaipur, State Bank of Hyderabad, State Bank of Mysore, State Bank of Patiala and State Bank of Travancore, and Bharatiya Mahila Bank were merged with State Bank of India with effect from 1 April 2017. Vijaya Bank and Dena Bank were merged into Bank of Baroda in 2018. IDBI Bank was categorised as a private bank with effect from January 2019.

On 30 August 2019, Finance Minister of India announced the government's plan for further consolidation of public sector banks: Indian Bank is to be merged with Allahabad Bank (anchor bank - Indian Bank); PNB, OBC and United Bank are to be merged (anchor bank - PNB); Union Bank of India, Andhra Bank and Corporation Bank are to be merged (anchor bank - Union Bank of India); and Canara Bank and Syndicate Bank are to be merged (anchor bank - Canara Bank). Post this merger, the number of Public Sector Banks will come down to the following twelve.

Public Sector Banks (Government Shareholding %, as of 1st Apr '19)

1. Bank of India (87.0535%)
2. Bank of Baroda (63.74%)
3. Bank of Maharashtra (87.01%)
4. Central Bank of India (88.02%)
5. Indian Overseas Bank (91.99%)

6. Punjab & Sind Bank (79.62%)
7. State Bank of India (61.00%)
8. UCO Bank (93.29%)

Being merged

1. Indian Bank (81.73%) - Allahabad Bank (79.41%)
2. Union Bank of India (67.43%) - Andhra Bank (84.83%) - Corporation Bank (84.96%)
3. Canara Bank (72.55%) - Syndicate Bank (81.23%)
4. Punjab National Bank (70.22%) - Oriental Bank of Commerce (77.23%) - United Bank of India (92.25%)

Payments Bank (PB)

- India Post Payments Bank (PPB) (100%)

IMPORTANT PROVISIONS OF RBI ACT

The growth of joint-stock banking in India is associated with the agency houses in the beginning of the 18th century. Earlier, indigenous bankers, *nidhis* and money lenders acted as bankers. They worked on the norms and taboos of the community. However, with the growth of joint-stock banking and, moreover, with a large number of agency houses entering banking field, it was necessary to modify into law the rules and regulations governing them. A need for the central bank in India to control the banking system, therefore, arose in 1773. During the early period, there was an increase in the number of mushroom companies, many of which were failures. The banking companies were then registered under the Companies Act and were governed by that Act. Banking legislation aims at protecting the interests of the depositors, ensuring control over the volume of credit, developing banking on sound lines, and avoiding bank failures.

Early Efforts

The need for the Central Bank in India arose in 1773. However it was the Hilton Young Commission in 1926 that recommended the establishment of a central bank. The Government introduced a bill in the Legislative Assembly in January 1927. The Reserve Bank of India Bill was dropped "after acrimonious and kaleidoscopic discussion," as the late Sir James Taylor put it. The Legislative Assembly was divided on the point of the constitution of the board, for the Muslim and the minority communities insisted on safeguards to protect the minorities which was guaranteed in the Assembly. Thereafter it took seven years to pass the Act in 1934, establishing it as a shareholders' bank.

After Independence, the Government proposed to take steps to nationalize the Reserve Bank after 30th September, 1948, when it would cease to be the common banker for India and Pakistan. The demand for State-owned, controlled and managed bank dates back to 1927.

Thereafter, the demand for nationalization was revived in a minute appended to the report of the select committee of the Legislative Assembly. Later, in the Central Legislative Assembly, resolutions was moved in February 1947, seeking the nationalization of the Reserve Bank. This indicates the political attitude of the legislators as well as of the public to the nationalization of these premier institutions of banking in India.

Moving the Reserve Bank (Transfer to I Public Ownership) Bill, K.C Neogy, the then Union Finance Minister, observed: "The first piece of legislation to bring about our ideas of nationalization should relate to an institution which is really the pivot of the financial system of the country and on which, to a very large extent, depends the economic well-being of the people." The bill was welcomed by the members of the Legislative Assembly, who enacted it into law and with effect from 1st January 1949, the Reserve Bank of India became the State-owned Bank.

The nationalization of the Reserve Bank was considered premature by the Board of the Bank. C D. Deshmukh, the then Governor of the Reserve Bank observed:" Although the Board of the Bank sincerely believe that this decision is premature and not logically necessary in view of the state of economic development reached by the country, they will be, in the event of the decision proving to be irrevocable, co-operate with the Government in evolving a scheme of nationalisation that is best calculated to ensure its success."

The contention of the Board evidently was that mere transfer from the private to the public sector would not affect the relations between the Bank and the Government or the well-being of the people. And that was why CD. Deshmukh aptly observed: "After all, it is not the theoretical constitution of the institution that matters, but the spirit in which the partnership between the Ministry of Finance and the Bank is worked." Prior to the Act, the relation between the Government, particularly the Ministry of Finance, and the Reserve Bank was close, confidential, even intimate; and it was factual rather than legal. By the Act of 1949, the Government of India established a legal connection between the two.

Board of Directors

Under the Reserve Bank of India Act, the Bank is a corporate body with special powers and obligations for serving the national interest. The establishment of the issue and the banking departments as well as the agricultural credit department was the statutory responsibility of the Bank. The other departments have been set up to perform the functions which have devolved on them from time to time.

The general superintendence and direction of the Bank's affairs is vested of the Bank's affairs is vested in the Central Board of Directors, which comprises: (i) A Governor and not more than four deputy governors appointed by the Central Government under Section 8(1)(a) of the Act; (ii) Four directors nominated by the Central Government, one from each of the four local boards, in terms of Section 8(1)(b); (iii) Ten directors nominated by the Central Government under section 8(1)(c); and (iv) One Government official nominated by the Central Government under Section 8(1)(d).

The Reserve Bank is a liaison between the Government and the commercial banks, financial corporations and small savings boards. Apart from this, it plays an important role in the development of the institutional machinery of industrial finance and agricultural credit, as well as in the development of commercial banking. Moreover, it has nursed the whole co-operative credit structure. In other words, the Reserve Bank has assisted in the steady growth of industry, agriculture, commerce, trade, and small-scale industry.

Salient Features

The following are the salient features of the Reserve Bank of India Act of 1934;

- It has regularized the issue of Bank Notes (Currency).

- It has ensured the monetary stability in the country. The issue of currency notes must be backed by assets in the form of gold bullion, gold coins, foreign securities and rupee securities to such an aggregate amount as is not less than the total liabilities of the Issue Department. The aggregate value of gold coins, gold bullion, and foreign securities held as assets shall not at any time be less than 2/5th of the assets of the Issue Department of the Reserve Bank, and the aggregate value of gold coins and gold bullion shall not fall below Rs. 40 crores. The Governor is the Chairman of the Board of Directors. There are four Deputy Governors to assist him. The London Branch of the Reserve Bank of India was closed in 1963 and its functions were vested in the State Bank of India. Three per cent deposits of scheduled banks are kept as cash reserves with the Reserve Bank free of interest (which is known as Statutory Reserve). Reserve Bank has the power to raise these reserves from 3 per cent to 15 per cent if the circumstances so warrant. In such circumstances the Reserve Bank may pay interest in excess of 3 per cent on the reserves. (This happened in 1960). The Reserve Bank was established on 1st April 1935.
- It is a lender of the last resort. The Reserve Bank is the Bankers' Bank.
- It is a banker to the Government. It manages public debts. It acts as an adviser to the Government in regard to the floating of loans, etc. The Bank Rate was raised from 4 and half per cent to 5 per cent on 29th May 1964 and to 6 per cent on 17th February 1965. The implication of the rise in the Bank Rate is that when it goes higher, the Government security rate drops. The term non-terminable security refers to loans or securities issued without deciding the time of maturity, i.e. three and half per cent loan. It was issued at Rs. 100 but now the price is Rs. 66 only. The Reserve Bank may lend at a lower rate than the prevailing Bank Rate to improve agriculture.

Weapons of Reserve Bank

The important monetary weapons of the Reserve Bank of India are:

- i. Bank Rate - a rate at which Reserve Bank of India lends to various institutions;
- ii. Open market operations;
- iii. Variable cash reserves;
- iv. Selected credit control or directions.

The capital of the Reserve Bank of India shall be five crores according to Sec. 28 (5). The special one-rupee note shall be deemed to be included in the expression "Rupee coin." Section 29 exempts bank notes from stamp duty.

Sec. 31 (1): No person in India, other than the Reserve Bank of India or, as expressly authorised by this Act, the Central Government, shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand or take up any sum or sums of money on the bills, hundies or notes payable to bearer on demand of any such person. Provided that cheques or drafts, including hundies payable to bearer on demand or otherwise, may be drawn on a person's account with a banker, shroff or agent.

Sec. 42 (2): If the average daily balance held at the Reserve Bank by a scheduled bank during any week is below the minimum prescribed limit, such scheduled bank shall be liable to pay to the Reserve Bank of India in respect of that week a penal interest at 3 per cent above the Bank Rate on the amount by which such balance with the Reserve Bank of India falls short of the prescribed minimum. If it continues for a subsequent week, then at 5 per cent above the Bank Rate, and every director, manager or secretary

of that bank, who is knowingly and willfully a party to the default, shall be punishable with fine which may extend to five hundred rupees for each subsequent week during which the default continues, and the bank may be prohibited from receiving fresh deposits from the public.

Sec. 46-A (1): The Reserve Bank of India shall establish and "maintain a fund to be known as the National Agricultural Credit (Long-Term Operation) Fund, to which shall be credited:

- (a) An initial sum of Rs. 10 crores by the Reserve Bank of India;
- (b) Such further sums of money as the Reserve Bank of India may contribute every year.

Ownership and Profits

The Bank was originally established as a shareholders' bank, with a share capital of Rs. 5 crores. In addition, the Central Government contributed an equal amount to form the Reserve Fund of the Bank. In January 1949, the Bank was nationalised and its entire share capital was acquired by the Central Government. As at the end of June 1967, the share capital stood at the same figure (Rs. 5 crores) while the Reserve Fund stood at Rs. 80 crores.

Under Section 47 of the Act, the profit of the Bank is to be paid to the Central Government. In arriving at the figure of profit, the Bank is entitled to make provisions for (i) bad and doubtful debts (ii) depreciation in assets (iii) all other matters for which provision is required to be made in terms of the Act and (iv) all matters which are usually provided for by bankers. The Bank thus has considerable latitude and flexibility for building up reserves including secret reserves. Apart from the Reserve Fund, the Bank has created certain special funds in terms of the obligations placed on it by sections 46A, 46B, and 46C of the Act, which respectively require the creation of three special funds, two in connection with agricultural credit and one for industrial finance.

The two funds for agricultural credit are the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund. These were created in 1956, following the recommendations of the Committee of Direction, All India Rural Credit Survey. The long term operations fund is used (i) for long-term loans to state governments for a maximum period of 20 years to enable them to subscribe directly or indirectly to the share capital of co-operative credit institutions (ii) for medium-term loans (between 15 months and 5 years) to state co-operative banks for agricultural purposes, (iii) for long-term loans to central land mortgage banks. The Stabilization Fund is applied exclusively for granting medium-term loans to state co-operative banks so that they may be able to convert their short-term credits into medium-term credits, whenever it becomes necessary to do as a result of drought, famine or other natural calamities. In 1965-66 (July-June) the Bank was obliged for the first time to have recourse to the Stabilization fund for converting the short-term borrowings of Rs. 4.68 crores of some state co-operative banks (in the areas affected by scarcity conditions) into medium-term borrowings.

As at the end of June 1967, the long-term operations fund stood at Rs. 131 crores while the stabilization fund amounted to Rs. 25 crores.

The special fund relating to industrial finance was established in 1964, to provide funds to the Industrial Development Bank of India in the form of loans or by purchase of bonds and debentures issued by the Development Bank. The fund was started with Rs. 10 crores, which was the Reserve Bank's initial contribution, and stood at Rs. 30 crores at the end of June 1967.

The Bank's accounting year is July-June and the annual accounts of the Bank along with a report of the directors of the central , board, are required to be submitted to the central government within two months, i.e., by end of August. The Bank is also required to prepare a weekly account of its Issue and Banking departments.

During 1966-67 the net profit available for payment to Government amounted to Rs. 60 crores as against Rs. 50 crores during 1965-66. There was a significant rise of Rs. 17.79 crores in the Bank's income, from Rs. 67.33 crores in 1965-66 to Rs. 85.12 crores in 1966-67, the rise in the expenditure being Rs. 7.59 crores, from Rs. 17.53 crores to Rs. 25.12 crores. The Bank has attributed the rise in its income to the increased earnings by way of discount on treasury bills and interest on its security holdings. The increased expenditure is mainly due to the higher agency charges paid to the State Bank of India and its subsidiaries in respect of government transactions.

The Bank is exempted from payment of income-tax or super tax on its income, profits or gains. The annual accounts of the Bank are required to be audited by two auditors who are appointed by the Central Government and their remuneration is also fixed by that government. The Central government is also empowered to appoint the comptroller and Auditor General of India to examine and report on the accounts of the Bank.

Management

The management of the Bank is vested in the Central Board of Directors and they may exercise all powers and do all acts and things which may be exercised or done by the Bank. The authority vested in the Board is subject to the power of the Central Government to issue directions to the Bank. The Central Government has also the power to supersede the Board and entrust the Bank's management to such other agency as it may determine. If such an action is taken, a report thereof must be laid before the Parliament within three months.

The acts or proceedings of the Board cannot be questioned on the ground merely of the existence of any vacancy or any defect in the constitution of the Board. The meetings of the Central Board are to be held at least six times in a year and at least once in each quarter. The meetings are to be convened by the Governor but any four directors can ask for a meeting at any time and it is obligatory for the Governor to call a meeting.

The Governor (and in his absence, a Deputy Governor authorized by the Governor) presides at the meetings of the Central Board, and in the event of an equality of votes, has a second or casting vote. Subject to any regulations made by the Central Board in this behalf, the Governor and in his absence, the Deputy Governor nominated by him for the purpose, will have powers of general superintendence and direction of the affairs and business of the Bank and he may exercise all powers and do all acts and things which may be exercised or done by the Bank. The Governor is also authorized in terms of Section 54A of the Act to delegate to a Deputy Governor, by means of a general or special order and subject to conditions and limitations that maybe specified in the order, such of his powers and functions as he may consider appropriate for the efficient administration of the affairs of the Bank.

The Governor and the Deputy Governors hold office for such periods not exceeding five years as may be fixed by the Central Government at the time of their appointment, and are eligible for reappointment. The directors nominated under Section 8(1)(c) hold office for four years, but may continue thereafter till their successors have been nominated; the terms of office of those nominated under Section 8(1)(b) is related to their membership of the local boards. The Government official holds office during the pleasure of the Central Government. The Governor, and in his absence, a Deputy Governor

nominated by him, is the chairman of the central board. The Deputy Governors and the Government's official nominee are not entitled to vote at the meetings of the board.

For the day-to-day conduct of the bank's business the Central Board, in terms of the powers vested in it under section 58 of the Act can make such regulations as it may consider necessary. The regulations so made will be effective only with the prior sanction of the Central Government. The powers of the Board to make regulations are fairly wide in that the Board can make regulations to cover all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the Act. In particular, the Board is authorised to make regulations in regard to the following matters:

1. Conduct of the business of the Central Board and the procedure that may be followed at its meetings;
2. Conduct of business of Local Boards;
3. Delegation of powers and functions to Local Boards;
4. Delegation of powers and functions of the Central Board to Deputy Governors, Directors, or Officers of the Bank;
5. Formation of committees of the Central Board and delegation of functions and powers to such committees;
6. Constitution and management of staff and superannuation funds;
7. Execution of contracts binding on the Bank;
8. Use of the common seal of the Bank;
9. Maintenance of accounts and preparation of balance sheets of the Bank;
10. Remuneration that may be paid to the Directors;
11. The relations of the scheduled banks with the Bank;
12. The returns submitted by the scheduled banks to the Bank;
13. Conduct and management of clearing houses for scheduled banks;
14. Refund of currency notes of the Government of India or bank notes which are lost, stolen, mutilated or imperfect;
15. For the efficient conduct of the business of the Bank.

Copies of all regulations made by the Central Board under Section 58 of the Act can be obtained by the public on payment. The bank has framed regulations which cover items 1 to 12 and 14 listed above. The regulations which would be of interest to the general public are:

- (i) Reserve Bank of India General Regulations, 1935.
- (ii) Reserve Bank of India (Note Issue) Regulations, 1935.
- (iii) Reserve Bank of India Scheduled Banks' Regulations, 1951.

The year mentioned against each set of regulations, indicates that the regulations were first made in those years. The regulations have, however, been amended from time to time.

The legal provisions in regard to the management and conduct of the bank's affairs can thus be summarized as under:

- i. the management of the Bank is vested in the Central Board of Directors;
- ii. the Governor (and in his absence the Deputy Governor nominated by him for the purpose) has concurrent powers of management, subject to any regulations framed by the Board in this behalf; and
- iii. the Central Board can, with the prior approval of Central Government, frame regulations for the smooth and efficient conduct of the Bank's business.

Central Board Composition and Terms of Appointments

The strength of the Central Board is at present fixed at twenty Directors, comprising the Governor, four Deputy Governors, four Directors nominated from amongst the four Local Boards (one from each), one Government Official (generally secretary of the Finance Ministry) and ten other persons. All the Directors including the Governor and the Deputy Governors are appointed/nominated by the Central Government.

The Governor and the Deputy Governors are appointed for such terms, not exceeding five years, as the Central Government may fix when appointing them. They can be reappointed for a further term. They are full-time officers of the Bank and their remuneration is fixed by the Central Board with the approval of the Central Government. At the request of the Central Government or any State Government, the Central Board may permit them to undertake such part-time honorary work as is not likely to interfere with their duties.

Although the Deputy Governors and the Government official are directors of the Central Board and can attend its meetings and take part in its deliberations, they are not entitled to vote.

There is no fixed term for the appointment of the Government official and he holds the office (of Director) at the pleasure of the Central Government. In the case of the four directors who are nominated from amongst the members of the Local Boards, their period of appointment will coincide with the period of their membership of the respective Local Boards. The remaining ten Directors are appointed for a period of four years. A retiring Director is eligible for re-appointment.

The Central Government is vested with the powers to remove from office any Director including the Governor and the Deputy Governor.

Committee of the Central Board

As a matter of practical convenience, the board has delegated some of its functions, by means of statutory regulations made under Section 58(2) of the Act, to a committee called the committee of the central board, consisting of the Governor, the Deputy Governors and such other directors as may be present at the relevant time in the area in which the meeting is held. The committee meets once a week, generally on Wednesdays, at the office of the Bank where the Governor has his headquarters for the time being to attend to the current business of the Bank, including the approval of the Bank's weekly accounts pertaining to the issue and the banking departments. To assist the committee of the central board, two sub-committees, one for matters relating to building projects and the other for dealing with staff and other matters, have been set up.

Local Boards

For each of the four regional areas of the country specified in the First Schedule to the Act, there is a local board with headquarters in Bombay, Calcutta, Madras and New Delhi. Local boards consist of five members each, appointed by the Central Government for a term of four years (but may continue thereafter until their successors have been appointed) to represent, as far as possible territorial and economic interests and the interests of co-operative and indigenous banks. The local board members elect from amongst themselves the chairman of the board; the managers in charge of the Bank's offices in Mumbai, Kolkata, Madras and New Delhi are the ex-officio secretaries of the local boards in these centers. The functions of the local boards are to advise the central board on such matters as may be generally or specifically referred to them and to perform such duties as the central board may delegate to them.

Governor is the Chief Executive

As the chairman of the central board of directors. The Governor is the Bank's chief executive authority. It has the powers of general superintendence and direction of the affairs and business of the bank, and may exercise all the powers which may be exercised by the Bank, unless otherwise provided in the regulations made by the central board. In the absence of the Governor, the Deputy Governor nominated by him would exercise his powers. The Governor is assisted at present in the performance of his duties by four Deputy Governors and four executive directors. The executive directors come in between the Deputy Governors and the chief manager. They are not members of the central board but attend the board meeting by invitation. The first post of executive director in the Bank was created in October 1950 to hold charge of the new department of banking development. With the enlargement of the Bank's activities in various spheres and the consequent increase in the work load of the Deputy Governors, the number of executive directors was increased in later years. They are now in charge of different operations of the bank.

Reserve Bank's Instruments of Credit Control

The government through the reserve bank of India employs the monetary policy as an instrument of achieving the objectives of general economic policy. The main objectives of the monetary policy are as follows:

1. Regulation of monetary growth and maintenance of price stability
2. Ensuring adequate expansion of credit
3. Assist economic growth
4. Encourage flow of credit into priority and neglected sectors
5. Strengthening of the banking system of the country

The quantitative or general measures influence the total volume of the credit while the qualitative measures influence the selective or particular use of credit. Reserve Bank of India has the power to influence the volume of credit created by banks in India. The banking regulation act 1949 says that the Reserve Bank of India can ask any particular bank (or even all the banks i.e. banking system of the country) to not to lend to particular groups/ persons. Apart from this RBI is armed with weapons to control the money market in India. For example each bank has to get a license from RBI to do banking

business in India and this license is always subject to cancellation by RBI provided the bank does not fulfill the requirements stipulated by RBI. Each scheduled bank needs to send a weekly report to RBI which shows its assets and liabilities. Quantitative measures: The quantitative measures of credit control are:

2. Bank Rate Policy: The bank rate is the Official interest rate at which RBI rediscounts the approved bills held by commercial banks. For controlling the credit, inflation and money supply, RBI will increase the Bank Rate. Current Bank Rate is 6%.
3. Open Market Operations: OMO The Open market Operations refer to direct sales and purchase of securities and bills in the open market by Reserve bank of India. The aim is to control volume of credit.
4. Cash Reserve Ratio: Cash reserve ratio refers to that portion of total deposits in commercial Bank which it has to keep with RBI as cash reserves. The current Cash reserve Ratio is 6%.
5. Statutory Liquidity Ratio: It refers to that portion of deposits with the banks which it has to keep with itself as liquid assets(Gold, approved govt. securities etc.) . the current SLR is 25%. If RBI wishes to control credit and discourage credit it would increase CRR & SLR.

Qualitative measures: Qualitative credit is used by the RBI for selective purposes. Some of them are:

1. Margin requirements: This refers to difference between the securities offered and amount borrowed by the banks.
2. Consumer Credit Regulation: This refers to issuing rules regarding down payments and maximum maturities of installment credit for purchase of goods.
3. Guidelines: RBI issues oral, written statements, appeals, guidelines, warnings etc. to the banks.
4. Rationing of credit: The RBI controls the Credit granted / allocated by commercial banks.
5. Moral Suasion: psychological means and informal means of selective credit control.
6. Direct Action: This step is taken by the RBI against banks that don't fulfill conditions and requirements. RBI may refuse to rediscount their papers or may give excess credits or charge a penal rate of interest over and above the Bank rate, for credit demanded beyond a limit.

RECOVERY OF DEBTS DUE TO BANKS & FINANCIAL INSTITUTIONS Act

Origin of RDDBFI Act – An Introduction

Banks and financial institutions duly registered with Reserve Bank of India (RBI) provide loan facility to legal entities and individuals (borrowers). In the event where the borrower fails to repay loan amount or any part thereof which also includes unpaid interests and other charges and/or debt becomes Non-Performing Asset (NPA), banks and financial institutions can recover the debt by approaching appropriate judicial forums.

Before, the enactment of the RDDBFI Act, banks, and financial institutions were facing huge challenges in recovering debts from the borrowers as the courts were overburdened with large numbers of regular cases due to which courts could not accord priority to recovery matters of the banks and financial

institutions. The Government of India in 1981 constituted a committee headed by Mr T. Tiwari, this committee suggested a quasi-judicial setup exclusively for banks and financial institutions which by adopting a summary procedure can quickly dispose-off the recovery cases filed by the banks and financial institutions against the borrowers.

Again in 1991, a committee was set up under Mr Narashmam, which endorsed the view of the Mr T. Tiwari Committee and recommended the establishment of quasi-judicial for the speedy recovery of debts. Pursuant to which Government of India enacted the RDDBFI Act. Through, the RDDBFI Act quasi-judicial authorities were constituted, and the procedure was specified for the speedy recovery of debt.

Authorities under RDDBFI Act

Debt Recovery Tribunal

Section 3, provides for the establishment of Debt Recovery Tribunal (DRT), by notification to be issued by the Central Government, for exercising, jurisdiction, powers, and authority conferred on such tribunal under the RDDBFI Act. First DRT was established in Kolkata in the year 1994. Presently 33 DRTs are functioning at various places in India, and 6 more DRTs are also being established[1]. As per section 4, DRT consists of sole member only, known as Presiding Officer. Section 5, provides that a person who has been or is qualified to become District Judge can be appointed as Presiding Office of DRT. Section 6 provides that the terms of the Presiding Office shall end after the expiry of the period of 5 years from the date he enters the office and he will be eligible for reappointment provided he has not attained the age of 65 years.

Debt Recovery Appellate Tribunal

Sections 8 -11 deals with the establishment, qualification, and term of the Chair Person of the Debt Recovery Appellate Tribunal (DRAT). DRAT is established to exercise control and powers conferred under the RDDBFI Act. DRAT consist of sole member to be known as Chair Person. A person is eligible to become a Chair Person, if he has been an or qualified to become a High Court Judge, or has been a member of the Indian Legal Services and held a Grade 1 post as such member for the minimum period of three years or has held office of Presiding Officer of Tribunal for period of at least three years. The Chair Person of DRAT can hold his office for the period of five years and is also eligible for reappointment, provided, that he has not attained the age of seventy years. Presently there are 5 DRATs in India in Delhi, Chennai, Mumbai, Allahabad, and Kolkata. DRAT has appellate and supervisory jurisdiction over DRTs.

Who can recover money from DRT under RDDBFI Act

As per section 1(4), the provisions of RDDBFI Act does not apply where the amount of debt due to the bank or financial institution or the consortium of banks and financial institutions is less than Rupees Ten Lakh or any other amount not below Rupees One Lakh, cases where the central government may by notification specify. Thus, in essence, minimum debt which is to be recovered from DRT should not be less than Rupees Ten Lakh. In the case of SARFESAI Act, if the asset has been declared as Non-Performing Asset (NPA), eligible banks and financial institutions after enforcing security can recover remaining amount under RDDBFI Act which is in excess, of Rupees One Lakh.

What type of debt can be recovered under the RDDBFI Act

As per section 2 (g) debt is any liability inclusive of interest, which is claimed to due from any person by any bank or financial institution or consortium thereof. Such liability may be secured or unsecured or assigned, whether payable under the order of court or arbitration award or under the mortgage. Such a liability shall be subsisting and validly recoverable on the date of application.

The debt also includes liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrowers by the debenture trustees or any authority in whose favor a security interest is created for the benefit of the holder of the debt security. Clause 2(ga) defines debt security as securities listed in accordance with regulations defined by SEBI under Securities and Exchange Board of India Act, 1992.

Jurisdiction, Powers, and Authority of DRT and DRAT

As per section 17 of RDDBFI Act, vests jurisdiction, power and authority on DRT to entertain and decide application from banks and financial institutions to recover a debt due to such banks and financial institutions. Further, section 17A confers on DRAT power of general superintendence and control and confers appellate jurisdiction on DRAT. DRAT is also empowered to transfer a case from one DRT to another DRT. DRAT is also empowered to call for information from DRT, about cases pending and disposed of them. DRAT is also empowered to convene the meeting of Presiding Officers. It also empowered to conduct an inquiry of Presiding Officer and recommend suitable action to the Central Government.

Section 18 bars the jurisdiction of any civil court or authority for recovery of debt, except High Court and Supreme Court in the exercise of their writ jurisdiction under Article 226 and 227 of the Constitution of India. Thus in essence order of DRAT can be challenged in writ jurisdiction of High Court or Supreme Court

Procedure for filing cases for recovery of money under RDDBFI Act

Now having understood the basics of RDDBFI Act, including DRT and DRAT, now understand the procedure which is to be followed or the process of recovering money under this Act:

Types of pleadings/applications generally filed before DRT

Following are the pleadings which are filed in DRT by the parties

1. Original Application (O.A) refers to the claim filed by the bank or financial institution for recovery of debt from the borrower.
2. Interlocutory Application (I.A) refers to the applications filed during the pendency of the case. Miscellaneous Interlocutory Application (Misc. I.A) refers to applications filed under clause e,g or h of section 22(2) of the RDDBFI Act.
3. Written Statement/ reply refers to defense of the borrower

Application to be filed in local jurisdiction of DRT

An Application has to be filed within the local jurisdiction of relevant DRT, as per section 19(1) of the Act, Application can be filed within the local limit of DRT in whose jurisdiction where:

1. the branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding;
2. the defendant voluntarily resides or carries on his business or works for gain;
3. in case there are more than one defendant, at the place where any one of the defendants voluntarily resides or carries on his business or works for gain;
4. where the cause of action wholly or partly arose.

Further, where a bank or a financial institution, which has to recover its debt from any person, has filed an O.A and against the same person another bank or financial institution also has claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that DRT.

Application contents

Along with the Application certified true copies of the documents on which the bank or financial institution is relying in support of its claim needs to be filed. Further, Applicant inter-alia should state the following:

1. Grounds of an application under different heads should be stated concisely;
2. Particulars of debt secured by a security interest in the property or assets belonging to the debtor and estimated value thereof;
3. If the secured assets are not sufficient to cover the debt then the particulars of any other property or assets owned by the debtor should be stated;
4. If the value of other assets is not sufficient to cover the debt, then a prayer must be made requesting for direction to the debtor for disclosing his other property or assets details.

Language and forms of pleading and other formalities

All pleadings shall be done in English or Hindi language. If in the English language then font should be Times New Roman with a font size of 13. There should be double spacing between the lines. Left-hand margin should be 5 centimetres and right-hand margin should be 2.5 centimetres. In all pleadings, legal size (A3) paper should be used.

A paper book is made which should include following:

1. Index in Form 1
2. List of dates and events
3. Pleadings i.e Application
4. Interlocutory Application, if any
5. Affidavit

6. Index of documents/Annexure
7. Original/attested copy of documents
8. Power of attorney/board resolution/ authorization letter
9. Vakaltanama, if represented by counsel

While filing O.A a copy of the statement of account, certified in accordance with the provisions of the Bankers' Books Evidence Act, 1891, needs to be filed along with the O.A., stating the rate of interest with a certificate that the interest has been charged at such rate. Also, details of penal interest charged from the borrower needs to be mentioned along with a certificate that the penal interest has not been capitalised.

While submitting torn or small document which is smaller than legal size paper, such documents need to be pasted on legal size paper to ensure that they fit the paper book.

All the pages of the paper book need to be signed, and the name of the person who is signing the pleadings must be written in each page in capital letters. Also, the party can affix digital signature, and in the case of illiterate person thumb impression is affixed, and his/her name be written in capital letters.

All the Annexures/documents should be attested with the following sentence mentioned on each page

“This Annexure is the true copy of the original document”, with all the pages of document duly signed.

One complete set of the paper book needs to be served to the other party.

Presentation/filing of application for recovery

After completing pre-filing formalities as mentioned above, the application can be filed before Registrar or any other officer of DRT as authorised by the Registrar. The application can be filed before 4:30 PM on any working day. The application can also be filed through e-filing.

One presentation of application Registrar or the officer authorised by him shall give diary number, date of filing with his endorsement, to the party filing the application. The application so filed will be securitized by Registrar or the officer authorised by him within 15 days. In the case of defects were found applicant will be given 15 days' time to remove the deficiency, in case applicant failed to cure the deficiency within the period of 15 days, he can apply for extension and registrar can give him extension subject to a maximum of one month. Even after extension if the applicant fails to cure the defect application will not be registered by the Registrar.

Once all the defects are cured, or there are no defects in the application, Registrar of DRT will get the application/case registered and allot a serial number to the application. Cause list of cases to be listed before Registrar will be placed in board or website of DRT a day before scheduled hearing.

Service of Summon/Notice

The Registrar of DRT or any other officer authorised by Presiding Officer will issue Summon/Notice, which will be served by the applicant to the defendant/respondent. Following the details of the forms in which Summons/Notice was issued:

1. Summons in respect of O.A in Form-3
2. Notice in respect of S.A. in Form-4
3. Notice in respect of an application filed under section 31-A of the Act in Form-5
4. Notice in respect of Misc. I.A. in Form-6
5. Notice in respect of an appeal in Form-7.

The Summon/Notice which also contains the paper book of petition/application is generally served on to the defendant/respondent by hand or registered post with acknowledgement due (AD) or speed post or courier. With the permission, of Registrar, Summon/Notice can also be also sent through email or fax, however, in such event, it must be ensured that defendant/respondent gets a copy of the paper book on the first date of his appearance. If the Summon/Notice is delivered to any adult family member of respondent/defendant at his address, it shall be deemed to be delivered. In case Summon/Notice has been sent through registered post with AD or speed post or courier or email or fax, an affidavit should be filed stating mode of dispatch and the correctness of the address where it was sent. In such case Summon/Notice shall be deemed to be delivered irrespective of the fact delivery acknowledgement has not be received back. If the defendant/respondent is deliberately avoiding the service of the Summons/Notice in that event with the permission of DRT Summon/Notice can be pasted at the visible place of the premises of the respondent/defendant or publication can be made in leading daily newspaper and in both cases service will be deemed to be effected on respondent/defendant. This is also known as substituted service.

Hearing of the case before Presiding Officer

Filing of reply/written statement – Defendant/Respondent within one month from the date of service of Notice/Summon on him is required to file the reply. However, with the permission of DRT respondent/defendant can seek time for filing reply/written statement. Even if in the extended time period the defendant/respondent failed to file his reply then DRT may proceed ex-prate.

The claim of set off /counter claim – Defendant at the first date of hearing can file a claim for set off/counterclaim. He cannot file it afterwards without the permission of DRT. The claim of set off/counterclaim shall have the same effect as a counter suit in any proceedings.

Admission of liability by respondent/defendant – If the respondent/defendant admits his liability, in that event Presiding Officer will pass an order directing respondent/defendant to pay the admitted amount within the period of 30 days from the date of the order of the DRT. If defendant/respondent fails to pay the admitted amount within that period, then Presiding Office may issue a certificate of debt due in terms of section 19 of the Act.

Affidavits- In the case where defendant/respondent denies his obligation, in that event Presiding Office may require the parties to him to prove any fact by filing an affidavit and such affidavits shall be read in the hearing in the manner which DRT deems fit. After filing of the affidavits by the respective parties where it appears to DRT that either the applicant or the defendant/respondent desires the production of a witness for cross-examination and that such witness can be produced and it is necessary for the case, DRT shall for sufficient reasons to be recorded, order the witness to be present for cross-examination, and in the event of the witness does not appears for cross-examination, then, the affidavit shall not be taken into evidence.

Interim Order by DRT

In cases where the applicant apprehends that the borrower may take steps which may frustrate attempt of execution may make an application to DRT along with details of property to be attached and value thereof, and on such application may pass an interim order directing respondent/defendant, directing him to deposit before it amount equivalent to property value or amount which may be sufficient to recover the debt or as and when required by DRT to place before it disposal the property.

Wherever DRT finds it fit, it may also pass following orders;

1. appoint a receiver of the property, before or after the grant of Recovery Certificate (RC);
2. remove any persons from possession or custody of any property;
3. commit the same to custody, management of the receiver;
4. confer power on the receiver to file/defend the suit on behalf of property, or to act in any manner for the improvement of the property;
5. appoint a commissioner for collecting details of defendant/respondent's property or sale thereof.

Judgment and Recovery Certificate by DRT

DRT after giving both the parties opportunity of hearing and hearing their submissions will within 30 days of the conclusion of such hearing pass its interim or final order. Within 15 days of the passing of the order, DRT will issue RC and forward the same to Recovery Officer. RC will contain the details of the amount to be paid by recovered by the borrower debtor. RC shall have the same effect as the decree of the civil court.

Appeal

An appeal by any aggrieved party against the order of DRT can be filed within the period of 30 days from the date of receipt of the order. No appeal can be filed against any order which has been filed with the consent of the parties. DRAT shall endeavour to dispose-off appeal finally within the period of six months.

Amount to be deposited for filing an appeal – Where the appeal is being preferred by the debtor, who as per the order of DRT is liable to pay money to bank or financial institution at the time of filing appeal is required to deposit before DRAT 50% of the amount he is required to pay as per the order of the DRT.

However with the permission of DRAT, this amount can be reduced by DRAT, but reduced amount should not be below 25% of the debt amount which Borrower is required to pay as per DRT order.

Recovery of debt by Recovery Officer

After receipt of RC from DRT, Recovery Office will initiate recovery by one or more of following modes:

1. Attachment and sale of movable or immovable property of defendants/debtors;
2. Taking possession of property over which security interest was created or any other property of defendant/debtor and appointing receiver for the management of the same;
3. Arrest of defendant/debtor and his detention in prison;
4. Appointment of receiver for management of movable or immovable property of defendant/debtor;
5. Any other mode as may be prescribed by the central government.

Apart from above modes Recovery Officer may also, direct any person who is liable to pay any amount to defendant/borrower, deduct from such amount the recovery amount, and transfer to the credit of Recovery Officer the amount so deducted. However, Recovery Officer will not deduct any such amount which is exempt from attachment under Code of Civil Procedure, 1908.

SARFAESI Act 2002

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (also known as the SARFAESI Act) is an Indian law. It allows banks and other financial institution to auction residential or commercial properties to recover loans.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, allow banks and financial institutions to auction properties (residential and commercial) when borrowers fail to repay their loans. It enables banks to reduce their non-performing assets by adopting measures for recovery or reconstruction.

Upon loan default, banks can seize the securities (except agricultural land) without intervention of the court. SARFAESI is effective only for secured loans where bank can enforce the underlying security e.g. hypothecation, pledge and mortgages. In such cases, court intervention is not necessary, unless the security is invalid or fraudulent. However, if the asset in question is an unsecured asset, the bank would have to move the court to file civil case against the defaulters.

BACKGROUND OF THE ACT:

The previous legislation enacted for recovery of the default loans was Recovery of Debts due to Banks and Financial institutions Act, 1993. This act was passed after the recommendations of the Narsimham Committee – I, was submitted to the government. This act had created the forums such as Debt Recovery Tribunals and Debt Recovery Appellate Tribunals for expeditious adjudication of disputes with regard to ever increasing non-recovered dues.

However, there were several loopholes in the act and these loopholes were mis-used by the borrowers as well as the lawyers. This led to the government introspect the act and this another committee under Mr.

Andhyarujina was appointed to examine banking sector reforms and consideration to changes in the legal system.

HOW IT WORKS?

The SARFAESI Act, 2002 gives powers of 'seize' to banks. Banks can give a notice in writing to the defaulting borrower requiring it to discharge its liabilities within 60 days. If the borrower fails to comply with the notice, the Bank may take recourse to one or more of the following measures:

- Take possession of the security for the loan;
- Sale or lease or assign the right over the security;
- Manage the same or appoint any person to manage the same.
 - The SARFAESI Act also provides for the establishment of Asset Reconstruction Companies regulated by RBI to acquire assets from banks and financial institutions.
 - The Act provides for sale of financial assets by banks and financial institutions to asset reconstruction companies. RBI has issued guidelines to banks on the process to be followed for sales of financial assets to Asset Reconstruction Companies.

RIGHTS OF BORROWERS:

The above observations make it clear that the SARFAESI act was able to provide the effective measures to the secured creditors to recover their long standing dues from the Non-performing assets, yet the rights of the borrowers could not be ignored, and have been duly incorporated in the law.

- The borrowers can at any time before the sale is concluded, remit the dues and avoid losing the security;
- In case any unhealthy/illegal act is done by the Authorised Officer, he will be liable for penal consequences;
- The borrowers will be entitled to get compensation for such acts;
- For redressing the grievances, the borrowers can approach firstly the DRT and thereafter the DRAT in appeal. The limitation period is 45 days and 30 days respectively.

PRE-CONDITIONS:

The Act stipulates four conditions for enforcing the rights by a creditor.

- The debt is secured;
- The debt has been classified as an NPA by the banks ;
- The outstanding dues are one lakh and above and more than 20% of the principal loan amount and interest there on;
- The security to be enforced is not an Agricultural land.

METHODS OF RECOVERY:

According to this act, the registration and regulation of securitization companies or reconstruction companies is done by RBI. These companies are authorized to raise funds by issuing security receipts to qualified institutional buyers (QIBs), empowering banks and FIs to take possession of securities given for financial assistance and sell or lease the same to take over management in the event of default. This act makes provisions for two main methods of recovery of the NPAs as follows:

- **Securitisation:** Securitisation is the process of issuing marketable securities backed by a pool of existing assets such as auto or home loans. After an asset is converted into a marketable security, it is sold. A securitization company or reconstruction company may raise funds from only the QIB (Qualified Institutional Buyers) by forming schemes for acquiring financial assets.
- **Asset Reconstruction:** Enacting SARFAESI Act has given birth to the Asset Reconstruction Companies in India. It can be done by either proper management of the business of the borrower, or by taking over it

or by selling a part or whole of the business or by rescheduling of payment of debts payable by the borrower enforcement of security interest in accordance with the provisions of this Act.

Further, the act provides Exemption from the registration of security receipt. This means that when the securitization company or reconstruction company issues receipts, the holder of the receipts is entitled to undivided interests in the financial assets and there is no need of registration unless and otherwise it is compulsory under the Registration Act 1908.

However, the registration of the security receipt is required in the following cases:

- There is a transfer of receipt;
- The security receipt is creating, declaring, assigning, limiting, and extinguishing any right title or interest in an immovable property.

POWERS OF DEBT RECOVERY TRIBUNAL:

The debt Recovery Tribunals have been empowered to entertain appeals against the misuse of powers given to banks. Any person aggrieved, by any order made by the Debts Recovery Tribunal may go to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

ROLE OF HIGH COURT:

The act allows taking the matter to high courts only in some matters related to the implementation of the act in Jammu & Kashmir. However, High Courts have been entertaining writ petitions under article 226 (Power to issue writs) of the constitution of India.

INSOLVENCY & BANKRUPTCY CODE 2016

The Insolvency and Bankruptcy Code, 2016 (IBC) is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. The Insolvency and Bankruptcy Code, 2015 was introduced in Lok Sabha in December 2015. It was passed by Lok Sabha on 5 May 2016 and by Rajya Sabha on 11 May 2016. The Code received the assent of the President of India on 28 May 2016. Certain provisions of the Act have come into force from 5 August and 19 August 2016. The bankruptcy code is a one stop solution for resolving insolvencies which previously was a long process that did not offer an economically viable arrangement. The code aims to protect the interests of small investors and make the process of doing business less cumbersome.

History of IBC

The Insolvency and Bankruptcy Code, 2015 was introduced in the Lok Sabha on 21 December 2015 by Finance Minister, Arun Jaitley. The Code was referred to a Joint Committee of Parliament on 23 December 2015, and recommended by the Committee on 28 April 2016. The Code was passed by the Lok Sabha on 5 May 2016 and by the Rajya Sabha on 11 May 2016. The Code received assent from President Pranab Mukherjee on 28 May, and was notified in *The Gazette of India* on 28 May 2016.

The Code was passed by parliament in May 2016 and became effective in December 2016. It aimed to repeal the Presidency Towns Insolvency Act, 1909 and Sick Industrial Companies (Special Provisions) Repeal Act, 2003, among others.

The first insolvency resolution order under this code was passed by National Company Law Tribunal (NCLT) in the case of Synergies-Dooray Automotive Ltd on 14 August 2017 and the second resolution plan was submitted in the case of Prowess International Private Limited. The plea for insolvency was submitted by company on 23 January 2017. The resolution plan was submitted to NCLT

within a period of 180 days as required by the code, and the approval for the same was received on 2 August 2017 from the tribunal. The final order was uploaded on 14 August 2017 on the NCLT website.

Key Features of IBC

Insolvency Resolution : The Code outlines separate insolvency resolution processes for individuals, companies and partnership firms. The process may be initiated by either the debtor or the creditors. A maximum time limit, for completion of the insolvency resolution process, has been set for corporates and individuals. For companies, the process will have to be completed in 180 days, which may be extended by 90 days, if a majority of the creditors agree. For start ups (other than partnership firms), small companies and other companies (with asset less than Rs. 1 crore), resolution process would be completed within 90 days of initiation of request which may be extended by 45 days.

Insolvency regulator: The Code establishes the Insolvency and Bankruptcy Board of India, to oversee the insolvency proceedings in the country and regulate the entities registered under it. The Board will have 10 members, including representatives from the Ministries of Finance and Law, and the Reserve Bank of India.

Insolvency professionals: The insolvency process will be managed by licensed professionals. These professionals will also control the assets of the debtor during the insolvency process.

Bankruptcy and Insolvency Adjudicator: The Code proposes two separate tribunals to oversee the process of insolvency resolution, for individuals and companies: (i) the National Company Law Tribunal for Companies and Limited Liability Partnership firms; and (ii) the Debt Recovery Tribunal for individuals and partnerships

Objectives of IBC

1. To consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms, and individuals.
2. To fix time periods for execution of the law in a time-bound settlement of insolvency (i.e. 180 days).
3. To maximize the value of assets of interested persons.
4. To promote entrepreneurship
5. To increase the availability of credit.
6. To balance all stakeholder's interest (including alteration). Balance to be done in the order of priority of payment of Government dues.
7. To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.
8. To establish higher levels of debt financing across a wide variety of debt instruments.
9. To provide painless revival mechanism for entities.
10. To deal with cross-border insolvency.
11. To resolve India's bad debt problem by creating a database of defaulters.

Applicability of IBC:

As per Section 2 of IBC, the code is applicable to the following:

- (a) any company incorporated under the Companies Act, 2013 or under any previous company law;
- (b) 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;

- (c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008;
- (d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and
- (e) partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be.

The Code is not applicable to a “Financial Institution (Financial Service Provide)” as explained in Section 7 which reads as follows:

““corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider”

In the context of the above, it is important to know the meaning of Financial Service Provider as defined by the Code.

- Section 3(14) of Chapter I of the code reads as ““financial institution" means— (a) a scheduled bank;
- (b) financial institution as defined in section 45-I of the Reserve Bank of India Act, 1934;
 - (c) public financial institution as defined in clause (72) of section 2 of the Companies Act, 2013; and
 - (d) such other institution as the Central Government may by notification specify as a financial institution”

So, after reading the above, one understands that a Financial Institution is the one that deals with

- (a) Financial Product
- (b) Financial Service and hence
- (c) It is a Financial Service Provider

With reference to the above one shall know the meaning of “Financial Product”, “Financial Service” and “Financial Service Provider” which are defined in Section 3, Sub Sections 15,16 and 17 respectively. They read as below:

Section 3(15)-““financial product" means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed”

Section 3(16)- "financial service" includes any of the following services, namely:—

- (a) accepting of deposits;
- (b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
- (c) effecting contracts of insurance;
- (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
- (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—
 - (i) buying, selling, or subscribing to, a financial product;

- (ii) availing a financial service; or
- (iii) exercising any right associated with a financial product or financial service
- (f) establishing or operating an investment scheme;
- (g) maintaining or transferring records of ownership of a financial product;
- (h) underwriting the issuance or subscription of a financial product; or
- (i) selling, providing, or issuing stored value or payment instruments or providing payment services

Section 3(17)- "financial service provider" means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator.

This makes the reader to know the definition of Financial Regulator as defined in Section 18 of the Code as below:

"financial sector regulator" means an authority or body constituted under any law for the time being in force to regulate services or transactions of financial sector and includes the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, the Pension Fund Regulatory Authority and such other regulatory authorities as may be notified by the Central Government.

What all constitute 'financial services' have been put under section 3(16) of the Code. The definition is *inclusive* and mentions the following categories of services as financial services (for ease of understanding, the respective category of entities providing such services are also mentioned) –

Clause	Particulars	Entities engaged in the activity
(a)	accepting of deposits;	Banks, deposit taking NBFCs/ HFCs
(b)	safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so	Depository
(c)	effecting contracts of insurance;	Insurance Company
(d)	offering, managing or agreeing to manage assets consisting of financial products belonging to another person;	Custodian/ Investment Managers

Clause	Particulars	Entities engaged in the activity
(e)	rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—	
	(i) buying, selling, or subscribing to, a financial product;	PMS/ Stock brokers/ Investment advisors
	(ii) availing a financial service	Advisory intermediaries in respect of financial services as defined in the section.
	(iii) exercising any right associated with financial product or financial service;	
(f)	establishing or operating an investment scheme;	Collective Investment Scheme
(g)	maintaining or transferring records of ownership of a financial product	Registrars and Transfer Agents
(h)	underwriting the issuance or subscription of a financial product	Underwriters
(i)	selling, providing, or issuing stored value or payment instruments or providing payment services	Prepaid payment instruments/ Credit Card providers

Source: <https://barandbench.com>

PROCEDURE OF INSOLVENCY RESOLUTION PROCESS:

STEP I: This step decides in terms of who file a petition with the Adjudicating Authority which is NCLT.

Section 6 of the Code tells us who can file the petition. It reads as:

“Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.”

To understand the eligibility of the above persons, one has to understand the meanings of

- (a) Corporate Debtor
- (b) Default
- (c) Financial Creditor and
- (d) Operational Creditor

Corporate Debtor is defined in Section 3(8) of the Code as ““corporate debtor" means a corporate person who owes a debt to any person”

As per Section 3(12), Default is defined as “non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

Financial Creditor is defined under Section 5(7) as “financial creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

In this context, one shall know the meaning of Financial Debt as defined in Section 5(8) a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause

Operating Creditor is defined in Section 5(20) “as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”

Further Operating Debt is defined in the following subsection i.e Section 5(21) “as a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

So from the above, it is understood that the petition can be filed by:

- (a) Financial Creditor
- (b) Operating Creditor or
- (c) The Corporate Debtor itself.

A.Procedure of Petition Filed by the Financial Creditor as Section 7:

7(1)A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

- (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;
- (b) the name of the resolution professional proposed to act as an interim resolution professional; and
- (c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or
- (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application: Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

B.Procedure of Filing Petition by the Operating Creditor as per Section 8

8. (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the repayment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor. Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

9. (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and

(d) such other information as may be specified.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional: Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

C. Procedure of Filing Petition by the Corporate Debtor itself (As per Section 10).

10. (1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

(2) The application under sub-section (1) shall be filed in such form, containing such particulars and in such manner and accompanied with such fee as may be prescribed.

(3) The corporate applicant shall, along with the application furnish the information relating to—

(a) its books of account and such other documents relating to such period as may be specified; and

(b) the resolution professional proposed to be appointed as an interim resolution professional.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

(5) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (4) of this section.

After studying the above, one may get a doubt that a Corporate Debtor may make use IBC as a shield against cases filed against itself under various other Acts. So, to set aside any such possibility, IBC clearly states who cannot file a petition.

As per Section 11, The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:—

- (a) a corporate debtor undergoing a corporate insolvency resolution process; or
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) a corporate debtor in respect of whom a liquidation order has been made.

Explanation.—For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Time Limit to complete the Resolution Process (Section 12):

12. (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent. of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days: Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

STEP II-Declaration of Moratorium by the Adjudicating Authority:

As per Section 14(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process

STEP III- Public Announcement of Corporate Insolvency Process:

The public announcement shall contain the following information:

(a) name and address of the corporate debtor under the corporate insolvency resolution process;

(b) name of the authority with which the corporate debtor is incorporated or registered;

(c) the last date for submission of claims;

(d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;`

(e) penalties for false or misleading claims; and

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

STEP IV: Appointment of Interim resolution Professional:

The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.

Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed respectively in the application under section 7 or section 10, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

Where the application for corporate insolvency resolution process is made by an operational creditor and—

(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;

(b) a proposal for an interim resolution professional is made under sub-section (4) of section 9, the resolution professional as proposed, shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

The Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending

The term of the interim resolution professional shall not exceed thirty days from date of his appointment.

STEP V- Activities of Interim Resolution Professional:

The interim resolution professional shall perform the following duties, namely:—

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made.

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board. Explanation.—For the purposes of this sub-section, the term "assets" shall not include the following, namely:—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and
- (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

STEP VI-Appointment of Committee of Creditors:

The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors. The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

Where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

Where any person is a financial creditor as well as an operational creditor:

- (a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;
- (b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility or issued as securities provide for a single trustee or agent to act for all financial creditors, each financial creditor may—

- (a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share;
- (b) represent himself in the committee of creditors to the extent of his voting share;
- (c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or
- (d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally.

The Board may specify the manner of determining the voting share in respect of financial debts issued as securities.

All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five per cent. of voting share of the financial creditors: Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and comprise of such persons to exercise such functions in such manner as may be specified by the Board.

The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

The resolution professional shall make available any financial information so required by the committee of creditors under sub-section (9) within a period of seven days of such requisition.

STEP VII-Appointment of Insolvency Professional:

The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors. The committee of creditors may, in the first meeting, by a majority vote of not less than seventy-five per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

Where the committee of creditors resolves(a) to continue the interim resolution professional as resolution professional, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or (b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional.

The Adjudicating Authority shall forward the name of the resolution professional proposed to the Board for its confirmation and shall make such appointment after confirmation by the Board. Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

STEP VIII-Resolution Process by the Insolvency Professional:

The resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period. The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional. In case of any appointment of a resolution professional, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

STEP IX- Meeting of Committee of Creditors:

All meetings of the committee of creditors shall be conducted by the resolution professional. The members of the committee of creditors may meet in person or by such electronic means as may be specified. The resolution professional shall give notice of each meeting of the committee of creditors to—

(a) members of Committee of creditors;

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

The directors, partners and one representative of operational creditors, may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings: Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

Any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors: Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor. The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board. The meetings of the committee of creditors shall be conducted in such manner as may be specified.

STEP X-Activities of Resolution Professional:

It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor. The resolution professional shall undertake the following actions, namely:—

- (a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;
- (b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;
- (c) raise interim finances subject to the approval of the committee of creditors
- (d) appoint accountants, legal or other professionals in the manner as specified by Board;
- (e) maintain an updated list of claims;
- (f) convene and attend all meetings of the committee of creditors;
- (g) prepare the information memorandum;
- (h) invite prospective lenders, investors, and any other persons to put forward resolution plans;
- (i) present all resolution plans at the meetings of the committee of creditors;
- (j) file application for avoidance of transactions, if any; and
- (k) such other actions as may be specified by the Board.

STEP XI-Preparation of Memorandum of Information:

The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan. The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes—

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Explanation.—For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified.

STEP XII- Submission of the Resolution Plan by the Applicant:

A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum. The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

The resolution professional shall present to the committee of creditors for its approval such resolution plans. The committee of creditors may approve a resolution plan by a vote of not less than seventy five per cent of voting share of the financial creditors. The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor. The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority

STEP XIII-Approval of Resolution Plan:

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. After the order of approval,—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

LIQUIDATION OF CORPORATE DEBTOR

The adjudicating authority may pass liquidation order of the corporate debtor under any of the following three conditions:

1. The resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors to liquidate the corporate debtor.
2. The Adjudicating Authority, —
 - (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or
 - (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein.
3. The resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order and on receipt of an application, if the Adjudicating Authority determines that the corporate debtor has contravened the provisions of the resolution plan.

STEPS IN LIQUIDATION PROCESS:

STEP I-Appointment of Liquidator:

Once the Adjudicating Authority passes an order for liquidation of the corporate debtor, the resolution professional appointed for the corporate insolvency resolution process under shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.

On the appointment of a liquidator under this section, all powers of the board of directors, key managerial personnel and the partners of the corporate debtor, as the case may be, shall cease to have effect and shall be vested in the liquidator.

The personnel of the corporate debtor shall extend all assistance and cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor and provisions shall apply in relation to voluntary liquidation process as they apply in relation to liquidation process with the substitution of references to the liquidator for references to the interim resolution professional. The Adjudicating Authority shall by order replace the resolution professional, if—

- (a) the resolution plan submitted by the resolution professional was rejected for failure to meet the requirements mentioned ; or
- (b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.

In such a case, the Adjudicating Authority may direct the Board to propose the name of insolvency professional to be appointed as a liquidator. The Board shall propose the name of another insolvency professional within ten days of the direction issued by the Adjudicating Authority.

The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator. An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board. The fees for the conduct of the liquidation proceedings under shall be paid to the liquidator from the proceeds of the liquidation estate.

STEP II-Initiation of Liquidation of the Corporate Debtor:

For the purposes of liquidation, the liquidator shall form an estate of the assets, which will be called the liquidation estate in relation to the corporate debtor. The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors. The liquidation estate shall comprise all liquidation estate assets which shall include the following:—

- (a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;
- (b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;
- (c) tangible assets, whether movable or immovable;
- (d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;
- (e) assets subject to the determination of ownership by the court or authority;
- (f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
- (g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;
- (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and
- (i) all proceeds of liquidation as and when they are realised.

The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

- (a) assets owned by a third party which are in possession of the corporate debtor, including—
 - (i) assets held in trust for any third party;
 - (ii) bailment contracts;
 - (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided;

(d) assets of any Indian or foreign subsidiary of the corporate debtor; or

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.

STEP III-Consolidation of Claims:

The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process. A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility:

Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor

An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board. A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt and also the extent to which the debt is in the nature of operational debt.

A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

STEP IV-Verification of Claims:

The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board. The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

The liquidator may, after verification of claims, either admit or reject the claim, in whole or in part, as the case may be. Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection. The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

After rejecting any claim, the liquidator shall determine the value of claims admitted in such manner as may be specified by the Board.

STEP V-Activities of the Secured Creditor:

A secured creditor in the liquidation proceedings may—

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator; or

(b) realise its security interest

Where the secured creditor realises security interest, he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised. Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either—

(a) by the records of such security interest maintained by an information utility; or

(b) by such other means as may be specified by the Board.

A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

The Adjudicating Authority, on the receipt of an application from a secured creditor may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall—

(a) account to the liquidator for such surplus; and

(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53

STEP VI-Distribution of Assets (As per Section 53)

The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—

- (a) the insolvency resolution process costs and the liquidation costs paid in full
- (b) the following debts which shall rank equally between and among the following :—
 - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (d) financial debts owed to unsecured creditors;
- (e) the following dues shall rank equally between and among the following:—
 - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (f) any remaining debts and dues;
- (g) preference shareholders, if any; and
- (h) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation.—For the purpose of this section—

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and
- (ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013.

STEP VII- Dissolution of Corporate Debtor:

Once the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate debtor. The Adjudicating Authority shall upon application filed by the liquidator, order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly. A copy of an order shall within seven days from the date of such order, be forwarded to the authority with which the corporate debtor is registered.

MODULE –II

INSURANCE LEGISLATIONS

HISTORY OF INSURANCE IN INDIA

In India, insurance has a deep-rooted history. It finds mention in the writings of Manu (*Manusmrithi*), Yagnavalkya (*Dharmasastra*) and Kautilya (*Arthasastra*). The writings talk in terms of pooling of resources that could be re-distributed in times of calamities such as fire, floods, epidemics and famine. This was probably a pre-cursor to modern day insurance. Ancient Indian history has preserved the earliest traces of insurance in the form of marine trade loans and carriers' contracts. Insurance in India has evolved over time heavily drawing from other countries, England in particular.

1818 saw the advent of life insurance business in India with the establishment of the Oriental Life Insurance Company in Calcutta. This Company however failed in 1834. In 1829, the Madras Equitable had begun transacting life insurance business in the Madras Presidency. 1870 saw the enactment of the British Insurance Act and in the last three decades of the nineteenth century, the Bombay Mutual (1871), Oriental (1874) and Empire of India (1897) were started in the Bombay Residency. This era, however, was dominated by foreign insurance offices which did good business in India, namely Albert Life Assurance, Royal Insurance, Liverpool and London Globe Insurance and the Indian offices were up for hard competition from the foreign companies.

In 1914, the Government of India started publishing returns of Insurance Companies in India. The Indian Life Assurance Companies Act, 1912 was the first statutory measure to regulate life business. In 1928, the Indian Insurance Companies Act was enacted to enable the Government to collect statistical information about both life and non-life business transacted in India by Indian and foreign insurers including provident insurance societies. In 1938, with a view to protecting the interest of the Insurance public, the earlier legislation was consolidated and amended by the Insurance Act, 1938 with comprehensive provisions for effective control over the activities of insurers.

The Insurance Amendment Act of 1950 abolished Principal Agencies. However, there were a large number of insurance companies and the level of competition was high. There were also allegations of unfair trade practices. The Government of India, therefore, decided to nationalize insurance business.

An Ordinance was issued on 19th January, 1956 nationalising the Life Insurance sector and Life Insurance Corporation came into existence in the same year. The LIC absorbed 154 Indian, 16 non-Indian insurers as also 75 provident societies—245 Indian and foreign insurers in all. The LIC had monopoly till the late 90s when the Insurance sector was reopened to the private sector.

The history of general insurance dates back to the Industrial Revolution in the west and the consequent growth of sea-faring trade and commerce in the 17th century. It came to India as a legacy of British occupation. General Insurance in India has its roots in the establishment of Triton Insurance Company Ltd., in the year 1850 in Calcutta by the British. In 1907, the Indian Mercantile Insurance Ltd, was set up. This was the first company to transact all classes of general insurance business.

1957 saw the formation of the General Insurance Council, a wing of the Insurance Association of India. The General Insurance Council framed a code of conduct for ensuring fair conduct and sound business practices.

In 1968, the Insurance Act was amended to regulate investments and set minimum solvency margins. The Tariff Advisory Committee was also set up then.

In 1972 with the passing of the General Insurance Business (Nationalisation) Act, general insurance business was nationalized with effect from 1st January, 1973. 107 insurers were amalgamated and grouped into four companies, namely National Insurance Company Ltd., the New India Assurance Company Ltd., the Oriental Insurance Company Ltd and the United India Insurance Company Ltd. The General Insurance Corporation of India was incorporated as a company in 1971 and it commenced business on January 1st 1973.

This millennium has seen insurance come a full circle in a journey extending to nearly 200 years. The process of re-opening of the sector had begun in the early 1990s and the last decade and more has seen it been opened up substantially. In 1993, the Government set up a committee under the chairmanship of RN Malhotra, former Governor of RBI, to propose recommendations for reforms in the insurance sector. The objective was to complement the reforms initiated in the financial sector. The committee submitted its report in 1994 wherein, among other things, it recommended that the private sector be permitted to enter the insurance industry. They stated that foreign companies be allowed to enter by floating Indian companies, preferably a joint venture with Indian partners.

Following the recommendations of the Malhotra Committee report, in 1999, the Insurance Regulatory and Development Authority (IRDA) was constituted as an autonomous body to regulate and develop the insurance industry. The IRDA was incorporated as a statutory body in April, 2000. The key objectives of the IRDA include promotion of competition so as to enhance customer satisfaction through increased consumer choice and lower premiums, while ensuring the financial security of the insurance market.

The IRDA opened up the market in August 2000 with the invitation for application for registrations. Foreign companies were allowed ownership of up to 26%. The Authority has the power to frame regulations under Section 114A of the Insurance Act, 1938 and has from 2000 onwards framed various regulations ranging from registration of companies for carrying on insurance business to protection of policyholders' interests.

In December, 2000, the subsidiaries of the General Insurance Corporation of India were restructured as independent companies and at the same time GIC was converted into a national re-insurer. Parliament passed a bill de-linking the four subsidiaries from GIC in July, 2002.

Today there are 31 general insurance companies including the ECGC and Agriculture Insurance Corporation of India and 24 life insurance companies operating in the country.

The insurance sector is a colossal one and is growing at a speedy rate of 15-20%. Together with banking services, insurance services add about 7% to the country's GDP. A well-developed and evolved insurance sector is a boon for economic development as it provides long-term funds for infrastructure development at the same time strengthening the risk taking ability of the country.

INSURANCE Act (AS AMMENDED IN 2015)

Insurance Act is the one which defines the business of insurance and the minimum requirement of an organization to perform the business. Therefore, one shall know the important provisions of the Act.

Important Provisions of Insurance Act:

Insurer- As per Section 2(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.

Indian Insurance Company-Section 2 (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.

Insurance Cooperative Society-

“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 (42 of 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 of 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;

In India, Insurance business is mainly divided into two types namely (a) Life Insurance and General Insurance. General Insurance is further divided into (i) Fire, (ii) marine (iii) Health and (iv) miscellaneous business. Therefore, one shall know their definitions as per the Act.

Life Insurance:

“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.

Explanation. — For the removal of doubts, it is hereby declared that “life insurance business” shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer.

General Insurance:

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

Fire Insurance:

“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.

Health Insurance:

“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;

Marine Insurance:

“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.

Registration of Insurance Companies

No person shall, after the commencement of this Act, 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 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 the 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.

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 interests 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 2C, 5 and 31A and has fulfilled all the requirements of this section applicable to him, the applicant has complied with the provisions of sections 2C, 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, shall record the reasons for such decision and shall furnish a copy thereof to the applicant

Cancellation or Suspension of Registration:

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 (41 of 1999), or
- (h) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 2013 (18 of 2013) or the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972) or the Foreign Exchange Management Act, 1999 (42 of 1999) or the Prevention of Money Laundering Act, 2002 (15 of 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 (39 of 2002), contravenes the provisions of law as may be applicable to the insurer.

Capital Requirements:

(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 (41 of 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 (18 of 2013), the Securities and Exchange Board of India Act, 1992 (15 of 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.

Capital Structure & Voting Rights Requirements:

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 (47 of 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.]

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.

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 (18 of 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 (18 of 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 (12 of 2003).

Every person who has any interest in any share of a company 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, 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 shares 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 realisation of dividend, such individual shall, notwithstanding anything contained in the Indian Companies Act, 1913 (7 of 1913) 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.

Separation of Accounts and Funds:

(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 insurance 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.

(2) Where the insurer carries on the business of life insurance 10[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 Controller 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 (I) 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.

(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

(1) Every insurer, on or after the date of the commencement of the Insurance Laws (Amendment) Act, 2015 (5 of 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 (18 of 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

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 (18 of 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.

Investment of Assets

(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.

Additional Provisions of Investments by Life Insurance Companies:

(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 36 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.

Investments made by General Insurance Companies

(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.

(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 (62 of 1968), which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

Manner and Condition of Investment:

- (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 (41 of 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.

Note: Prohibition for investment of funds outside India-No insurer shall directly or indirectly invest outside India the funds of the policyholders.

Statement and return of investment of assets: 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:

- (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 (18 of 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.

Business in Rural and Social Sector

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 and social sectors, as may be specified, in the Official Gazette by the Authority, in this behalf.

Obligation towards Unorganized sector and Backward Classes

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 unorganised 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 towards Third Party Risk of Motor Vehicle Insurance

Every insurer carrying on general insurance business shall, after the commencement of the Insurance Laws (Amendment) Act, 2015 (5 of 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.

INVESTIGATION BY IRDA

Power of investigation and inspection by Authority:

(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 (18 of 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 subsection (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, —

(a) require the insurer, to take such action in respect of any matter arising out of the report as the Authority may think fit; or

(b) cancel the registration of the insurer or intermediary or insurance intermediary, as the case may be; or

(c) 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—

(a) all its subsidiaries formed for the purpose of carrying on the business of insurance exclusively outside India; and

(b) 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.

APPOINTMENT OF STAFF:

Power to appoint staff BY IRDA- IRDA may appoint such staff, and at such places at 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 TO ISSUE DIRECTIONS:

Power of IRDA to issue directions.

(1) Where the Authority is satisfied that—

(a) in the public interest; or

(b) 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

(c) 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 direction 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 cancelling any direction, may impose such conditions as he thinks fit, subject to which the modification or cancellation shall have effect.

CONTROL OVER MANAGEMENT:

Power of IRDA to remove managerial persons from office.

(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 1 [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 or 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 subsection (1) has been made, the 1 [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 farther periods not exceeding three years at a time as the Authority may specify;
 - (b) not insure 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 IRDA to appoint additional directors

- (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 proportion of the total number of directors of the insurer, any additional director appointed under this section shall not be taken into account.

Further powers.

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 it 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 if, 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.

AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS

Amalgamation and transfer of insurance business:

(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 therefore 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 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.—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 along with 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.

Power of IRDA to prepare Scheme of Amalgamation:

(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 interest 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 of 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 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 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 shareholders, 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 the 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, by 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 or 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 equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee insurer, the doubt or difference shall be referred to the Controller whose decision thereon shall be final.

(j) notwithstanding anything contained in clause (i) where any of the employees 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) of 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 (14 of 1947), and such pension, gratuity, provident fund, or other retirement benefits ordinarily admissible to them under the rules or authorisations 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 the 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 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, the 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 the provisions of this section.

WINDING UP

Winding up by the Court.:

(1) The Tribunal (NCLT) may order the winding up in accordance with the Companies Act, 1956 (1 of 1956) of any insurance company and the provisions of that Act shall, subject to the provisions of this Act, apply accordingly.

(2) In addition to the grounds on which such an order may be based, the Tribunal may order the winding up of an insurance company—

(a) if with the sanction of the Tribunal 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 of the Tribunal on any of the following grounds, namely

(i) that the company having failed to comply with any requirement of this Act has continued such failure 5 [or having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure or contravention has been conveyed to the company by IRDA,

(ii) that it appears from any returns or statements furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is, or is deemed to be insolvent, or

(iii) that the continuance of the company is prejudicial to the interest of the policy-holders or to the public interest generally.

Unpaid-up share capital:

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:

Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956)], an insurance company shall not be wound up voluntarily except for the purpose of affecting an amalgamation or a reconstruction of the company, or on the ground that by reason of its liabilities it cannot continue its business.

Valuation of liabilities:

(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 Tribunal.

(2) For the purposes of any reduction by the Tribunal 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 Tribunal thinks proper having regard to the 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 section 643 of the Companies Act, 1956 (1 of 1956)], 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:

(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 Tribunal 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 Tribunal 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 of 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.

REGULATION OF LIFE & GENERAL INSURANCE

Prohibition of payment by way of commission or otherwise for procuring business:

(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:

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:

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:

(1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance 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.

Appointment of insurance agents:

(1) An insurer may appoint any person to act as insurance agent for the purpose of soliciting and procuring insurance business:

Provided that such person does not suffer from any of the disqualifications mentioned in sub-section (3).

(2) No person shall act as an insurance agent for more than one life insurer, one general insurer, one health insurer and one of each of the other mono-line insurers:

Provided that the Authority shall, while framing regulations, ensure that no conflict of interest is allowed to arise for any agent in representing two or more insurers for whom he may be an agent.

(3) The disqualifications referred to in the proviso to sub-section (1) shall be the following: —

(a) that the person is a minor;

(b) that he is found to be of unsound mind by a court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction:

Provided that where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Authority shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;

(d) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurer or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or insured;

(e) that in the case of an individual, who does not possess the requisite qualifications or practical training or passed the examination, as may be specified by the regulations;

(f) that in the case of a company or firm making, a director or a partner or one or more of its officers or other employees so designated by it and in the case of any other person the chief executive, by whatever name called, or one or more of his employees designated by him, do not possess the requisite qualifications or practical training and have not passed such an examination as required under clauses (e) and (g);

(g) that he has not passed such examination as may be specified by the regulations;

(h) that he has violated the code of conduct as may be specified by the regulations.

(4) Any person who acts as an insurance agent in contravention of the provision of this Act, shall be liable to a penalty which may extend to ten thousand rupees and any insurer or any person acting on behalf of an insurer, who appoints any person as an insurance agent not permitted to act as such or transacts any insurance business in India through any such person shall be liable to penalty which may extend to one crore rupees.

(5) The insurer shall be responsible for all the acts and omissions of its agents including violation of code of conduct specified under clause (h) of sub-section (3) and liable to a penalty which may extend to one crore rupees.

Prohibition of insurance business through principal agent, special agent and multilevel marketing:

(1) No insurer shall, on or after the commencement of the Insurance Laws (Amendment) Act, 2015 (5 of 2015), appoint any principal agent, chief agent, and special agent and transact any insurance business in India through them.

(2) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance policy through multilevel marketing scheme.

(3) The Authority may, through an officer authorised in this behalf, make a complaint to the appropriate police authorities against the entity or persons involved in the multilevel marketing scheme.

Explanation. —For the purpose of this section “multilevel marketing scheme” means any scheme or programme or arrangement or plan (by whatever name called) for the purpose of soliciting and procuring insurance business through persons not authorised for the said purpose with or without consideration of whole or part of commission or remuneration earned through such solicitation and procurement and includes enrolment of persons into a multilevel chain for the said purpose either directly or indirectly.

Record of insurance agents:

(1) Every insurer and every person who, acting on behalf of an insurer employs insurance agents shall maintain a record showing the name and address of every insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

(2) The record prepared by the insurer under sub-section (1), shall be maintained as long as the insurance agent is in service and for a period of five years after the cessation of appointment

Power to call for information:

For the purposes of ensuring compliance with the provisions of sections 40, 40B and 40C, the Authority may, by notice—

(a) require from an insurer such information, certified if so required by an auditor or actuary, as it may consider necessary;

(b) require an insurer to submit for its examination at the principal place of business of the insurer in India, any books of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer on oath, in relation to any such information, book, register, document or statement and the insurer, shall comply with any such requirement within such time as may be specified in the notice.

Insurance agent or intermediary or insurance intermediary not to be director in insurance company:

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 (5 of 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:

(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 the 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.

LIFE INSURANCE COUNCIL AND GENERAL INSURANCE COUNCIL

Councils of Life Insurance and General Insurance:

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:

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.

Authorities of the Life Insurance Council and the General Insurance Council:

The authorities of the Life Insurance Council and the General Insurance Council shall be the Executive Committee constituted in the manner provided in this Part.

Executive Committees of the Life Insurance Council and the General Insurance Council:

(1) The Executive Committee of the Life Insurance Council shall consist of the following persons, namely: —

(a) four representatives of members of the Life Insurance Council elected in their individual capacity by the members in such manner as may be laid down in the bye-laws of the Council;

(b) an eminent person not connected with insurance business, nominated by the Authority;

(c) three persons to represent insurance agents, intermediaries and policyholders respectively as may be nominated by the Authority;

(d) one representative each from self-help groups and Insurance Co-operative Societies:

Provided that one of the representatives as mentioned in clause (a) shall be elected as the Chairperson of the Executive Committee of the Life Insurance Council.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons, namely: —

(a) four representatives of members of the General Insurance Council elected in their individual capacity by the members in such manner as may be laid down in the bye-laws of the Council;

(b) an eminent person not connected with insurance business, nominated by the Authority; and

(c) four persons to represent insurance agents, third party administrators, surveyors and loss assessors and policyholders respectively as may be nominated by the Authority:

Provided that one of the representatives as mentioned in clause (a) shall be elected as the Chairperson of the Executive Committee of the General Insurance Council.

(3) If anybody of persons specified in sub-sections (1) and (2) fails to elect any of the members of the Executive Committees of the Life Insurance Council or the General Insurance Council, the Authority may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be a member of the Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto.

(4) Each of the said Executive Committees may make bye-laws for the transaction of any business at any meeting of the said Committee.

(5) The Life Insurance Council or the General Insurance Council may form such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto.

(6) The Secretary of the Executive Committee of the Life Insurance Council and of the Executive Committee of the General Insurance Council shall in each case be appointed by the Executive Committee concerned:

Provided that each Secretary appointed by the Executive Committee concerned shall exercise all such powers and do all such acts as may be authorised in this behalf by the Executive Committee concerned.

Duration and dissolution of Executive Committees:

(1) The duration of the Executive Committee of the Life Insurance Council or the General Insurance Council shall be three years from the date of its first meeting on the expiry of which it shall stand dissolved and a new Executive Committee constituted.

(2) Notwithstanding the dissolution of the Executive Committee of the Life Insurance Council or the General Insurance Council, the outgoing members thereof shall continue to hold office and discharge

such administrative and other duties as may be prescribed until such time as a new Executive Committee of the Life Insurance Council or the General Council, as the case may be, shall have been constituted.

Functions of Executive Committee of Life Insurance Council:

(1) The functions of the Executive Committee of the Life Insurance Council shall be—

(a) to aid, advise and assist insurers carrying on life insurance business in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of life insurance policies;

(b) to render advice to the Authority in the matter of controlling the expenses of insurers in respect of their life insurance business in India;

(c) to bring to the notice of the Authority the case of any insurer acting in a manner prejudicial to the interests of holders of life insurance policies;

(d) to act in any matter incidental or ancillary to any of the matters specified in clauses (a) to (c) as, with the approval of the 2[Authority], may be notified by the Life Insurance Council in the Gazette of India.

(2) For the purpose of enabling it to effectively discharge its functions, the Executive Committee of the Life Insurance Council may collect such fees as may be laid down in the bye-laws made by the Council from the insurers carrying on life insurance business.

Executive Committee of Life Insurance Council may advise in controlling expenses:

(1) It shall be the duty of the Executive Committee of the Life Insurance Council to meet at least once before the 31st day of March every year to advise the Authority in fixing under the proviso to sub-section (2) of section 40B the limits by which the actual expenses incurred by an insurer carrying on life insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in fixing any such limits the Authority shall have due regard to the conditions obtaining in life insurance business generally during that year, and he may fix different groups of insurers.

(2) Where an insurer is guilty of contravening the provisions of section 40B with respect to the expenses of management, the Authority may, after giving the insurer an opportunity of being heard, administer a warning to the insurer.

(3) Where within a period of seven years two warnings have been given to an insurer under sub-section (2) and they have been disregarded by him, the Authority may cause an investigation and valuation, as 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 said actuary all the materials required by him for the purpose of such investigation and valuation, within such period, not being less than three months, as the Authority may specify.

(4) The provisions of sub-sections (1) and (4) of section 13 and of sub-sections (1) and (2) of section 15, or, as the case may be, of sub-section (2) of section 16 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.

(5) There shall be appended to every such abstract a statement signed by the actuary giving such information as may be prescribed.

(6) On receipt of the abstract and statement furnished in accordance with sub-section (4), the Authority may take such action as may be prescribed.

Functions of the Executive Committee of General Insurance Council:

(1) The functions of the Executive Committee of the General Insurance Council shall be—

(a) to aid and advise insurers, carrying on general insurance business, in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of policies of general insurance;

(b) to render advice to the Authority in the matter of controlling the expenses of such insurers carrying on business in India in the matter of commission and other expenses;

(c) to bring to the notice of the Authority the case of any such insurer acting in a matter prejudicial to the interests of holders of general insurance policies;

(d) to act in any matter incidental or ancillary to any of the matters specified in clauses (a) to (c) as with the approval of the Authority may be notified by the General Insurance Council in the Gazette of India.

(2) For the purpose of enabling it to effectively discharge its functions, the Executive Committee of the General Insurance Council may collect such fees as may be laid down in the bye-laws made by the Council from the insurers carrying on general insurance business.

Provided that if the General Insurance Council thinks fit, it may by a resolution passed by it, waive the collection of the prescribed fees for any year and where any such resolution has been approved by the Authority, the Executive Committee of the General Insurance Council shall not collect any fees in relation to that year.

Executive Committee of General Insurance Council may advise in controlling expenses:

(1) It shall be the duty of the Executive Committee of the General Insurance Council to meet at least once before the 31st day of March every year to advise the Authority in fixing under the proviso to sub-section (1) of section 40 C the limits by which the actual expenses of management incurred by an insurer carrying on general insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in fixing any such limits the Authority shall have due regard to the conditions obtaining in general insurance business in the preceding year, and he may fix different limits for different groups of insurers.

(2) Where an insurer is guilty of contravening the provisions of section 40C with respect to the expenses of management the Authority may, after giving the insurer an opportunity of being heard, administer a warning to the insurer.

(3) Where in any case two warnings given to an insurer under sub-section (2) have been disregarded by him, the Authority may take such action against the insurer as may be prescribed.

General powers of Life Insurance Council and General Insurance Council:

(1) For the efficient performance of its duties, the Life Insurance Council or the General Insurance Council as the case may be, may—

(a) appoint such officers and servants as may be necessary and fix the conditions of their service;

(b) determine the manner in which any prescribed fee may be collected;

(c) keep and maintain up-to-date, a copy of list of all insurers who are members of the either Council;

(d) make bye-laws for —

(i) the holding of elections other than the first elections;

(ii) the summoning and holding of meetings, the conduct of business thereat and the number of persons necessary to form a quorum;

(iii) the submission by insurers to the Executive Committee of the Life Insurance Council, or the General Insurance Council, of such statements or information as may be required of them and the submission of copies thereof by the insurers to the Authority;

(iv) the levy and collection of any fees;

(v) the regulation of any other matter which may be necessary for the purpose of enabling it to carry out its duties under this Act.

(2) The Life Insurance Council or the General Insurance Council may authorise the Executive Committee concerned to exercise any of the powers conferred on the Life Insurance Council or the General Insurance Council, as the case may be, under clause (a), clause (b) , clause (c) of sub-section (1).

RE-INSURANCE

Re-insurance with Indian re-insurers:

(1) Every insurer shall re-insure with Indian re-insurers such percentage of the sum assured on each policy as may be specified by the the Authority with the previous approval of the Central Government under sub-section (2).

(2) For the purposes of sub-section (1), the Authority may, by notification in the Official Gazette, —

(a) specify the percentage of the sum assured on each policy to be re-insured and different percentages may be specified for different classes of insurance:

Provided that no percentage so specified shall exceed thirty per cent. of the sum assured on such policy; and

(b) also specify the proportions in which the said percentage shall be allocated among the Indian re-insurers.

(3) Notwithstanding anything contained in sub-section (1), an insurer carrying on fire insurance business in India may, in lieu of re-insuring the percentage specified under sub-section (2) of the sum assured on each policy in respect of such business, re-insure with Indian re-insurers such amount out of the first surplus in respect of that business as he thinks fit, so however that, the aggregate amount of the premiums payable by him on such re-insurance in any year is not less than the said percentage of the premium income (without taking into account premiums on re-insurance ceded or accepted) in respect of such business during that year.

Explanation.—For the purposes of this sub-section, the year 1961 shall be deemed to mean the period from 1st April to-the 31st December of that year.

(4) A notification under sub-section (2) may also specify the terms and conditions in respect of any business of re-insurance required to be transacted under this section and such terms and conditions shall be binding on Indian re-insurers and other insurers.

(5) No notification under sub-section (2) shall be issued except after consultation with the Advisory Committee constituted under section 101B.

(6) Every notification issued under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

(7) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing an insurer from re-insuring with any Indian re-insurer or other insurer the entire sum assured on any policy or any portion thereof in excess of the percentage specified under sub-section (2).

Advisory Committee:

(1) The Authority with the previous approval of the Central Government shall, for the purposes of section 101 A, constitute an Advisory Committee consisting of not more than five persons having special knowledge and experience of the business of insurance.

(2) The term of office of, and the allowances payable to, members of the Advisory Committee, the procedure to be followed by, and the quorum necessary for the transaction of business of, the Committee and the manner of filling casual vacancies therein shall be such as may be determined by the regulations made by the Authority.

Examination of re-insurance treaties:

The Authority may, at any time, —

(a) call upon an insurer to submit for his examination at the principal place of business of the insurer in India all re-insurance treaties and other re-insurance contracts entered into by the insurer;

(b) examine any officer of the insurer on oath in relation to any such document as is referred to in clause (a) above; or

(c) by notice in writing, require any insurer to supply him with copies of any of the documents referred to in clause (a), certified by a principal officer of the insurer.

HEALTH INSURANCE:

IMPORTANT PROVISIONS OF HEALTH INSURANCE REGULATIONS

Registration and Scope of Health Insurance Business

a. Health Insurance products may be offered only by entities with a valid registration granted to carry on Life Insurance or General Insurance or Health Insurance Business under the Insurance Regulatory and

Development Authority (Registration of Indian Insurance Companies) Regulations 2000 as amended from time to time.

b. Life Insurers may offer long term Individual Health Insurance products i.e., for term of 5 years or more, but the premium for such products shall remain unchanged for at least a period of every block of three years, thereafter the premium may be reviewed and modified as necessary.

Provided that a life insurer may not offer indemnity based products either Individual or Group. All existing indemnity based products offered by life insurers shall be withdrawn as specified under these Regulations.

Provided also that no single premium health insurance product shall be offered under Unit Linked platform.

c. General Insurers and Health Insurers may offer individual health products with a minimum tenure of one year and a maximum tenure of three years, provided that the premium remains unchanged for the tenure.

d. Group Health Policies may be offered by any insurer for a term of one year except credit linked products where the term can be extended up to the loan period not exceeding five years.

Provided General Insurers and Health Insurers may also offer Credit Linked Group Personal Accident policies for a term extended upto the loan period not exceeding five years.

Provided further, notwithstanding the provisions of Regulation 4 (b) of these Regulations, Life Insurers may offer Group Health Insurance Policies as specified in Regulation (3) (d).

e. Group Personal Accident Policies may be offered by General Insurers and Health insurers with term less than one year also to provide coverage to specific events. Other Insurance Products offering Travel Cover and Individual Personal Accident Cover may also be offered for a period less than one year.

f. Overseas or Domestic Travel Insurance policies may only be offered by General Insurers and Health Insurers , either as a standalone product or as an add-on cover to a health or personal accident policy.

Product Filing Procedure for health insurance products

a. No insurance product of a Life Insurer, General Insurer and Health Insurer under Health Insurance Business and any revision or modification thereon shall be marketed or offered by any insurer unless it is filed with the Authority as per the Product Filing Guidelines and duly disposed of by the Authority as provided therein.

b. Health Insurance products of Life Insurers shall also be subject to the provisions specifically provided for health products in the following Regulations as modified from time to time:

1. IRDA (Linked Insurance Products) Regulations, 2013.

2. IRDA (Non-linked Insurance Products) Regulations, 2013

Withdrawal of Health Insurance Product

- i. Withdrawal of a health insurance product by Life Insurers, General Insurers and Health Insurers shall be subject to the Guidelines specified by the Authority.
- ii. With regard to specific withdrawal of indemnity based health products offered by life insurers pursuant to the provisions of Regulation 3 (b) of these Regulations, the product shall be closed by giving a prospective date of closure not later than three months from the date of notification of these Regulations. For existing policyholders, the policy shall continue until the expiry of the respective policy term.

Review of Health Insurance Products

(i) All particulars of any health insurance product of Life Insurers, General Insurers and Health Insurers shall, after introduction, revision or modification be reviewed by the Appointed Actuary at least once a year. If the product is found to be financially unviable, or is deficient the Appointed Actuary may revise the product appropriately and apply for revision under Product Filing Guidelines subject to the provisions of Regulation 10 of these Regulations.

Group Insurance

a. No Group Health Insurance Policy shall be issued by any Insurer where a Group is formed with the main purpose of availing itself of insurance. There shall be a clearly evident relationship as specified by the Authority from time to time between the members of the group and the group policy holder..

The Group shall have a size as determined by the Insurer which shall be applicable for all its group policies, subject to a minimum of 7, to be eligible for issuance of a Group Insurance Policy. Further, Insurer shall follow the Guidelines specified by the Authority on Group Insurance, from time to time.

Underwriting

a. All Life Insurers, General Insurers and Health Insurers shall evolve a Health Insurance Underwriting Policy which shall be approved by the Board of the Company. Every Insurer shall also put in place measures for periodical review of the underwriting policy in tune with the changes affecting the medical field and health insurance business.

b. The underwriting policy shall also cover the approach and aspects relating to offering health insurance coverage not only to standard lives but also to sub-standard lives. It shall have in place various objective underwriting parameters to differentiate the various classes of risks being accepted in accordance with the respective risk categorisation.

c. Any proposal for health insurance may be accepted as proposed or on modified terms or denied wholly based on the Board approved underwriting policy. A denial of a proposal shall be communicated to the prospect in writing, by recording the reasons for denial. Provided, the denial of the coverage shall be the last resort that an insurer may consider.

d. General Insurers and Health Insurers may devise mechanisms or incentives to reward policyholders for early entry, continued renewals (wherever applicable), favourable claims experience, preventive and

wellness habits and disclose upfront such mechanism or incentives in the prospectus and the policy document, by complying with the norms specified under Product Filing Procedure Guidelines. Provided that what is proposed to be covered as part of wellness habits and preventive habits be clearly defined in each and every product. Provided further that no discount shall be offered on any third party service or merchandise. However, discounts in premium or discounts and/or benefits on diagnostic or pharmaceuticals or consultation services of providers in the network are permitted.

Principles of Pricing of Health Insurance Products offered by Life, General and Health Insurers:

- a. Insurers shall ensure that the premium for a health insurance policy shall be based on,
 - i. Age: for individual policies and group policies.
 - ii. Other relevant risk factors as applicable
- b. For provision of cover under family floater, the impact of the multiple incidence of rates of all family members proposed to be covered shall be considered.
- c. The premiums filed shall ordinarily be not changed for a period of three years after a product has been cleared in accordance to the product filing guidelines specified by the Authority. Thereafter the insurer may revise the premium rates depending on the experience subject to (d) (e) and (f) hereunder. However, such revised rates shall not be changed for a further period of at least one year from the date of launching the revision.
- d. The policy premium rate shall be unchanged
 - i. for all group products for the term of the policy.
 - ii. for all individual and family floater products, other than travel insurance products offered by general insurers and health insurers, for at least: 1. a period of one year in case of one year renewable policies and 2. the period stipulated in 3(c) herein in case of the rest.
 - iii. In case of individual health products offered by life insurers, every block of three years as stipulated in Regulation (3) (b).
- e. Subject to Regulation (3) (b), changes in rates will be applicable from the date of approval by the Authority and shall be applied only prospectively thereafter for new policies and from the date of renewal for the existing policies.
- f. Notwithstanding the above provisions, all Insurers shall comply with the Guidelines specified by the Authority while pricing the products.

Designing of Health Insurance Policies

- a. Subject to Regulation 3 as applicable, Health insurance product may be designed to offer various covers;
 - i. For specific age or gender groups
 - ii. For different age groups

iii. For treatment in all hospitals throughout the country, provided the hospitals comply with the definition specified

iv. For treatment in specific hospitals only, provided the morbidity rates used are representative

v. For treatment in specific geographies only, provided the morbidity rates used are representative

Provided, such specifications are disclosed clearly upfront in the product prospectus, documents and during sale process. And provided that no insurer shall offer any benefit or service without any insurance element.

b. In order to facilitate offering of innovative covers by insurers, 'Pilot products' may be designed and filed for approval of the Authority in accordance with the Product Filing Guidelines specified by the Authority. Pilot products referred herein can be offered only by General Insurers and Health Insurers for policy tenure of one year. Every Pilot product may be offered upto a period not exceeding 5 years. After 5 years of launch of the pilot product, the product needs to get converted into a regular product or based on valid reasons may be withdrawn subject to the insured being given an option to migrate to another product subject to portability conditions. The Authority may specify guidelines for Pilot Products from time to time. Where a pilot product gets converted into a regular product, any exception made in these Regulations for pilot products shall no longer apply and the insurer shall ensure compliance with all the provisions of these Regulations.

c. Insurer shall not compel the insured to migrate to other health insurance products. In case of migration from a withdrawn product, the insurer shall offer the policyholder an alternative available product subject to portability conditions.

d. Insurers shall ensure adequate dissemination of product information on all their health insurance products on their websites. This information shall include a description of the product, copies of the prospectus as approved under the Product Filing Guidelines, proposal form, policy document wordings and premium rates inclusive and exclusive of Service Tax as applicable.

Entry and Exit Age

i. Except as provided for in regulation 17(i), all health insurance policies shall ordinarily provide for an entry age of at least up to 65 years

ii. Except travel insurance products, personal accident products and Pilot Products referred to in Regulation 2(i)(l) herein, once a proposal is accepted and a policy is issued which is thereafter renewed periodically without any break, further renewal shall not be denied on grounds of the age of the insured.

Renewal of Health Policies issued by General Insurers and Health Insurers (not applicable for travel and personal accident policies)

i. A health insurance policy shall ordinarily be renewable except on grounds of fraud, moral hazard or misrepresentation or non-cooperation by the insured, provided the policy is not withdrawn.

ii. An insurer shall not deny the renewal of a health insurance policy on the ground that the insured had made a claim or claims in the preceding policy years, except for benefit based policies where the policy terminates following payment of the benefit covered under the policy like critical illness policy.

iii. The insurer shall provide for a mechanism to condone a delay in renewal up to 30 days from the due date of renewal without deeming such condonation as a break in policy. However coverage need not be available for such period.

iv. The promotion material and the policy document shall explicitly state the conditions under which a policy terminates, such as on the payment of the benefit in case of critical illness benefits policies.

Migration of health insurance policy (not applicable for Travel and Personal Accident policies)

i. General Insurers and Health Insurers offering health covers specific to age groups such as maternity covers, children under family floater policies, students etc, shall offer an option to migrate to a suitable alternative available health insurance policy at the end of the specific exit age or at the time of withdrawal of the policy at the option exercised by the said lives by allowing suitable credits for all the previous policy years, provided the policy has been maintained without a break.

ii. Pilot products offered by general insurers and health insurers, may be guided by Regulation 11(b).

iii. All health insurance policies issued by General and Health Insurers shall allow the portability of any policy in accordance with Schedule -1 of these Regulations.

AYUSH Coverage:

a. General Insurers and Health Insurers may endeavour to provide coverage for one or more systems covered under 'AYUSH treatment' provided the treatment has been undergone in a government hospital or in any institute recognized by government and/or accredited by Quality Council of India or National Accreditation Board on Health.

Wellness and Preventive aspects:

While wellness and preventive elements as part of product design is encouraged, no policy of insurance shall promote or offer the products and services of third parties who are not Network Providers. Insurers shall neither offer any discounts to the policyholders, in any form, on the products of the third parties either as part of policy contract or otherwise.

i. However, Insurers may endeavour promoting wellness amongst policyholders of health insurance by offering the following health specific services offered by Network Providers, 1. outpatient consultations or treatments or 2. Pharmaceuticals or 3. Health check-ups

including discounts on all the above at specific Network Providers.

ii. Insurers may also endeavour to put in place procedures for offering discounts on premiums on renewals based on the fitness and wellness criteria stipulated and disclosed.

Provided further the costs towards the above services are factored into the pricing of the underlying Health Insurance Product.

Special Provisions for Senior Citizens

- i. The premium charged for health insurance products offered by Life Insurers, General Insurers and Health Insurers to senior citizens shall be fair, justified, transparent and duly disclosed upfront. The insured shall be informed in writing of any underwriting loading charged as filed and approved under the Product Filing Guidelines over and above the premium and specific consent of the policyholder for such loadings shall be obtained before issuance of a policy.
- ii. All Life Insurers, General Insurers and Health insurers and TPAs, as the case may be, shall establish a separate channel to address the health insurance related claims and grievances of senior citizens.

Multiple Policies

- i. In case of multiple policies which provide fixed benefits, on the occurrence of the insured event in accordance with the terms and conditions of the policies, each insurer shall make the claim payments independent of payments received under other similar policies.
- ii. If two or more policies are taken by an insured during a period from one or more insurers to indemnify treatment costs, the policyholder shall have the right to require a settlement of his/her claim in terms of any of his/her policies.
 1. In all such cases the insurer who has issued the chosen policy shall be obliged to settle the claim as long as the claim is within the limits of and according to the terms of the chosen policy.
 2. Claims under other policy/ies may be made after exhaustion of Sum Insured in the earlier chosen policy / policies.
 3. If the amount to be claimed exceeds the sum insured under a single policy after considering the deductibles or co-pay, the policyholder shall have the right to choose insurers from whom he/she wants to claim the balance amount.
 4. Where an insured has policies from more than one insurer to cover the same risk on indemnity basis, the insured shall only be indemnified the hospitalization costs in accordance with the terms and conditions of the chosen policy.

Loadings on Renewals:

- i. For Individual products, the loadings on renewal shall be in terms of increase or decrease in premiums offered for the entire portfolio and shall not be based on any individual policy claim experience.
- ii. The discounts and loadings offered shall:
 1. not be at the discretion of the insurer;

2. be based on an objective criteria;
 3. be disclosed upfront in the prospectus and policy document along with the objective criteria, and shall be as approved under the Product Filing Guidelines
- iii. No Insurer shall resort to fresh underwriting by calling for medical examination, fresh proposal form etc. at renewal stage where there is no change in Sum Insured offered. Provided that where there is an improvement in the risk profile, the Insurer may endeavour to recognise that for removal of loadings at the point of renewal.

Protection of Policyholders' Interest:

Every insured shall be provided with a Customer Information Sheet as specified by the Authority in the relevant Guidelines. The insurer shall establish necessary systems, procedures, offices and infrastructure to enable efficient issuance of pre-authorisations on a 24 hour basis and for prompt settlement of claims and grievances.

Settlement/Rejection of claim by insurer:

- i. An insurer shall settle or reject a claim, as may be the case, within thirty days of the receipt of the last 'necessary' document.
- ii. Except in cases where a fraud is suspected, ordinarily no document not listed in the policy terms and conditions shall be deemed 'necessary'. The insurer shall ensure that all the documents required for claims processing are called for at one time and that the documents are not called for in a piece-meal manner.
- iii. The information that the insurer has captured in the proposal form at the time of accepting the proposal, the terms & conditions offered under the policy, the medical history as revealed by earlier claims, if any, and the prior claims experience shall all be maintained by the insurer as an electronic record and shall not be called for again from the policyholder/insured at the time of subsequent claim settlements.
- iv. Insurer may stipulate a period within which all necessary claim documents should be furnished by the policyholder/insured to make a claim. However, claims filed even beyond such period should be considered if there are valid reasons for any delay.
- v. Every Insurance Claim shall be disposed of in accordance to the Terms and Conditions of the policy contract and the extant Regulations governing the settlement of Claims. No Claim shall be closed in the books of the Insurers.

Minimum Disclosures in Policy Document: In addition to the requirements stipulated in IRDA (Protection of Policyholders' Interest) Regulations, 2002 as amended from time to time the policy document shall contain:

- i. List of disclosures required as per this regulation.

- ii. Procedure for claims submission, time lines and possible course of action, if time lines for claim submission are not adhered to along with all the claims documents required for claim processing.
- iii. Sub-limits applicable on any of the covers offered in the health insurance product and the impact of such sub-limits on other covers provided in the product, if any, shall be clearly spelt out.
- iv. Penal interest provision shall invariably be incorporated in the policy document as per Regulation 9(6) of IRDA (Protection of Policyholders' Interests) Regulations, 2002 as modified from time to time.
- v. The TPA(s) details, if any along with the complete address and contact numbers shall be attached to the policy document. It shall also be mentioned that the updated list of the TPAs will be available in the website of the Insurers.

Other Disclosures:

- i. Every Insurer shall disclose product-wise or location or geography-wise particulars of the TPAs that are engaged for rendering health services in their respective website, and these details shall be updated whenever there is a change.
- ii. Product-wise cashless services offered shall be clearly explained in the website of the respective Insurers.
- iii. In case of Pilot Products referred under Regulation (2)(i)(l) above, in addition to all the extant disclosure norms applicable to insurance advertisements, all the sales and publicity material pertaining to the 'Pilot products' shall disclose the following:
 - 1. The product offered is a pilot product and that it is a close-ended one.
 - 2. The product may be discontinued from the date of dd/mm/yyyy (to specify the maximum date on which the product be either withdrawn or converted into a regular product) or may be continued as a regular product.
 - 3. In the event of the discontinuation of the Pilot product, the Insured would be provided the option of migration as per the extant applicable provisions.
 - 4. The product shall carry a tag line of "PILOT PRODUCT" to demonstrate that the Health Insurance product promoted is a Pilot product.
- iv. Insurer shall keep the insured informed of the list of Network Providers and display the same on their website. Such list shall be displayed geography wise and updated as and when there is any change in the Network providers.

Administration of Health Policies

- a. Subject to the terms of a policy, General Insurers and Health insurers shall extend to all policy holders a cashless facility for treatment at specific establishments or the reimbursement of the costs of medical and health treatments or services availed at any medical establishment.

- b. Cashless facility shall be offered only at establishments which have entered into an Agreement with the insurer to extend such services. Such establishments will be termed as Network Providers.
- c. Reimbursement shall be allowed at any medical establishment. All such establishments must be licensed or registered as may be required by any Local, State or National Law as applicable.
- d. The administration of all health plus life-combi products shall be in accordance with the provisions of Schedule II of this Regulation.
- e. Except in emergencies a cashless facility may require a Pre-Authorisation to be issued by the Insurer or an appointed TPA to the Network Provider where the treatment is to be undergone. The Authority may prescribe a Standard Pre-Authorisation form and standard reimbursement claims forms which shall be used for this purpose, as applicable.
- f. To avail the benefit of cashless facility, insurers shall issue an Identification Card to the insured within 15 days from the date of issuance of a policy, either through a TPA or directly. Provided where there is no mention of the expiry date on the card, the Insurer may provide a permanent card which is valid as long as the policy is renewed with the company.
- g. The identification card shall, at the minimum, carry details of the policyholder and the logo of the insurer. Insurers shall endeavour to issue Smart Cards with features such as cards with Quick Response Code, Magnetic reader to enable the TPAs and Network Providers offer health services seamlessly.
- h. Where a policyholder has been issued a pre-authorisation for the conduct of a given procedure in a given hospital or if the policyholder is already undergoing such treatment at a hospital, and such hospital is proposed to be removed from the list of Network Provider before the final settlement of the claim, then insurers shall provide the benefits of cashless facility to such policy holder as if such hospital continues to be on the Network Provider list.
- i. An insurance company may enter into an arrangement with other insurance companies for sharing of Network Providers, transfer of claim and transactional data arising in areas beyond their service.

Health Services Agreements:

- a. Insurance companies may offer policies providing cashless services to the policyholders provided:
 - i. The services are offered through network providers who have been enlisted to provide medical services under a direct written agreement with the insurer where there is a direct arrangement or by a tripartite agreement amongst health services provider, the TPA and the insurer where it is through a TPA. Where an insurer wishes to utilise the services of a TPA, it shall ensure that the written agreement is entered into for defined services with a TPA holding a valid Certificate of Registration issued in accordance with the IRDAI (Third Party Administrators – Health Services) Regulations, 2016 as may be amended from time to time.
 - b. The Agreements which shall be entered into between / amongst insurers, network providers or TPAs shall cover the following amongst others:

i. The tariff applicable with respect to various kinds of healthcare services being provided by the network provider ii. A clause empowering the insurer to cancel or modify the agreement in case of any fraud, misrepresentation, inadequacy of service or other non-compliance or default on the part of TPA or network provider;.

iii. A standard clause as may be agreed upon providing for continuance of services by a network provider to the insurance company if the TPA is changed or the agreement with TPA is terminated.

iv. A clause providing for opting out of network provider from a given TPA or dispanelment of a network provider by a TPA subject to Guidelines specified by the Authority, if any, for reasons of inadequacy of service rendered by the TPA to the network provider.

v. A clause specifically fixing the onus on the Insurer to deny or repudiate a claim

vi. A clause enabling insurer to inspect the premises of the Network Provider at any time without prior intimation.

c. Insurers and TPAs shall comply with standard clauses to be incorporated in all such agreements as specified by the Authority by way of guidelines.

d. The insurance company shall endeavour to enter into Agreements with adequate number of both public and private sector network providers across the geographical spread. The copy of the agreement shall be maintained by the Insurer for a period of not less than five years from the date of the expiry or termination of the agreement.

e. The Authority may specify, through Guidelines, certain standards, benchmarks and protocols for Network Providers from time to time. The Insurers and TPAs shall ensure that only those Providers who meet with such standards, benchmarks and protocols are enrolled into the network.

Payments to Network Providers and Settlement of Claims of Policyholders:

a. For the purpose of claim settlement, insurer shall make direct payments to the Network provider and to the policyholders by integrating their banking system platform with the Network Provider or the policyholder, as the case may be. Provided that, if a claimant opts for payment through a cheque or Demand Draft, the insurer shall not deny such request.

Engagement of Services of TPAs by Insurers in relation to Health Insurance Policies

a. Every Insurer shall provide detailed product wise guidelines to TPAs for handling of claims i.e. claim admissions and assessments. The guidelines shall articulate the payments / benefits allowed or disallowed under various products that are being serviced by the TPAs. While prescribing such guidelines the Insurers shall also prescribe the capacity requirements, internal control procedures to be put in place by the TPA under the agreement for rendering the services under such product.

b. Detailed Claim Guidelines: Every Insurer shall issue detailed product specific claim guidelines to TPAs

c. Insurers shall ensure that the TPAs are not carrying out the following activities as part of the agreement

i. Claim rejections/repudiations with respect to the health insurance policies;

ii. Payments to the policyholders, claimants or the network providers;

iii. Any services directly to the policyholder or insured or to any other person unless such service is in accordance with the terms and conditions of the Agreement entered into with the insurer and complies with the IRDAI (TPA-Health Services) Regulations, 2016.

d. Settlement and Denial of Claims:

i. Insurers and/or TPAs, as may be applicable, shall endeavour to collect documents for processing claims for disposal electronically. Claims that are being settled shall be done through e-payments by the insurers.

ii. Where claims are directly handled by the Insurers, the provisions of Regulation (21) (3) (c) (i) of IRDAI (TPA-Health Services) Regulations, 2016 shall be complied in the correspondence to the policyholder with respect to settlement of the claims

iii. The insurer shall be responsible for proper and prompt service to the policyholders at all times.

iv. Where a claim is denied or repudiated, the communication about the denial or the repudiation shall be made only by the Insurer by specifically stating the reasons for the denial or repudiation, while necessarily referring to the corresponding policy conditions. The insurer shall also furnish the grievance redressal procedures available with the Insurance Company and with the Insurance Ombudsman along with the detailed addresses of the respective offices.

e. More than one TPA may be engaged by an insurance company.

Guidelines on Standardization in Health Insurance

As mentioned in the Schedule III of Health Insurance Regulations, IRDA has to come out with Guidelines on Standardization of Health Insurance Products and Services to avoid any ambiguity and confusion among the insurers, Third Party Administrators (TPAs) and customers. In this context, IRDA came out with such guidelines in the year 2016. Some important provisions are listed below in terms of giving their standardized meanings and definitions.

1. Accident:

An accident means sudden, unforeseen and involuntary event caused by external, visible and violent means.

2. Any one illness: (not applicable for Travel and Personal Accident Insurance)

Any one illness means continuous period of illness and includes relapse within 45 days from the date of last consultation with the Hospital/Nursing Home where treatment was taken.

3. Cashless facility:

Cashless facility means a facility extended by the insurer to the insured where the payments, of the costs of treatment undergone by the insured in accordance with the policy terms and conditions, are directly made to the network provider by the insurer to the extent pre-authorization is approved.

4. Condition Precedent:

Condition Precedent means a policy term or condition upon which the Insurer's liability under the policy is conditional upon.

5. Congenital Anomaly:

Congenital Anomaly means a condition which is present since birth, and which is abnormal with reference to form, structure or position. a) Internal Congenital Anomaly

Congenital anomaly which is not in the visible and accessible parts of the body

b) External Congenital Anomaly

Congenital anomaly which is in the visible and accessible parts of the body

6. Co-Payment: Co-payment means a cost sharing requirement under a health insurance policy that provides that the policyholder/insured will bear a specified percentage of the admissible claims amount. A co-payment does not reduce the Sum Insured.

7. Cumulative Bonus:

Cumulative Bonus means any increase or addition in the Sum Insured granted by the insurer without an associated increase in premium.

8. Day Care Centre:

A day care centre means any institution established for day care treatment of illness and/or injuries or a medical setup with a hospital and which has been registered with the local authorities, wherever applicable, and is under supervision of a registered and qualified medical practitioner AND must comply with all minimum criterion as under –

i) has qualified nursing staff under its employment; ii) has qualified medical practitioner/s in charge; iii) has fully equipped operation theatre of its own where surgical procedures are carried out; iv) maintains daily records of patients and will make these accessible to the insurance company's authorized personnel.

9. Day Care Treatment:

Day care treatment means medical treatment, and/or surgical procedure which is:

i. undertaken under General or Local Anesthesia in a hospital/day care centre in less than 24 hrs because of technological advancement, and

ii. which would have otherwise required hospitalization of more than 24 hours.

Treatment normally taken on an out-patient basis is not included in the scope of this definition. (Insurers may, in addition, restrict coverage to a specified list).

10. Deductible:

Deductible means a cost sharing requirement under a health insurance policy that provides that the insurer will not be liable for a specified rupee amount in case of indemnity policies and for a specified number of days/hours in case of hospital cash policies which will apply before any benefits are payable by the insurer. A deductible does not reduce the Sum Insured.

(Insurers to define whether the deductible is applicable per year, per life or per event and the manner of applicability of the specific deductible)

11. Dental Treatment:

Dental treatment means a treatment related to teeth or structures supporting teeth including examinations, fillings (where appropriate), crowns, extractions and surgery.

12. Disclosure to information norm:

The policy shall be void and all premium paid thereon shall be forfeited to the Company in the event of misrepresentation, mis-description or non-disclosure of any material fact.

13. Domiciliary Hospitalization:

Domiciliary hospitalization means medical treatment for an illness/disease/injury which in the normal course would require care and treatment at a hospital but is actually taken while confined at home under any of the following circumstances:

- i) the condition of the patient is such that he/she is not in a condition to be removed to a hospital, or
- ii) the patient takes treatment at home on account of non-availability of room in a hospital.

14. Emergency Care:

Emergency care means management for an illness or injury which results in symptoms which occur suddenly and unexpectedly, and requires immediate care by a medical practitioner to prevent death or serious long term impairment of the insured person's health.

15. Grace Period:

Grace period means the specified period of time immediately following the premium due date during which a payment can be made to renew or continue a policy in force without loss of continuity benefits such as waiting periods and coverage of pre-existing diseases. Coverage is not available for the period for which no premium is received.

16. Hospital (not applicable for Overseas Travel Insurance):

A hospital means any institution established for in-patient care and day care treatment of illness and/or injuries and which has been registered as a hospital with the local authorities under Clinical Establishments (Registration and Regulation) Act 2010 or under enactments specified under the Schedule of Section 56(1) and the said act Or complies with all minimum criteria as under:

i) has qualified nursing staff under its employment round the clock; ii) has at least 10 in-patient beds in towns having a population of less than 10,00,000 and at least 15 in-patient beds in all other places; iii) has qualified medical practitioner(s) in charge round the clock; iv) has a fully equipped operation theatre of its own where surgical procedures are carried out; v) maintains daily records of patients and makes these accessible to the insurance company's authorized personnel;

17. Hospitalization (not applicable for Overseas Travel Insurance):

Hospitalization means admission in a Hospital for a minimum period of 24 consecutive 'In-patient Care' hours except for specified procedures/ treatments, where such admission could be for a period of less than 24 consecutive hours.

18. Illness:

Illness means a sickness or a disease or pathological condition leading to the impairment of normal physiological function and requires medical treatment.

(a) Acute condition - Acute condition is a disease, illness or injury that is likely to respond quickly to treatment which aims to return the person to his or her state of health immediately before suffering the disease/ illness/ injury which leads to full recovery (b) Chronic condition - A chronic condition is defined as a disease, illness, or injury that has one or more of the following characteristics:

1. it needs ongoing or long-term monitoring through consultations, examinations, check-ups, and /or tests
2. it needs ongoing or long-term control or relief of symptoms
3. it requires rehabilitation for the patient or for the patient to be specially trained to cope with it
4. it continues indefinitely

5. it recurs or is likely to recur

19. Injury:

Injury means accidental physical bodily harm excluding illness or disease solely and directly caused by external, violent, visible and evident means which is verified and certified by a Medical Practitioner.

20. Inpatient Care (not applicable for Overseas Travel Insurance):

Inpatient care means treatment for which the insured person has to stay in a hospital for more than 24 hours for a covered event.

21. Intensive Care Unit:

Intensive care unit means an identified section, ward or wing of a hospital which is under the constant supervision of a dedicated medical practitioner(s), and which is specially equipped for the continuous monitoring and treatment of patients who are in a critical condition, or require life support facilities and where the level of care and supervision is considerably more sophisticated and intensive than in the ordinary and other wards.

22. ICU Charges:

ICU (Intensive Care Unit) Charges means the amount charged by a Hospital towards ICU expenses which shall include the expenses for ICU bed, general medical support services provided to any ICU patient including monitoring devices, critical care nursing and intensivist charges.

23. Maternity expenses:

Maternity expenses means;

a) medical treatment expenses traceable to childbirth (including complicated deliveries and caesarean sections incurred during hospitalization); b) expenses towards lawful medical termination of pregnancy during the policy period.

24. Medical Advice:

Medical Advice means any consultation or advice from a Medical Practitioner including the issuance of any prescription or follow-up prescription.

25. Medical Expenses:

Medical Expenses means those expenses that an Insured Person has necessarily and actually incurred for medical treatment on account of Illness or Accident on the advice of a Medical Practitioner, as long as these are no more than would have been payable if the Insured Person had not been insured and no more than other hospitals or doctors in the same locality would have charged for the same medical treatment.

26. Medical Practitioner (not applicable for Overseas Travel Insurance):

Medical Practitioner means a person who holds a valid registration from the Medical Council of any State or Medical Council of India or Council for Indian Medicine or for Homeopathy set up by the Government of India or a State Government and is thereby entitled to practice medicine within its jurisdiction; and is acting within its scope and jurisdiction of license.

(Insurance companies may specify additional or restrictive criteria to the above e.g. that the registered practitioner should not be the insured or close member of the family. Insurance Companies may also specify definition suitable to overseas jurisdictions where Indian policyholders are getting treatment outside India as per the terms and conditions of a health insurance policy issued in India)

27. Medically Necessary Treatment (not applicable for Overseas Travel Insurance):

Medically necessary treatment means any treatment, tests, medication, or stay in hospital or part of a stay in hospital which:

i) is required for the medical management of the illness or injury suffered by the insured; ii) must not exceed the level of care necessary to provide safe, adequate and appropriate medical care in scope, duration, or intensity; iii) must have been prescribed by a medical practitioner; iv) must conform to the professional standards widely accepted in international medical practice or by the medical community in India.

28. Network Provider (not applicable for Overseas Travel Insurance):

Network Provider means hospitals or health care providers enlisted by an insurer, TPA or jointly by an Insurer and TPA to provide medical services to an insured by a cashless facility.

29. New Born Baby:

Newborn baby means baby born during the Policy Period and is aged upto 90 days.

30. Non- Network Provider:

Non-Network means any hospital, day care centre or other provider that is not part of the network.

31. Notification of Claim:

Notification of claim means the process of intimating a claim to the insurer or TPA through any of the recognized modes of communication.

32. OPD treatment:

OPD treatment means the one in which the Insured visits a clinic / hospital or associated facility like a consultation room for diagnosis and treatment based on the advice of a Medical Practitioner. The Insured is not admitted as a day care or in-patient.

33. Pre-Existing Disease (not applicable for Overseas Travel Insurance):

Pre-Existing Disease means any condition, ailment or injury or related condition(s) for which there were signs or symptoms, and / or were diagnosed, and / or for which medical advice / treatment was received within 48 months prior to the first policy issued by the insurer and renewed continuously thereafter.

(Life Insurers may define norms for applicability of PED at reinstatement).

34. Pre-hospitalization Medical Expenses

Pre-hospitalization Medical Expenses means medical expenses incurred during predefined number of days preceding the hospitalization of the Insured Person, provided that:

- i. Such Medical Expenses are incurred for the same condition for which the Insured Person's Hospitalization was required, and
- ii. The In-patient Hospitalization claim for such Hospitalization is admissible by the Insurance Company.

35. Post-hospitalization Medical Expenses:

Post-hospitalization Medical Expenses means medical expenses incurred during predefined number of days immediately after the insured person is discharged from the hospital provided that:

- i. Such Medical Expenses are for the same condition for which the insured person's hospitalization was required, and
- ii. The inpatient hospitalization claim for such hospitalization is admissible by the insurance company.

36. Qualified Nurse (not applicable for Overseas Travel Insurance):

Qualified nurse means a person who holds a valid registration from the Nursing Council of India or the Nursing Council of any state in India.

37. Reasonable and Customary Charges (not applicable for Overseas Travel Insurance):

Reasonable and Customary charges means the charges for services or supplies, which are the standard charges for the specific provider and consistent with the prevailing charges in the geographical area for identical or similar services, taking into account the nature of the illness / injury involved.

38. Renewal:

Renewal means the terms on which the contract of insurance can be renewed on mutual consent with a provision of grace period for treating the renewal continuous for the purpose of gaining credit for pre-existing diseases, time-bound exclusions and for all waiting periods.

39. Room Rent:

Room Rent means the amount charged by a Hospital towards Room and Boarding expenses and shall include the associated medical expenses.

40. Subrogation (Applicable to other than Health Policies and health sections of Travel and PA policies):

Subrogation means the right of the insurer to assume the rights of the insured person to recover expenses paid out under the policy that may be recovered from any other source.

41. Surgery or Surgical Procedure:

Surgery or Surgical Procedure means manual and / or operative procedure (s) required for treatment of an illness or injury, correction of deformities and defects, diagnosis and cure of diseases, relief from suffering and prolongation of life, performed in a hospital or day care centre by a medical practitioner.

42. Unproven/Experimental treatment:

Unproven/Experimental treatment means the treatment including drug experimental therapy which is not based on established medical practice in India, is treatment experimental or unproven.

IRDA ACT

IMPORTANT PROVISIONS OF IRDA Act 1999

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 purposes of this Act, an Authority to be called "the Insurance Regulatory and Development Authority".

(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 MEMBER (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 sixtytwo 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.

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.

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
- (b) any appointment in any company in the insurance sector.

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 re-insurance 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 64U 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.

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)

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 2B 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, 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 subsection(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 to be disqualified for reappointment.

(4) The Central Government shall cause a copy of the notification issued under sub-section(1) and a full report to any action to be laid before each House of Parliament at the earliest.

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 transactions 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 subsection(2) of section 12;

(d) the powers and functions which may be delegated to Committees of the members under subsection(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.

MODULE – III

SEBI & CAPITAL MARKET LEGISLATIONS

Origin of SEBI

Before 1992, the three principal Acts governing the securities markets were:

- (a) the Capital Issues (Control) Act, 1947, which restricted issuer's access to the securities market and controlled the pricing of issues;
- (b) the Companies Act, 1956, which sets out the code of conduct for the corporate sector in relation to issue, allotment and transfer of securities, and disclosures to be made in public issues; and
- (c) the Securities Contracts (Regulation) Act, 1956, which provides for regulation of transactions in securities through control over stock exchanges.

The Capital Issues (Control) Act, 1947 had its origin during the war in 1943 when the objective was to channel resources to support the war effort. The Act was retained with some modifications as a means of controlling the raising of capital by companies and to ensure that national resources were channeled into proper lines, i.e., for desirable purposes to serve goals and priorities of the government, and to protect the interests of investors.

Under the Act, any firm wishing to issue securities had to obtain approval from the Central Government, which also determined the amount, type and price of the issue. Major part of the liberalisation process was the repeal of the Capital Issues (Control) Act, 1947 in May 1992. With this, Government's control over issue of capital, pricing of the issues, fixing of premia and rates of interest on debentures etc. ceased.

The office which administered the Act was abolished and the market was allowed to allocate resources to competing uses. However to ensure effective regulation of the market, SEBI Act, 1992 was enacted to empower SEBI with statutory powers for (a) protecting the interests of investors in securities, (b) promoting the development of the securities market, and (c) regulating the securities market.

Its regulatory jurisdiction extends over corporates in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with securities market. SEBI can specify the matters to be disclosed and the standards of disclosure required for the protection of investors in respect of issues; can issue directions to all intermediaries and other persons associated with the securities market in the interest of investors or of orderly development for securities market; and can conduct enquiries, audits and inspection of all concerned and adjudicate offences under the Act.

In short, it has been given necessary autonomy and authority to regulate and develop an orderly securities market.

Objectives of SEBI:

- To protect the interests of investors in securities
- To promote the development of, and
- To regulate, the securities market and for matters connected therewith or incidental thereto

Important Provisions of SEBI Act 1992

Chapter I of the Act covers the definitions of various terms under the Act, while Chapter II deals with establishment of SEBI and its management. In terms of section 3 of the Act, SEBI is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract, sue and be sued in its own name. SEBI has its Head Office at Mumbai and has powers to establish its offices at other places in India.

Composition of the Board (Section 4(1)):

- (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, 2013;
- (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.

The Chairman and the other members 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 SEBI. The terms and conditions of service of Chairman and members are determined in the rules framed by Government in this regard. The general superintendence, direction and management of the affairs of SEBI vests in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by SEBI. Unless determined otherwise through regulations, the Chairman shall also have all these powers.

Functions and Powers of SEBI

Chapter IV of SEBI Act, 1992 deals with the powers and functions of SEBI. Section 11 of the Act lays down that it shall be the duty of SEBI to protect the interests of the investors in securities and to promote the development of, and to regulate the securities markets by such measures as it thinks fit. Section 11(2) provides that these measures would include:

- (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 SEBI 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 takeover 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 selfregulatory organisations in the securities market;
- (ia) calling for information and records from any person including any bank or any authority or board or corporation established or constituted by or under any central or state Act, which in the opinion of SEBI, shall be relevant to any investigation or inquiry by SEBI 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 SEBI, in the matters relating to the prevention or detection of violation in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard. However, SEBI 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 approval of the Central Government.
- (j) 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 SEBI, 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.

Section 11(2A) prescribed that SEBI 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 SEBI has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

Section 11(3) of SEBI Act provides that for carrying out the duties assigned to it under the Act, SEBI has been vested with the same powers as are available to a Civil Court under the Code of Civil Procedure, 1908 for trying a suit in respect of the following matters:

- (i) the discovery and production of books of account and other documents at such place and such time indicated by SEBI.
- (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 listed in section 12 of the Act, namely stock brokers, sub brokers, share transfer agents, bankers to an issue, trustee of trust deed, registrar to an issue, merchant bankers, underwriters, portfolio managers,

investment advisors and other such intermediaries associated with securities markets at any place.

- (iv) inspection of any book or register or other document or record of any listed company or a public company which intends to get its securities listed on any recognized stock exchange.
- (v) issuing commissions for the examination of witnesses or documents.

As per Section 11(4) SEBI, may, by an order or for reasons to be recorded in writing, in the interest of investors or securities market take any of the following measures either pending investigation or inquiry or on completion of such investigation or enquiry 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 for a period not exceeding one month, with prior approval of a magistrate of the first class having jurisdiction, one or more bank accounts of any intermediary or any person associated with the securities market in any of the Act or rules or regulations made thereunder. However, 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 regulations made there under 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.

SEBI may 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 an intermediary which intends to get its securities listed on any recognised stock exchange where SEBI has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market. Further, SEBI shall, either before or after passing such orders, gives an opportunity of hearing to such intermediaries or persons concerned.

Section 11(5) of the Act authorises SEBI to disgorge the amount, pursuant to 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 SEBI and such amount shall be utilized by SEBI in accordance with the regulations made under this Act.

Regulation of Issue of Prospectus

Section 11A(1) of SEBI Act, 1992 provides that without prejudice to the provisions of the Companies Act, 2013, SEBI 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.

Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956, SEBI may specify the requirements for listing and transfer of securities and other matters incidental thereto.

Issuing Directions

Section 11B of the Act provides that if SEBI is satisfied after making due enquiries, 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 interests of investors or securities market; or
- (iii) to secure the proper management of any such intermediary or person,

SEBI 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 relating to issue of capital, transfer of securities and other matter incidental thereto, as may be appropriate in the interests of investors in securities and the securities market.

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, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

Procedure of Investigation:

Section 11C of the Act provides that where SEBI has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or 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 SEBI thereunder, it may, at any time by order in writing, direct any person specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to SEBI.

It is the duty of every manager, managing director, officer and other employee of the company and every intermediary 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.

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 it or any person authorized 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.

The Investigating Authority may keep in its custody any books, registers, other documents and record produced 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.

The Investigating Authority may call for any book, or register, other document and record if they are needed again. Further, 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.

Any person, directed to make an investigation 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.

If any person fails without reasonable cause or refuses 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 to produce; or to furnish any information which it is his duty to furnish; or to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him by the Investigating Authority; or to sign the notes of any examination, 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.

Sub-section 7 lays down that notes of any 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. Sub-section 8 lays down that where in the course of an investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to any, 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 during noted court in Mumbai, as may be notified by the Central Government for an order for the seizure of such books, registers, other documents and records.

Sub-section 8A stipulates that the authorised officer may requisition the services of any police officer or any office of the Central Government, or of both, to assist him for all or any of the purposes specified above and it shall be the duty of every such officer to comply with such requisition.

Sub-section (9) provides that after considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designed Court, by order, authorize 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 and other documents and records, it consider necessary for the purpose of the investigation.

However, the Magistrate or Judge of the Designated Court shall not authorize seizure of books, registers, other documents and record of any listed public company or a public company (not being the intermediary specified under section 12) which intends to get its securities listed on any recognized stock exchange unless such company indulges in insider trading or market manipulation.

Sub-section 10 provides that 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. The Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof. 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.

Registration of Intermediaries:

Chapter V of the Act provides for registration of various intermediaries such as stock broker, sub-broker, share transfer agents etc.

Section 12(1) of the Act provides that 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 SEBI in accordance with the regulations made under this Act.

A person buying or selling securities or otherwise dealing with the securities market as a stock-broker, subbroker, 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 SEBI 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.

Also no depository participant, custodian of securities, foreign institutional investor, credit rating agency or any other intermediary associated with the securities market as SEBI 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 SEBI in accordance with the regulations made under this Act.

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 SEBI in accordance with the regulations. It is clarified by SEBI that 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 the insurer.

Every application for registration would in such manner and on payment of such fees as may be determined by regulations. SEBI may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations. However no such order shall be made unless the person concerned has been given a reasonable opportunity of being heard.

Prohibition of Manipulative Activities and Insider Trading:

Chapter VA of the Act deals with prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control. Section 12A of the Act provides that 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 recognized 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 recognized 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 recognized 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; company whose securities are listed or proposed to be listed on a recognized stock exchange in contravention of the regulations made under this Act

Finance, Accounts and Audit of SEBI:

Chapter VI of the Act provides for Finance, Accounts and Audit of SEBI

Fund

The Central Government may, after due appropriation made by Parliament by law in this behalf, make to

SEBI grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act. There shall be constituted a fund to be called the Securities and Exchange Board of India General Fund and there shall be credited thereto all grants, fees and charges received by SEBI under this Act; all sums received by SEBI from such other sources as may be decided upon by the Central Government. The Fund shall be applied for meeting the salaries, allowances and other remuneration of members, officers and other employees of SEBI, expenses of SEBI in the discharge of its functions and expenses on objects and for purposes authorised by this Act.

Accounts and Audit

SEBI 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. The accounts of SEBI 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 SEBI to the Comptroller and Auditor General of India. The Comptroller and Auditor General of India and any other person appointed by him in connection with the audit of the accounts of SEBI 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 SEBI. The accounts of SEBI 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 FOR FAILURES

Chapter VIA of SEBI Act deals with penalties which can be imposed under the Act for various failures, defaults, non-disclosure and other offences.

It may be recalled that Section 11(2)(i) empowers SEBI to call for information and conduct enquiries and audits of the stock exchanges, mutual funds, other persons associated with securities markets, intermediaries and self regulatory organisations in the security market. Also Section 11(ia) of the Act requires 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 SEBI.

Penalty for failure to furnish information, return, etc:

Section 15A lays down that if any person who is required under SEBI Act or any rules or regulations made thereunder, he 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, if :

- (a) to furnish any document, return or report to SEBI, fails to furnish the same;
- (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;
- (c) to maintain books of accounts or records, fails to maintain the same.

Penalty for failure by any person to enter into agreement with clients:

Section 15B lays down that 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 pay a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

Penalty for failure to redress investors' grievances:

Section 15C lays down that if any listed company or any person who is registered as an Intermediary, after having been called upon by SEBI in writing to redress the grievances of investor, fails to redress such grievances within the time specified by SEBI, such company or intermediary shall be liable to pay a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

Penalties for Default:

Section 15D and 15F provide for penalties for default in case of mutual funds : Section 15D lays down that in case of mutual funds, if any person who is:

- (a) required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from SEBI 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 of 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 SEBI 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 SEBI 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 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 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 lays down that where any asset management company of a mutual fund registered under SEBI Act fails to comply with any of the regulation providing for restrictions on the activities of such company, it shall be liable to a penalty which shall not be less than one lakh rupees but which may extend one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalties for default in case of stock brokers:

Section 15F provides if any person registered as a stock broker under SEBI Act -

- (a) fails to issue contract notes in the form and in the manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;
- (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 lays down that if any insider:

- (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,

he shall be liable to a penalty 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 lays down that if any person 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 such 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 ten 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 provides that 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 regulations made or directions issued by SEBI 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 extend to one crore rupees.

Adjudications :

Section 15-I & J deal with SEBI's power to adjudicate and factors to be taken into account by the adjudicating officer.

- (1) For the purpose of adjudging the penalties for failure, SEBI appoints any of its officers not below the rank of 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 has powers 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, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.
- (3) SEBI 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.

However, no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter. Further, nothing contained in this shall not 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 lays down that while adjudging the amount of penalty, the adjudicating officer shall have due regard to the following factors viz.,

- (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.

Section 15JA provides that all sums realised by way of penalties under this Act shall be credited to the consolidated fund of India.

Settlement of administrative and civil procedure:

Section 15JB deals with settlement of administrative and civil proceeding by SEBI. Any person against where any proceedings have been initiated or may be initiated under section 11, Section 11B, section 11D, section 12(3) or section 15-I, may file an application in writing to SEBI proposing for settlement of proceeding initiated or to be initiated for the alleged defaults. SEBI, 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 SEBI in accordance with the regulations made under this Act.

The settlement proceedings shall be conducted in accordance with the procedure specified in the regulations made under this Act.

No appeal shall lie under section 15T against any order passed by SEBI or adjudicating officer as the case may be.

SECURITIES APPELLATE TRIBUNAL (SAT):

In order to afford proper appellate remedies, Chapter VIB of SEBI Act provides for the establishment of the Securities Appellate Tribunals to consider appeals against SEBI's orders, of penalties.

As per Section 15K, the Central Government is empowered to establish by notifications one or more Appellate Tribunals, to be known as the Securities Appellate Tribunals to exercise the jurisdiction, power and authorities conferred on such Tribunal by SEBI Act or under the Act or any other law for the time being in force. The Central Government has set up a Tribunal at Mumbai.

Composition of SAT:

According to Section 15L, which deals with the composition of the Tribunal, the Securities Appellate Tribunals shall consist of a Presiding Officer and two other members to be appointed by the Central Government by notification.

Qualification for Appointment as Presiding Officer or Member :

Section 15M prescribes that a person shall not be qualified for appointment as the Presiding Officer of Securities Appellate Tribunals unless he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court or 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. It has also been prescribed that the presiding officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with chief justice of India or his nominee. A person shall not be qualified for appointment as a member of 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.

A member of SEBI or any person holding a post at senior management level at SEBI cannot be appointed as presiding officer or member of Securities Appellate Tribunal during his service or tenure as such with SEBI or within two years from the date on which he ceases to hold office as such in SEBI.

Tenure of Officer of Presiding Officer and Other Members:

Section 15N lays down that the Presiding Officer and every other member of Securities Appellate Tribunal shall hold office for a term of five years from the date he enters upon his office and is eligible for reappointment.

It has also been provided that the person attaining the age of sixty eight years cannot hold office as the presiding officer of Securities Appellate Tribunal. Also a person who has attained the age of sixty two years cannot hold office as member of Securities Appellate Tribunal.

Orders Constituting Appellate Tribunal to be Final and not to Invalidate its Proceedings:

Section 15R makes it clear that 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 Tribunals shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

Requirements for Appeal to the Tribunal:

Section 15T and 15U deal with the appeal procedure and power of Securities Appellate Tribunals. Section 15T lays down that any person aggrieved:

(1) (a) by an order of SEBI made, 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) Every appeal shall be filed within a period of 45 days from the date on which a copy of the order made by SEBI or the Adjudicating Officer, as the case may be, is received by him and it shall be in such form and be accompanied by prescribed fee.

However, the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal, 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 SEBI and the parties to the appeal and to the concerned Adjudicating Officer.

(5) The appeal filed before the Securities Appellate Tribunal 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 OF SECURITIES APPELLATE TRIBUNAL:

As regards the procedure and powers of Securities Appellate Tribunal, Section 15U lays down that 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.

POWERS OF SECURITIES APPELLATE TRIBUNAL:

The Securities Appellate Tribunals 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*; and
- (h) any other matter which may be prescribed.

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.

Legal representation:

Section 15V permits the appellant either to appear in person or authorise one or more Practising Company Secretaries or Chartered Accountants or Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Limitation:

As per the section 15W, the provisions of the Limitations Act, 1963 shall apply to an appeal made to Securities Appellate Tribunal.

Public Servants:

As per section 15X, the Presiding Officer and other officers and employees of Securities Appellate Tribunal shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

JURISDICTION OF CIVIL COURT:

Section 15Y lays down that no civil court has 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 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 lays down that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order;

It has been 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 60 days.

POWERS OF CENTRAL GOVERNMENT:

(a) To issue directions

Section 16 empowers Central Government to issue directions in writing to SEBI on questions of policy as it may deem fit from time to time. However, the Central Government shall as far as practicable, give an opportunity to SEBI to express its views before any such directions is given by the Central Government. The decision of the Central Government as to whether a question is one of policy or not shall be final.

(b) To Supercede SEBI

Section 17 lays down that if at any time the Central Government is of opinion that:

- (a) on account of grave emergency, SEBI is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or
- (b) SEBI 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 SEBI or the administration of SEBI has deteriorated; or
- (c) circumstances exist which render it necessary in the public interest so to do,

it may, by notification, supersede SEBI for such period, not exceeding six months, as may be specified in the notification.

Upon the publication of the notification, it will have the following effects:

- (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 SEBI, shall until SEBI is reconstituted under subsection (3), be exercised and discharged by such person or persons as the Central Government may direct; and
- (c) all property owned or controlled by SEBI shall, until SEBI is reconstituted, vest in the Central Government.

On the expiration of the period of supersession specified in the notification, the Central Government may reconstitute SEBI by a fresh appointment and in such case any person or persons who vacated their offices because of supersession shall not be deemed disqualified for appointment.

However, the Central Government may, at any time, before the expiration of the period of supersession, take action. The Central Government shall cause a notification issued and a full report of any action taken under this section and the circumstances to such action to be laid before each House of Parliament at the earliest.

Returns and Reports:

As per Section 18, SEBI is required to 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.

SEBI 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 and a copy of the report, as soon as may be after it is received, shall be laid down before each House of Parliament.

Delegation of Powers:

In accordance with Section 19 of SEBI Act, SEBI may, by general or special order in writing delegate to any member, officer of SEBI or any other person subject to such conditions, if any as may be specified in the order, such of its powers and functions under the Act as it may deem necessary.

Appeal to the Central Government:

Section 20 of the Act provides that any person aggrieved by an order of SEBI made 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. The appeal shall not be admitted if it is preferred after the expiry of the period prescribed therefor. However, if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

Every appeal made under this section shall be made in prescribed form and shall be accompanied by a copy of the order appealed against by such fees as may be prescribed.

The procedure for disposing of an appeal shall be such as may be prescribed and the appellant shall be given a reasonable opportunity of being heard.

Bar of Jurisdiction:

Section 20A lays down that no order passed by SEBI 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 SEBI (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 SEBI or the adjudicating officer by, or under, SEBI Act.

Public Servants:

Section 22 of the Act provides that all members, officers and other employees of SEBI while acting or purporting to act in pursuance of any of the provisions of the Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

Offences and Punishments:

Section 24 lays down that:

- (1) Without prejudice to any award of penalty by the Adjudicating Officer under SEBI 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.

Section 24A provides any offence punishable under this Act, not being an offence punishable with imprisonment only or with imprisonment and also with fine, may before or after the institutions of any proceeding, be compounded by a Securities Appellate Tribunal or a Court before which such proceedings are pending.

Power to grant Immunity:

As per Section 24B of the Act, the Central Government may on the recommendations by SEBI, if satisfied that any person who is alleged to have violated any of the provisions of this Act or the rules or regulations made thereunder has made a full and true disclosures in respect of alleged violations, grant to such persons, subject to conditions as it may think fit, immunity from prosecution for any offence under this Act with respect to the alleged violation.

However, 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. It has also been provided that recommendations of SEBI shall not be binding upon the Central Government. However, an immunity granted to a person can be withdrawn by the Central Government, if it is satisfied 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. 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. He 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.

Cognizance of Offences by Courts:

Section 26 lays down that:

- (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 SEBI.

Establishment of Special Courts:

Section 26A empowered the Central Government for providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

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.

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 narrates that notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, 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.

Application of Code to proceedings before Special Court:

Section 26D (1) provides that 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.

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.[26(2)]

Transitional provisions:

Section 26E provides that 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. However, 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 on offences by company lays down that:

- (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;

However, 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 above, 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.

Recovery of amounts:

Section 28A(1) provides that if a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of SEBI 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 SEBI, 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 section 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 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.

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 15T of this Act.

“Recovery Officer” means any officer of SEBI who may be authorized, by general or special order in writing, to exercise the powers of a Recovery Officer.

Sub-section (2) empowered the Recovery Officer to seek the assistance of the local district administration while exercising the powers.

The recovery of amounts by a Recovery Officer, pursuant to non compliance with any direction issued by SEBI under section 11B, shall have precedence over any other claim against such person.

Power to make Rules:

Section 29 empowers the Central Government to make rules for carrying out the purposes of this Act.

Power of SEBI to make Regulations:

Section 30 empowers SEBI by notification to make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Such regulations may provide for all or any of the following matters, namely:

- (a) the times and places of meetings of SEBI and the procedure to be followed at such meetings including quorum necessary for the transaction of business;
- (b) the terms and other conditions of service of officers and employees of SEBI;
- (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 fulfillment of other conditions relating to Collective Investment scheme under sub-section (2A) of section 11AA;
- (cc) the procedure to be followed by the authorized 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.
- (da) the terms determined by SEBI 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 regulation or in respect of which provision is to be made by regulations.

Rules, Regulations to be laid before the Parliament:

Section 31 lays down that 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.

Section 32 lays down that 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.

SEBI (SETTLEMENT OF ADMINISTRATIVE & CIVIL PROCEEDINGS) REGULATIONS, 2014:

Under the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956 (SCRA) and the Depositories Act, 1996, SEBI pursues two streams of enforcement actions i.e. Administrative/Civil or Criminal. Administrative/civil actions include issuing directions such as remedial orders, cease and desist orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal. Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal court. Consent order is a remedial measure for settling civil proceedings initiated by SEBI.

Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays.

SEBI vide circular ref no. EFD/ED/Cir-1/2007 dated April 20, 2007 laid down the framework for passing of consent orders and for considering requests for composition of offences under SEBI Act, SC(R) Act and Depositories Act. Again in the year 2012 SEBI with the purpose of providing more clarity on its scope and applicability, partially modified the same.

The President of India promulgated the Securities Laws (Amendment) Second Ordinance, 2013 on September 16, 2013 conferring explicit powers on SEBI to settle administrative and civil proceedings under section 15JB of the Securities and Exchange Board of India Act, 1992 (SEBI Act), section 23JA of the Securities Contracts (Regulation) Act, 1956 and section 19-IA of the Depositories Act, 1996.

The said Ordinance provided that SEBI 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 SEBI in accordance with the regulations made under SEBI Act. The said Ordinance further provided that the settlement proceedings shall be conducted in accordance with the procedure specified in the regulations made under SEBI Act. In this direction SEBI also placed a draft consultation paper on SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2013 on its website for public comments.

In the light of the above, SEBI framed SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and notified it vide Circular No. LAD-NRO/GN/2013-14/37/50 dated 09 January, 2014. These regulations will enable the persons who have defaulted on any SEBI laws & civil proceedings have been initiated against them, to settle the proceedings. These regulations do not provide for settling proceedings which are under criminal in nature.

These regulations provide for the involved entity to file settlement plea within 60 days of the show cause notice served to them by SEBI. The charges and related costs would not be considered upon the payment of settlement also in the cases in which the applicant has already been a party to two earlier settlements. The regulation mentions the minimum amount to be paid by entities, which will vary as per the charges against them. These charges will be highest for the promoters.

SEBI (Settlement of Administrative & Civil Proceedings) Regulations, 2014 is divided into VIII chapters and two schedules. Chapter 1 covers the preliminary definitions part. Chapter II deals with the application

for settlement and limitations part. Chapter III stipulates the scope of settlement proceedings, withdrawal of application for settlement, effect of pending application on the specified proceedings etc, Chapter V deals with the terms of settlement like monetary and non- monetary terms, factors to be considered to arrive at the settlement terms, Chapter V defined the role of the internal committee and high powered advisory committee in order to impart transparency in the process, Chapter VI provides the procedure of settlement before the internal committee and high powered advisory committee, Chapter VII deals with Settlement orders like settlement of proceeding before the adjudicating officer and SEBI or Settlement proceeding pending before tribunal or any court, Rejection of application in certain eventualities and chapter VIII deals with miscellaneous information like confidentiality of information, power to remove difficulties, SEBI's power to specify procedures, Rescission and savings etc. Schedule I is divided into three parts A, B & C respectively and Schedule II is again divided into seven chapters. The highlights of the regulations in brief is discussed below:

Scope of Settlement Proceeding:

Regulation 5 deals with the scope settlement proceedings. It provides that an application for settlement of any specified proceeding shall not be considered, if:

- (a) the alleged default was committed within a period of 24 calendar months from the date of the last settlement order where the applicant was a party.
- (b) An earlier application with regard to the same alleged default has been rejected;

However, such an application may be considered in exceptional circumstances, such as the lapse of time since the commission of the alleged default, the weight of evidence against the applicant, etc. and subject to the payment of such additional fees and/or interest on the settlement amount from the date of rejection of the earlier application till the date of payment of the settlement amount, as may be recommended by the high powered advisory committee.

- (c) the applicant has been party to two settlement orders during the period of thirty six calendar months, prior to the date of applications;
- (d) the audit or investigation, if any, in respect of any alleged default, is not complete.

The following proceedings are out of the scope of this regulations, i.e. a specified proceeding cannot be settled, if it involves any of the following defaults:

- (a) defaults involving insider trading and communication of unpublished price sensitive information ;
- (b) fraudulent and unfair trade practices including front running, which in the opinion of SEBI are serious and have a market wide impact or have caused substantial losses to or affect the rights of investors in securities, especially retail investors and small shareholders:

Explanation.- The expression ‘ front running’ means usage of non-public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change;

- (c) failure to make an open offer except where the applicant agrees to make the open offer or where SEBI is of the opinion that the making of the open offer would not be beneficial to the shareholders or is infructuous;

- (d) defaults or manipulative practices by mutual funds, alternative investment funds, collective investment schemes and their sponsors or asset management companies, collective investment management company, managers, trustees that result in substantial losses to investors, except in cases where the applicant has compensated the investors for the losses, to the satisfaction of SEBI;
- (e) failure to redress investor grievances except where the alleged default is with regard to delayed redressal;
- (f) failure, by issuers of securities or entities who invite investment, to make material disclosures in offer documents;
- (g) raising of monies by issuance of securities or pooling of funds, in violation of securities laws where the remedy is refund of such monies;
- (h) non-compliance of notices and summons issued by SEBI or summons issued by the adjudicating officer;
- (i) non-compliance of any order or direction passed under the securities laws.

So any civil proceedings apart from above can be brought under these regulations & can be settled.

Settlement Terms:

Regulation 8 provides for the terms of settlement in monetary as well as non-monetary terms or both. The non-monetary terms may include appropriate directions, such as:

- (a) Voluntary suspension of certificate of registration or closure of business for a specified period;
- (b) Removal from management;
- (c) Direction in the nature of disgorgement, where it is possible to identify the investors who have incurred losses on account of the action or inaction of the applicant;
- (d) Debarment of certain individuals from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by SEBI, for specified periods;
- (e) Cancellation of securities and reduction in share holding where the securities are issued fraudulently including cancellation of bonus shares received on such securities, if any, and reimbursement of any dividends received, etc;
- (f) Voluntary lock-in of securities;
- (g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as direction to appoint or retain an independent consultant to review policies and procedures;
- (h) Direction to provide enhanced training and education to employees of intermediaries;
- (i) Directions relating to internal audit and reporting requirements;
- (j) Any other directions that may be issued by SEBI under the securities laws in the interest of the investors.

The amount of settlement will be credited in the Consolidated Fund of India. The application fee, the additional processing fee accompanying the application for condonation of delay and the legal cost will

be included in the general fund of SEBI. The ill-gotten profits made (if any) will be credited in SEBI's Investor Protection and Education Fund.

Factors to be considered to arrive at the settlement terms:

Regulation 9 deals with the factors to be considered by SEBI while arriving at the settlement terms, including but not limited to the following:

- (a) conduct of the applicant in the investigation;
- (b) the role played by the applicant in case the alleged default is committed by a group of persons;
- (c) nature, gravity and impact of alleged defaults;
- (d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;
- (e) whether the alleged default is minor or major in nature;
- (f) the extent of amount of harm and/or loss to investors' and/or gain by the applicant;
- (g) processes which have been introduced since the alleged default to minimize future defaults or lapses;
- (h) compliance schedule proposed by the applicant;
- (i) economic benefits accruing to any person from the non-compliance or delayed compliance;
- (j) conditions which are necessary to deter future non-compliance by the same or another person;
- (k) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;
- (l) whether the applicant has undergone any other enforcement action for the same violation;
- (m) any other factors necessary in the facts and circumstances of the case.

Procedure:

1. The person who wants to have proceedings settled have to make application along with requisite fees.
2. The applicant shall make full & true disclosures.
3. Application should be complete & if not complete it will be returned. The return of application can be resubmitted within 15 days from the day of rejection of application.
4. The Settlement terms include settlement amount &/or non-monetary terms. The settlement amount will be calculated in accordance with the guidelines specified in Schedule II of these regulations.
5. The settlement once completed will be published on SEBI website.
6. If there is any non compliance of settlement order then the original proceedings which was settled would be restored.
7. The application may be rejected if applicant refuses to receive or respond to the communications sent by SEBI or non submission or delays the submission of information, document, etc. as required or non

appearance before the internal committee on more than one occasion or violates in any manner the undertaking and waivers specified, or non remittance or delays the payment of settlement amount and/or does not abide by the undertaking and waivers.

SECURITIES CONTRACTS (REGULATION) ACT, 1956

The Securities Contracts (Regulation) Act, 1956 was enacted by Parliament to prevent undesirable transactions in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith. The Act extends to the whole of India and came into force on 28th February, 1957. The Act defines various terms in relation to securities and provides the detailed procedure for the stock exchanges to get recognition from Government/SEBI, procedure for listing of securities of companies and operations of the brokers in relation to purchase and sale of securities on behalf of investors.

However, 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, in so far 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.

If the Central Government is satisfied that in the interest 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.

DEFINITIONS

Section 2 of this Act contains definitions of various terms used in the Act. Some of the important definitions are given below:

Securities

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 body corporate;
- (ii) derivative;
- (iii) units or any other instrument issued by any collective investment scheme to the Investors in such schemes;
- (iv) 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;
- (v) units or any other such instrument issued to the investors under any mutual fund scheme;

Explanation : “securities” shall not include any unit linked insurance policy or scripts 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 person and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.

- (vi) any certificate or instrument (by whatever name called) issued to an investor by any issuer being a special purpose distinct entity which possess 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;
- (vii) government securities;
- (viii) such other instruments as may be declared by the Central Government to be securities; and
- (ix) rights or interests in securities.

Spot delivery contract

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 dispatch 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.

Stock Exchange

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, 2013 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.

Recognised Stock Exchange

Recognised Stock Exchange means a stock exchange which is for the time being recognised by the Central Government.

Government security

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.

Derivative

A 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 and;
- (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 derivatives.

Non-transferable specific delivery contract

“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.

Ready Delivery Contract

“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.

However, 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 therefore is dispensed with, then such contract shall not be deemed to be a ready delivery contract.

Transferable specific delivery contract

“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.

RECOGNITION OF STOCK EXCHANGES

Section 3 lays down that any stock exchange, desirous of being recognized for the purposes of this Act may make an application in the prescribed manner to the Central Government.

Every application 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 re-admission 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 authorized representatives and clerks.

Section 4 lays down that if the Central Government is satisfied (powers are exercisable by SEBI also) 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.

The conditions which the Central Government can prescribe 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 exchanges 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.

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 of the stock exchange is situated, and such recognition shall have effect as from the date of its publication in the Gazette of India.

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.

No rules of a recognised stock exchange relating to any of the matter specified above as conditions for grant of recognition by the Central Government shall be amended except with the approval of the Central Government.

CORPORATISATION AND DEMUTUALISATION OF STOCK EXCHANGES

Section 4A of the Act provides that on and from the appointed date, all recognized stock exchanges (if not corporatized and demutualised before the appointed date) shall be corporatized and demutualised in accordance with the provisions contained in Section 4B.

Further SEBI may, if it is satisfied that any recognized stock exchange was prevented by sufficient cause from being corporatized and demutualised on or after the appointed date, specify another appointed date in respect of that recognized stock exchange and such recognized stock exchange may continue as such before such appointed date.

WITHDRAWAL OF RECOGNITION

Section 5 lays down that if the Central Government is of opinion that the recognition granted to a stock exchange 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;

However, the withdrawal shall not 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.

Where the recognized stock exchange has not been corporatized or demutualised or it fails to submit the scheme within the specified time therefore or the scheme has been rejected by the SEBI, the recognition granted to such stock exchange, 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.

However, such withdrawal shall not affect the validity of any contract entered into or made before the date of the notification, and SEBI 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.

It is to be noted that the powers under Section 4 (3), 4(5) and Section 5 have been delegated concurrently to SEBI also. Hence, SEBI may exercise these powers.

POWER OF CENTRAL GOVERNMENT TO CALL FOR PERIODICAL RETURNS AND MAKE DIRECT ENQUIRIES

Section 6 enjoins that every recognised stock exchange shall furnish to SEBI, such periodical returns relating to its affairs as may be prescribed. Every such stock exchange and every member thereof shall maintain and preserve for such periods not exceeding five years such books of accounts, 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 to all reasonable times by SEBI.

If SEBI is satisfied that it is in the interest of the trade or in public interest so to do, may by order in writing –

- (a) 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 SEBI may require; or
- (b) 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 SEBI 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 SEBI.

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 –

- (a) every director, manager, secretary or other officer of such stock exchange;
- (b) every member of such stock exchange;
- (c) if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm; and
- (d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in 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.

Every stock exchange shall furnish to the Central Government and to SEBI a copy of its annual report which shall contain such particulars as may be prescribed by Central Government/SEBI.

POWER OF RECOGNISED STOCK EXCHANGE TO MAKE RULES RESTRICTING VOTING RIGHTS ETC.

Section 7A of the Act stipulates that 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 –

- (a) the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting;
- (b) 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;
- (c) 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; and
- (d) such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a) (b) and (c).

No rules of a recognised stock exchange made or amended in relation to any matter referred in the above paragraph 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, 2013. The powers have been delegated concurrently to SEBI also in this regard.

POWER OF CENTRAL GOVERNMENT TO DIRECT RULES OR MAKE RULES

Section 8 deals with the power of Central Government to make rules or direct rules to be made in respect of recognised stock exchange. 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 therefor, direct the 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 or to amend any rules already made in respect of all or any of the matters as specified, within a period of two months from the date of the order.

If any recognised stock exchange fails or neglects to comply with any order, 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.

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, 2013 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.

Powers have been delegated concurrently to SEBI also.

CLEARING CORPORATION

Section 8A(1) provides that a recognised stock exchange may, with the prior approval of SEBI, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 2013, 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.

Sub-section (2) provides that 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 SEBI for its approval.

Sub-section (3) provides that SEBI 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 and approve transfer of the duties and functions of a clearing house to a clearing corporation.

POWER OF RECOGNISED STOCK EXCHANGES TO MAKE BYE-LAWS

According to Section 9, any recognised stock exchange may, subject to the previous approval of SEBI, make bye-laws for the regulation and control of contracts. 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 SEBI by the clearing house as soon as may be after each periodical settlement of all or any of the following particulars as SEBI 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 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 SEBI subject to the directions, if any, issued by SEBI 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, rescission 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 concerning 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.

PUNISHMENTS FOR CONTRAVENTIONS

The bye-laws made under Section 9 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 (which specifies contract in notified areas to be void).
- (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.

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 SEBI, 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 situated, and shall have effect as from the date of its publication in the Gazette of India.

However, if SEBI is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made immediately, it may, by order in writing specify the reasons therefor, dispense with the condition of previous publication.

POWER OF SEBI TO MAKE OR AMEND BYE-LAWS OF RECOGNISED STOCK EXCHANGES

SEBI 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.

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 situated, 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.

Where the governing body of a recognised stock exchange objects to any bye-laws made or amended by SEBI on its own motion, it may, within two months of the publication thereof in the Gazette of India apply to SEBI for revision thereof and SEBI 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, and where 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) of Section 10.

The making or the amendment or revision of any bye-laws shall in all cases be subject to the condition of previous publication.

However, if SEBI 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 therefor, dispense with the condition of previous publication.

POWER OF CENTRAL GOVERNMENT TO SUPERSEDE COMPANIES OF STOCK EXCHANGES OR SUSPEND BUSINESS THEREOF

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, the

Central Government may serve on the governing body a written notice that the Central Government is considering the super session 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.

On the publication of a notification in the Official Gazette, the following consequences shall ensure, namely –

- (a) the members of the governing body which has been superseded shall, as from the date of the notification of super session, cease to hold office as such members;
- (b) the person or persons appointed may exercise and perform all the powers and duties of the governing body which has been superseded;
- (c) all such property of the recognised stock exchange as the person or persons appointed 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.

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, 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 notification, vary such period.

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 reconstitute the governing body in accordance with its rules and on such re-constitution all the property of the recognised stock exchange which has been vested in, or was in the possession of, the person or persons appointed, shall vest or re-vest, as the case may be, in the governing body so re-constituted;

However, until a governing body is so re-constituted, the person or persons appointed, shall continue to exercise and perform their powers and duties.

Power to Suspend Business of Recognised Stock Exchange

If in the opinion of the Central Government an emergency, has arisen, 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;

However, 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 provides that if, after making or causing to be made an inquiry, SEBI 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.

CONTRACTS IN SECURITIES

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, declare that section 13 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 date of the notification otherwise than between members of a recognised stock exchange or recognized stock exchanges in such State or States or area or through or with such member shall be illegal.

However, 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 SEBI;
- (ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of SEBI.

Additional Trading Floor

A stock exchange may establish additional trading floor with the prior approval of SEBI in accordance with the terms and conditions stipulated by SEBI.

Additional trading floor means a trading ring or trading facility offered by a recognised stock exchange outside its area of operating to enable the investors to buy and sell securities through such trading floor under the regulatory framework of that stock exchange.

Contract in certain areas to be void

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-laws, and also
- (ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

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.

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.

However, 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 3 days from the date of contract.

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

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.

All contracts in contravention of the provisions of sub-section (1) entered into after the date of the notification issued thereunder shall be illegal.

Licensing of dealers in certain areas

Subject to the provision 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 license granted by SEBI in this behalf.

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.

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

Section 17A provides for public issue and listing of securities.

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 recognized stock exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by SEBI.

Every issuer 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 recognized stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.

Where the permission applied for listing has not been granted or refused by the recognized 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.

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.

All the provisions of this Act relating to listing of securities of a public company on a recognized stock exchange shall, *mutates 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

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 contract 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 DERIVATIVES

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.

CONDITIONS FOR LISTING

Section 21 of the Act provides that 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 provides that a recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act.

The securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal (SAT) against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognized 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.

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 TO SAT AGAINST REFUSAL TO LIST SECURITIES OF PUBLIC COMPANIES BY STOCK EXCHANGES

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 40 of the Companies Act, 2013, 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.

Every appeal under sub-section (1) shall be in such form and be accompanied by such fee as may be prescribed. The Securities Appellate Tribunal shall send a copy of every order made by it to SEBI and parties to the appeal.

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 SAT

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.

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.

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, 1860 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

The appellant may either appear in person or authorise one or more chartered accountants or company secretary or cost accountant or legal practitioners or any of its officers to present his or its case before the SAT.

APPEAL TO SUPREME COURT

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 fact or law arising out of such order;

However, 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 PROCEDURES

The Act prescribes various penalties against persons who might be found guilty of offences under section 23 the Act. These offences are listed below –

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; or
- (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 willfully 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 person 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.

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 the Central Government under 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.

PENALTIES

Penalty for failure to furnish information, return, etc.

Any person, who is required under this Act or any rules made thereunder, fails to furnish any information, document, books, returns or report to a recognised stock exchange or fail to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, shall be liable to a penalty which shall not be less than 1 lakh rupees and which may extend to one crore rupees for each day during which such failure continues.

Penalty for failure by any person to enter into an agreement with clients

Any person, who is required under this Act or any bye-laws of a recognised stock exchange made thereunder, fails to enter into an agreement with his client, then he shall be liable to a penalty which shall not be less than 1 lakh rupees which may extend to one crore rupees for each day during which such failure continues.

Penalty for failure to redress investors' grievances

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 SEBI or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time, shall be liable to a penalty which shall not be less than 1 lakh rupees and which may extend to one crore rupees for each day during which such failure continues.

Penalty for failure to segregate securities or moneys of client or clients

Any person, who is registered as a stock broker or sub-broker with SEBI, 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 1 lakh rupees and which may extend to one crore rupees.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds

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, he shall be liable to a penalty which shall not be less than 5 lakh rupees and which may extend to 25 crore rupees.

Penalty for excess dematerialisation or delivery of unlisted securities

If any company 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 5 lakh rupees and which may extend to 25 crore rupees.

Penalty for failure to furnish periodical returns, etc.

If a recognised stock exchange fails or neglects to furnish periodical returns to SEBI or fails or neglects to make or amend its rules or bye-laws as directed by SEBI or fails to comply with directions issued by SEBI, such recognised stock exchange shall be liable to a penalty which shall not be less than 5 lakh rupees and which may extend to 25 crore rupees.

Penalty for contravention where no separate penalty has been prescribed

Where contravenues of any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by SEBI for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than 1 lakh rupees and which may extend to 1 crore rupees.

POWER TO ADJUDICATE

Section 23-I deals with power to adjudicate by SEBI.

SEBI shall appoint any officer not below the rank of a Division Chief of SEBI 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.

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, he may impose such penalty as he thinks fit in accordance with the provisions of this Act.

SEBI 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. However, no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.

Further, 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 THE ADJUDICATING OFFICER

Section 23J provides for the factors to be taken into account by the adjudicating officer. While adjudging the quantum of penalty, 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 Proceedings

Section 23JA states that 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 SEBI proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

SEBI 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 SEBI in accordance with the regulations made under the SEBI Act, 1992.

For the purpose of settlement under this section, the procedure as specified by SEBI under the SEBI Act, 1992 shall apply.

No appeal shall lie under section 23L against any order passed by SEBI or adjudicating officer, as the case may be, under this section.

Recovery of Amounts

Section 23JB deals with recovery of amounts. If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of SEBI for refund of monies or fails to comply with a direction of disgorgement order issued under Section 12A or fails to pay any fees due to SEBI, 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 section 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 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.

OFFENCES

(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 byelaws 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. [Section 23M].

COMPOSITION OF CERTAIN OFFENCES

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. [Section 23N]

POWER TO GRANT IMMUNITY

Section 23-O deals with the power to grant immunity.

(1) The Central Government may, on recommendation by SEBI, 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 thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation.

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.

Further that the recommendation of the SEBI under this sub-section are not 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

(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:

However, 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) Where an offence under this Act has been committed by a company and 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.

(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

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under section 23 shall be deemed to be cognizable offence within the meaning of that Code.

COGNIZANCE OF OFFENCES BY COURTS

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 SEBI or a recognised stock exchange or by any person.

Establishment of Special Courts

Section 26A lays down the provisions for establishment of special courts by Central Govt. for the purpose of speedy trial.

(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 provides that 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) Ordinance, 2014 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.

Application of Code to proceeding before special court

Section 26D provides that the Code of Criminal Procedure, 1973 shall apply to the proceeding before a special court and for the purposes of the said provisions, the special court shall be deemed to be Court of Session and the person conducting prosecution before a special court shall be deemed to be a public prosecutor within the meaning of the Code of Criminal Procedure, 1973. The persons conducting prosecution should have been in practice as an Advocate for not less than seven years or shall have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

RIGHTS OF INVESTORS

Entitlement of the Investors to Dividend declared by the Company

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.

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

It shall be lawful for the holder of any securities, being units or other instruments issued by 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, though the said security, being units or other instruments issued by 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 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 investments 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 instruments issued by 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.

This shall not affect –

- (a) the right of a collective investment scheme to pay any income from units or other instruments issued by 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 registered holder in the books of the collective investment scheme being units or other instruments issued by collective investment scheme in respect of which the income in respect of units or other instruments issued by collective scheme has become due; or
- (b) the right of transferee of any security, being units or other instruments issued by 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 provides that 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.

The period specified in this Section may 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;
- (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 cause connected with the post, by the actual period of the delay.

Sub-section (2) provides that 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 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.

POWER OF CENTRAL GOVERNMENT TO DELEGATE OR TO MAKE RULES

Section 29A of the Securities Contracts (Regulation) Act, 1956 provides that 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 SEBI or the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934.

Section 30 empowers the Central Government to make rules for the purpose of carrying into effect the objects of this Act by notification in the Official Gazette.

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 recognizing 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) documents which should be maintained and preserved under section 6 and the periods for which they should be preserved;
 - (e) manner in which any inquiry by the governing body of a stock exchange shall be made.
 - (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.

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 deals with following special provisions relating to commodity derivatives:-

- (1) This Act shall not apply to non-transferable specific delivery contracts.

However, 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) 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 SEBI TO MAKE REGULATIONS

Section 31 provides that without prejudice to the provisions contained in Section 30 of SEBI Act, 1992, SEBI 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.

In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matter 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 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 SEBI for settlement of proceeding under sub-section (2) of section 23JA and (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 regulation.

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.

SECURITIES CONTRACT (REGULATION) (STOCK EXCHANGE AND CLEARING CORPORATIONS) REGULATIONS, 2012

With an intent to regulate recognition, ownership and governance in stock exchanges and clearing corporations, SEBI on June 20, 2012 notified the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012.

With the notification of these Regulations, the Securities Contracts (Regulations) (Manner of Increasing and Maintaining Public shareholding in recognized Stock Exchanges) Regulations, 2006, which dealt only with the Stock Exchanges stand repealed.

Definitions

“Associate” in relation to a person shall include another person:

- (i) who, directly or indirectly, by himself, or in combination with other persons, exercises control over the first person;
- (ii) who holds more than fifteen per cent shares in the paid up equity capital of the first person;
- (iii) who is a holding company or a subsidiary company of the first person;
- (iv) who is a relative of the first person;
- (v) who is a member of a Hindu Undivided Family wherein the first person is also a member;
- (vi) such other cases where SEBI is of the view that a person shall be considered as an associate based on the facts and factors including the extent of control, independence, conflict of interest.

“Commodity derivatives exchange” means a recognized stock exchange which assists, regulates or controls

the business of buying, selling or dealing only in commodity derivatives and option in securities with the prior approval of SEBI.

“National commodity derivatives exchange” means a commodity derivatives exchange that is demutualized, has an electronic trading platform and is permitted to assist, regulate or control the business of buying, selling or dealing in commodity derivatives and option in securities with the prior approval of SEBI.

“Netting” means the determination by Clearing Corporation of net payment or delivery obligations of the clearing members of a recognised clearing corporation by setting off or adjustment of the inter se obligations or claims arising out of buying and selling of securities including the claims and obligations arising out of the termination by the Clearing Corporation or Stock Exchange, in such circumstances as the Clearing Corporation may specify in bye-laws, of the transactions admitted for settlement at a future date, so that only a net claim be demanded, or a net obligation be owed.”

“Public” includes any member or section of the public but does not include any trading member or clearing member or their associates and agents.

However, a public sector bank, public financial institution, an insurance company, mutual fund and alternative investment fund in public sector, that has associate(s) as trading members or clearing members, shall be deemed as public for the purposes of these regulations.

“Public interest director” means an independent director, representing the interests of investors in securities market and who is not having any association, directly or indirectly, which in the opinion of SEBI, is in conflict with his role.

“Shareholder director” means a director who represents the interest of shareholders, and elected or nominated by such shareholders who are not trading members or clearing members, as the case may be, or their associates and agents.

Recognition of Stock Exchanges and Clearing Corporations

As per the provisions of these Regulations, all Stock Exchanges and Clearing Corporations are required to apply for recognition by the SEBI. The Stock Exchanges which have been recognized under the Act as on the date of commencement of these Regulations, shall be deemed to have been recognized under these Regulations and all the provisions shall be applicable on them. The existing Clearing Corporations will continue for a period of 3 months from the date of applicability of these Regulations until an application made for the recognitions is disposed of.

The Regulations provides for manner of making application, fees, documents required and consideration for grant of recognition by SEBI. The regulations also provides for the period of recognition, regulatory fees as well as provisions with respect to renewal and withdrawal of recognition.

Networth Requirements

Recognised Stock Exchanges and Clearing Corporations are required to maintain minimum network requirements of Rs. 100 crores at all times. The existing recognized Stock Exchanges and Clearing Corporations are required to fulfill the network requirement within a maximum period of 3 years from the date of commencement of these Regulations. The limit is not applicable to an applicant performing clearing functions of a recognized stock exchange on the date of commencement of these regulations. It is further provided that the recognized Stock Exchange or the recognized Clearing Corporation shall not distribute profit in manner to its shareholders until specified network limit is achieved. Recognised stock exchange or clearing corporation is required to submit an audited network certificate from the statutory auditor on a yearly basis by the thirtieth day of September of every year for the preceeding financial year.

The eligible instruments for investment such as fixed deposits, central government securities and liquid schemes of debt mutual funds to the extent permissible, other instruments as may be specified by SEBI from time to time, and cash and bank balance, shall be considered as liquid assets, for the purpose of calculation of net worth of a clearing corporation.

Ownership of Stock Exchanges

As per the provisions of the Regulations, the shareholding or ownership of a stock exchange shall be as following:

Shareholder	Equity share holding limit
Equity Share Capital to be held by Public	Atleast 51% of paid up equity capital
Individual resident in India [either directly or indirectly and either individually or with person acting in concert (PAC)]	Not more than 5%
Further • Stock exchange • Depository • Banking company • Insurance company • Public Financial Institution (acquire or hold either directly or indirectly and either individually or with PAC)	up to 15% of the paid up equity capital
An Individual resident outside India (either directly or indirectly and either individually or with PAC) shall acquire or hold	Not more than 5% of the paid up equity capital
However, - (i) a foreign stock exchange; (ii) a foreign depository; (iii) a foreign banking company; (iv) an foreign insurance company; and (v) a foreign commodity derivatives exchange, (may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert)	Upto 15 per cent of the paid up equity share capital of a recognised stock exchange.
All the residents outside India taken together	Not more than 49% of total paid up equity capital
No Clearing Corporation shall hold any right, stake or interest in any recognized Stock Exchange.	
Any person who directly or indirectly and either individually or with PAC acquires 2% or more in equity capital would require to apply for approval of SEBI within 15 days of such acquisition. If the approval is not granted the shares so acquired shall be forthwith divested. Shareholders of existing recognized Exchange holding more than 2% equity may apply for approval within 90 days of commencement of these Regulations.	
Stock exchange, Depository, Banking company, Insurance company, Public Financial Institution allowed to hold upto 15% equity capital, cannot acquire either directly or indirectly and either individually or with PAC any holding over and above 5% without the prior approval from SEBI.	
Every shareholder of the recognized Stock Exchange is required to be a Fit & Proper person.	
Every shareholder of the recognized Stock Exchange is required to be a Fit & Proper person.	

Ownership of Clearing Corporations

The provisions with respect to ownership and shareholding of recognized Clearing Corporations as similar to the aforesaid provisions as applicable to recognized Stock Exchanges except for as following:

- 51% or more equity share capital to be held by one or more recognized Stock Exchanges.
- A single Stock Exchange cannot hold more than 15% of equity share capital in one Clearing Corporation.

Governance of Stock Exchanges and Clearing Corporations

The provisions with respect to management and governance of recognized Stock Exchanges as well as Clearing Corporations are also provided in the Regulation broadly covering the following:

- Composition of Governance Board
- Guidelines for election of chairperson as well as number of public interest directors, appointment of Shareholder director, etc on the Governing Board.
- Conditions for appointment of Directors and the Managing director.
- Code of conduct for Directors and Key Managerial Personnel.
- Compensation and Tenure for Key Managerial Personnel.
- Segregation of regulatory department from other departments.
- Constitution of Oversight committee
- Constitution of Advisory Committee
- Constitution of Risk Management committee (in case of clearing corporations)
- To formulate and implement a comprehensive detail risk management policy.
- Appointment of compliance officer
- Transfer of Profits
- Transfer of penalties
- Disclosure and Corporate Governance norms.

As per section 23(7) of SECC Regulations, 2012 provides that:-

- a) No trading member or clearing member, or their associates and agents, irrespective of the stock exchange/ clearing corporation of which they are members, shall be on the governing board of any recognised stock exchange or recognised clearing corporation.
- b) A person who is a director in an entity, that itself is a trading member or clearing member or has associate(s) as trading member(s) or clearing member(s) in terms of regulation 2(1) (b), he/she will be deemed to be trading member or clearing member.

However, a person will not be deemed to be clearing member and/or trading member or their associate for the purpose of these regulations, if he/she is on the board of a PFI or bank which is in Public Sector or which either has no identifiable ultimate promoter or the ultimate promoter is in Public Sector or has well diversified shareholding, and such PFI or bank or its associate is a

clearing member and/or trading member.

- c) The appointment shall be subject to fulfilment of other requirements and satisfaction of SEBI.
- d) Recognised stock exchange and recognised Clearing Corporation, shall monitor and ensure the compliance of governance of stock exchanges and clearing corporations on continuous basis, to ensure that directors appointed, on their governing board, do not get associated with trading member or clearing member after approval and appointment.

Listing of Securities

As per the provisions of the Regulations, a recognized stock exchange can apply for the listing of its securities on any recognized stock exchange other than itself if:

- It complies with the provisions of these regulations.
- It has completed 3 years of continuous trading operations immediately preceding the date of application of listing.
- It has the approval of SEBI.

Though as per the provisions of these Regulations, the securities of a recognized Clearing Corporation shall not be listed on a stock exchange.

The Regulations also requires securities of both the recognized Stock Exchanges as well as Clearing Corporations to be held in dematerialized form.

As per Regulation 45(2) of the SECC Regulations, 2012 –

- Ensuring holding of 51 per cent by public at all times by the listed stock exchange. The listed stock exchange shall disseminate the details of its shareholding with category wise breakup, on a continuous basis, on its website. Similarly, the stock exchange where the shares are listed, shall also display the above information.
- Ensuring that all shareholders are fit and proper.
- Ensuring that shareholders holding shares above 2 per cent are fit and proper. In addition to the criteria mentioned above, on acquisition of shares above 2 per cent, shall seek approval of SEBI within 15 days of acquisition as per Regulation 19(2) and those intending to acquire beyond 5 per cent as per Regulation 19(3) have to seek prior approval of SEBI.

Contribution to the Settlement Guarantee Fund

According to regulation 33 of SECC Regulations, 2012 states that the contribution to the Settlement Guarantee Fund or the Trade Guarantee Fund as specified in regulation 39 of SECC Regulations, 2012 shall be made by the recognised stock exchange, the recognised clearing corporation and the clearing members, in the manner as may be specified by SEBI from time to time.

In case of any shortfall in the Fund, the recognised clearing corporation and the recognised stock exchange shall replenish the Fund to the threshold level as may be specified by SEBI from time to time.

Investment Policy of Clearing Corporation

Regulation 40 of SECC Regulations, 2012 states that the utilization of profits and investments by recognised clearing corporations shall be in accordance with the norms specified by SEBI which is discussed below:

While framing the Investment policy, the clearing corporations shall consider the following principles –

- a) The investment policy of the clearing corporation, shall be built on the premise of highest degree of safety and least market risk.
- b) The investments shall be broadly in fixed deposits/central government securities and liquid schemes of debt mutual funds.

The clearing corporations shall align the investment policy in line with the principles for investment laid down above, subject to the following –

- a) Fixed deposit with banks [only those banks which have a net worth of more than INR 500 crore and are rated A1 (or A1+) or equivalent,]
- b) Central government securities; and
- c) Liquid schemes of debt mutual funds:
 - Investment in liquid scheme of debt mutual funds, shall not exceed a limit of 10 per cent of the total investible resources held by the clearing corporation, at any point in time.
 - In case the clearing corporation has investments in mutual funds beyond the limits specified above, then such excess investments shall be liquidated by the clearing corporation. Fresh investments by the clearing corporation beyond the threshold limit prescribed above are not permitted.

Risk Management Practices

- Clearing corporation shall not accept Fixed Deposit Receipts (FDRs) from trading/clearing members as collateral, which are issued by the trading/ clearing member themselves or banks who are associate of trading/ clearing member.

Explanation - for this purpose, ‘associate’ shall have the same meaning as defined under Regulation 2

(b) of SECC Regulations 2012.

- Trading/Clearing Members who have deposited their own FDRs or FDRs of associate banks shall replace such collateral, with other eligible collateral as per extant norms, within a period of six months from the date of issuance of the circular.

Disclosure by Clearing Corporation

In order to improve transparency in disclosing the regulatory orders and arbitration matters as issued by Clearing Corporation, the clearing corporations shall post all the past regulatory orders as well as arbitration and appellate awards (i.e., issued since June 20, 2012) on their websites within 30 days, while fresh orders should be uploaded immediately.

The Clearing Corporation shall disseminate information with respect to brief profile, qualification, areas

of experience / expertise, number of arbitration matters handled, pre-arbitration experience, etc. of the arbitrators on their website and the status of the implementation of the norm in the monthly development report shall be communicate to SEBI.

SECURITIES CONTRACTS (REGULATION) RULES, 1957

These rules were made by the Central Government in exercise of the powers conferred by Section 30 of the Securities Contracts (Regulation) Act, 1956 and notified on 21st February, 1957.

Definition

“Public” means persons other than –

- (i) the promoter and promoter group;
- (ii) subsidiaries and associates of the company.

Explanation : Here “promoter” and “promoter group” shall have the same meaning as assigned to them under the SEBI (ICDR) Regulations, 2009.

“Public Sector Company” means a body corporate constituted by an Act of Parliament or any State Legislature and includes a government company.

“Public Shareholding” means equity shares of the company held by public including shares underlying the depository receipts if the holder of such depository receipts has the right to issue voting instruction and such depository receipts are listed on an international exchange in accordance with the Depository Receipts Scheme, 2014.

However, the equity shares of the company held by the trust set up for implementing employee benefit schemes under the regulations framed by SEBI shall be excluded from public shareholding.

Application for recognition

Under rules 3, it is laid down that an application under section 3 of the SCRA for recognition of a stock exchange shall be made to SEBI in Form A. This form is to be used for seeking recognition as well as renewal of recognition of a stock exchange. The annexure to form A requires the applicant stock exchange to furnish general information about itself and also details about its membership, governing body, trading and miscellaneous matters.

The application shall be accompanied by 4 copies of the rules (including the memorandum and articles of association where the applicant stock exchange is an incorporated body) and bye-laws of the stock exchange applying for recognition and the receipt obtained for payment of fees.

Before granting recognition to a stock exchange, SEBI may make such enquiries and require such further information to be furnished as it deems necessary, in relation to the information furnished in the Annexure to the application.

Form of Recognition

Rule 6 provides that the recognition granted to a stock exchange shall be in Form B and subject to the following conditions, namely –

- (a) that the recognition unless granted on a permanent basis, shall be for such period not less than one year as may be specified in the recognition;
- (b) that the stock exchange shall comply with such conditions as are or may be prescribed or imposed under the provisions of the Act and these rules from time to time.

In case of a recognised stock exchange, renewal of such recognition should be sought from SEBI not later than 3 months before expiry of the period of recognition.

In case SEBI desires to withdraw recognition from a stock exchange, SEBI shall first issue a show-cause notice in Form C and obtain information. Only after considering the submissions of the stock exchange SEBI can take a decision on withdrawal of recognition.

Qualification prescribed for Membership of a recognised Stock Exchange

Rule 8 contains detailed provisions on this subject and they are as follows:

No person shall be liable to be elected as a member if–

- (a) he is less than twenty-one years of age;
 - (b) he is not a citizen of India;
- However, the governing body may in suitable cases relax this condition with the prior approval of SEBI;
- (c) he has been adjudged bankrupt or a receiving order in bankruptcy has been made against him or he has been proved to be insolvent even though he has obtained his final discharge;
 - (d) he has compounded with his creditors unless he has paid 100 paise in the rupee;
 - (e) he has been convicted of an offence involving fraud or dishonesty;
 - (f) he is engaged as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business;

However no member may conduct business in commodity derivatives, except by setting up a separate company which shall comply with the regulatory requirements, such as, networth, capital adequacy, margins and exposure norms as may be specified by the Forward Market Commission, from time to time:

Further that nothing herein shall be applicable to any corporations, bodies corporate, companies or institutions referred to in items (a) to (n) of the proviso to sub-rule (4).

- (g) he has been at any time expelled or declared a defaulter by any other stock exchange;
- (h) he has been previously refused admission to membership unless a period of one year has elapsed since the date of such rejection.

No person eligible for admission as a member under sub-rule (1) shall be admitted as a member unless:

- (a) he has worked for not less than two years as a partner with, or as an authorised assistant or authorised clerk or remisier or apprentice to, a member; or
- (b) he agrees to work for a minimum period of two years as a partner or representative member with another member and to enter into bargains on the floor of the stock exchange and not in his

own name but in the name of such other member; or

- (c) he succeeds to the established business of a deceased or retiring member who is his father, uncle, brother or any other person who is, in the opinion of the governing body, a close relative;

However the rules of the stock exchange may authorise the governing body to waive compliance with any of the foregoing conditions if the person seeking admission is in respect of means, position, integrity, knowledge and experience of business in securities, considered by the governing body to be otherwise qualified for membership;

No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

- (a) he ceases to be a citizen of India;

However this shall not affect those who are not citizens of India but who were members at the time of such application or were admitted subsequently under the provisions of clause (b) of sub-rule (1) of this rule, subject to their complying with all other requirements of this rule;

- (b) he is adjudged bankrupt or a receiving order in bankruptcy is made against him or he is proved to be insolvent;
- (c) he is convicted of an offence involving fraud or dishonesty;
- (d) he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that—
 - (i) the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm.
 - (ii) in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such

application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

- (iii) nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institution referred to in item (a) to (n) of the proviso to sub-rule (4).

Corporate Membership

Sub-rule 4 provides that a company as defined in the Companies Act, 2013, shall be eligible to be elected as a member of a stock exchange if –

- (i) such company is formed in compliance with the provisions of Companies Act, 2013.
- (ii) a majority of the directors of such company are shareholders of such company and also members of that stock exchange; and

- (iii) the directors of such company, who are members of that stock exchange, have ultimate liability in such company;

However where SEBI makes a recommendation in this regard, the governing body of a stock exchange shall, in relaxation of the requirements of this clause, admit as member the following corporations, bodies corporate companies or institutions, namely–

- (a) the Industrial Finance Corporation, established under the Industrial Finance Corporation Act, 1948;
- (b) the Industrial Development Bank of India, established under the Industrial Development Bank Act, 1964;
- (c) any insurance company granted registration by the Insurance Regulatory Development Authority under the Insurance Act, 1938;
- (d) the Unit Trust of India, established under the Unit Trust of India Act, 1963;
- (e) the Industrial Credit and Investment Corporation of India, a company registered under the Companies Act, 2013;
- (f) the subsidiaries of any of the corporations or companies specified in (a) to (f) and any subsidiary of the State Bank of India or any nationalised bank set up for providing merchant banking services, buying and selling securities and other similar activities;
- (g) any bank included in the second schedule to RBI Act, 1934;
- (h) the Export Import Bank of India, established under the Export Import Bank of India Act, 1981;
- (i) the National Bank for Agriculture and Rural Development, established under the National Bank for Agriculture and Rural Development Act, 1981 and
- (j) the National Housing Bank, established under the National Housing Bank Act, 1987.
- (k) Central Board of Trustees, Employees' Provident Fund, established under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- (l) any pension fund registered or appointed or regulated by the Pension Fund Regulatory and Development Authority under the Pension Fund Regulatory And Development Authority Act, 2013; and
- (m) any Standalone Primary Dealers authorised by the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934.

According to sub-rule 4A a company as defined in the Companies Act, 2013, shall also be eligible to be elected as a member of a Stock Exchange if –

- (i) such company is formed in compliance with the provisions of section 3 of the said Act;
- (ii) such company undertakes to comply with such financial requirements and norms as may be specified by SEBI for the registration of such company under sub-section (1) of section 12 of SEBI Act, 1992;
- (iii) the directors of the company are not disqualified for being members of a stock exchange except clause
(1) of sub-clause (b) and sub-clause (f) thereof or clause (3) except sub-clause (a) and sub-

clause (f) thereof and the Director of the company had not held the offices of the Director in any company which had been a member of the stock exchange and had been declared defaulter or expelled by the stock exchange; and

(iv) not less than two directors of the company are persons who possess a minimum two years' experience—

(a) in dealing in securities; or

(b) as portfolio managers; or

(c) as investment consultants.

Sub-rule 5 provides that where any member of a stock exchange is a firm, the provisions of sub-rules (1), (3) and (4), shall, so far as they can, apply to the admission or continuation of any partner in such firm.

Sub-rule 6 lays down that a limited liability partnership as defined in the Limited Liability Partnership Act, 2008, shall also be eligible to be elected its a member of a stock exchange if:

(i) such “limited liability partnership” undertakes to comply with such financial requirements and norms as may be provided by SEBI for registration of such limited liability partnerships under sub-section (1) of section 12 of the SEBI Act, 1992;

(ii) the designate partners of the ‘limited liability partnership’ are not disqualified from being members of a stock exchange under sub-rule (1) [except clause (b) and (f) thereof or sub-rule (3) except clause (a) and clause (f) thereof and the designated partners of the ‘limited liability partnership’ had not held the offices of Directors in any company or body corporate or partner in any firm or ‘limited liability partnership’, which had been a member of the stock exchange and had been declared defaulter or expelled by the stock exchange; and

(iii) not less than two designated partners of the ‘limited liability partnership’ are persons who possess a minimum experience of two years:-

(a) in dealing in securities; or

(b) as portfolio managers; or

(c) as investment consultants.

Sub-rule 7 lays down that any provident fund represent by its trustees, of an exempted establishment under the Employee’s Provident Funds and Miscellaneous Provisions Act, 1952, shall be also be eligible to be elected as a member of a stock exchange.

Regulation of transaction in the stock exchange

All contracts between the members of a recognised stock exchange shall be confirmed in writing and shall be enforced in accordance with the rules and bye-laws of the stock exchange of which they are members.

SEBI may nominate one or more persons not exceeding three in number, as member or members of the governing body of every recognised stock exchange. Such member or members shall enjoy the same status and powers as other members of the governing body.

After receiving the report of the result of an enquiry made under clause (b) of sub-section (3) of Section

6 of the Act, SEBI may take such action as they deem proper and, in particular, may direct the governing body of the stock exchange to take such disciplinary action against the offending member, including fine, expulsion, suspension or any other penalty of a like nature not involving the payment of money, as may be specified by SEBI; notwithstanding anything to the contrary contained in the rules or bye-laws of the stock exchange concerned, the governing body shall give effect to the directions of SEBI in this behalf and shall not in any manner commute, revoke or modify the action taken in pursuance of such directions, without the prior approval of SEBI. SEBI may however, either on its own motion or on the representation of the member concerned, modify or withdraw its direction to the governing body.

Every member shall get his accounts audited by a chartered accountant whenever such audit is required by SEBI.

Books and documents to be maintained and preserved

(A) By every recognised stock exchange

Every recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years;

(1) Minute books of the meetings of –

- (a) members;
- (b) governing body;
- (c) any standing committee or committees of the governing body or of the general body of members. Register of members showing their full names and addresses. Where any member of the –

- (1) Stock exchange is a firm,
- (2) Full names and addresses of all partners shall be shown.
- (3) Register of authorised clerks.
- (4) Register of remisiers of authorised assistants.
- (5) Record of security deposits.
- (6) Margin deposits book.
- (7) Ledgers.
- (8) Journals.
- (9) Cash Book.
- (10) Bank pass-book.

(B) By every member of a recognised stock exchange

Every member of a recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years;

- (a) Register of transactions (Sauda book).
- (b) Clients' ledger.

- (c) General ledger.
- (d) Journals.
- (e) Cash book.
- (f) Bank pass-book.
- (g) Documents register showing full particulars of shares and securities received and delivered.

Every member of a recognised stock exchange shall maintain and preserve the following documents for a period of two years;

- (a) Members' contract books showing details of all contracts entered into by him with other members of the same exchange or counter-foils or duplicates of memos of confirmation issued to such other members.
- (b) Counter-foils or duplicates of contract notes issued to clients.
- (c) Written consent of clients in respect of contracts entered into as principals.

Manner of Enquiry in the Affairs of Stock Exchange

Rule 16 lays down that any enquiry in relation to the affairs of the governing body of a recognised stock exchange or the affairs of any member in relation to the stock exchange can be conducted only by the person or persons appointed by SEBI under section 6(3)(b) of the Act. The person or persons so appointed are referred to as the inquiring authority.

The procedure relating to the conduct of inquiry is stated below –

- where the inquiring authority consists of two or more persons, one of them shall be appointed as the chairman or senior member thereof;
- the inquiring authority shall hand over a statement of issues to be inquired into to the governing body or the member concerned, as the case may be, who will be given a reasonable opportunity to state their or his side of the case;
- if any witness is called for examination, an opportunity shall be provided to the governing body or the member whose affairs are being inquired into, as the case may be, to cross-examine such witness;
- where the inquiring authority consists of more than one person, the views of the majority shall be deemed to represent the findings of such authority and, in the event of an equality of votes, the chairman or senior member shall have a casting vote;
- the inquiring authority shall submit its report in writing to the SEBI within the period specified in the order of appointment;
- temporary absence from any hearing or hearings of any member of the inquiring authority shall not vitiate its proceedings.

Where SEBI has directed the governing body of a stock exchange to make an inquiry SEBI, the governing body concerned shall appoint one or more members thereof to make the inquiry.

Submission of annual reports and periodical returns by stock exchanges to SEBI

These matters are regulated under rule 17 & 17A respectively.

Every recognised stock exchange shall (before the 31st day of January in each year or within such extended time as SEBI may, from time to time, allow), furnish to SEBI annually with a report about its activities during the (preceding calendar year), which shall *inter alia* contain detailed information about the following matters:

- (a) changes in rules and bye-laws, if any;
- (b) changes in the composition of the governing body;
- (c) any new sub-committees set up and changes in the composition of existing ones;
- (d) admissions, re-admissions, deaths or resignations of members;
- (e) disciplinary action against members;
- (f) arbitration of disputes (nature and number) between members and non-members;
- (g) defaults;
- (h) action taken to combat any emergency in trade;
- (i) securities listed and de-listed; and
- (j) securities brought on or removed from the forward list.

Every recognised stock exchange shall within one month of the date of the holding of its annual general meeting, furnish to SEBI with a copy of its audited balance sheet and profit and loss account for its preceding financial year.

Rule 17A necessitated that every recognised stock exchange shall furnish to SEBI periodical returns relating to –

- (i) the official rates for the securities enlisted thereon;
- (ii) the number of shares delivered through the clearing house;
- (iii) the making-up prices;
- (iv) the clearing house programmes;
- (v) the number of securities listed and de-listed during the previous three months;
- (vi) number of securities brought on or removed from the forward list during the previous three months; and
- (vii) any other matter as may be specified by the SEBI.

REQUIREMENTS OF LISTING OF SECURITIES WITH RECOGNISED STOCK EXCHANGES

This is one of the most important provision of the Securities Contracts (Regulation) Rules, 1957. Rule 19 provides for the complete procedure in this regard. A public company as defined under the Companies Act, 2013, desirous of getting its securities listed on a recognised stock exchange, shall apply for the purpose to the stock exchange and forward along with its application the following documents and particulars:

- (a) Memorandum and articles of association and, in the case of a debenture issue, a copy of the trust deed.
- (b) Copies of all prospectuses or statements in lieu of prospectuses issued by the company at any time.
- (c) Copies of offers for sale and circulars or advertisements offering any securities for subscription or sale during the last five years.
- (d) Copies of balance sheets and audited accounts for the last five years, or in the case of new companies, for such shorter period for which accounts have been made up.
- (e) A statement showing –
 - (i) dividends and cash bonuses, if any, paid during the last ten years (or such shorter period as the company has been in existence, whether as a private or public company),
 - (ii) dividends or interest in arrears, if any.
- (f)** Certified copies of agreements or other documents relating to arrangements with or between –
 - (i) vendors and/or promoters,
 - (ii) underwriters and sub-underwriters,
 - (iii) brokers and sub-brokers.
- (g) Certified copies of agreements with –
 - (i) managing agents and secretaries and treasurers.
 - (ii) selling agents,
 - (iii) managing directors and technical directors,
 - (iv) general manager, sales manager, managers or secretary.
- (h) Certified copy of every letter, report, balance sheet, valuation contract, court order or other document, part of which is reproduced or referred to in any prospectus, offer for sale, circular or advertisement offering securities for subscription or sale, during the last five years.
- (i) A statement containing particulars of the dates of, and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other documents (except those entered into in the ordinary course of business carried on or intended to be carried on by the company) together with a brief description of the terms, subject-matter and general nature of the documents.
- (j) A brief history of the company since its incorporation giving details of its activities including any reorganization, reconstruction or amalgamation, changes in its capital structure (authorised, issued and subscribed) and debenture borrowings, if any.
- (k) Particulars of shares and debentures issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option.
- (l) A statement containing particulars of any commission, brokerage, discount or other special terms including an option for the issue of any kind of the securities granted to any person.

(m) Certified copies of –

- (i) acknowledgment card or the receipt of filing offer document with the SEBI;
- (ii) agreements, if any, with the Industrial Finance Corporation, Industrial Credit and Investment Corporation and similar bodies.

(n) Particulars of shares forfeited.

(o) A list of highest ten holders of each class or kind of securities of the company as on the date of application along with particulars as to the number of shares or debentures held by and the address of each such holder.

(p) Particulars of shares or debentures for which permission to deal is applied for;

However, a recognised stock exchange may either generally by its bye-laws or in any particular case call for such further particulars or documents as it deems proper.

Rule 19(2)

Sub-rule 2 of Rule 19 provides that apart from complying with such other terms and conditions as may be laid down by a recognised stock exchange, an applicant company shall satisfy the stock exchange that;

Rule 19(2)(a)

(a) Its articles of association provide for the following among others –

- (i) that the company shall use a common form of transfer;
- (ii) that the fully paid shares will be free from all lien, while in the case of partly paid shares, the company's lien, if any, will be restricted to moneys called or payable at a fixed time in respect of such shares;
- (iii) that any amount paid-up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof, in a dividend subsequently declared;
- (iv) there will be no forfeiture of unclaimed dividends before the claim becomes barred by law;
- (v) that option or right to call of shares shall not be given to any person except with the sanction of the company in general meeting;

However, a recognised stock exchange may provisionally admit to dealings the securities of a company which undertakes to amend its articles of association at its next general meeting so as to fulfill the foregoing requirements and agrees to act in the meantime strictly in accordance with the provisions of this clause.

Rule 19(2)(b)

- (b) The minimum offer and allotment to public in terms of an offer document shall be-
- (i) at least twenty five per cent of each class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees;
 - (ii) at least such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value of four hundred crore rupees, if the post issue capital of the company calculated at offer price is more than one thousand six hundred crore rupees but less than or equal to four thousand crore rupees;
 - (iii) at least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above four thousand crore rupees.

However, the company referred to in sub-clause (ii) or sub-clause (iii), shall increase its public shareholding to at least twenty five per cent within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India.

Further this clause shall not apply to a company whose draft offer document is pending with SEBI before the commencement of the Securities Contracts (Regulation) Third Amendment Rules, 2014, if it satisfies the conditions prescribed in clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement.

Conditions precedent to submission of application for listing by stock exchange

Sub-rule (3) of Rule 19 deals with the conditions required to be fulfilled by a company precedent to listing company applying for listing shall, as conditions precedent, undertake *inter alia* –

- (i) that letters of allotment will be issued simultaneously and that, in the event of its being impossible to issue letters of regret at the same time, a notice to that effect will be inserted in the press so that it will appear on the morning after the letters of allotment have been posted that letters of right will be issued simultaneously,
- (ii) that letters of allotment, acceptance or rights will be serially numbered, printed on good quality paper and, examined and signed by a responsible officer of the company and that whenever possible, they will contain the distinctive numbers of the securities to which they relate.
- (iii) that letters of allotment and renounceable letters of right will contain a proviso for splitting and that, when so required by the exchange, the form of renunciation will be printed on the back of or attached to the letters of allotment and letters of right.
- (iv) that letters of allotment and letters of right will state how the next payment of interest or dividend on the securities will be calculated;
- (v) to issue, when so required, receipts for all securities deposited with it whether for registration, sub- division, exchange or for other purposes; and not to charge any fees for registration of

transfers, for sub-division and consolidation of certificates and for sub-division of letters of allotment, renounceable letters of right, and split consolidation, renewal and transfer receipts into denominations of the market unit of trading;

- (bb) to issue, when so required, consolidation and renewal certificates in denominations of the market unit of trading, to split certificates, letters of allotment, letters of right, and transfer, renewal, consolidation and split receipts into smaller units, to split call notices, issue duplicates thereof and not require any discharge on call receipts and to accept the discharge of members of stock exchange on split, consolidation and renewal receipts as good and sufficient without insisting on the discharge of the registered holders;
- (b) when documents are lodged for sub-division or consolidation (or renewal) through the clearing house of the exchange;
 - (i) to accept the discharge of an official of the stock exchange clearing house on the company's split receipts and (consolidation receipts and renewal receipts) as good and sufficient discharge without insisting on the discharge of the registered holders; and
 - (ii) to verify when the company is unable to issue certificates or split receipt or (consolidation receipts or renewal receipts) immediately on lodgement whether the discharge of the registered holders, on the documents lodged for sub-division or consolidation (or renewal) and their signatures on the relative transfers are in order;
- (c) on production of the necessary documents by shareholders or by members of the exchange, to make on transfers an endorsement to the effect that the power of attorney or probate or letters of administration or death certificate or certificate of the Controller of Estate Duty or similar other document has been duly exhibited to and registered by the company;
- (d) to issue certificates in respect of shares or debentures lodged for transfer within a period of one month of the date of lodgement of transfer and to issue balance certificates within the same period where the transfer is accompanied by a larger certificate;
- (e) to advise the stock exchange of the date of the board meeting at which the declaration or recommendation of a dividend (or the issue or right or bonus share) will be considered;
- (f) to recommend or declare all dividends and/or cash bonuses at least five days before the commencement of the closure of its transfer books or the record date fixed for the purpose and so advise the stock exchange in writing of all dividends and/or cash bonuses recommended or declared immediately after a meeting of the board of the company has been held to finalise the same;
- (g) to notify the stock exchange of any material change in the general character or nature of the company's business;
- (i) to notify the stock exchange of any change –
 - (i) in the company's directorate by death, resignation, removal or otherwise,
 - (ii) of managing director, managing agent or secretaries and treasurers,
 - (iii) of auditors appointed to audit the books and accounts of the company;
- (j) to forward to the stock exchange copies of statutory and annual reports and audited accounts as

soon as issued, including directors' reports;

- (k) to forward to the stock exchange as soon as they are issued, copies of all other notices and circulars sent to the shareholders including proceedings of ordinary and extraordinary general meetings of the company and to file with the stock exchange certified copies of resolutions of the company as soon as such resolutions become effective;
- (l) to notify the stock exchange prior to intimating the shareholders, of any new issue of securities whether by way of right, privilege, bonus or otherwise and the manner in which it is proposed to offer or allot the same;
- (m) to notify the stock exchange in the event of re-issue of any forfeited securities or the issue of securities held in reserve for future issue;
- (n) to notify the stock exchange of any other alteration of capital including calls;
- (o) to close the transfer books only for the purpose of declaration of dividend or issue of right or bonus shares or for such other purposes as the stock exchange may agree and to give notice to the stock exchange as many days in advance as the exchange may from time to time reasonably prescribe, stating the dates of closure of its transfer books (or, when the transfer books are not to be closed, the date fixed for taking a record of its shareholders or debenture holders) and specifying the purpose or purposes for which the transfer books are to be closed (or the record is to be taken) and in the case of a right or bonus issue to so close the transfer books or fix a record date only after the sanctions of the competent authority subject to which the issue is proposed to be made have been duly obtained, unless the exchange agrees otherwise;
- (p) to forward to the stock exchange an annual return immediately after each annual general meeting of at least ten principal holders of each class of security of the company along with particulars as to the number of shares or debentures held by, and address of, each such holder;
- (q) to grant to shareholders the right of renunciation in all cases of issue of rights, privileges and benefits and to allow them reasonable time not being less than four weeks within which to record, exercise, or renounce such rights, privileges and benefits, and to issue, where necessary, coupons or fractional certificates or provide for the payment of the equivalent of the value of the fractional right in cash unless the company in general meeting or the stock exchange agrees otherwise;
- (r) to promptly notify the stock exchange—
 - (i) of any action which will result in the redemption, cancellation or retirement in whole or in part of any securities listed on the exchange,
 - (ii) of the intention to make a drawing of such securities, intimating at the same time the date of the drawing and the period of the closing of the transfer books (or the date of the striking of the balance) for the drawing;
 - (iii) of the amount of securities outstanding after any drawing has been made;
- (s) to intimate the stock exchange any other information necessary to enable the shareholders to appraise the position of the company and to avoid the establishment of a false market in the shares of the company;

- (t) that in the event of the application for listing being granted, such listing shall be subject to the rules and bye-laws of the exchange in force from time to time and that the company will comply within a reasonable time, with such further listing requirements as may be promulgated by the exchange as a general condition for new listings.

Application for listing of new securities

An application for listing shall be necessary in respect of the following:

- (a) all new issues of any class or kind of securities of a company to be offered to the public;
- (b) all further issues of any class or kind of securities of a company if such class or kind of securities of the company are already listed on a recognised stock exchange. **[Rule 19(4)]**

Suspension or withdrawal of admission to dealings in securities on stock exchange

A recognised stock exchange may suspend or withdraw admission to dealings in the securities of a company or body corporate either for a breach of or non-compliance with, any of the conditions of admission to dealings or for any other reason, to be recorded in writing, which in the opinion of the stock exchange justifies such action;

However, no such action shall be taken by a stock exchange without affording to the company or body corporate concerned a reasonable opportunity by a notice in writing, stating the reasons, to show cause against the proposed action;

Further that where a recognised stock exchange has withdrawn admission to dealings in any security, or where suspension of admission to dealings has continued for a period exceeding three months, the company or body corporate concerned may prefer an appeal to the Securities Appellate Tribunal constituted under section 15K of the SEBI Act, 1992 and the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000 shall apply to such appeal. The Securities Appellate Tribunal may, after giving the stock exchange an opportunity of being heard, vary or set aside the decision of the stock exchange and its orders shall be carried out by the stock exchange.

A recognised stock exchange may, either at its own discretion or shall in accordance with the orders of the Securities Appellate Tribunal restore or re-admit to dealings any securities suspended or withdrawn from the list.

All requirements with respect to listing prescribed by these rules shall, so far as they may be, also apply to a public sector company.

SEBI may, at its own discretion or on the recommendation of a recognised stock exchange, waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by these rules. **[Rule 19(5)]**

CONTINUOUS LISTING REQUIREMENT

Rule 19A (1) stipulates that every listed company other than public sector company shall maintain public shareholding of at least 25%.

However, any listed company which has public shareholding below 25%, shall increase its public shareholding to at least twenty five per cent, within a period of four years from the date of commencement of amendment to the said rules in 2014, in the manner specified by SEBI.

Explanation : For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum 25% public shareholding from the date on which the public shareholding in the company reaches the level of 25% in terms of said sub-clause.

Sub-rule (2) provides that where the public shareholding in a listed company falls below 25 % at any time, such company shall bring the public shareholding to 25% within a maximum period of twelve months from the date of such fall in the manner specified by SEBI.

Where the public shareholding in a listed company falls below 25% in consequence to SCRR Amendment Rules, 2015, such company shall increase its shareholding to atleast 25%, in the manner specified by SEBI within a period of three years, as the case may be, from the date of notification of:

- (a) the Depository Receipts Scheme, 2014, in cases where the public shareholding falls below 25% as a result of such Scheme;
- (b) SEBI (Share Based Employee Benefits) Regulations, 2014, in cases where the public shareholding falls below 25%, as a result of such regulations.

DELISTING OF SECURITIES

Rule 21 deals with delisting of Securities. A recognized stock exchange may, without prejudice to any other action that may be taken under the Act or under any other law for the time being in force, delist any securities listed thereon on any of the following grounds in accordance with the regulations made by SEBI, namely:—

- (a) the company has incurred losses during the preceding three consecutive years and it has negative networth;
- (b) trading in the securities of the company has remained suspended for a period of more than six months;
- (c) the securities of the company have remained infrequently traded during the preceding three years;
- (d) the company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or SEBI Act, 1992 or the Depositories Act, 1996 or rules, regulations, agreements made thereunder, as the case may be and awarded a penalty of not less than rupees one crore or imprisonment of not less than three years;
- (e) the addresses of the company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the company has changed its registered office in contravention of the provisions of the Companies Act, 2013, or;
- (f) shareholding of the company held by the public has come below the minimum level applicable to the company as per the listing agreement under the Act and the company has failed to raise public holding to the required level within the time specified by the recognized stock exchange.

However, no securities shall be delisted unless the company concerned has been given a reasonable opportunity of being heard.

(2) If the securities is delisted under clause (1),

(a) the company, promoter and director of the company shall be jointly and severally liable to purchase the outstanding securities from those holders who wish to sell them at a fair price determined in accordance with regulations made by SEBI, under the Act; and

(3) the said securities shall be delisted from all recognized stock exchanges. A recognized stock exchange may, on the request of the company, delist any securities listed thereon in accordance with the regulations made under the Act by SEBI, subject to the following conditions, namely :

(a) the securities of the company have been listed for a minimum period of three years on the recognized stock exchange;

(b) the delisting of such securities has been approved by the two-third of public shareholders; and

(c) the company, promoter and/or the director of the company purchase the outstanding securities from those holders who wish to sell them at a price determined in accordance with regulations made by SEBI under the Act.

However, the condition at (c) may be dispensed with by SEBI if the securities remain listed at least on the National Stock Exchange of India Limited or the Bombay Stock Exchange Limited.

MODULE – IV

FEMA

The Foreign Exchange Management Act, 1999 (FEMA) is an Act of the Parliament of India "to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India". It was passed in the winter session of Parliament in 1999, replacing the Foreign Exchange Regulation Act (FERA). This act makes offences related to foreign exchange civil offenses. It extends to the whole of India., replacing FERA, which had become incompatible with the pro-liberalization policies of the Government of India. It enabled a new foreign exchange management regime consistent with the emerging framework of the World Trade Organization (WTO). It also paved the way for the introduction of the Prevention of Money Laundering Act, 2002, which came into effect from 1 July 2005.

History of Foreign Exchange Regulation in India

Foreign Exchange Regulation Act

The Foreign Exchange Regulation Act (FERA) was legislation passed in India in 1973 that imposed strict regulations on certain kinds of payments, the dealings in foreign exchange (forex) and securities and the transactions which had an indirect impact on the foreign exchange and the import and export of currency. The bill was formulated with the aim of regulating payments and foreign exchange

FERA came into force with effect from January 1, 1974. FERA was introduced at a time when foreign exchange (Forex) reserves of the country were low, Forex being a scarce commodity. FERA therefore proceeded on the presumption that all foreign exchange earned by Indian residents rightfully belonged to the Government of India and had to be collected and surrendered to the Reserve Bank of India (RBI). FERA primarily prohibited all transactions not permitted by RBI

Coca-Cola was India's leading soft drink until 1977 when it left India after a new government ordered the company to turn over its secret formula for Coca-Cola and dilute its stake in its Indian unit as required by the Foreign Exchange Regulation Act (FERA). In 1993, the company (along with PepsiCo) returned after the introduction of India's Liberalization policy.

Switch from FERA

FERA did not succeed in restricting activities such as the expansion of Multinational Corporations. The concessions made to FERA in 1991-1993 showed that FERA was on the verge of becoming redundant. After the amendment of FERA in 1993, it was decided that the act would become the FEMA. This was done in order to relax the controls on foreign exchange in India.

FERA was repealed in 1998 by the government of India and replaced by the Foreign Exchange Management Act, which liberalised foreign exchange controls and restrictions on foreign investment

The buying and selling of foreign currency and other debt instruments by businesses, individuals and governments happens in the foreign exchange market. Apart from being very competitive, this market is

also the largest and most liquid market in the world as well as in India. It constantly undergoes changes and innovations, which can either be beneficial to a country or expose them to greater risks. The management of foreign exchange market becomes necessary in order to mitigate and avoid the risks. Central banks would work towards an orderly functioning of the transactions which can also develop their foreign exchange market. Foreign Exchange Market Whether under FERA or FEMA's control, the need for the management of foreign exchange is important. It is necessary to keep adequate amount of foreign exchange from Import Substitution to Export Promotion

FEMA served to make transactions for external trade and easier – transactions involving current account for external trade no longer required RBI's permission. The deals in Foreign Exchange were to be 'managed' instead of 'regulated'. The switch to FEMA shows the change on the part of the government in terms of for the capital.

Main Features

- Activities such as payments made to any person outside India or receipts from them, along with the deals in foreign exchange and foreign security is restricted. It is FEMA that gives the central government the power to impose the restrictions.
- Free transactions on current account subject to a reasonable restrictions that may be imposed.
- Without general or specific permission of FEMA, MA restricts the transactions involving foreign exchange or foreign security and payments from outside the country to India – the transactions should be made only through an authorised person.
- Deals in foreign exchange under the current account by an authorised person can be restricted by the Central Government, based on public interest generally.
- Although selling or drawing of foreign exchange is done through an authorized person, the RBI is empowered by this Act to subject the capital account transactions to a number of restrictions.
- Residents of India will be permitted to carry out transactions in foreign exchange, foreign security or to own or hold immovable property abroad if the currency, security or property was owned or acquired when he/she was living outside India, or when it was inherited by him/her from someone living outside India.

IMPORTANT PROVISIONS OF FEMA:

It permits only authorised person to deal in foreign exchange or foreign security. Such an authorised person, under the Act, means authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised by Reserve Bank. The Act thus prohibits any person who:-

Deal in or transfer any foreign exchange or foreign security to any person not being an authorized person;

Make any payment to or for the credit of any person resident outside India in any manner;

Receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner;

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;

is resident in India which acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

The Act regulates two types of foreign exchange transactions, namely 'Capital Account Transactions' and 'Current Account Transactions'.

According to the Act, '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 the following transactions referred in the Act:-

Transfer or issue of any foreign security by a person resident in India;

Transfer or issue of any security by a person resident outside India;

Transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;

Any borrowing or lending in rupees in whatever form or by whatever name called;

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;

Deposits between persons resident in India and persons resident outside India;

Export, import or holding of currency or currency notes;

Transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;

Acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;

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.

It also defines the term 'current account transaction' as 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.

The Act has empowered the Reserve Bank of India (RBI) to specify, in consultation with the Central Government, the permissible capital account transactions and the limits upto which foreign exchange may be drawn for such transactions. But it 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.

Any person may sell or draw foreign exchange if such sale or drawal is a current account transaction. Under the Act, 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.

Every exporter of goods shall:- (i) 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; (ii) furnish to the Reserve Bank such other information as may be required by it for the purpose of ensuring the realisation of the export proceeds by such exporter.

The Reserve Bank may, at any time, cause an inspection to be made, by any officer specially authorised in writing by it in this behalf, of the business of any authorised person as may appear to it to be necessary or expedient for the purpose of:- (i) verifying the correctness of any statement, information or particulars furnished to the Reserve Bank; (ii) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so; (iii) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

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.

FDI NORMS:

Foreign Investment in India is regulated in terms of clause (b) sub-section 3 of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (FEMA) read with Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, These Regulations are amended from time to time to incorporate the changes in the regulatory framework and published through amendment notifications.

Within the contours of the Regulations, Reserve Bank of India also issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999 in the form of Master Direction which lays down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/ constituents with a view to implementing the regulations framed.

IMPORTANT PROVISIONS OF MASTER CIRCULAR ON FDI:

- A person resident outside India may hold, own, transfer or invest in a security in India if such security was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India. Such investment will be held by such person on a non-repatriable basis.
- Foreign investment is not permitted in Inventory based model of e-commerce
- 'Foreign Direct Investment' (FDI) is the investment through capital instruments by a person resident outside India (a) in an unlisted Indian company; or (b) in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.
- 'Foreign Portfolio Investment' is any investment made by a person resident outside India in capital instruments where such investment is (a) less than 10 percent of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company or (b) less than 10 percent of the paid up value of each series of capital instruments of a listed Indian company
- 'Foreign Portfolio Investor (FPI)' is a person registered in accordance with the provisions of Securities Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.
- 'Investment on repatriation basis' is an investment, the sale/ maturity proceeds of which are, net of taxes, eligible to be repatriated and the expression 'Investment on non-repatriation basis', will be construed accordingly.
- 'Investment Vehicle' is an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and will be Real Estate Investment Trusts (REITs) governed by the SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (InvIts) governed by the SEBI (InvIts) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by the SEBI (AIFs) Regulations, 2012

Prohibited sectors/ persons

Investment by a person resident outside India is prohibited in the following sectors:

- (1) Lottery Business including Government/ private lottery, online lotteries.
- (2) Gambling and betting including casinos.
- (3) Chit funds (except for investment made by NRIs and OCIs on a non- repatriation basis).
- (4) Nidhi company.
- (5) Trading in Transferable Development Rights (TDRs).
- (6) Real Estate Business or Construction of Farm Houses
- (7) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
The prohibition is on manufacturing of the products mentioned and foreign

investment in other activities relating to these products including wholesale cash and carry, retail trading etc. will be governed by the sectoral restrictions laid down in Regulation 16 of FEMA 20(R).

- (8) Activities/ sectors not open to private sector investment viz., (i) Atomic energy and (ii) Railway operations
- (9) Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities
- Any investment by a person who is a citizen of Bangladesh or Pakistan or is an entity incorporated in Bangladesh or Pakistan requires prior Government approval.
- A person who is a citizen of Pakistan or an entity incorporated in Pakistan can, only with the prior Government approval, invest in sectors/ activities other than defence, space, atomic energy and sectors/ activities prohibited for foreign investment.

Entry routes and Permitted sectors

Entry Routes

1. Automatic Route is the entry route through which investment by a person resident outside India does not require the prior Reserve Bank approval or Government approval.

2. Government Route is the entry route through which investment by a person resident outside India requires prior Government approval. Foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

Note: 'Government approval' is approval from the erstwhile Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India and/ or the erstwhile Foreign Investment Promotion Board (FIPB) and/ or any of the ministry/ department of the Government of India, as the case may be.

Sectoral caps

- Foreign investment is permitted up to 100% on the automatic route, subject to applicable laws/ regulations, security and other conditionalities, in sectors/ activities not listed in Regulation 16 of FEMA 20(R) and not prohibited under Regulation 15 of FEMA 20(R). This condition is not applicable for activities in financial services.
- Foreign investment in financial services other than those indicated under serial number “F” in Regulation 16 of FEMA 20(R) would require prior Government approval.

Foreign investment in investing companies:

- Foreign Investment in investing companies not registered as Non-Banking Financial Companies with the Reserve Bank and in core investment companies (CICs), both engaged in the activity of

investing in the capital of other Indian entities, will require prior Government approval

- The core investment companies should additionally comply with the regulatory framework prescribed for such entities as NBFCs under the Reserve Bank of India Act, 1934 and regulations framed thereunder.
- Foreign investment in investing companies registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank, will be under 100% automatic route.
- For undertaking activities which are under automatic route and without FDI linked performance conditions, an Indian company which does not have any operations and also has not made any downstream investment, may receive investment in its capital instruments from persons resident outside India under automatic route. However, Government approval will be required for such companies for undertaking activities which are under Government route. As and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.
- The onus of compliance with the sectoral/ statutory caps on foreign investment and attendant conditions if any, will be on the company receiving foreign investment.

Permitted Investments by persons resident outside India:

Unless otherwise specifically stated, any investment made by a person resident outside India shall be subject to the entry routes, sectoral caps or the investment limits, as the case may be, and the attendant conditionalities for making such investment. A person resident outside India may make investment as stated hereinafter.

Subscribe/ purchase/ sale of capital instruments of an Indian company is permitted as per the directions laid down in Annex 1 of Master Direction.

Purchase/ sale of capital instruments of a listed Indian company on a recognised stock exchange in India by Foreign Portfolio Investors is permitted as per the directions laid down in Annex 2 of Master Direction.

Purchase/ sale of Capital Instruments of a listed Indian company on a recognised stock exchange in India by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis is permitted as per the directions laid down in Annex 3 of Master Direction.

Purchase/ sale of Capital Instruments of an Indian company or Units or contribution to capital of a LLP or a firm or a proprietary concern by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on a Non-Repatriation basis is permitted as per the directions laid down in Annex 4 of Master Direction.

Purchase/ sale of securities other than capital instruments by a person resident outside India is permitted as per the directions laid down in Annex 5 of Master Direction.

Investment in a Limited Liability Partnership (LLP) is permitted as per the directions laid down in Annex 6 of Master Direction.

Investment by a Foreign Venture Capital Investor (FVCI) is permitted as per the directions laid down in Annex 7 of Master Direction.

Investment in an Investment Vehicle is permitted as per the directions laid down in Annex 8 of Master Direction.

Issue/ transfer of eligible instruments to a foreign depository for the purpose of issuance of depository receipts by eligible person(s) is permitted as per the directions laid down in Annex 9 of Master Direction.

Purchase/ sale of Indian Depository Receipts (IDRs) issued by Companies Resident outside India is permitted as per directions laid down in Annex 10 of Master Direction.

INTRODUCTION TO TRANSFER PRICING

Commercial transactions between the different parts of the multinational groups may not be subject to the same market forces shaping relations between the two independent firms. One party transfers to another goods or services, for a price. That price is known as "transfer price". This may be arbitrary and dictated, with no relation to cost and added value, diverge from the market forces. Transfer price is, thus, a price which represents the value of good; or services between independently operating units of an organisation. But, the expression "transfer pricing" generally refers to prices of transactions between associated enterprises which may take place under conditions differing from those taking place between independent enterprises. It refers to the value attached to transfers of goods, services and technology between related entities. It also refers to the value attached to transfers between unrelated parties which are controlled by a common entity.

Suppose a company A purchases goods for 100 rupees and sells it to its associated company B in another country for 200 rupees, who in turn sells in the open market for 400 rupees. Had A sold it direct, it would have made a profit of 300 rupees. But by routing it through B, it restricted it to 100 rupees, permitting B to appropriate the balance. The transaction between A and B is arranged and not governed by market forces. The profit of 200 rupees is, thereby, shifted to the country of B. The goods is transferred on a price (transfer price) which is arbitrary or dictated (200 hundred rupees), but not on the market price (400 rupees).

Thus, the effect of transfer pricing is that the parent company or a specific subsidiary tends to produce insufficient taxable income or excessive loss on a transaction. For instance, profits accruing to the parent can be increased by setting high transfer prices to siphon profits from subsidiaries domiciled in high tax countries, and low transfer prices to move profits to subsidiaries located in low tax jurisdiction. As an example of this, a group which manufacture products in a high tax countries may decide to sell them at a low profit to its affiliate sales company based in a tax haven country. That company would in turn sell the product at an arm's length price and the resulting (inflated) profit would be subject to little or no tax in that country. The result is revenue loss and also a drain on foreign exchange reserves.

IMPORTANT PROVISIONS OF TRANSFER PRICING AS PER INCOME TAX ACT

Definitions of certain terms relevant to computation of arm's length price, etc.

92F. In sections 92, 92A, 92B, 92C, 92D and 92E, unless the context otherwise requires,—

- (i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;

- (ii) "arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions;
- (iii) "enterprise" means a person (including a permanent establishment of such person) who is, or has been, or is proposed to be, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights, or the provision of services of any kind, or in carrying out any work in pursuance of a contract, or in investment, or providing loan or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, whether such activity or business is carried on, directly or through one or more of its units or divisions or subsidiaries, or whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or places;
- (iiia) "permanent establishment", referred to in clause (iii), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;
- (iv) "specified date" shall have the same meaning as assigned to "due date" in Explanation 2 below sub-section (1) of section 139;
- (v) "transaction" includes an arrangement, understanding or action in concert,—
 - (A) whether or not such arrangement, understanding or action is formal or in writing; or
 - (B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.

Computation of arm's length price.

92C. (1) The arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely :—

- (a) comparable uncontrolled price method;
- (b) resale price method;
- (c) cost plus method;
- (d) profit split method;
- (e) transactional net margin method;
- (f) such other method as may be prescribed by the Board.

(2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed :

Provided that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices:

Provided further that if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified by the Central Government

in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price :

Provided also that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken on or after the 1st day of April, 2014, shall be computed in such manner as may be prescribed and accordingly the first and second proviso shall not apply.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of the second proviso shall also be applicable to all assessment or reassessment proceedings pending before an Assessing Officer as on the 1st day of October, 2009.

(2A) Where the first proviso to sub-section (2) as it stood before its amendment by the Finance (No. 2) Act, 2009 (33 of 2009), is applicable in respect of an international transaction for an assessment year and the variation between the arithmetical mean referred to in the said proviso and the price at which such transaction has actually been undertaken exceeds five per cent of the arithmetical mean, then, the assessee shall not be entitled to exercise the option as referred to in the said proviso.

(2B) Nothing contained in sub-section (2A) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154 for any assessment year the proceedings of which have been completed before the 1st day of October, 2009.

(3) Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that—

- (a) the price charged or paid in an international transaction or specified domestic transaction has not been determined in accordance with sub-sections (1) and (2); or
- (b) any information and document relating to an international transaction or specified domestic transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or
- (c) the information or data used in computation of the arm's length price is not reliable or correct; or
- (d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D,

the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction or specified domestic transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

(4) Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined :

Provided that no deduction under section 10A or section 10AA or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section :

Provided further that where the total income of an associated enterprise is computed under this sub-section on determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible under the provisions of Chapter XVIIIB, the income of the other associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise.

Meaning of international transaction.

92B. (1) For the purposes of this section and sections 92, 92C, 92D and 92E, "international transaction" means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

(2) A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be an international transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not.

Explanation.—For the removal of doubts, it is hereby clarified that—

(i) the expression "international transaction" shall include—

- (a) the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
- (b) the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;
- (c) capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
- (d) provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
- (e) a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

(ii) the expression "intangible property" shall include—

- (a) marketing related intangible assets, such as, trademarks, trade names, brand names, logos;

- (b) technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;
- (c) artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;
- (d) data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;
- (e) engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering drawing and schema-tics, blueprints, proprietary documentation;
- (f) customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;
- (g) contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;
- (h) human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;
- (i) location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;
- (j) goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;
- (k) methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;
- (l) any other similar item that derives its value from its intellectual content rather than its physical attributes.

Reference to Transfer Pricing Officer.

92CA. (1) Where any person, being the assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Principal Commissioner or Commissioner, refer the computation of the arm's length price in relation to the said international transaction or specified domestic transaction under section 92C to the Transfer Pricing Officer.

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction or specified domestic transaction referred to in sub-section (1).

(2A) Where any other international transaction other than an international transaction referred under sub-section (1), comes to the notice of the Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply as if such other international transaction is an international transaction referred to him under sub-section (1).

(2B) Where in respect of an international transaction, the assessee has not furnished the report under section 92E and such transaction comes to the notice of the Transfer Pricing Officer during the

course of the proceeding before him, the provisions of this Chapter shall apply as if such transaction is an international transaction referred to him under sub-section (1).

(2C) Nothing contained in sub-section (2B) shall empower the Assessing Officer either to assess or reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year, proceedings for which have been completed before the 1st day of July, 2012.

(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arm's length price in relation to the international transaction or specified domestic transaction in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

(3A) Where a reference was made under sub-section (1) before the 1st day of June, 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153, or as the case may be, in section 153B for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires:

Provided that in the circumstances referred to in clause (ii) or clause (x) of Explanation 1 to section 153, if the period of limitation available to the Transfer Pricing Officer for making an order is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to have been extended accordingly.

(4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C in conformity with the arm's length price as so determined by the Transfer Pricing Officer.

(5) With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him under sub-section (3), and the provisions of section 154 shall, so far as may be, apply accordingly.

(6) Where any amendment is made by the Transfer Pricing Officer under sub-section (5), he shall send a copy of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

(7) The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all or any of the powers specified in clauses (a) to (d) of sub-section (1) of section 131 or sub-section (6) of section 133 or section 133A.

Explanation.—For the purposes of this section, "Transfer Pricing Officer" means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons.

Maintenance and keeping of information and document by persons entering into an international transaction or specified domestic transaction.

92D. (1) Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed :

Provided that the person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed.

Explanation.—For the purposes of this section,—

(A) "constituent entity" shall have the meaning assigned to it in clause (d) of sub-section (9) of section 286;

(B) "international group" shall have the meaning assigned to it in clause (g) of sub-section (9) of section 286.

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction or specified domestic transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard :

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

(4) Without prejudice to the provisions of sub-section (3), the person referred to in the proviso to sub-section (1) shall furnish the information and document referred to in the said proviso to the authority prescribed under sub-section (1) of section 286, in such manner, on or before the date, as may be prescribed.

Following section 92D shall be substituted for the existing section 92D by the Act No. 23 of 2019, w.e.f. 1-4-2020 :

Maintenance, keeping and furnishing of information and document by certain persons.

92D. (1) Every person,—

(i) who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof as may be prescribed;

(ii) being a constituent entity of an international group, shall keep and maintain such information and document in respect of an international group as may be prescribed.

Explanation.—For the purposes of this clause,—

(A) "constituent entity" shall have the meaning assigned to it in clause (d) of sub-section (9) of section 286;

(B) "international group" shall have the meaning assigned to it in clause (g) of sub-section (9) of section 286.

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under the said sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person referred to in clause (i) of sub-section (1) to furnish any information or document referred therein, within a period of thirty days from the date of receipt of a notice issued in this regard:

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

(4) The person referred to in clause (ii) of sub-section (1) shall furnish the information and document referred therein to the authority prescribed under sub-section (1) of section 286, in such manner, on or before such date, as may be prescribed.

Furnishing of report in respect of international group.

286. (1) Every constituent entity resident in India, shall, if it is constituent of an international group, the parent entity of which is not resident in India, notify the prescribed income-tax authority (herein referred to as prescribed authority) in the form and manner, on or before such date, as may be prescribed,—

- (a) whether it is the alternate reporting entity of the international group; or
- (b) the details of the parent entity or the alternate reporting entity, if any, of the international group, and the country or territory of which the said entities are resident.

(2) Every parent entity or the alternate reporting entity, resident in India, shall, for every reporting accounting year, in respect of the international group of which it is a constituent, furnish a report, to the prescribed authority within a period of twelve months from the end of the said reporting accounting year in the form and manner as may be prescribed.

(3) For the purposes of sub-section (2) and sub-section (4), the report in respect of an international group shall include,—

- (a) the aggregate information in respect of the amount of revenue, profit or loss before income-tax, amount of income-tax paid, amount of income-tax accrued, stated capital, accumulated earnings, number of employees and tangible assets not being cash or cash equivalents, with regard to each country or territory in which the group operates;
- (b) the details of each constituent entity of the group including the country or territory in which such constituent entity is incorporated or organised or established and the country or territory where it is resident;
- (c) the nature and details of the main business activity or activities of each constituent entity; and
- (d) any other information as may be prescribed.

(4) A constituent entity of an international group, resident in India, other than the entity referred to in sub-section (2), shall furnish the report referred to in the said sub-section, in respect of the international group for a reporting accounting year within the period as may be prescribed, if the parent entity is resident of a country or territory,—

- (a) where the parent entity is not obligated to file the report of the nature referred to in sub-section (2);
- (aa) with which India does not have an agreement providing for exchange of the report of the nature referred to in sub-section (2); or
- (b) there has been a systemic failure of the country or territory and the said failure has been intimated by the prescribed authority to such constituent entity:

Provided that where there are more than one such constituent entities of the group, resident in India, the report shall be furnished by any one constituent entity, if,—

- (a) the international group has designated such entity to furnish the report in accordance with the provisions of sub-section (2) on behalf of all the constituent entities resident in India; and
- (b) the information has been conveyed in writing on behalf of the group to the prescribed authority.

(5) Nothing contained in sub-section (4) shall apply, if, an alternate reporting entity of the international group has furnished a report of the nature referred to in sub-section (2), with the tax authority of the country or territory in which such entity is resident, on or before the date specified ⁹⁰[by that country or territory] and the following conditions are satisfied, namely:—

- (a) the report is required to be furnished under the law for the time being in force in the said country or territory;
- (b) the said country or territory has entered into an agreement with India providing for exchange of the said report;
- (c) the prescribed authority has not conveyed any systemic failure in respect of the said country or territory to any constituent entity of the group that is resident in India;
- (d) the said country or territory has been informed in writing by the constituent entity that it is the alternate reporting entity on behalf of the international group; and
- (e) the prescribed authority has been informed by the ⁹¹[entity] referred to in sub-section (4) in accordance with sub-section (1).

(6) The prescribed authority may, for the purposes of determining the accuracy of the report furnished by any reporting entity, by issue of a notice in writing, require the entity to produce such information and document as may be specified in the notice within thirty days of the date of receipt of the notice:

Provided that the prescribed authority may, on an application made by such entity, extend the period of thirty days by a further period not exceeding thirty days.

(7) The provisions of this section shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed the amount, as may be prescribed.

(8) The provisions of this section shall be applied in accordance with such guidelines and subject to such conditions, as may be prescribed.

(9) For the purposes of this section,—

(a) "accounting year" means,—

- (i) a previous year, in a case where the parent entity is resident in India; or
- (ii) an annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident, in any other case;

(b) "agreement" means a combination of all of the following agreements, namely:—

- (i) an agreement entered into under sub-section (1) of section 90 or sub-section (1) of section 90A; and
- (ii) an agreement for exchange of the report referred to in sub-section (2) and notified by the Central Government;

- (c) "alternate reporting entity" means any constituent entity of the international group that has been designated by such group, in the place of the parent entity, to furnish the report of the nature referred to in sub-section (2) in the country or territory in which the said constituent entity is resident on behalf of such group;
- (d) "constituent entity" means,—
 - (i) any separate entity of an international group that is included in the consolidated financial statement of the said group for financial reporting purposes, or may be so included for the said purpose, if the equity share of any entity of the international group were to be listed on a stock exchange;
 - (ii) any such entity that is excluded from the consolidated financial statement of the international group solely on the basis of size or materiality; or
 - (iii) any permanent establishment of any separate business entity of the international group included in sub-clause (i) or sub-clause (ii), if such business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;
- (e) "group" includes a parent entity and all the entities in respect of which, for the reason of ownership or control, a consolidated financial statement for financial reporting purposes,—
 - (i) is required to be prepared under any law for the time being in force or the accounting standards of the country or territory of which the parent entity is resident; or
 - (ii) would have been required to be prepared had the equity shares of any of the enterprises were listed on a stock exchange in the country or territory of which the parent entity is resident;
- (f) "consolidated financial statement" means the financial statement of an international group in which the assets, liabilities, income, expenses and cash flows of the parent entity and the constituent entities are presented as those of a single economic entity;
- (g) "international group" means any group that includes,—
 - (i) two or more enterprises which are resident of different countries or territories; or
 - (ii) an enterprise, being a resident of one country or territory, which carries on any business through a permanent establishment in other countries or territories;
- (h) "parent entity" means a constituent entity, of an international group holding, directly or indirectly, an interest in one or more of the other constituent entities of the international group, such that,—
 - (i) it is required to prepare a consolidated financial statement under any law for the time being in force or the accounting standards of the country or territory of which the entity is resident; or
 - (ii) it would have been required to prepare a consolidated financial statement had the equity shares of any of the enterprises were listed on a stock exchange,

and, there is no other constituent entity of such group which, due to ownership of any interest, directly or indirectly, in the first mentioned constituent entity, is required to prepare a consolidated financial statement, under the circumstances referred to in ⁹⁵[sub-clause (i) or sub-clause (ii)], that includes the separate financial statement of the first mentioned constituent entity;
- (i) "permanent establishment" shall have the meaning assigned to it in clause (iiia) of section 92F;

- (j) "reporting accounting year" means the accounting year in respect of which the financial and operational results are required to be reflected in the report referred to in sub-sections (2) and (4)
- (k) "reporting entity" means the constituent entity including the parent entity or the alternate reporting entity, that is required to furnish a report of the nature referred to in sub-section (2);
- (l) "systemic failure" with respect to a country or territory means that the country or territory has an agreement with India providing for exchange of report of the nature referred to in sub-section (2), but—
 - (i) in violation of the said agreement, it has suspended automatic exchange; or
 - (ii) has persistently failed to automatically provide to India the report in its possession in respect of any international group having a constituent entity resident in India.

Report from an accountant to be furnished by persons entering into international transaction or specified domestic transaction.

92E. Every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed.

Penalty for failure to keep and maintain information and document, etc., in respect of certain transactions.

271AA. (1) Without prejudice to the provisions of section 270A or section 271 or section 271BA, if any person in respect of an international transaction or specified domestic transaction,—

- (i) fails to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D;
- (ii) fails to report such transaction which he is required to do so; or
- (iii) maintains or furnishes an incorrect information or document,

the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of each international transaction or specified domestic transaction entered into by such person.

(2) If any person fails to furnish the information and the document as required under sub-section (4) of section 92D, the prescribed income-tax authority referred to in the said sub-section may direct that such person shall pay, by way of penalty, a sum of five hundred thousand rupees.

Maintenance and keeping of information and document by persons entering into an international transaction or specified domestic transaction

92D. (1) Every person who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof, as may be prescribed :

Provided that the person, being a constituent entity of an international group, shall also keep and maintain such information and document in respect of an international group as may be prescribed.

Explanation.—For the purposes of this section,—

(A) "constituent entity" shall have the meaning assigned to it in clause (d) of sub-section (9) of section 286;

(B) "international group" shall have the meaning assigned to it in clause (g) of sub-section (9) of section 286.

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction or specified domestic transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty days from the date of receipt of a notice issued in this regard :

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

(4) Without prejudice to the provisions of sub-section (3), the person referred to in the proviso to sub-section (1) shall furnish the information and document referred to in the said proviso to the authority prescribed under sub-section (1) of section 286, in such manner, on or before the date, as may be prescribed.

Following section 92D shall be substituted for the existing section 92D by the Act No. 23 of 2019, w.e.f. 1-4-2020 :

Maintenance, keeping and furnishing of information and document by certain persons.

92D. (1) Every person,—

(i) who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document in respect thereof as may be prescribed;

(ii) being a constituent entity of an international group, shall keep and maintain such information and document in respect of an international group as may be prescribed.

Explanation.—For the purposes of this clause,—

(A) "constituent entity" shall have the meaning assigned to it in clause (d) of sub-section (9) of section 286;

(B) "international group" shall have the meaning assigned to it in clause (g) of sub-section (9) of section 286.

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under the said sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person referred to in clause (i) of sub-section (1) to furnish any information or document referred therein, within a period of thirty days from the date of receipt of a notice issued in this regard:

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

(4) The person referred to in clause (ii) of sub-section (1) shall furnish the information and document referred therein to the authority prescribed under sub-section (1) of section 286, in such manner, on or before such date, as may be prescribed.

Computation of income from international transaction having regard to arm's length price.

92. (1) Any income arising from an international transaction shall be computed having regard to the arm's length price.

Explanation.—For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.

(2) Where in an international transaction or specified domestic transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(2A) Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

(3) The provisions of this section shall not apply in a case where the computation of income under sub-section (1) or sub-section (2A) or the determination of the allowance for any expense or interest under sub-section (1) or sub-section (2A), or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (2) or sub-section (2A), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction or specified domestic transaction was entered into.

Meaning of specified domestic transaction.

92BA. For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:—

- (i) any transaction referred to in section 80A;
- (ii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;
- (iii) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;
- (iv) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or
- (v) any other transaction as may be prescribed,

and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of twenty crore rupees.

Power of Board to make safe harbour rules.

92CB. (1) The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules.

(2) The Board may, for the purposes of sub-section (1), make rules for safe harbour.

Explanation.—For the purposes of this section, "safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

Advance pricing agreement.

92CC. (1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person.

(2) The manner of determination of arm's length price referred to in sub-section (1), may include the methods referred to in sub-section (1) of section 92C or any other method, with such adjustments or variations, as may be necessary or expedient so to do.

(3) Notwithstanding anything contained in section 92C or section 92CA, the arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with the advance pricing agreement so entered.

(4) The agreement referred to in sub-section (1) shall be valid for such period not exceeding five consecutive previous years as may be specified in the agreement.

(5) The advance pricing agreement entered into shall be binding—

(a) on the person in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and

(b) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the said person and the said transaction.

(6) The agreement referred to in sub-section (1) shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

(7) The Board may, with the approval of the Central Government, by an order, declare an agreement to be void ab initio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

(8) Upon declaring the agreement void ab initio,—

(a) all the provisions of the Act shall apply to the person as if such agreement had never been entered into; and

(b) notwithstanding anything contained in the Act, for the purpose of computing any period of limitation under this Act, the period beginning with the date of such agreement and ending on the date of order under sub-section (7) shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation, referred to in any provision of this Act, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(9) The Board may, for the purposes of this section, prescribe a scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

(9A) The agreement referred to in sub-section (1), may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding four previous years preceding the first of the previous years referred to in

sub-section (4), and the arm's length price of such international transaction shall be determined in accordance with the said agreement.

(10) Where an application is made by a person for entering into an agreement referred to in sub-section (1), the proceeding shall be deemed to be pending in the case of the person for the purposes of the Act.

Effect to advance pricing agreement.

92CD. (1) Notwithstanding anything to the contrary contained in section 139, where any person has entered into an agreement and prior to the date of entering into the agreement, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the agreement.

(2) Save as otherwise provided in this section, all other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

(3) If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (1), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1), ⁹⁷[pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, as the case may be,] having regard to and in accordance with the agreement.

(4) Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement taking into consideration the modified return so furnished.

(5) Notwithstanding anything contained in section 153 or section 153B or section 144C,—

- (a) the order under sub-section (3) shall be passed within a period of one year from the end of the financial year in which the modified return under sub-section (1) is furnished;
- (b) the period of limitation as provided in section 153 or section 153B or section 144C for completion of pending assessment or reassessment proceedings referred to in sub-section (4) shall be extended by a period of twelve months.

(6) For the purposes of this section,—

- (i) "agreement" means an agreement referred to in sub-section (1) of section 92CC;
- (ii) the assessment or reassessment proceedings for an assessment year shall be deemed to have been completed where—
 - (a) an assessment or reassessment order has been passed; or
 - (b) no notice has been issued under sub-section (2) of section 143 till the expiry of the limitation period provided under the said section.

Secondary adjustment in certain cases.

92CE. (1) Where a primary adjustment to transfer price,—

- (i) has been made suo motu by the assessee in his return of income;

- (ii) made by the Assessing Officer has been accepted by the assessee;
- (iii) is determined by an advance pricing agreement entered into by the assessee under section 92CC , on or after the 1st day of April, 2017
- (iv) is made as per the safe harbour rules framed under section 92CB; or
- (v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation,

the assessee shall make a secondary adjustment:

Provided that nothing contained in this section shall apply, if,—

- (i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; or
- (ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016:

Provided further that no refund of taxes paid, if any, by virtue of provisions of this sub-section as they stood immediately before their amendment by the Finance (No. 2) Act, 2019 shall be claimed and allowed.

(2) Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money or part thereof, as the case may be, which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

Explanation.—For the removal of doubts, it is hereby clarified that the excess money or part thereof may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.

(2A) Without prejudice to the provisions of sub-section (2), where the excess money or part thereof has not been repatriated within the prescribed time, the assessee may, at his option, pay additional income-tax at the rate of eighteen per cent on such excess money or part thereof, as the case may be.

(2B) The tax on the excess money or part thereof so paid by the assessee under sub-section (2A) shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated and no further credit therefor shall be claimed by the assessee or by any other person in respect of the amount of tax so paid.

(2C) No deduction under any other provision of this Act shall be allowed to the assessee in respect of the amount on which tax has been paid in accordance with the provisions of sub-section (2A).

(2D) Where the additional income-tax referred to in sub-section (2A) is paid by the assessee, he shall not be required to make secondary adjustment under sub-section (1) and compute interest under sub-section (2) from the date of payment of such tax.

(3) For the purposes of this section,—

- (i) "associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of section 92A;
- (ii) "arm's length price" shall have the meaning assigned to it in clause (ii) of section 92F;
- (iii) "excess money" means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken;

- (iv) "primary adjustment" to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;
- (v) "secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

Limitation on interest deduction in certain cases.

94B. (1) Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :

Provided that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

(2) For the purposes of sub-section (1), the excess interest shall mean an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year, whichever is less.

(3) Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.

(4) Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "Profits and gains of business or profession", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2):

Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

(5) For the purposes of this section, the expressions—

- (i) "associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of section 92A;
- (ii) "debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";
- (iii) "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

MODULE V

SELF REGULATORY ORGANISATIONS

INTRODUCTION TO SELF REGULATORY ORGANISATION

A self-regulatory organization (SRO) is a non-governmental organization which has the power to create and enforce stand-alone industry and professional regulations and standards. In the case of a financial SROs, such as a stock exchange, the priority is to protect the investor by establishing rules, regulations, and set standards of procedures which promote ethics, equality, and professionalism.

There may also be self-regulatory organizations specific to the country they serve, such as the Investment Industry Regulatory Organization of Canada (IIROC) and the Association of Mutual Funds in India (AMFI). Some industries may also create SROs with examples being the American Bar Association and the Institute of Nuclear Power Operations (INPO)

The Purpose of SROs

Although SROs are private organizations, they are still subject to government-imposed regulation to a degree. However, the government does delegate some aspects of the industry oversight to self-regulatory organizations.

Since the SRO has some regulatory influence over an industry or profession, it can often serve as a watchdog to guard against fraud or unprofessional practices. The ability of an SRO to exercise regulatory authority does not stem from a grant of power from the government.

Instead, SROs often accomplish control through internal mechanisms that regulate the flow of business operations. The authority may also come from an external agreement between like businesses. The purpose of these organizations is to govern from within while avoiding ties to a country's governance.

Authority of Self-Regulatory Organizations

Once the self-regulating organization sets regulations and provisions to guide activity, those rules are binding. Failure to operate within the given regulations can have consequences, and a firm must understand those rules when it considers associating with the SRO.

Further, the SRO may set standards which a professional or business must meet to become a member, such as having a specified educational background or working in a manner that is considered ethical by the industry.

An additional function undertaken by the SRO is educating investors on appropriate business practices. The SRO will provide information and allow input on any areas of interest or concern which may include fraud or other unethical industry activities. The SRO may also help investors understand how their investments work and advise on methods to mitigate potential risks associated with the securities industry.

In India SEBI has come out with SRO Regulations in the year 2004.

IMPORTANT PROVISIONS OF SEBI SRO REGULATIONS 2004

1. Recognition of Self Regulatory Organization

(1) Any group or association of intermediaries, which is desirous of being recognized as a Self Regulatory Organization, may form a company registered under section 25 of the Companies Act, 1956 and such company may make an application to the Board for grant of certificate of recognition as a Self Regulatory Organization:

Provided that for the purpose of this sub-regulation a distributor shall be deemed to be an intermediary

Provided further that the Board may, in case of distributors engaged by asset management companies of mutual funds, grant certificate of recognition to only one group or association making an application under this regulation.

Every application made by such company under sub-regulation (1) shall contain such particulars as may be specified and shall be accompanied by a copy of the governing norms of Self Regulatory Organization and also a copy of the memorandum and articles of association relating in general to the constitution of the Self Regulatory Organization and in particular, to -

- (a) Board of Directors of Self Regulatory Organization, its constitution and powers of management and the manner in which its business would be transacted;
- (b) the powers and duties of the office bearers of Self Regulatory Organization;
- (c) the admission into the Self Regulatory Organization of members, agents, their qualifications for membership, and the exclusion, suspension, expulsion and readmission of members therefrom or thereinto;

(3) Every application under sub-regulation (1) shall be signed on behalf of the applicant under authority of its Board of Directors by its Chairman, Managing Director, Chief Executive Officer or whole time director.

(4) Every application under sub-regulation (1) shall be made to the Board in Form A of the first schedule and shall be accompanied by a non-refundable application fee, as specified in Part A of the second schedule, to be paid in the manner specified in Part B thereof.

2. Eligibility criteria:

The Board shall not consider an application for grant of a certificate under regulation 3 unless the applicant satisfies the following conditions, namely:-

- (a) the applicant is a company which has been granted license under section 25 of Companies Act, 1956;
- (b) the applicant has, in its memorandum of association, specified admission of members and discharging the functions of Self Regulatory Organization as one of its main objects;
- (c) the applicant has a minimum networth of one crore rupees;
- (d) the applicant has adequate infrastructure, to enable it to discharge its functions as a Self Regulatory Organization in accordance with the provisions of the Act and these regulations;
- (e) the applicant referred to in regulation 3 and its directors have the professional competence, financial soundness and general reputation of fairness and integrity to the satisfaction of the Board;
- (f) neither the applicant, nor any director of the applicant is involved in any legal proceeding connected with the securities market, which may have an adverse impact on the interests of the investors;
- (g) neither the applicant, nor any director has at any time in the past been convicted of any offence involving moral turpitude or any economic offence;
- (h) the applicant has, in its employment, persons having adequate professional and other relevant experience to the satisfaction of the Board;
- ⁷[(i) the applicant is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;]
- (j) grant of certificate to the applicant is in the interest of investors and the securities market.

3. Grant of in-principle approval.

Where the applicant is not in compliance with the provisions of clauses (c), (d) or (h) of regulation 4, on the date of submission of the application under regulation 3, the Board may grant an in-principle approval to the applicant, which shall be valid for a period of one hundred and eighty days, within which the applicant shall ensure compliance with all provisions of regulation 4:

Provided that the Board may, upon sufficient cause shown by the applicant, extend the validity of the in-principle approval for a further period not exceeding ninety days.

4. Grant of recognition as a Self Regulatory Organization

2. (1) If the Board 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 articles and governing norms of the applicant applying for recognition are in conformity with such conditions as may be specified by the Board;
- (b) that the applicant is willing to comply with any other conditions which the Board may impose for the purpose of carrying out the objects of these Regulations; and,
- (c) that it would be in the interest of the trade and also in the public interest to grant recognition to the applicant as a Self Regulatory Organization;

the Board may grant certificate of recognition to the applicant as a Self Regulatory Organization in Form B1 of the First Schedule subject to such terms and conditions as the Board may deem fit and appropriate.

(2) The conditions which the Board may specify under sub-regulation (1) for the grant of recognition to the applicant as a Self Regulatory Organization may include, among other matters, conditions relating to, -

- (i) the qualification for membership of the Self Regulatory Organization;
- (ii) the representation of the Board in the Board of Directors of the Self Regulatory Organization by such number of directors not exceeding four as the Board may nominate in this behalf; and
- (iii) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Board.

(3) No articles of Self Regulatory Organization relating to any of the matters specified in clauses (a), (b) and (c) of sub-regulation (2) of Regulation 3 shall be amended except with the prior written approval of the Board.

5. Conditions of certificate and validity period:

1. (1) The certificate granted under regulation 5 shall be, subject to the following conditions, namely: -

- (a) the applicant shall comply with the provisions of the Act, applicable regulations and guidelines, directions or circulars issued by the Board from time to time;
- (b) any information or particulars furnished to the Board by the applicant shall not be false or misleading in any material respect;

- (c) where any material information or particulars furnished to the Board by the applicant, in or in connection with the application for recognition, has undergone change subsequent to its furnishing, the applicant shall forthwith inform the fact to the Board in writing;

(2) The certificate of recognition shall be valid for a period of five years.

6. Renewal of certificate.

(1) Any Self Regulatory Organization desirous of obtaining renewal of the recognition granted to it, shall make to the Board an application for the renewal of the certificate of recognition in Form A of the First Schedule.

(2) Such application shall be made not less than three months before expiry of the period of validity of the certificate, specified in sub-regulation (2) of regulation 8.

(3) The application for renewal made under sub-regulation (1), -

(a) shall be accompanied by a renewal fee as specified in the second schedule; and,

(b) as far as may be, shall be dealt with in the same manner as if it were an application for the grant of a fresh certificate under regulation 3.

(4) If the Board is satisfied that the certificate of recognition already granted to the Self Regulatory Organization under sub-regulation (1) of regulation 5 or the certificate previously renewed under this regulation deserves to be renewed, the Board may renew such certificate in Form B2 of the First Schedule subject to such terms and conditions as it may deem fit and appropriate.

7. Composition of Board of Directors:

The Articles of Association of a Self Regulatory Organization shall provide for the following: -

- (d) There shall be a Board of Directors of the Self Regulatory Organization and majority of directors shall be independent directors.
- (e) The independent directors shall not be required to hold any qualification shares.
- (f) The Board of Directors shall consist of nine directors out of which five directors shall be nominated by the Board and the remaining four shall be elected by the members of the Self Regulatory Organization.
- (g) The General Superintendence, direction and management of the affairs of the Self Regulatory Organization shall vest in its Board of Directors, which may exercise all powers and do all acts and things which may be exercised or done by the Self Regulatory Organization.
- (h) There shall be a Chairman, who shall be an independent professional, appointed by

Board of Directors, with the prior approval of the Board.

- (i) The Chairman shall be responsible for day-to-day administration of Self Regulatory Organization and implementing the decisions of Board of Directors.
- (j) The Board of Directors may establish committees including disciplinary committee, screening committee, arbitration committee or remuneration committee in order to carry out the purposes of these regulations:

Provided that the committees constituted under this regulation may consist wholly of other persons or partly of directors and partly of other persons:

Provided further that the majority of members of each such committee shall be independent.

- (k) The office bearers of Board of Directors shall relinquish their office, when the Board passes an order under clause (c) of sub-section (4) of section 11 of the Act.
- (l) The Board of Directors of the Self Regulatory Organization shall be reconstituted as and when required by the Board.

8. Membership of SRO

- (1) After commencement of these regulations, any application for registration or renewal of registration as an intermediary with the Board under the respective regulations applicable to such intermediaries, shall in case of any applicant who is a member of a Self Regulatory Organization or who ought to be a member of a Self Regulatory Organization, be made only through the Self Regulatory Organization of which he is a member, in the specified manner.
- (2) The application under sub-regulation (1) shall be forwarded by the Self Regulatory Organization to the Board along with its recommendation for grant or refusal of certificate of registration not later than 30 days from the date of its receipt.
- (3) The Self Regulatory Organization shall also give the reasons for its recommendation either for granting certificate of recognition or for refusal of certificate of registration by the Board.

9. Functions and Obligations of SRO

- 3. (1) A Self Regulatory Organization shall always abide by the directions of the Board.
- (2) The Self Regulatory Organization shall be responsible for investor protection and education of investors or its members and shall ensure observance of Securities Laws by its members.
- (3) The Self Regulatory Organization shall specify standard of conduct for its members and also shall be responsible for the implementation of the same by its members.

- (4) The Self Regulatory Organization shall conduct inspection and audit of its members, on regular basis, through independent auditors.
- (5) The Self Regulatory Organization shall submit its annual report to the Board.
- (6) The Self Regulatory Organization shall treat all its members and the applications for membership in a fair and transparent manner.
- (7) The Self Regulatory Organization may collect admission and membership fees from its members for carrying out the purposes of these regulations.
- (8) The Self Regulatory Organization shall promptly inform the Board of violations of the provisions of the Act, the rules, the regulations, the directions, the circulars or the guidelines by any of its members.
- (9) The Self Regulatory Organization shall conduct screening and certification tests for its members, agents and such other persons as it may determine.
- (10) Self Regulatory Organization shall conduct training programmes for its members or agents and also conduct awareness programmes for securities market investors.
- (11) The Self Regulatory Organization shall make endeavors for introduction of best business practices amongst its members.
- (12) The Self Regulatory Organization shall act in utmost good faith and shall avoid conflict of interest in the conduct of its functions.
- (13) The Self Regulatory Organization shall comply with the norms of corporate governance as applicable to listed companies.
- (14) The Self Regulatory Organization may discharge such other functions and obligations as may be specified by the Board, from time to time.

10. SEBI's Right to Inspect

1) Where it appears to the Board so to do, it may appoint one or more persons as inspecting authority to undertake inspection of the books of accounts, other records and documents of the Self Regulatory Organization for any of the purposes specified in sub- regulation (2).

(2) The purposes referred to in sub-regulation (1) shall be as follows, namely: -

- (a) to ensure that the provisions of the Act, the regulations, the directions and the circulars issued by the Board are being complied with;
- (b) to inquire into the complaints received from members, investors, or any other person on any matter having a bearing on the activities of the Self Regulatory Organization; or,

- (c) to inquire suomotu, in the interest of securities business or investors' interest, into the affairs of the Self Regulatory Organization.

11. Withdrawal of recognition.

18. (1) If the Board is of the opinion that the recognition granted to a Self Regulatory Organization under the provisions of these Regulations should, in the interest of the trade or in the public interest, be withdrawn, it may serve a written notice in Form "C" on Board of Directors of the Self Regulatory Organization calling upon it to show cause as to why the recognition should not be withdrawn for the reasons stated in the notice.

(2) Where a notice is issued under sub-regulation (1), the Board may, after giving an opportunity to Board of Directors of the Self Regulatory Organization to be heard in the matter, withdraw, by passing an order, the recognition granted to the Self Regulatory Organization and thereupon sub-regulations (3), (4) and (5) of regulation 11 would apply as if the application of the Self Regulatory Organization for renewal of recognition has been rejected under regulation 10.

(3) The Board shall promptly communicate such order to the concerned Self Regulatory Organization.

(4) On receipt of the order passed under sub-regulation (2), the Self Regulatory Organization shall cease to carry on any activity as a Self Regulatory Organization and shall comply with such directions as may be issued by the Board under sub-regulation (2) read with sub-regulations (3), (4) or (5) of regulation 11, as the case may be.

With a view of coming out with new regulations pertaining to SRO, SEBI released a consultation paper which is given as Annexure I.

ANNEXURE - I

Consultation Paper on Self Regulatory Organizations in Securities Market

1. Objective

- 1.1. This Memorandum proposes to seek the approval of the Board for initiation of public consultation process on the proposal to amend the SEBI (Self Regulatory Organizations) Regulations, 2004 (“**SRO Regulations**”) to simplify the process of recognition of and to strengthen the role of Self Regulatory Organizations (“**SRO**”) in the securities market.

2. Background

- 2.1. SEBI notified the SRO Regulations on February 19, 2004. SEBI Board, in its meeting held on August 16, 2012, approved the proposal to set up a Self Regulatory Organization (SRO) to regulate the distributors of securities such as mutual fund products, portfolio management products, etc. In order to implement the Board decision, the SRO Regulations were amended and brought into force on January 8, 2013, vide a Notification, in relation to distributors engaged by asset management companies of mutual funds and distributors engaged by portfolio managers.
- 2.2. Subsequent to the aforesaid notification, a public notice was issued on March 21, 2013 on the SEBI website inviting applications from entities desirous of being recognized as an SRO for distributors of mutual fund products.
- 2.3. The SEBI Board in its meeting held on June 25, 2013 after taking into account the difficulties envisaged in multiple SRO system and also the advantages of having a single SRO system decided to have a single SRO for distributors engaged by asset management companies. Further, it was decided to shortlist a suitable entity from the applications received, for grant of in-principle approval and provide a reasonable time period to comply with all requirements (including capital infusion, setting up infrastructure, etc.) for obtaining the recognition as an SRO.

- 2.4. Accordingly, another public notice was issued on June 27, 2013 inviting applications from entities for being recognized as an SRO for distributors engaged by asset management companies latest by July 31, 2013.
- 2.5. The following three applications were received as on July 31, 2013 from-
- 2.5.1. Institution for Mutual Fund Intermediaries (IMFI), promoted by Association of Mutual Funds in India (AMFI)
 - 2.5.2. Financial Planning Supervisory Foundation (FPSF), promoted by Financial Planning Standards Board India (FPSB)
 - 2.5.3. Organization of Financial Distributors (OFD), promoted by Financial Intermediaries Association of India (FIAI)
- 2.6. After examining all the applications and upon due consideration of several factors, the Committee of Executive Directors (CoED) recommended that IMFI be granted an in-principle approval for recognition as an SRO for distributors engaged by asset management companies. Accordingly, in-principle approval was granted to IMFI on February 06, 2014 and the decision was communicated to all the applicants.
- 2.7. Aggrieved by this decision, FPSF filed an appeal before the Hon'ble Securities Appellate Tribunal ("SAT") on March 27, 2014. The main contentions of the appellant were as under:
- 2.7.1. IMFI did not have a certificate of incorporation as on the date of its application for being considered as an SRO by SEBI. [in terms of Reg. 3(1) of the SRO Regulations].
 - 2.7.2. Rejection of the application of FPSF without an opportunity of being heard. (in terms of Reg. 10(1)).
 - 2.7.3. SEBI was biased in favour of IMFI even before inviting the applications.
- 2.8. The Hon'ble SAT, after hearing the matter, restricted itself to two issues in the matter viz. Points 2.7.1 and 2.7.2. and in its judgment dated September 30, 2015, observed the following:

“...since respondent no. 2 (IMFI) held license under Section 25(1) of the 1956 Act on the date of submitting the application under regulation 3 of the SRO Regulations, respondent no. 2 was eligible to apply and therefore SEBI was justified in entertaining the application submitted by respondent no. 2.”

“...since SEBI has failed to comply with the requirements of regulation 10, we quash and set aside the impugned decision of SEBI dated 06.02.2014 and direct SEBI to select an applicant afresh for grant of certificate of recognition in respect of distributors of mutual fund products.”

- 2.9. FPSF appealed against the aforesaid Order of the Hon’ble SAT before the Hon’ble Supreme Court of India on January 11, 2016 for setting-aside the SAT’s Order to the extent that it held that IMFI was eligible to apply for recognition as an SRO.
- 2.10. SEBI filed an Interlocutory Application (I.A.) before the Hon’ble Supreme Court on July 27, 2017 praying that SEBI would like to proceed in the matter afresh in view of the period of time that has elapsed. It was also submitted that in the meantime (three years) many other entities may have become eligible and that SEBI may be permitted to issue notice inviting applications afresh for recognition as an SRO.
- 2.11. While disposing off the appeal, the Hon’ble Supreme Court in its Order dated October 13, 2017, observed the following:

“4. In paragraph 16 of the application, it has been stated that the selection process had started in March, 2013 and with the passage of time many more persons/entities have become eligible and the respondent No.1-SEBI, who had initiated the selection process, is confident that if it is permitted to start the process afresh more applications will be received, thereby broadening the choice of selection.

5. Having regard to the above statement in paragraph 16 of the application and the public interest involved, we allow prayer (a) as made in the application extracted above.”

- 2.12. After the disposal of the said matter, based on regulatory experience the provisions in SRO Regulations were thoroughly examined. The present regulations allow

applications to be made by entities and the Board is, therefore, obliged to examine such applications against the criteria specified in the SRO Regulations. These regulations also stipulate that the applicant may be granted opportunity of hearing before rejecting its application. This may lead to a situation wherein many applicants may satisfy the criteria and fulfill the requirements of the regulations and yet many of them would have to be rejected as the number of SROs would be limited. This may lead to unintended complications. The larger issue is that, since the SRO would be first level regulator, SEBI should have adequate faith and confidence in the capabilities of such SRO for regulating the entities it is supposed to regulate. Therefore, such nomination should be done only after conducting due diligence and getting satisfied of the capabilities of such an organization.

Considering these issues and the associated concerns, SEBI is proposing to amend the SRO Regulations with respect to the manner of recognizing an SRO, subject to the compliance/satisfaction with criteria specified by the Board. As per the proposed process, SEBI would recognize an entity as an SRO on nomination basis, after conducting due diligence, instead of inviting applications for the same.

- 2.13. Accordingly, SEBI filed a Miscellaneous Application (M.A.) before the Hon'ble Supreme Court on October 06, 2018 to seek leave to go ahead with the aforesaid broad approach and to make necessary amendments to the SRO Regulations for the purposes of recognizing an SRO in accordance with amended regulations. The Hon'ble Supreme Court in its Order dated November 12, 2018 while allowing SEBI's application observed the following:

“Prayer to amend the Self Regulatory Organization (SRO) Regulations and to consider the pending cases in the light of the amended Regulations is allowed. We make it clear that we have expressed no opinion on the validity of the amendment(s) proposed.”

- 2.14. With the leave of Hon'ble Supreme Court in place, SEBI intends to undertake the process to review the provisions of the extant SRO Regulations to rationalize the process of recognition and to strengthen the role of an SRO in the securities market. For this purpose, it was proposed to initiate a public consultation process.

- 2.15. (This para has been excised for reasons of confidentiality)
- 2.16. (This para has been excised for reasons of confidentiality)
- 2.17. On examination, in the global scenario, it was noted that Securities Exchange Act, 1934 (of the United States of America) defines the term “Self Regulatory Organization” as follows:
- “The term ‘self-regulatory organization’ means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 19(b), 19(c), and 23(b) of this title) the Municipal Securities Rulemaking Board established by section 15B of this title.”*
- 2.18. Further, it was also deliberated whether an SRO could be defined as a “professionally managed entity” and additionally enumerate certain eligibility criteria, like having direct or indirect experience in member registration, training, certification, formulation of code of conduct, inspection, member supervision, investor grievance resolution, arbitration, etc.
- 2.19. (This para has been excised for reasons of confidentiality)
- 2.20. (This portion has been excised for reasons of confidentiality) the need for an effective solution to regulate the intermediaries, such as distributors engaged by asset management companies and investment advisers, is urgent. Hence, it is felt that SRO Regulations may be suitably modified to enable SEBI to nominate a body to regulate market participants like distributors engaged by asset management companies and investment advisers.
- 2.21. This purpose may perhaps be achieved by amending, inter alia, the definition of “Self Regulatory Organization” under regulation 2(1)(k) of SRO Regulations as follows:
- “Self Regulatory Organization” means, an organization of intermediaries or an entity promoted by a stock exchange, as may be recognized by the Board.”*

3. SRO in the Securities Market

- 3.1. Given the development of the securities market, size of Mutual Funds industry and the further scope of expansion, it is proposed to have SRO(s) to regulate the distributors engaged by asset management companies, investment advisers and such other intermediaries/other market participants as may be notified by SEBI from time to time.

3.2. SRO for Distributors of Mutual Fund Products in India

- 3.2.1. In recent years the securities market in general and the Mutual Funds industry in particular has grown manifold. AUM has increased from INR 1.4 Lakh Crores in 2004 to INR 5.87 Lakh Crores in 2012, and thereafter to INR 21.36 Lakh Crore as on March 31, 2018. The number of folios has grown from 1.46 Crores in 2004 to 4.65 Crores in 2012 to 7.13 Crores as on March 31, 2018. The number of distributors of the Mutual Fund products has also increased from 18,285 in 2004 to 47,845 in 2012 to 1,07,302 as on March 31, 2018.
- 3.2.2. As on February 28, 2019, the AUM of the Mutual Funds industry has grown to INR 23.16 Lakh Crores and number of folios has increased to 8.18 Crores.
- 3.2.3. To sustain this growth and to promote deeper penetration of the Mutual Fund products into all areas of the country, the distributors are expected to play an important role.
- 3.2.4. At present, distributors of Mutual Fund products are registered with Association of Mutual Funds in India (AMFI) which assigns an AMFI Registration Number (ARN) to them. They are paid commission by the Asset management Companies (AMCs) for their services in bringing investments. The distributors are empanelled, by way of agreements, with single / multiple AMCs, for marketing their products. Hence, Mutual Funds / AMCs have the primary responsibility for the conduct of the distributors empanelled by it.
- 3.2.5. However, it is observed that there are diverse practices in the industry regarding the relationships between the AMC and the distributor. Further, a distributor is empanelled with multiple AMCs. Thus there is a need to bring a certain level of consistency in the practices of the distributors. Hence, there is a need to have an SRO

for the distributors of Mutual Fund products to ensure consistency of the practices, enforcement of code of conduct and to take disciplinary action, if required, particularly in respect of alleged malpractices like misselling of products, churning of portfolio etc. and to deal with investor grievances, in order to safeguard the interests of the investors.

3.3. SRO for Investment Advisers

- 3.3.1. Section 11(2)(b) of SEBI Act inter alia empowers SEBI to register and regulate the working of Investment Advisers. Under the said mandate, SEBI issued a Concept Paper on Regulation of Investment Advisors on September 26, 2011 to seek public comments.
- 3.3.2. The Concept Paper, inter alia, stated that the aforesaid regulations would be implemented through an SRO. Post receipt of public comments, draft regulations on Investment Advisers were put up to the Board for consideration and approval of the same. The memorandum to the board with regard to the draft regulations, inter alia, proposed as follows:

10.1. At the initial stages till recognition of a SRO, SEBI will directly register and regulate Investment Advisors.

10.2. SEBI may appoint an SRO for the purpose of regulating Investment Advisors, representatives or fund managers.

10.3. SEBI may specify that no person shall act as an investment advisor unless he is a member of a recognized SRO

The Board, in its meeting held on August 16, 2012 approved the draft SEBI (Investment Advisers) Regulations.

- 3.3.3. SEBI (Investment Advisers) Regulations, 2013 (“IA Regulations”) were notified on January 21, 2013 and came into effect from April 21, 2013. Regulation 14(1) of IA regulations, inter alia, state that the Board may recognize any body or body corporate for the purpose of delegating administration and supervision of Investment Advisers to such a body on such terms and conditions as may be specified by the Board.

- 3.3.4. As on March 19, 2019, a total of 1136 Investment Advisers are registered with SEBI.

The category wise details of SEBI registered Investment Advisers are as follows:

Category	No. of Investment Advisers
Body Corporates	290
Limited Liability Partnership	46
Individuals and Partnership Firms	800
Total	1136

3.3.5. SEBI has been registering and regulating Investment Advisers since 2013 by providing necessary criterion for registration and seeking compliances in terms of risk profiling, suitability, maintenance of records etc. Further, the complaints received against registered investment advisers are also taken up for redressal.

3.3.6. Since the last five years, the number of registered investment advisers has shown an increase, particularly individuals, and there has been a corresponding increase in number of complaints against them.

3.3.7. SEBI is in receipt of a large number of complaints alleging charging of exorbitant fees, assurance of returns, misconduct etc. by Investment Advisers.

3.3.8. Given the growth in this segment of the market, it is felt that the time is appropriate to initiate the formation of an SRO. Thus it is proposed that in line with the earlier Board memorandum, an SRO may be formed and recognized for regulating investment advisers.

4. Salient Features of proposed amendments to the SRO Regulations:

4.1. Broadly speaking and conceptually, SRO is an organization representing a particular segment of entities, which, as a first level regulator, regulates the members of that segment. The proposed SRO(s), as per Para 3 above, would be entrusted with several important tasks, inter alia including registration / grant of membership, supervision, training and education of its members, and redressal of investors' grievances. SEBI would be assisted in its regulatory functions by such an SRO. Therefore, it is of utmost importance as to which body/institution is allowed to be recognized as an SRO by SEBI.

- 4.2. In the past when applications for SRO of distributors of Mutual Fund products were invited by SEBI, multiple applicants staked their claims. This led to prolonged litigation and complications, thereby, causing unreasonable delay in the process of recognition of an SRO.
- 4.3. Given that SROs are the first level regulators which perform the crucial task of regulating a particular segment of securities market on behalf of the regulator, it is desirable that SEBI, after considering the experience and capability of an entity, grants recognition to it as an SRO on a nomination basis.
- 4.4. Considering the aforesaid issues, SEBI proposes to review the extant SRO Regulations.
- 4.5. In view of the above, a detailed Consultation Paper is placed at **Annexure A**. The salient features of proposed regulations are summarized below:

S. No.	Feature	Proposal	Rationale
4.5.1	Definition of SRO	To amend the definition as follows: <i>“Self Regulatory Organization” means, an organization of intermediaries or an entity promoted by a stock exchange, as may be recognized by the Board.”</i>	It is important that the SRO is promoted by an entity(ies) having expertise in handling various regulatory / supervisory aspects of securities market.
4.5.2	Who may be an SRO	An SRO may be an organization of intermediaries or an entity	In line with the proposed definition of SRO

S. No.	Feature	Proposal	Rationale
		promoted by a stock exchange which has adequate experience in regulation, supervision and dispute resolution. Such organization or entity shall be registered under section 8 of Companies Act 2013.	
4.5.3	Nomination Process	Nomination Committee: It is proposed to constitute a Nomination Committee comprising of external experts, preferably headed by a retired Judge of a High Court or Supreme Court, to consider and give its recommendation(s) to SEBI regarding the suitability of an organisation or entity to be recognised as an SRO. The said committee may also consider the pending cases, as directed by the Hon'ble Supreme Court in its Order dated November	An SRO is the first level regulator that performs the crucial task of regulating intermediaries representing a particular segment of securities market on behalf of the regulator. An SRO would be seen as an extension of the regulatory authority of SEBI and would perform the tasks delegated to it by SEBI. The role of an SRO is developmental, regulatory, related to grievance redressal and

S. No.	Feature	Proposal	Rationale
		12, 2018, as stated in Para 2.13. SEBI, after considering the recommendation of the Nomination Committee and experience and capability of an entity and/or its promoter(s) or promoting entity/entities, may grant recognition to the entity as an SRO subject to such conditions as may be deemed appropriate.	dispute resolution as well as taking disciplinary actions. Therefore, it is crucial that SEBI, after due diligence, recognises such entity/entities which is/are capable of carrying out responsibilities of an SRO.
4.5.4	Governing Board and Committees	The Governing Board may consist of elected representatives of members of SRO (i.e. regulatees e.g. Distributors of MF products and/or Investment Advisers), SEBI nominated Public Interest Directors (PIDs) and shareholder directors (i.e. representatives of the promoters or promoting entities).	Since it is a Self Regulatory Organization, it is proposed to have representation from amongst its regulatees, with majority directors being Public Interest Directors (PIDs) since the principal objective of the SRO is the protection of investors.

S. No.	Feature	Proposal	Rationale
		The Chairman of the Governing Board shall have the casting vote. The Chairman of the Governing Board shall be elected by the Governing Board from amongst the PIDs. The CEO / Managing Director shall be deemed to be a Shareholder Director. The functioning and composition of the Governing Board and the creation, composition and functions of the committees of the Governing Board may be as specified by SEBI from time to time. The appointment and removal of all directors including CEO/Managing Director shall be with prior approval of SEBI.	For the SRO(s) of distributors of MF products and Investment Advisers, it is proposed that the Governing Board shall comprise of not more than 25% Shareholder Directors, not more than 25% Elected Representatives and not less than 50% of PIDs. As an SRO is assisting SEBI in discharging certain regulatory functions, it should have more representation of Public Interest Directors nominated by SEBI.
4.5.5	Arbitration & Dispute Resolution	The SRO shall provide for a dispute resolution mechanism including	Presently there is no effective mechanism to handle disputes between

S. No.	Feature	Proposal	Rationale
		arbitration to settle disputes between investors and its members and disputes between its members.	investors and distributors. Hence, SRO can provide such a mechanism under Arbitration and Conciliation Act.
4.5.6	Tenure of Recognition of SRO	SRO may be granted recognition on a permanent basis subject to it satisfactorily carrying out its role in compliance with regulations etc. to the satisfaction of SEBI and effectively carrying out such other related mandate as specified by SEBI from time to time.	SEBI has gradually moved towards the approach of permanent registration and/or recognition to intermediaries, subject to satisfactory compliance with the regulations, payment of fees and effectively carrying out of its mandate to satisfaction of SEBI.

5. Proposal

- 5.1. The Board is requested to consider and approve the proposal to float a Consultation Paper for seeking public comments.
- 5.2. The Board is also requested to authorize the Chairman to make necessary incidental modifications, if required, to the proposed Consultation Paper.

(Uploaded on SEBI website on April 01, 2019 for Public Comments)