



CS EXECUTIVE CHART BOOK

QUICK REVISION GUIDE

ECONOMIC, COMMERCIAL AND INTELLECTUAL PROPERTY LAWS

MODULE - II

Summarised Tabular
Chart Format for
revising the subject
matter in an easy-to-
learnformat

Point-wise
Summaries of each
chapter are provided
in a nutshell

Full-coverage of
the New Syllabus
for CS-Executive
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FEMA

Provides Free Current Account Transactions subject to reasonable restrictions

Provides for Classes of Capital Account Transactions, Realization of Export Proceeds

Deals Foreign Exchange through Authorized Person (e.g. Authorized Dealer/Money Changer/Off-shore Banking Unit.)

Provides for Adjudication of Offences, Appeal Provisions including Special Director (Appeals) and Appellate Tribunal & High Court.

REGULATORY FRAMEWORK

The Foreign Exchange Management Act, 1999 enacted 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. In fact it is the central legislation that deals with inbound investments into India and outbound investments from India and trade and business between India and the other countries.

Foreign Exchange
[Section 2(n)]

The term 'foreign exchange' has been defined to mean foreign currency and includes deposits, credits, balance payable in foreign currency, drafts, travelers cheques, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in any foreign currency. Any draft, travelers cheque, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency has also been included in the definition of foreign exchange.

Foreign Security
[Section 2(o)]

The term 'foreign security' has been defined to mean any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return such as interest or dividend is payable in Indian currency.

Transfer or issue of a foreign security is a capital account transaction within the meaning of Section 6(3)(a) of the Act. The Reserve Bank of India has made Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2000 for regulation, acquisition and transfer of a foreign security by a person resident in India i.e. investment by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a person resident in India in shares and securities issued outside India.

Person [Section 2(u)]

The definition of the term 'person' includes, an individual, a Hindu Undivided Family, a company, a firm, an association of persons or body of individuals whether incorporated or not; any agency, office or branch owned or controlled by such persons. Even every artificial juridical person not falling within the above definition has been treated as person as per clause (u) of Section 2.

The expression 'person resident in India' has been defined to mean

- (i) A person residing in India for more than 182 days during the course of the preceding financial year.

However, two categories of persons are excluded from the purview of definition.

The first category includes any person who has gone out of India or who stays outside India for or on taking up employment outside India, or for carrying on outside India a business or vocation. The definition also includes person who stays outside India for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period. The second category of persons which have been excluded from the definition of person resident in India include:

- (a) for or taking up employment in India; or
(b) for carrying on in India a business or vocation in India; or
(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

- (ii) Any person or body corporate registered or incorporated in India.
(iii) An office, branch or agency in India owned or controlled by a person resident out of India.
(iv) An office, branch or agency outside India owned or controlled by a person resident in India.

Person Resident in India
[Section 2(v)]

A person who has come to stay or stays in India, in either case otherwise than—

- (a) for or taking up employment in India; or
(b) for carrying on in India a business or vocation in India; or
(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

- (ii) Any person or body corporate registered or incorporated in India.

- (iii) An office, branch or agency in India owned or controlled by a person resident out of India.

- (iv) An office, branch or agency outside India owned or controlled by a person resident in India.

REPATRIATE TO INDIA [SECTION 2(Y)]

'Repatriate to India' means bringing into India the realised foreign exchange and (i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or (ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank, and includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly.

CURRENT ACCOUNT TRANSACTIONS

A transaction other than a capital account transaction.

Payments in connection with short term banking facilities in ordinary course.

Payments due as interest on loan and net income from investments

Remittances for living expenses of parents, children and spouse.

Expenses in connection with foreign travel, education and medical care.

PROHIBITION ON WITHDRAWAL OF FOREIGN EXCHANGE FOR CERTAIN TRANSACTIONS

Remittance out of lottery winnings

Remittance of income from racing/riding etc., or any other body

Remittance for purchase of lottery tickets, banned/prescribed magazine, football pools, sweep stakes etc.

Payment of commission on exports made towards equity investment in joint ventures/ wholly owned subsidiaries abroad of India Companies

Payment of commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of exports of tea and tobacco

Payment related to 'call back service' of telephone.

Remittance of interest income on funds held in Non-resident Special Rupee Scheme Account. Transactions in Schedule III.

TRANSACTIONS IN SCHEDULE III

1. Facilities for Individuals

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess thereof requires prior approval of the Reserve Bank of India.

- i. Private visits to any country (except Nepal and Bhutan).
- ii. Gift or donation.
- iii. Going abroad for employment.

iv.	Emigration.
v.	Maintenance of close relatives abroad.
vi.	Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
vii.	Expenses in connection with medical treatment abroad.
viii.	Studies abroad.
ix.	Any other current account transaction.

2. Facilities for Persons other than Individual

The following remittances by persons other than individuals require prior approval of the Reserve Bank of India.

(i)	Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for (a) creation of Chairs in reputed educational institutes; (b) contribution to funds (not being an investment fund) promoted by educational institutes; and (c) contribution to a technical institution or body or association in the field of activity of the donor Company.
(ii)	Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
(iii)	Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
(iv)	Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

LIBERALISED REMITTANCE SCHEME (LRS)

Liberalised Remittance Scheme (LRS) of USD 2,50,000 for resident individuals. Under the Liberalised Remittance Scheme, Authorised Dealers may freely allow remittances by resident individuals up to USD 2,50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both. The Scheme is not available to corporates, partnership firms, HUF, Trusts, etc.

a.	Private visits	For private visits abroad, other than to Nepal and Bhutan, any resident individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000 from an Authorised Dealer or FFMC, in any one financial year, irrespective of the number of visits undertaken during the year. Further, all tour related expenses including cost of rail/road/water transportation; cost of Euro Rail; passes/ tickets, etc. outside India; and overseas hotel/ lodging expenses shall be subsumed under the LRS limit. The tour operator can collect this amount either in Indian rupees or in foreign currency from the resident traveller.
b.	Gift/donation	Any resident individual may remit up-to USD 2,50,000 in one FY as gift to a person residing outside India or as donation to an organization outside India.
c.	Going abroad on employment	A person going abroad for employment can draw foreign exchange up to USD 2,50,000 per FY from any Authorised Dealer in India.

d.	Emigration	A person wanting to emigrate can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 250,000. Remittance of any amount of foreign exchange outside India in excess of this limit may be allowed only towards meeting incidental expenses in the country of immigration and not for earning points or credits to become eligible for immigration by way of overseas investments in government bonds; land; commercial enterprise; etc.
e.	Maintenance of relatives abroad	A resident individual can remit up-to USD 2,50,000 per FY towards maintenance of relatives 'relative' as defined in Section 2(77) of the Companies Act, 2013 abroad.
f.	Business trip	Visits by individuals in connection with attending of an international conference, seminar, specialised training, apprentice training, etc., are treated as business visits. For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD 2,50,000 in a FY irrespective of the number of visits undertaken during the year. However, if an employee is being deputed by an entity for any of the above and the expenses are borne by the latter, such expenses shall be treated as residual current account transactions outside LRS and may be permitted by the AD without any limit, subject to verifying the bonafides of the transaction.
g.	Medical treatment abroad	Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 or its equivalent per FY without insisting on any estimate from a hospital/doctor. For amount exceeding the above limit, Authorised Dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital/ doctor abroad. A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India. In addition to the above, an amount up to USD 250,000 per financial year is allowed to a person for accompanying as attendant to a patient going abroad for medical treatment/check-up.
h.	Facilities available to students for pursuing their studies abroad.	AD Category I banks and AD Category II, may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign university. However, AD Category I bank and AD Category II may allow remittances (without seeking prior approval of the Reserve Bank of India) exceeding USD 2,50,000 based on the estimate received from the institution abroad. It may be noted that remittances under the Liberalised Remittance Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions. However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account/ investment, if they are not the co-owners/co-partners of the overseas bank account/ investment. Remittances for purchase of property shall be in accordance with the provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022. Further, a resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.

The permissible capital account transactions by an individual under LRS are:

Opening of foreign currency account abroad with a bank;

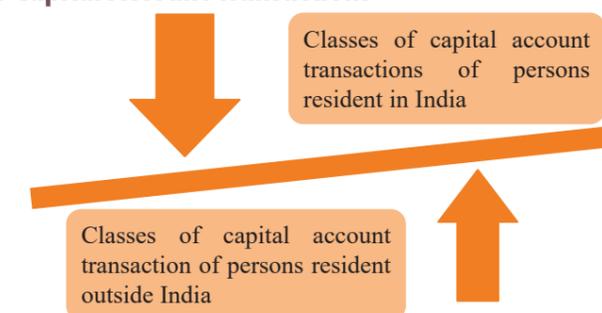
Acquisition of immovable property abroad, Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI), in accordance with the provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022;

Extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.

CAPITAL ACCOUNT TRANSACTIONS

'Capital account transaction' has been defined to mean any transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of person resident outside India and includes the transactions specified in Sub-section (3) of Section 6 of the Act.

Classes of Capital Account Transactions



Classes of Capital Account Transactions by Persons Resident in India

- (a) Investment by a person resident in India in Foreign securities
- (b) Foreign currency loans raised in India and abroad by a person resident in India
- (c) Transfer of immovable property outside India by a person resident in India
- (d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- (e) Export, import and holding of currency/currency notes.
- (f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
- (g) Maintenance of foreign currency accounts in India and outside India by a person resident outside India

- (h) Taking out of insurance policy by a person resident in India from an insurance company outside India
- (i) Loans and overdrafts by a person resident in India to a person resident outside India
- (j) Remittance outside India of capital assets of a person resident in India
- (k) Undertake derivative Contracts

CLASSES OF CAPITAL ACCOUNT TRANSACTIONS BY PERSONS RESIDENT OUTSIDE INDIA

- (a) Investment in India by a person resident India, that is to say,
 - (i) Issue of security by a body corporate or an entity in India and investment therein by a person resident outside India and
 - (ii) Investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association in India
- (b) Acquisition and transfer of immovable property in India by a person resident outside India
- (c) Deposits between a person resident in India and a person resident outside India.
- (d) Foreign currency accounts in India of a person resident outside India
- (e) Remittance outside India of capital assets in India of a person resident outside India
- (f) Undertake derivative Contracts.

Manner of Repatriation

On realisation of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and

Sell it to an authorised person in India in exchange for rupees; or

Retain or hold it in account with an authorised dealer in India to the extent specified by the Reserve Bank; or

Use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by the Reserve Bank.

Period for Surrender in Certain Cases

Where the foreign exchange acquired or purchased by any person not being an individual resident in India from an authorised person is for the purpose of foreign travel, then, the unspent balance of such foreign exchange shall, save as otherwise provided in the regulations made under the Act, be surrendered to an authorised person.

Within ninety days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of currency notes and coins; and

Within one hundred eighty days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of travellers cheques.

REMITTANCE OF ASSETS

Remittances by Individuals not being NRIs/ PIOs

'Remittance of assets' means remittance outside India of funds in a deposit with a bank/firm/company, provident fund balance or superannuation benefits, amount of claim or maturity proceeds of insurance policy, sale proceeds of shares, securities, immovable property or any other asset held in India in accordance with the provisions of the Foreign Exchange Management Act, 1999 (FEMA) or rules/ regulations made there under.

Authorised Dealer (AD) may allow remittance of assets by a foreign national where:

- (i) The person has retired from employment in India;
- (ii) The person has inherited from a person referred to in section 6(5) of the Act;
- (iii) The person is a non-resident widow/widower and has inherited assets from her/his deceased spouse who was an Indian national resident in India; The remittance should not exceed USD one million per financial year. This limit, however, will not cover sale proceeds of assets held on repatriation basis. In case the remittance is made in more than one instalment, the remittance of all instalments should be made through the same AD on submission of documentary evidence;
- (iv) The remittance is in respect of balances held in a bank account by a foreign student who has completed his/ her studies, provided such balance represents proceeds of remittances received from abroad through normal banking channels or rupee proceeds of foreign exchange brought by such person and sold to an authorised dealer or out of stipend/ scholarship received from the Government or any organisation in India.

These facilities are not available for citizens of Nepal or Bhutan or a PIO.

Remittances by NRIs/ PIOs

A 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955; or

Who belonged to a territory that became part of India after the 15th day of August, 1947; or

Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or

Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c).

ADs may allow NRIs/ PIOs, on submission of documentary evidence, to remit up to USD one million, per financial year:

Out of balances in their non-resident (ordinary) (NRO) accounts/ sale proceeds of assets/ assets acquired in India by way of inheritance/ legacy;

In respect of assets acquired under a deed of settlement made by either of his/ her parents or a relative as defined in Companies Act, 2013. The settlement should take effect on the death of the settler;

In case settlement is done without retaining any life interest in the property i.e. during the lifetime of the owner/ parent, it would tantamount to regular transfer by way of gift and the remittance of sale proceeds of such property would be guided by the extant instructions on remittance of balance in the NRO account.

Remittances by Companies/Entities

ADs may allow remittances by Indian companies under liquidation on directions issued by a Court in India/ orders issued by official liquidator in case of voluntary winding up on submission of:

Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act.

In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

Remittances/Winding up Proceeds of Branch/Office

ADs may permit remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office) on submission of the following documents:

(i) A copy of the Reserve Bank's permission for establishing the branch/ office in India.

(ii) Auditor's certificate:

(a) Indicating the manner in which the remittable amount has been arrived and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets;

(b) Confirming that all liabilities in India including arrears of gratuity and other benefits to the employees etc., of the branch/ office have been either fully met or adequately provided for;

(c) Confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India;

(d) Confirming that the branch/office has complied with all regulatory requirements stipulated by the Reserve Bank of India from time to time regarding functioning of such offices in India;

(iii) A confirmation from the applicant that no legal proceedings are pending in any Court in India and there is no legal impediment to the remittance; and

(iv) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the office in India.

REMITTANCE OF ASSETS REQUIRING RBI APPROVAL

Prior approval of the Reserve Bank is necessary for remittance of assets where:

- (a) Remittance is in excess of USD 1,000,000 (US Dollar One million only) per financial year
 - (i) on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India;
 - (ii) by NRIs/ PIOs out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.
- (b) Hardship will be caused to a person if remittance from India is not made to such a person.

Regulation 3 the Reserve Bank has specified the following limits for the possession or retention of foreign currency or foreign coins, namely:

- (i) possession without limit of foreign currency and coins by an authorized person within the scope of his authority;
- (ii) possession without limit of foreign coins by any person;
- (iii) Retention by a person resident in India of foreign currency notes, bank notes and foreign currency traveler's cheques not exceeding USD 2000 or its equivalent in the form of currency notes, bank notes, and traveler's cheques acquired during a visit to any place outside India.

MANNER OF RECEIPT AND PAYMENT

Regulation 3 of the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023 states that save as otherwise in a manner as provided in the Foreign Exchange Management Act or the rules or regulations made or directions issued under the Act, no person resident in India shall make or receive payment from a person resident outside India:

The receipt and payment between a person resident in India and a person resident outside India shall, unless provided otherwise, be made through an Authorised Bank or Authorised Person and in the manner as specified below:

I. Trade transactions

- (a) receipt/payment for export to or import from the countries given below of eligible goods and services shall be made as under:
 - (i) Nepal and Bhutan - in Indian Rupees provided that in case of exports from India where the importer in Nepal has been permitted by the Nepal Rashtra Bank to make payment in foreign currency, such receipts towards the amount of the export may be in foreign currency;
 - (ii) Member countries of ACU, other than Nepal and Bhutan - through ACU mechanism or as per the directions issued by the Reserve Bank to authorised dealer from time to time:
Provided that in case of imports where the goods are shipped to India from a member country of the ACU (other than Nepal and Bhutan) but the supplier is resident of a country other than a member country of the ACU, the payment may be made in a manner as specified at (iii) below.
 - (iii) Provided that in case of imports where the goods are shipped to India from a member country of the ACU (other than Nepal and Bhutan) but the supplier is resident of a country other than a member country of the ACU, the payment may be made in a manner as specified at (iii) below.
- (b) Notwithstanding anything contained in this sub-regulation, receipts and payments may also be made in a manner as may be provided in the extant Foreign Trade Policy framed by the Central Government.

II. Transactions other than trade transactions - receipt and payment shall be made as under:

- (i) Nepal and Bhutan - In Indian Rupees provided that in case of overseas investment in Bhutan, payment may also be made in foreign currency;
- (ii) Other Countries - In Indian Rupees or any foreign currency.

Payment and receipt in India for any current account transaction, other than a trade transaction, between any person resident in India and a person resident outside India, who is on a visit to India, may be made only in Indian Rupees.

- ❖ Acquisition/ Transfer of immovable property by NRI or an OCI
- ❖ A 'Non-Resident Indian' (NRI) is a person resident outside India who is a citizen of India.
- ❖ An 'Overseas Citizen of India (OCI)' is a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.

An NRI or an OCI can acquire by way of purchase any immovable property (other than agricultural land/ plantation property/ farm house) in India.

An NRI or an OCI can acquire by way of gift any immovable property (other than agricultural land/ plantation property/ farm house) in India from person resident in India or from an NRI or an OCI who is a relative as defined in section 2(77) of the Companies Act, 2013.

An NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition.

An NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident in India.

An NRI or an OCI may transfer any immovable property in India to a person resident in India.

An NRI or an OCI may transfer any immovable property (other than agricultural land or plantation property or farmhouse) to an NRI or an OCI. In case the transfer is by way of gift, the transferee should be a relative as defined in section 2(77) of the Companies Act, 2013.

Payment for Acquisition of Immovable Property NRIs or OCIs may make payment, if any, for transfer of immovable property out of funds received in India through banking channels by way of inward remittance from any place outside India or by debit to their NRE/ FCNR (B)/ NRO account.

Joint acquisition by the spouse of an NRI or an OCI A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse.

Acquisition by a Long-Term visa holder A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries viz., Hindus, Sikhs, Jains, Buddhists, Parsis and Christians, who is residing in India and has been granted a Long-Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for self-employment.

The property should not be located in and around restricted/ protected areas so notified by the Central Government and cantonment areas.

The person should submit a declaration to the Revenue Authority of the district where the property is located specifying the source of funds and that he/ she is residing in India on a LTV.

The registration documents of the property should mention the nationality and the fact that such person is on a LTV.

The property of such person may be attached/ confiscated in the event of his/ her indulgence in anti-India activities.

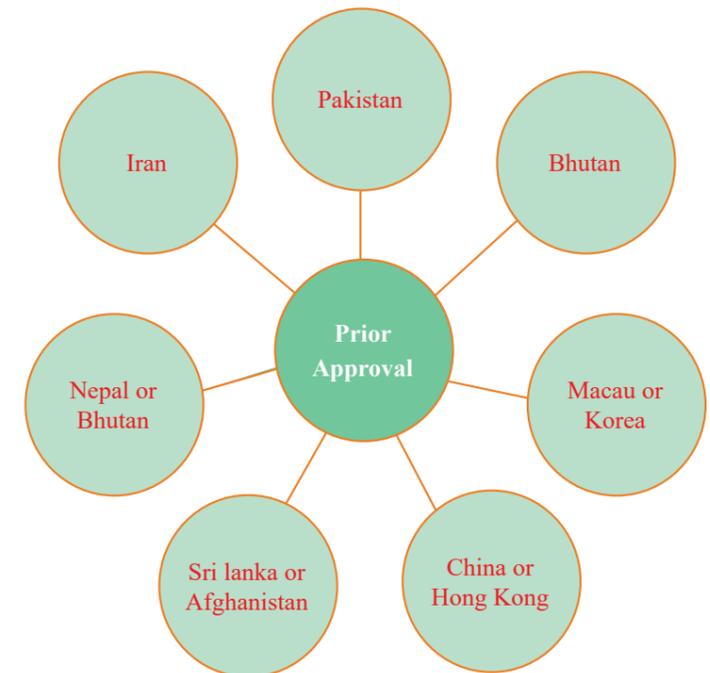
A copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division).

Acquisition of immovable Property by Foreign Embassies/Diplomats/Consulate Generals Foreign Embassy/Diplomat/ Consulate General, may purchase/sell immovable property (other than agricultural land/plantation property/farm house) in India if: the clearance from Government of India, Ministry of External Affairs is obtained for such purchase/sale.

The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels.

Acquisition of Immovable Property by Person Resident outside India for Carrying on a Permitted Activity

- ❖ A branch or office or any other place of business in India, other than a liaison office, established by a person resident outside India, may acquire immovable property in India which is necessary for or incidental to the activity carried on in India by such branch or office.
- ❖ Such a person is required to file with the Reserve Bank a declaration in the form IPI (as given in the Master Direction on Reporting), not later than ninety days from the date of such acquisition.



EXPORT OF GOODS & SERVICES

According to the Section 7(1) of the Act, every exporter of goods shall:

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.

Furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

DECLARATION OF EXPORTS

In case of exports taking place through Customs manual ports, every exporter of goods or software in physical form or through any other form, either directly or indirectly, to any place outside India, other than Nepal and Bhutan, shall furnish to the specified authority, a declaration in one of the forms set out in the Schedule and supported by such evidence as may be specified, containing true and correct material particulars including the amount representing.

The full export value of the goods or software; or

If the full export value 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 or the software in overseas market, and affirms in the said declaration that the full export value of goods (whether ascertainable at the time of export or not) or the software has been or will within the specified period be, paid in the specified manner.

ADJUDICATION AND APPEAL

Appointment of Adjudicating Authority	Section 16 empowers the Central Government to appoint by notification in the Official Gazette as many Adjudicating Authorities as it may think fit for holding enquiries under Section 13. The Adjudicating Authority has been empowered to hold any enquiry on a complaint made in writing by an officer authorised by a general or special order by the Central Government.
Appeal to Special Director (Appeals)	Section 17 of the Act provides for appointment of one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities. In this context, the Central Government has been empowered to appoint by notification Special Directors (Appeals) specifying their jurisdiction over matters and places.
Appeal to Appellate Tribunal	According to Section 19(1) the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in section 17(1), or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal: Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government: Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty. Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty. Section 19 (2) states that every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or the Special Director (Appeals) is received by the aggrieved person or by the Central Government.

As per Section 19(3), on receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

Bank of Baroda v. Appellate Tribunal for Foreign Exchange, WP(C)

which emerges is that the Tribunal while considering any application for waiver of deposit is to take into account firstly the existence of a prima facie case. In case, it is found that a party has a very strong prima facie case, and/or where the errors in the impugned order are writ large on the record, in such a case, it would be competent for the court in the exercise of its jurisdiction to grant waiver of predeposit since in such a case requiring a pre-deposit itself would amount to undue hardship.

In determination of the quantum of waiver, factors, such as, balance of convenience, financial hardship of the parties, its capacity to pay or secure the amount and irreparable loss are to be considered. The said discretion is to be exercised in accordance with well settled principles for exercise of judicial discretion.”

Monotosh Saha v. Special Director of Enforcement,

Two significant expressions used in the provisions are “undue hardship to such person” and “safeguard the realization of penalty”. Therefore, while dealing with the application twin requirements of considerations i.e., consideration of undue hardship aspect and imposition of conditions to safeguard the realization of penalty have to be kept in view. S. Vasudeva v. State of Karnataka and Ors. (AIR 1994 SC 923) that under Indian conditions expression “Undue hardship” is normally related to economic hardship. “Undue” which means something which is not merited by the conduct of the claimant, or is very much disproportionate to it. Undue hardship is caused when the hardship is not warranted by the circumstances.

The word “undue” adds something more than just hardship. It means an excessive hardship or a hardship greater than the circumstances warrant.

Appeal to High Court

According to Section 35 of the Act, a right to appeal to High Court lies with the appellant who is aggrieved by the decision of the Tribunal. Such appeal must be filed within 60 days from the date of communication of the decision or order of the Tribunal. The appeal to the High Court can be made on any question of law arising out of such order. A relaxation for a maximum period of sixty days for making an appeal may be granted by the High Court, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the specified period.

Directorate of Enforcement

Central Government to establish a Directorate of Enforcement with a Director and other officers or class of Officers, for the purposes of the enforcement of the Act. The Central Government has also been empowered to authorise Director, Additional Director, Special Director or Deputy Director to appoint officers of enforcement below the rank of Assistant Director of Enforcement to exercise the powers and discharge the duties conferred or imposed on him under the Act.

Investigation

Section 37 of the Act empowers the Director of Enforcement and other officers below the rank of Assistant Director to take up for investigation the contravention referred to in Section 13 of the Act. In addition, the Central Government may also authorise any officer or class of officers in the Central Government, State Government, Reserve Bank of India, not below the rank of Under Secretary to Government of India, to investigate any contravention under Section 13 of the Act.

CONTRAVENTION AND PENALTIES

If any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub section (1) of section 37A, he shall be liable to a

penalty up to three times the sum involved in such contravention and confiscation of the value equivalent, situated in India, the Foreign exchange, foreign security or immovable property.

in addition to the penalty imposed under sub-section (1A), punishable with imprisonment for a term which may extend to five years and with fine.

Union of India, through Deputy Legal Adviser, Directorate of Enforcement (Appellant) Vs. Kamal Chand (Respondent)

The maximum amount of penalty which can be imposed under the Section is three times the amount of contravention involved. From the language of the Section, it is clear that the Section has not prescribed either a fixed amount of penalty or minimum amount of penalty. It therefore, follows that the amount of the penalty which is to be imposed by the Adjudicating Authority is a matter of discretion which, of course, is necessarily required to be exercised judiciously after taking into account the facts of the case and the evidence placed before him. The appellant has failed to place any reason in the pleadings as to show that the discretion has not been exercised judiciously by the Adjudicating Authority.

The present case it is seen that the Adjudicating Authority has not only taken notice of the facts of the case but also has evaluated the evidence on record to infer that the outward remittances in 39 tranches occurred without corresponding imports of goods.

The Adjudicating Authority has complied with the provisions of the Section by imposing penalty for contravention of section FEMA r/w Regulation 6 (1) of Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations 2000 and as well as imposing penalty for contravention of Section 3 (b) of FEMA. For contravention of each of these Sections he has chosen to impose slightly over fifty percent thus totaling a penalty of over hundred percent.

The Appellate Tribunal referred the case of State of MP and Ors. Vs. Bharat Heavy Electricals [(1997) 7 Supreme Court Cases 1] where in Hon’ble Supreme Court its order dated 14.08 .1997 held that in a statute prescribing the provision for penalty equal to ten times the amount of entry tax, the statute prescribed only a maximum limit and did not prescribe an irreducible amount depriving the assessing authority of any discretion in this regard. The stand of the State in the case supra conceded that the assessing authorities are not bound to levy fixed penalty equal to ten times the amount of entry tax.

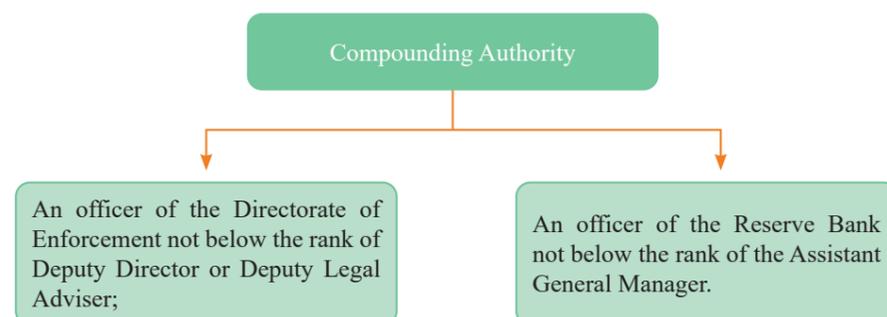
CONTRAVENTION BY COMPANIES

Section 42 of the Act deals with contravention of the provisions of the Act by the Companies and provides that where the person committing the contravention of the Act or Rules happened to be a company, every person who at the time the contravention was committed, was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the contravention and liable to be proceeded against and punished accordingly. However, no such persons shall be deemed to be guilty of committing any offence if he proves that such contravention took place without his knowledge or that he exercised adequate steps to prevent such contravention.

In case the contravention is committed by a company and it is proved that such contravention is committed with the knowledge, consent and connivance or is attributed to the neglect on the part of any director, manager or secretary or other officer of the company, they will also be deemed to be guilty of contravention and liable to be proceeded against and punished accordingly.

COMPOUNDING OF CONTRAVENTIONS

Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/regulations/notification/orders/directions/circulars issued there under. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The provisions of section 15 of Foreign Exchange Management Act, 1999 (42 of 1999) hereinafter referred to as FEMA, 1999, permit compounding of contraventions and, as such it empowers the Reserve Bank to compound any contravention as defined under section 13 of the FEMA, 1999, except the contraventions under section 3 (a) of FEMA, 1999, on an application made by the person committing such contravention.



COMPOUNDING AUTHORITIES OF RESERVE BANK TO COMPOUND VARIOUS CONTRAVENTIONS (OTHER THAN A CONTRAVENTION OF SECTION 3(A) OF FEMA)

Compounding Authorities of Reserve Bank	Sum involved in Contravention
Assistant General Manager	Does not exceed sixty lakh rupees
Deputy General Manager	Does not exceed two and a half crore rupees
General Manager	Does not exceed five crore rupees
Chief General Manager	Above five crore rupees

COMPOUNDING AUTHORITIES OF DIRECTORATE OF ENFORCEMENT TO COMPOUND CONTRAVENTIONS OF SECTION 3(A) OF FEMA)

Compounding Authorities of Directorate of Enforcement	Sum involved in Contravention
Deputy Director	Five lakh rupees or below
Additional Director	More than five lakh rupees but less than ten lakh rupees
Special Director	Ten lakh rupees or more but less than fifty lakh rupees
Special Director along with the Deputy Legal Adviser	Fifty lakh rupees or more but less than one crore rupees
Director of Enforcement along with the Special Director	One crore rupees or more

Application for Compounding

- ❖ An applicant may submit a compounding application, along with relevant documents, either physically or through the PRAVAAH Portal of the Reserve Bank, suo moto or based on a Memorandum of Contraventions issued by the Reserve Bank.
- ❖ If an applicant, after issuance of the Memorandum of Contraventions, does not opt for compounding within the period stated in the Memorandum of Contravention, the relevant provisions of FEMA, 1999, shall apply.
- ❖ All compounding applications shall be submitted along with the prescribed fee of ₹10,000/- (plus applicable GST, currently 18%) by demand draft in favour of “Reserve Bank of India” payable at the concerned Regional Office/CO Cell, New Delhi/Central Office or through NEFT or other permissible electronic/online modes of payment.
- ❖ It shall be ensured that intimation of payment of the application fee to the respective Regional Office, CO Cell, or Central Office is made as soon as possible, but not later than 2 hours from the time of payment, through an email. The compounding application must include payment details, including the UTR number evidencing payment of the application fee.
- ❖ Applications submitted to the Reserve Bank must contain the contact details i.e., Name of the applicant/authorized official or representative, telephone/mobile number, and email ID.
- ❖ Along with the compounding application in the prescribed format, the applicant shall provide details relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment, and Branch Office/Liaison Office, as applicable; a copy of the Memorandum of Association, if available; and an undertaking regarding enquiry/investigation/adjudication by the Directorate of Enforcement (DOE).
- ❖ A compounding application shall be returned where administrative action has not been completed by the applicant or the application is incomplete, or the application fee has not been paid by the applicant. The application fee, if paid, shall not be returned in case of return of the compounding application. However, in case such applications are re-submitted, then the application fee need not be paid again.³¹
- ❖ The applicants are also advised to bring changes, if any, in the address/ contact details of the applicant to the notice of the compounding authority, during the pendency of the compounding application with the Reserve Bank.
- ❖ In case of an incomplete application, wherever the applicant is allowed by the Reserve Bank to submit any necessary information or documents within a reasonable time, then the date of receipt of such information or documents, as the case may be, shall be taken as the date of receipt of the application.

Procedure for Compounding

- ❖ On receipt of an application, the Reserve Bank shall examine the application based on the documents and submissions made in the application and assess whether contravention can be compounded in accordance with the Compounding Rules, 2024 and, if so, the sum involved in the contravention.
- ❖ The Compounding Authority may call for any information, or any other documents relevant to the compounding proceedings. In case the contravener fails to submit the additional information/ documents called for within the specified period, the application for compounding shall be liable to be returned.
- ❖ The following factors, which are only indicative, shall be taken into consideration for the purpose of passing compounding order and determining amount on payment of which contravention shall be compounded:
 - Undue gains i.e., the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention (or) economic benefits accruing to the contravener from delayed compliance or compliance avoided;
 - the amount of loss caused to any authority/ exchequer as a result of the contravention;
 - the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
 - contravener’s conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and any other factor as considered relevant and appropriate.

It may be noted that as per provisions under section 13 of FEMA, 1999, the compounding amount can be up to three times the sum involved in the contravention

Issue of the Compounding Order

- ❖ The Compounding Authority shall pass a compounding order after affording an opportunity of being heard to the applicant as expeditiously as possible and not later than 180 days from the date of receipt of such compounding application by Reserve Bank and complete in all respects, on the basis of the averments made in the application as well as other documents and submissions made in this context by the contravener during the personal hearings.
- ❖ If the applicant opts for the personal hearing, the Reserve Bank would encourage the applicant to appear either personally or through a virtual mode rather than being represented / accompanied by legal experts / consultants, as compounding is a voluntary process and only for admitted contraventions. Appearing for or opting out of personal hearing does not have any bearing whatsoever on the compounding amount that may be specified in the compounding order. If the applicant does not opt for personal hearing or absents on the day of hearing, Compounding Authority may pass the order based on available information/ documents.
- ❖ The Compounding Order shall specify the provisions of the FEMA, 1999 or any rule, regulation, notification, direction, or order issued in exercise of the powers under FEMA, 1999 in respect of which contravention has taken place along with details of the contravention.
- ❖ One copy of the compounding order shall be provided to the applicant and another copy shall also be provided to the Adjudicating Authority, where the compounding of any contravention is made after making of a complaint under sub-section (3) of section 16 of the FEMA, as the case may be.

RESERVE BANK OF INDIA

Section 11 of the Foreign Exchange Management Act empowers the RBI to issue directions to the authorised person in regard to making of payment or doing or desist from doing any act relating to foreign exchange or foreign security. The Reserve Bank of India was established on April 1, 1935 in accordance with the provisions of the Reserve Bank of India Act, 1934. The Preamble of the Reserve Bank of India describes the basic functions of the Reserve Bank as:

To regulate issue of Bank Notes and reserves.

To operate the currency and credit system of India.

To have a modern monetary policy framework.

To maintain price stability and balance growth.

CENTRAL BOARD OF DIRECTOR

The Reserve Bank's affairs are governed by a Central Board of Directors. The board is appointed by the Government of India in keeping with the Reserve Bank of India Act. They are appointed/nominated for a period of four years. Constitution of Central Board of Directors are as under:

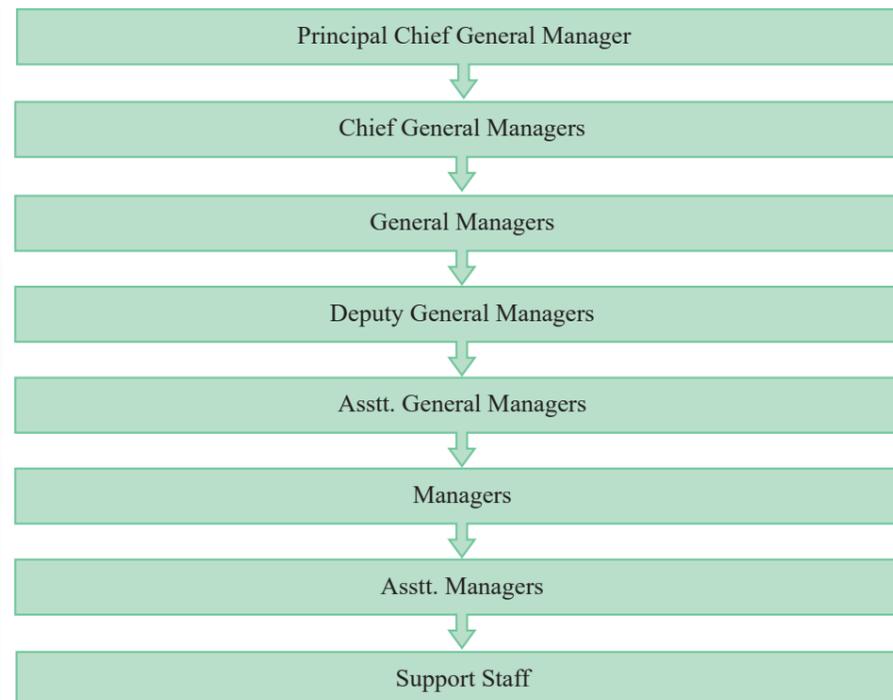
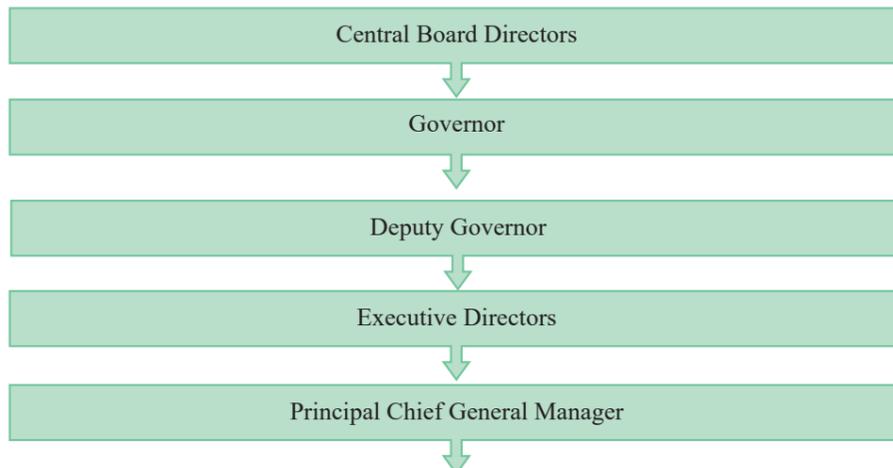
Official Directors: Full-time: Governor and not more than four Deputy Governors.

Non-Official Directors

Nominated by Government: ten Directors from various fields and two government Official

Others: four Directors - one each from four local boards

ORGANISATION STRUCTURE



BOARD FOR FINANCIAL SUPERVISION

The Reserve Bank of India performs the supervisory function under the guidance of the Board for Financial Supervision (BFS). The Board was constituted in November 1994 as a committee of the Central Board of Directors of the Reserve Bank of India under the Reserve Bank of India (Board for Financial Supervision) Regulations, 1994. The primary objective of BFS is to undertake consolidated supervision of the financial sector comprising Scheduled Commercial and Co-operative Banks, All India Financial Institutions, Local Area Banks, Small Finance Banks, Payments Banks, Credit Information Companies, Non-Banking Finance Companies and Primary Dealers.

Main Functions Reserve Bank of India

The main Functions of Reserve Bank of India are as follows:

Monetary Authority

- ❖ Formulates, implements and monitors the monetary policy
- ❖ Objective: maintaining price stability while keeping in mind the objective of growth.

Regulator and Supervisor of the Financial System

- ❖ Prescribes broad parameters of banking operations within which the country's banking and financial system functions.
- ❖ **Objective:** maintain public confidence in the system, protect depositors' interest and provide cost effective banking services to the public.

Manager of Foreign Exchange

- ❖ Manages the Foreign Exchange Management Act, 1999.
- ❖ **Objective:** to facilitate external trade and payment and promote orderly development and maintenance of foreign exchange market in India.

Issuer of Currency

- ❖ Issues, exchanges and destroys currency notes as well as puts into circulation coins minted by Government of India.
- ❖ **Objective:** to give the public adequate quantity of supplies of currency notes and coins and in good quality.

Developmental Role

- ❖ Performs a wide range of promotional functions to support national objectives.

Regulator and Supervisor of Payment and Settlement Systems

- ❖ Introduces and upgrades safe and efficient modes of payment systems in the country to meet the requirements of the public at large.
- ❖ **Objective:** maintain public confidence in payment and settlement system.

Related Functions

- ❖ Banker to the Government: performs merchant banking function for the central and the state governments; also acts as their banker.
- ❖ Banker to banks: maintains banking accounts of all scheduled banks.

The White Paper on Indian Constitutional Reforms also recommended the establishment of a Reserve Bank "free from political influence". As a result of these findings, when a fresh Bill was introduced by Sir George Schuster on September 8, 1933 it was accepted and received the assent of the Governor-General on March 6, 1934.

The functions of the Reserve Bank were generally indicated in the preamble as the regulation of the issue of the Bank notes and the keeping of the reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. But to enable the Reserve Bank to function in this manner, it had to be given other powers, so that it may function effectively as a central bank. To this end, the Reserve Bank was given the right to hold the cash balances of important commercial banks, a right to transact Government business in India which was also its obligation, and to enter into agreements with State Governments to transact their business.

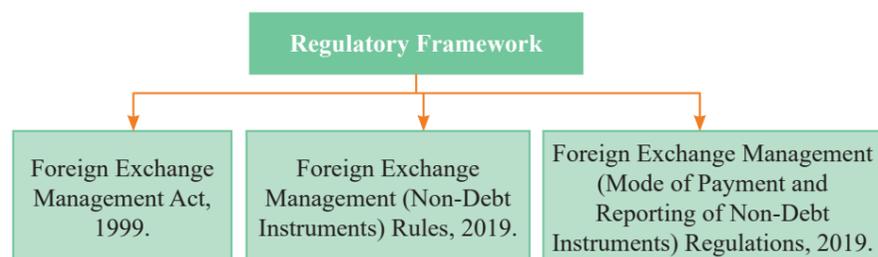
But the most important function of the Reserve Bank is to regulate the banking system generally. The Reserve Bank has been described as a Bankers' Bank. Under the Reserve Bank of India Act, the scheduled banks maintain certain balances and the Reserve Bank can lend assistance to those banks "as a lender of the last resort". The Reserve Bank has also been given certain advisory and regulatory functions. By its position as a central bank, it acts as an agency for collecting financial information and statistics. It advises Government and other banks on financial and banking matters, and for this purpose, it keeps itself informed of the activities and monetary position of scheduled and other banks, and inspects the books and accounts of scheduled banks and advises Government after inspection whether a particular bank should be included in the Second Schedule or not.



Foreign Direct Investment ('FDI') means investment through equity instruments by a person resident outside India in an unlisted Indian company; or in 10% or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company. If existing investment falls below 10% it will still be considered as FDI.

'Fully diluted basis' means the total number of shares that would be outstanding if all possible sources of conversion are exercised.

Investment shall include to acquire, hold or transfer depository receipts issued outside India, the underlying of which a security is issued by a person resident in India;



Foreign Direct Investment

- ❖ Investment by a foreign resident in an **unlisted Indian company** or **10% or more** of a **listed Indian company's equity capital** (on a fully diluted basis).
- ❖ **Fully diluted basis** = Total shares if all convertible securities (like warrants, debentures) are converted.
- ❖ Once an investment falls below 10% in a listed company, it **still remains FDI**.
- ❖ **Investment**
 - ♦ Buying, holding, or transferring securities (shares, units, etc.) in an Indian company.
 - ♦ Includes **depository receipts** (like ADRs/GDRs) issued abroad but linked to Indian securities.
 - ♦ For **LLPs (Limited Liability Partnerships)**, it means capital contribution or profit share transfer.

Regulators of FDI

- ❖ Department for Promotion of Industry and Internal Trade (DPIIT) under Ministry of Commerce & Industry – Makes FDI policies.
- ❖ Foreign Exchange Management Act (FEMA), 1999 – Regulates foreign exchange transactions.
- ❖ FDI Policy + FEM (Non-Debt Instruments) Rules, 2019 – Govern FDI rules.

Purpose of FDI in India

- ❖ Major source of non-debt funding for economic growth.
- ❖ Brings long-term capital, technology, innovation, and employment.
- ❖ Helps in strategic sector development and boosts competition.
- ❖ Aims to supplement domestic capital, skills, and technology for faster economic growth.

FDI vs. Foreign Portfolio Investment (FPI)

- ❖ **FDI** implies a **"lasting interest"** (long-term stake) in an Indian company.
- ❖ **FPI** is short-term investment (like stocks, bonds) without controlling interest.

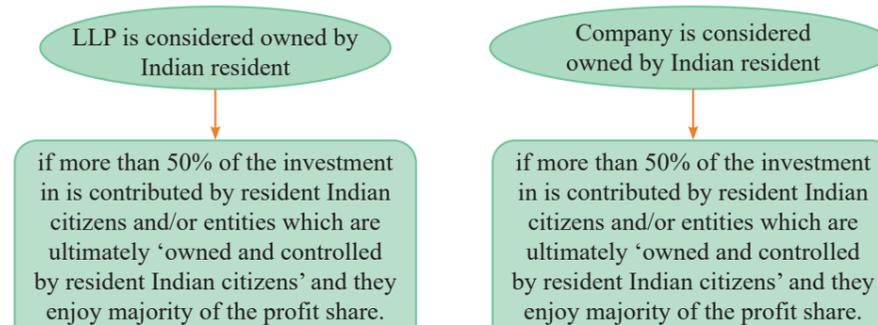
What Qualifies as FDI Capital?

- ❖ **Equity shares** (including partly paid shares).
- ❖ **Fully, compulsorily & mandatorily convertible** preference shares/debentures.
- ❖ **Warrants** (as per SEBI & Companies Act, 2013).

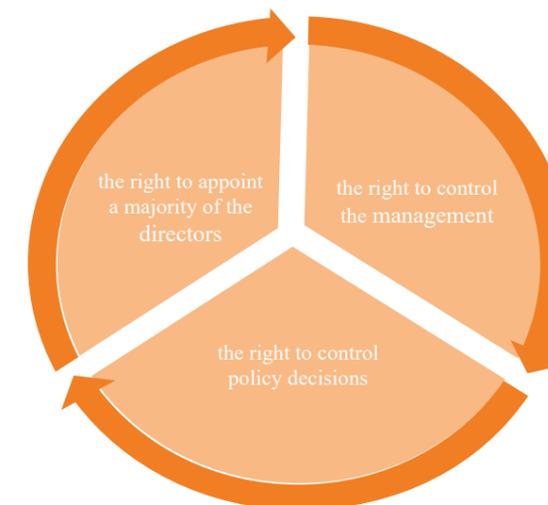
ELIGIBLE INVESTORS

1. (a) A non-resident entity can invest in India, subject to the FDI Policy. However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route.
(b) In the event of the transfer of ownership of any existing or future FDI in an entity in India, resulting in change of beneficial ownership will also require Government approval.
2. NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, but amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.
3. OCBs can also invest in India as per FDI Policy and Foreign Exchange Management (Non-Debt Instrument) Rules, 2019.
4. A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special permission under the FDI Policy.
5. Foreign Portfolio Investors (FPI) may make investments as per Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
6. Registered FPIs and NRIs can invest/trade through a registered broker in the capital of Indian Companies on recognised Indian Stock Exchanges Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

7. An NRI or an OCI may subscribe to the National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA).



'Control' shall include

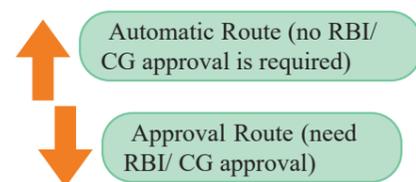


Eligible Investee Entities



1.	Indian Company
2.	Partnership Firm/Proprietary Concern
	(i) A Non-Resident Indian (NRI) can invest in the capital of a firm or a proprietary concern in India on non- repatriation
	(ii) Investments by NRI on repatriation basis will require RBI approval
	(iii) Investment by non-residents other than NRI shall require prior approval of RBI
3.	Trusts engaged in 'VCF' registered and regulated by SEBI and 'Investment vehicle'.
4.	Limited Liability Partnerships (LLPs)
	Foreign Investment in LLPs is permitted in Limited Liability Partnership (LLPs) operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions + compliance with LLP Act,2008
5.	Investment vehicle registered and regulated by SEBI(REITs) Regulations, 2014
6.	Startup Companies
	Start-ups can issue equity or equity linked instruments or debt instruments to FVCI against receipt of foreign remittance.
	In addition, start-ups can issue convertible notes to person resident outside India subject to the following conditions:
	(i) A person resident outside India, may purchase convertible notes issued by an Indian startup company for an amount of twenty-five lakh rupees or more in a single tranche.
	'Convertible Note' means an instrument issued by a startup company acknowledging receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company, within a period not exceeding five years from the date of issue or upon occurrence of events as per the other terms and conditions.
	(ii) A startup company engaged in a sector where foreign investment requires Government approval may issue convertible notes to a non-resident only with approval of the Government.
	(iii) A startup company issuing convertible notes to a person resident outside India shall receive the amount of consideration by inward remittance through banking channels.
	(iv) NRIs may acquire convertible notes on non-repatriation basis as per Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
	(v) A person resident outside India may acquire or transfer, by way of sale, convertible notes, from or to, a person resident in or outside India.
	(vi) The startup company issuing convertible notes shall be required to furnish reports as prescribed by the RBI.

ENTRY ROUTES FOR INVESTMENT

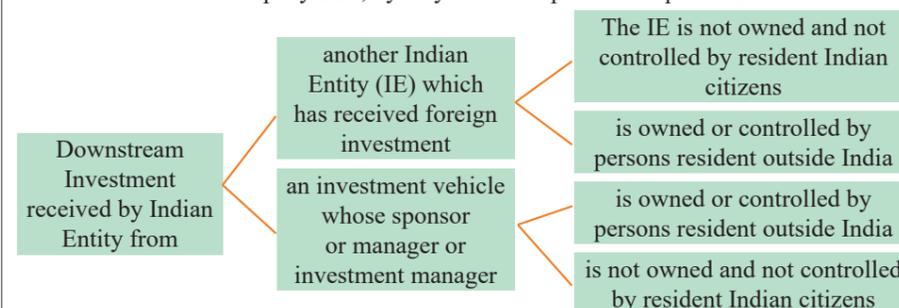


Foreign Investment in Sectors/Activities Which Require Government Approval Where

(i)	An Indian company is being established with foreign investment and is not owned by a resident Indian.
(ii)	An Indian company is being established with foreign investment and is not controlled by a resident.
(iii)	The control of an existing Indian company is being transferred/ passed on to a non-resident entity through amalgamation, merger/demerger, acquisition etc.; or
(iv)	It is clarified that foreign investment shall include all types of foreign investments, direct and indirect, FCCBs and DRs, being in the nature of debt, shall not be treated as foreign investment.
(v)	Investment by NRIs under Schedule IV of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 will be deemed to be domestic investment at par with the investment made by residents;
(vi)	A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments & such investment will also be deemed domestic investment at par with the investment made by residents.

Foreign Investment Into/Downstream Investment by Eligible Indian Entities

Downstream investment means investment made by an Indian entity which has total foreign investment in it, or an Investment Vehicle in the capital instruments or the capital, of another Indian entity. It means indirect foreign investment, by an eligible Indian entity, into another Indian Company/LLP, by way of subscription or acquisition.



(In this diagram, investment means more than 50% of equity or control)
 "Indirect foreign investment" means downstream investment received by an Indian entity from,

(A)	another Indian Entity (IE) which has received foreign investment and
	(i) the IE is not owned and not controlled by resident Indian citizens; or
	(ii) is owned or controlled by persons resident outside India.
(B)	an investment vehicle whose sponsor or manager or investment manager
	(i) is not owned and not controlled by resident Indian citizens; or
	(ii) is owned or controlled by persons resident outside India.
Guidelines for calculation of total foreign investment i.e. direct and indirect foreign investment	
(i)	Counting of direct foreign investment

	All investment directly by a non-resident entity into the Indian company/LLP would be counted towards foreign investment.
(ii)	Counting of indirect foreign investment
	(a) The foreign investment through the investing Indian company/LLP would not be considered for calculation of the indirect foreign investment, if it is owned and controlled by Indian Residents.
(iii)	Downstream investment by an Investment Vehicle shall have to conform to the sectoral caps and conditions / restrictions as per the FDI Policy.
(iv)	Downstream investment in an LLP by an Investment Vehicle as per Schedule VIII of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
(v)	An Alternative Investment Fund Category III with foreign investment shall make portfolio investment in only those securities or instruments in which a Registered Foreign Portfolio Investor is allowed to invest under the principal Regulations.
(vi)	The Investment Vehicle receiving foreign investment shall be required to make such report and in such format to Reserve Bank of India or to SEBI as may be prescribed by them from time to time

COMPETENT AUTHORITY

Competent Authority means the concerned Administrative Ministry/Department empowered to grant government approval for foreign investment under FDI Policy and FEMA.

S. No.	Activity/Sector	Administrative Ministry/Department
1.	Mining	Ministry of Mines
2.	Defence	
	(a) Items requiring Industrial Licence under the Industries (Development & Regulation) Act, 1951, and/or Arms Act, 1959 for which the powers have been delegated by Ministry of Home Affairs to DPIIT	Department of Defence Production, Ministry of Defence
	(b) Manufacturing of Small Arms and Ammunitions covered under Arms Act, 1959	Ministry of Home Affairs
3.	Broadcasting	Ministry of Information & Broadcasting
4.	Print Media/Digital Media	
5.	Civil Aviation	Ministry of Civil Aviation
6.	Satellites	Department of Space
7.	Telecommunication	Department of Telecommunications
8.	Private Security Agencies	Ministry of Home Affairs
9.	(a) Applications involving investments from an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country.	Concerned Administrative Ministry/Department as identified by the DPIIT

	(b) Cases pertaining to sectors/activities under Government approval route requiring security clearance as per the extant Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 & FDI Policy.	Nodal Administrative Ministries/ Departments
10.	Trading (Multi Brand Retail Trading and Food Product retail trading)	Department for Promotion of Industry and Internal Trade
11.	FDI proposals by Non-Resident Indians (NRIs)/ Export Oriented Units requiring approval of the Government	Concerned Administrative Ministry/ Department as identified by the DPIIT
12.	Applications relating to issue of equity shares for import of capital goods/ machinery/ equipment (excluding second-hand machinery)	
13.	Applications relating to issue of equity shares for pre-operative/pre- incorporation expenses (including payments of rent etc.)	
14.	Financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight	Department of Economic Affairs
15.	Applications for foreign investment into a Core Investment Company or an Indian company engaged only in the activity of investing in the capital of other India Company(ies)	
16.	Banking (Public and Private)	Department of Financial Services
17.	Pharmaceuticals	Department of Pharmaceuticals

Cases which do not Require Fresh Approval

Companies may not require fresh approval of the Government for bringing in additional foreign investment into the same entity, in the following cases:

Entities that initially needed government approval for foreign investment in certain activities or sectors, and received such approval, later those activities or sectors have been moved to the automatic route, will no longer need fresh approval.

Entities that previously had sectoral caps on foreign investment and obtained prior government approval for their initial investment can now receive additional foreign investment under the automatic route within the sectoral cap limit.

Entities that initially required government approval for foreign investment under Press Note 18 of 1998 or Press Note 1 of 2005 can now receive additional foreign investment without further government approval, provided no other reasons necessitate such approval under the current FDI policy.

Additional foreign investment up to cumulative amount of Rs 5000 crore into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary.

Prohibited Sectors

FDI is prohibited in:

(a)	Lottery Business including Government/private lottery, online lotteries, etc.
(b)	Gambling and Betting including casinos etc.
(c)	Chit funds
(d)	Nidhi company
(e)	Trading in Transferable Development Rights (TDRs)
(f)	Real Estate Business or Construction of Farm Houses
	Excluding development of townships, construction of residential / commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.
(g)	Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
(h)	Activities/ sectors not open to private sector investment

Permitted Sectors

(a)	FDI up to the limit indicated against each sector/activity is allowed subject to applicable laws/regulations.
(b)	Sectoral cap i.e. the maximum amount which can be invested by foreign investors in an entity includes all types of foreign investments (direct and indirect)
(c)	Foreign investment in sectors under Government approval route resulting in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities will be subject to Government approval.
(d)	The sectors which are already under 100% automatic route.
(e)	Portfolio investment, up to aggregate foreign investment level as permitted under Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities.
(f)	Wherever the foreign investor wishes to specify a particular auditor/audit firm having international network for the Indian investee company, then audit of such investee companies should be carried out as joint audit wherein one of the auditors should not be part of the same network.
(g)	The onus of compliance of above provisions will be on the investee company.

Agriculture & Animal Husbandry

% of Equity/ FDI Cap	Entry Route
100%	Automatic

Plantation Sector

Sector/Activity	Entry Route
100%	Automatic

Mining

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals (Development & Regulation) Act, 1957.	100%	Automatic
Coal & Lignite	100%	Automatic
Mining and Mineral Separation of titanium bearing minerals and ores, its value addition and integrated activities	100%	Automatic

Other Conditions

(i)	FDI for separation of titanium bearing minerals & ores will be subject to the following additional conditions viz.: (A) value addition facilities are set up within India along with transfer of technology; (B) disposal of tailings during the mineral separation shall be carried out in accordance with Rules framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.
(ii)	FDI will not be allowed in mining of "prescribed substances" listed in the Notification No. S.O. 61(E), dated 18.1.2006, issued by the Department of Atomic Energy.
(iii)	"Associated Processing Infrastructure" includes coal washery, crushing, coal handling, and separation (magnetic and non-magnetic).

Petroleum & Natural Gas

% of Equity/ FDI Cap	Entry Route
100%	Automatic

Defence

Sector/Activity	Entry Route
100%	Automatic up to 74% & Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded.

Other Conditions

(i)	FDI up to 74% under automatic route shall be permitted for companies seeking new industrial licenses
(ii)	Infusion of fresh foreign investment up to 49%, which already has Government approval for FDI in Defence, shall require mandatory submission of a declaration with the Ministry of Defence in case change in equity /shareholding pattern.
(iii)	Licence applications will be considered by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, in consultation with the Ministry of Defence and the Ministry of External Affairs.
(iv)	Foreign investment in the sector is subject to security clearance by the Ministry of Home Affairs and as per guidelines of the Ministry of Defence.
(v)	The investee/joint venture company along with the manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.
(vi)	Foreign Investments in the Defence Sector shall be subject to scrutiny on grounds of National Security and Government reserves the right to review any foreign investment in the Defence Sector that affects or may affect national security.

Broadcasting Carriage Services

Sl. No.	Sector/Activity	% of Equity/ FDI Cap	Entry Route
1.	Teleports (setting up of up-linking HUBs/Teleports);	100%	Automatic Route
2.	Direct to Home (DTH);		
3.	Cable Networks (Multi System operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability);		
4.	Mobile Tv;		
5.	Headend-in-the Sky broadcasting Service (HITS)		
	Cable Networks [Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)]	100%	Automatic Route

Broadcasting Content Services

Terrestrial broadcasting FM (FM Radio),	49%	Government
Up-linking of 'News & Current Affairs' Tv Channels	49%	Government
Uploading/Streaming of News & Current Affairs through Digital Media	26%	Government
Up-linking of Non- 'News & Current Affairs' Tv Channels/ Downlinking of Tv Channels	100%	Automatic

Conditions for Broadcasting Sector

- FDI for Up-linking/Down-linking TV Channels will be subject to compliance with the relevant Up-linking/ Down-linking Policy notified by the Ministry of Information & Broadcasting from time to time.
- Foreign investment (FI) will be subject to relevant regulations and such terms and conditions, by the Ministry of Information and Broadcasting.
- The foreign investment (FI) limit shall include, in addition to FDI, Foreign Portfolio Investors (FPIs), Qualified Foreign Investors (QFIs).
- Foreign investment will be subject to the following security conditions/terms:

Mandatory Requirement for Key Executives of the Company

 - The majority of Directors on the Board of the Company shall be Indian citizens.
 - The Chief Executive Officer (CEO), Chief Officer in-charge of technical network operations and Chief Security Officer should be resident Indian citizens.

Security Clearance of Personnel

 - The Company, all Directors on the Board of Directors and such key executives who individually hold 10% or more shall require to be security cleared. In case of the appointment/change of Directors on the Board of the Company and such key executive's prior permission of the Ministry of Information and Broadcasting shall have to be obtained.
 - The security clearance shall be required to be obtained every two years.

Permission vis-à-vis Security Clearance

 - The permission shall be subject to permission holder/licensee remaining security cleared throughout the currency of permission. In case the security clearance is withdrawn, the permission granted is liable to be terminated forthwith alongwith 5 years of disqualification.

Infrastructure/Network/Software related requirement

 - The officers/officials of the licensee companies dealing with the lawful interception of services will be resident India citizens.
 - Details of infrastructure/network diagram (technical details of the network) could be provided, on a need basis only, to equipment suppliers/manufactures and the affiliate of the licensee company.
 - The Company shall not transfer the subscribers' databases to any person/place outside India unless permitted by relevant law.
 - The Company must provide traceable identity of their subscribers.

Monitoring, Inspection and Submission of Information

 - The Company should ensure that necessary provision (hardware/software) is available in their equipment for doing the lawful interception and monitoring from a centralized location as and when required by Government.
 - The company, at its own costs, provide the necessary equipment, services and facilities at designated place(s) for continuous monitoring or the broadcasting service by or under supervision of the Government or its authorized representative.
 - The Government of India, Ministry of Information & Broadcasting or its authorized representative shall have the right to inspect the broadcasting facilities.

(xiii) The permission holder/licensee shall be liable to furnish the Government of India such reports as required.

National Security Conditions

(xiv) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle.

Other Conditions

(xv) Licensor reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security and public interest or for proper provision of broadcasting services.

(xvi) Licensee will ensure that broadcasting service installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.

Print Media

100%	Government		
1.	News current affairs	26%	Govt. Route
2.	Scientific Technical Magazine	100%	Govt. Route

Other Conditions

FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.

Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, as applicable.

CIVIL AVIATION SECTOR

Airports

(a)	Greenfield projects	100%	Automatic
(b)	Existing projects	100%	Automatic

Air Transport Services

1.	(a) Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline	100%	Automatic up to 49% (Automatic up to 100% for NRIs) Government route beyond 49%
	(b) Regional Air Transport Service		
2.	Non-Scheduled Air Transport Services	100%	Automatic
3.	Helicopter services/seaplane services requiring DGCA approval	100%	Automatic

Other Services Under Civil Aviation Sector

1.	Ground Handling Services subject to sectoral regulations and security clearance	100%	Automatic
2.	Maintenance and Repair organizations; flying training institutes; and technical training institutions.	100%	Automatic

Other Conditions

(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, helicopter and seaplane services.

(b) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services, as per the limits and entry routes mentioned above.

(c) Foreign airlines are also allowed to invest in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the following conditions:

- It would be made under the Government approval route,
- The 49% limit will include FDI and FPI investment,
- The investments so made would need to comply with the relevant regulations of SEBI, such as ICDR Regulations/ SAST Regulations, as well as other applicable rules and regulations,
- All foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such investment shall be cleared from security viewpoint before deployment, and
- All technical equipment that might be imported into India as a result of such investment shall require clearance from the relevant authority in the Ministry of Civil Aviation.

Construction Development: Townships, Housing, Built-Up Infrastructure

100%	Automatic
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Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy. Investment will be subject to the following conditions:

- (i) The foreign investor will be permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage, subject to lock in period of 3 years.
- The project shall conform to the norms and standards and other regulations of the State Government/Municipal/Local Body concerned.
- The Indian investee company will be permitted to sell only developed plots where trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage, have been made available.
- The Indian investee company shall be responsible for obtaining all necessary approvals
- The State Government/Municipal/Local Body concerned, which approves the building/development plans, will monitor compliance of the above conditions by the developer.
 - Conditions of lock-in period at (A) above will not apply to Hotels & Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs.

Industrial Parks

100%	Automatic
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FDI in Industrial Parks would not be subject to the conditionalities applicable for construction development projects, provided the Industrial Parks meet with the under-mentioned conditions:

It would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area;

The minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.

Space Sector

Sector/Activity	Sectoral Cap	Entry Route
Satellites-Manufacturing & Operation	100%	Up to 74%: Automatic Beyond 74%: Government route
Satellites-Manufacturing & Operation		
Ground Segment & User Segment		
Launch Vehicles and associated systems or sub-systems	100%	Up to 49%: Automatic Beyond 49%: Government route
Creation of Spaceports for launching and receiving Spacecraft		
Manufacturing of components and systems/ sub-systems for satellites, ground segment and user segment	100%	Up to 100%: Automatic

Private Security Agency

Private Security Agency	74%	Automatic up to 49% Government route beyond 49% and up to 74%
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Telecom Services

Telecom Services	100%	Automatic
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Trading

Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)	100%	Automatic
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Guidelines for Cash & Carry Wholesale Trading/Wholesale Trading (WT)

- For undertaking WT, requisite licenses/registration/ permits, as per relevant Acts/ Regulations/Rules/Orders of the State Government/Government Body/ Government Authority/Local Self- Government Body under that State Government should be obtained.
- Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers, only when WT are made to the following entities:
 - Entities holding applicable tax registration; or
 - Entities holding trade licenses
 - Entities holding permits/license etc
 - Institutions having a certificate of incorporation or registration as a society or registration as public trust for their self-consumption.
- Full records indicating all the details of such sales like name of entity, kind of entity, registration/ license/ permit etc. number, amount of sale etc.
- WT of goods would be permitted among companies of the same group. However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture.
- WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.
- An entity undertaking wholesale/cash and carry as well as retail business will be mandated to maintain separate books of accounts for these two arms of the business and duly audited by the statutory auditors.

E-Commerce Activities

100%	Automatic
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Other Conditions

- Digital & electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles etc.
- Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.
- E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
- E-commerce entity providing a marketplace will not exercise ownership or control over the inventory i.e. goods purported to be sold.
- An entity having equity participation by e-commerce marketplace entity will not be permitted to sell its products on the platform run by such marketplace entity.
- In marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.
- In marketplace model, payments for sale may be facilitated by the e-commerce entity in as per the guidelines of the Reserve Bank of India.
- In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller.
- E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field. Services should be provided by e-commerce marketplace to vendors on the platform at arm's length and in a fair and non-discriminatory manner.
- E-commerce marketplace entity will not mandate any seller to sell any product exclusively on its platform only.
- E-commerce marketplace entity with FDI shall have to obtain and maintain a report of statutory auditor by 30th of September every year for the preceding financial year confirming compliance of the e-commerce guidelines.

Single Brand Product Retail Trading (SBRT)

Single brand Product Retail Trading	100%	Automatic
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- FDI in Single Brand product retail trading would be subject to the following conditions:
 - Products to be sold should be of a 'Single Brand' only.
 - Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.
 - 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.
 - A non-resident entity or entities shall be permitted to undertake 'single brand' product retail trading in the country through a legally tenable agreement executed between the Indian entity and the brand owner.

- In respect of proposals involving foreign investment beyond 51%, sourcing or purchase of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen,

Multi Brand Retail Trading (MBRT)

Multi-brand retail trading ("MBRT") refers to the sale

51%	Government
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- FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:
 - Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.
 - Minimum amount to be brought in, as FDI, by the foreign investor, would be US \$ 100 million.
 - At least 50% of total FDI brought in the first tranche of US \$ 100 million, shall be invested in 'back-end infrastructure' within three years,
 - At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries,
 - Self-certification compliance will be sufficient.
 - Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census.
 - Government will have the first right to procurement of agricultural products.
 - The above policy is an enabling policy only and the State Governments/ Union Territories would be free to take their own decisions in regard to implementation of the policy.

Duty Free Shops

100%	Automatic
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Duty Free Shops would mean shops set up in custom bonded area at International Airports/International Seaports and Land Custom Stations where there is transit of international passengers.

Foreign investment in Duty Free Shops is subject to compliance of conditions stipulated under the Customs Act, 1962 and other laws, rules and regulations.

Duty Free Shop entity shall not engage into any retail trading activity in the Domestic Tariff Area of the country.

Railway Infrastructure

100%	Automatic
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Asset Reconstruction Companies

100%	Automatic
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Other Conditions

i.	Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank of India, up to 100% on the automatic route.
ii.	Investment limit of a sponsor in the shareholding of an ARC will be governed by the provisions of SARFAESI, 2002.
iii.	The total shareholding of an individual FPI shall be below 10% of the total paid-up capital.
iv.	FPIs can invest in the Security Receipts (SRs) issued by ARCs. /FPIs may be allowed to invest up to 100 per cent of each tranche in SRs issued by ARCs, as per RBI Guidelines and Sectoral caps.
v.	All investments would be subject to provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, as amended from time to time.

74% Automatic up to 49% , Government route beyond 49% to 74%.

Banking-Public Sector

20% Government

Credit Information Companies (CIC)

100% Automatic

Infrastructure Company In The Securities Market

49% Automatic

Insurance

74% Automatic

100% Automatic

Other Conditions

(a)	No Indian Insurance company shall allow the aggregate holdings by way of total foreign investment i to exceed seventy four percent of the paid-up equity capital but approval of IRDAI will be required.
(b)	Compliance of Insurance Act, 1938 is mandatory
(c)	An Indian Insurance company having foreign investment - (i) a majority of its Directors; (ii) a Majority of its Key Managerial Persons; and (iii) at list one among the Chairperson of its Board, its MD & its CEO shall be resident Indian citizen.
(d)	The foreign equity investment cap of 100 percent shall remain same for insurance brokers, re-insurance brokers.
(e)	The insurance intermediary that has majority shareholding of foreign investors shall undertake the following: <ol style="list-style-type: none"> be incorporated as a limited company under the provisions of the Companies Act, 2013; at least one from among the Chairman of the Board of Directors or the Chief Executive Officer or Principal Officer or Managing Director of the insurance intermediary shall be a resident Indian citizen; shall take prior permission of the Authority for repatriating dividend; shall bring in the latest technological, managerial and other skills;

v.	shall not make payments to the foreign group or promoter or subsidiary or interconnected or associate entities beyond what is necessary or permitted by the Authority;
vi.	shall make disclosures in the formats to be specified by the Authority of all payments made to its group or promoter or subsidiary or interconnected or associate entities;

LIC (Life Insurance Corporation)

20% Automatic

Pension Sector

49% Automatic

Power Exchanges

49% Automatic

White Label ATM Operations

100% Automatic

Pharmaceuticals

Greenfield 100% Automatic

Brownfield 74% Automatic Automatic up to 74%, Government route beyond 74%

Types of Instruments

- Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares subject to pricing guidelines/ valuation norms prescribed under FEMA Regulations.
- The inward remittance received by the Indian company vide issuance of DRs and FCCBs are treated as FDI and counted towards FDI.
- Acquisition of Warrants and Partly Paid Shares - An Indian Company may issue warrants and partly paid shares to a person resident outside India.
- Issue of Foreign Currency Convertible bonds (FCCBs) and Depository Receipts (DRs)
- Two-way Fungibility Scheme:** Under this Scheme, a stock broker in India, registered with SEBI, can purchase shares of an Indian company from the market for conversion into ADRs/GDRs based on instructions received from overseas investors.
 - Sponsored ADR/gDR issue:** An Indian company can also sponsor an issue of ADR/GDR. Under this mechanism, the company offers its resident shareholders a choice to submit their shares back to the company so that on the basis of such shares, ADRs/GDRs can be issued abroad.

Provisions Relating to Issue/Transfer of Shares

- The capital instruments should be issued within 60 days from the date of receipt of the inward remittance received through normal banking channels.
- Issue price of shares
Price of shares issued to persons resident outside India under the FDI Policy, shall not be less than
 - the price worked out in accordance with the SEBI guidelines (In case of Listed Company);

- the fair valuation of shares done by a SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology on arm's length basis, (In case of Unlisted Company) and
- the price as applicable to transfer of shares from resident to non-resident as per RBI guidelines

3. Foreign Currency Account

Indian companies which are eligible to issue shares to persons resident outside India under the FDI Policy and in accordance with RBI guidelines.

4. Transfer of shares and convertible debentures

- Subject to FDI sectoral policy & applicable laws, general permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:
 - A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).
 - NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.
 - A person resident outside India can transfer any security to a person resident in India by way of gift.
 - A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.
 - A person resident in India can transfer by way of sale, shares/ convertible debentures (including transfer of subscriber's shares), of an Indian company under private arrangement to a person resident outside India, subject to the guidelines.
 - Transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines.
 - The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days of transfer of capital instruments or receipt / remittance of funds whichever is earlier.

5. Prior permission of RBI (for transfer of capital instruments)

6. Conversion of ECb/Lump-sum Fee/Royalty etc. into Equity/ fully compulsorily and mandatorily convertible preference shares, (Automatic Route)

Terms and conditions for transfer of shares/convertible debentures, by way of sale, from a person resident in india to a person resident outside india and from a person resident outside india to a person resident in india

- Pricing guidelines
- The under noted pricing guidelines are applicable to the following types of transactions:
 - Transfer of shares by way of sale under private arrangement by a person resident in India to a person resident outside India.
 - Transfer of shares by way of sale under private arrangement by a person resident outside India to a person resident in India.
 - Exit by non-resident investor on exercising option/right in shares or compulsorily & mandatorily convertible preference shares or fully, compulsorily & mandatorily convertible debentures.
- Transfer by Resident to Non-resident. Price of shares transferred by way of sale by resident to a non-resident where the shares of an Indian company are:

(a)	Listed on a recognized stock exchange in India, Pricing shall be as per preferential allotment of shares
(b)	Not listed on a recognized stock exchange in India, shall not be less than the fair value to be determined by a SEBI registered Merchant Banker or a Chartered Accountant.
4.	Method of payment and remittance/credit of sale proceeds
	The sale consideration in respect of the shares purchased by a person resident outside India shall be remitted to India through normal banking channels.
	The sale proceeds of shares (net of taxes) sold by an OCB may be remitted outside India directly if the shares were held on repatriation basis. If the shares sold were held on non-repatriation basis, the sale proceeds may be credited to its NRO (Current) Account after payment of taxes
5.	For sale of shares by a person resident in India:
(i)	Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer
(ii)	Where Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares.
(iii)	The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity participation of residents and non-residents category-wise.
(iv)	Certificate indicating fair value of shares from a Chartered Accountant.
(v)	Copy of Broker's note if sale is made on Stock Exchange.
(vi)	Undertaking from the buyer to the effect that he is eligible to acquire shares/convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.
(vii)	Undertaking from the /sub account to the effect that the individual / Sub account ceiling as prescribed by SEBI has not been breached, till it gets registered as FPI.
6.	For sale of shares by a person resident outside India:
(i)	Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer
(ii)	Where the Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document authorizing the agent to purchase/sell shares by the seller/buyer.
(iii)	If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/ non-repatriation basis. The sale proceeds shall be credited NRE/NRO account, as applicable.
(iv)	Certificate indicating fair value of shares from a Chartered Accountant
(v)	No Objection/Tax Clearance Certificate from Income Tax authority/Chartered Account
(vi)	Undertaking from the buyer to the effect that the Pricing Guidelines have been complied.
7.	Reporting requirements
	Reporting of transfer of shares between residents and non-residents and vice versa is to be done in Form FC- TRS. The Form FC-TRS should be submitted to the AD Category-I bank,
	The actual inflows and outflows on account of such transfer of shares shall be reported by the AD branch in the R-returns in the normal course.

In addition the AD branch should submit two copies of the Form FC-TRS received, to IBD/FED/or the nodal office designated for the purpose.

Shares purchased / sold by /FPIs under private arrangement will be by debit /credit to their Special Non- Resident Rupee Account. Therefore, the transaction should also be reported in Form LEC by the designated bank of the /FPI concerned.

Documents to be submitted by a person resident in India for transfer of shares to a person resident outside India by way of gift

- i. Name and address of the transferor (donor) and the transferee (donee).
- ii. Relationship between the transferor and the transferee.
- iii. Reasons for making the gift.
- iv. In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.
- v. In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
- vi. In case of shares and convertible debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by Securities & Exchange Board of India.
- vii. Certificate from the concerned Indian company certifying that the proposed number of shares/convertible debentures to be held by the non- resident transferee shall not exceed 5 per cent of the paid up capital of the company.
- viii. An undertaking from the resident transferor that the value of security to be transferred together with any security already transferred by the transferor, as gift, to any person residing outside India complies RBI guidelines.
- ix. A declaration from the donee accepting partly paid shares or warrants that donee is aware of the liability as regards calls in arrear and consequences thereof.

SPECIFIC CONDITIONS IN CERTAIN CASES

Issue of Rights/bonus Shares to Non Resident Shareholders

Such issue of bonus/rights shares has to be in accordance with other laws/statutes like the Companies Act, as applicable, SEBI (ICDR) Regulations, 2009 (in case of listed companies), etc. The offer on right basis to the persons resident outside India shall be:

In the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company;

In the case of shares of a company not listed on a recognized stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to resident shareholders.

Acquisition of Shares Under Scheme of Merger/Demerger/ Amalgamation

Once the scheme of merger or demerger or amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India, subject to the conditions that:

The percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap, and

The transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy.

Issue of Employees Stock Option Scheme (ESOPs)/Sweat Equity

An Indian company may issue "employees' stock option" and/or "sweat equity shares" to its employees/ directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/ subsidiaries who are resident outside India, provided that:

The scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 under the Companies Act 2013.

The "employee's stock option"/ "sweat equity shares" issued to non-resident employees/directors are in compliance with the sectoral cap applicable to the said company.

Issue of "employee's stock option"/ "sweat equity shares" by a company where foreign investment is under the approval route shall require prior approval of Government of India.

Issue of "employee's stock option"/ "sweat equity shares" under the applicable rules/regulations to an employee/director who is a citizen of Bangladesh/Pakistan shall require prior approval of the Government of India.

The issuing company shall furnish to the Regional Office concerned of the Reserve Bank of India under whose jurisdiction the registered office of the company operates, within 30 days from the date of issue of employees' stock option or sweat equity shares, a return in the Form-ESOP.

Pledge of Shares

The transfer of equity instruments of an Indian company or units of an investment vehicle by way of pledge is subject to the following terms and conditions, namely:

- (i) Any person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowing may pledge the shares of the borrowing company for the purpose of securing the external commercial borrowing.
 - (a) The period of such pledge shall be co-terminus with the maturity of the underlying external commercial borrowing;
 - (b) In case of invocation of pledge, transfer shall be made as per directions of Reserve Bank;
 - (c) The statutory auditor has certified that the borrowing company shall utilise or has utilised the proceeds of the external commercial borrowing for the permitted end-use only;
 - (d) No objection letter shall be obtained from AD Category bank related to compliance of conditions
- (ii) In whose favour pledge can be created:
 - (a) In favour of a bank in India to secure the credit facilities being extended to such Indian company for bona fide purposes,
 - (b) In favour of an overseas bank to secure the credit facilities being extended to such person or a person resident outside India who is the promoter of such Indian company or the overseas group company of such Indian company,

- (c) In favour of a non-banking financial company registered with the Reserve Bank to secure the credit facilities being extended to such Indian company for bona fide purposes,

Remittance on Winding Up/Liquidation of Companies

AD Category-I banks shall allow the remittance if the applicant submits the following documents:

No objection or Tax clearance certificate from Income Tax Department for the remittance.

Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, as applicable.

In case of Voluntary winding up, an auditor's certificate to the effect that there are no legal proceeding pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

Penalties

If a person violates/contravenes any FDI Regulations, he shall, upon adjudication, be liable to:

A penalty up to thrice the sum involved in such contraventions where such amount is quantifiable, or up to two lakh Rupees where the amount is not quantifiable.

Where such contraventions is a continuing one, further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

COMPOUNDING PROCEEDINGS

Under the Foreign Exchange (Compounding Proceedings) Rules 2000, the Central Government may appoint 'Compounding Authority' an officer either from Enforcement Directorate or Reserve Bank of India for any person contravening any provisions of the FEMA. The Compounding Authorities are authorized to compound the amount involved in the contravention to the Act made by the person.

No contravention shall be compounded unless the amount involved in such contravention is quantifiable

Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

The Compounding Authority shall pass an order of compounding after affording an opportunity of being heard to all the concerns and not later than 180 days from the date of application made to the Compounding Authority.

Permissible limits under portfolio investment schemes through stock exchanges for FPIS and NRIS

- (i) Foreign Portfolio Investors (FPIs) and investor groups can each hold less than 10% of the total paid-up capital or less than 10% of the paid-up value of each series of debentures or preference shares in an Indian company.
The total aggregate limit for all FPIs combined cannot exceed 24% of the total paid-up capital or paid-up value of each series of debentures or preference shares.
- (a) In the case of NRIs, individual holding is restricted to 5 per cent of the total paid-up capital on fully diluted basis or paid-up value of each series of debentures.
Total holdings of all NRIs and OCIs put together shall not exceed 10 per cent of the total paid-up capital. However, NRI holding can be allowed up to 24 per cent through a special resolution.
- (b) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid-up capital of the private bank will apply to non-resident investors as well.
- (c) Transfer of shares under FDI from residents to non-residents shall require approval of RBI and/or Government wherever applicable.
- (ii) Setting up of a subsidiary by foreign banks
- (a) Foreign banks will be permitted to either have branches or subsidiaries but not both.
- (b) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 per cent paid up capital to enable them to set up a wholly-owned subsidiary in India.
- (c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.
- (d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license.
- (e) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.

FOREIGN EXCHANGE MANAGEMENT (MODE OF PAYMENT AND REPORTING OF NON-DEBT INSTRUMENTS) REGULATIONS, 2019

Purchase & sale of Equity investment of Indian company by PROI

- The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/Escrow account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.
- Equity instruments shall be issued to the person resident outside India making such investment within sixty days from the date of receipt of the consideration.
- Where such equity instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance within fifteen days (from the date of completion of sixty days)

Investments by Non Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis

Mode of Payment

- The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a Non-Resident External (NRE) account.
- Investment in units of domestic mutual fund shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B) account.
- Subscription to National Pension System shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account.

INVESTMENT BY NRI OR OCI ON NON REPATRIATION BASIS

Purchase or sale of equity instruments of an Indian company or units or contribution to the capital of a LLP by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on Non-repatriation basis.

Mode of Payment

The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account

Sale/Maturity Proceeds

The sale/maturity proceeds (net of applicable taxes) of equity instruments or units or disinvestment proceeds of a LLP shall be credited only to the NRO account of the investor, irrespective of the type of account from which the consideration was paid;

The amount invested in equity instruments of an Indian company or the consideration for contribution to the capital of a LLP and the capital appreciation thereon shall not be allowed to be repatriated abroad.

Investment in a Firm or a Proprietary Concern

Mode of Payment

The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account.

Sale/Maturity Proceeds

The disinvestment proceeds shall be credited only to the NRO account of the person concerned, irrespective of the type of account from which the consideration was paid;

The amount invested for contribution to the capital of a firm or a proprietary concern and the capital appreciation thereon shall not be allowed to be repatriated abroad.

Investment in a Limited Liability Partnership

Mode of payment: Payment by an investor towards capital contribution of an LLP or remittance of disinvestment shall be made by way of an inward/outward remittance through banking channels or out of funds held in NRE or FCNR (B) account maintained.

Issue of Indian Depository Receipts

Mode of Payment:	NRIs or OCIs may invest in the IDRs out of funds held in their NRE/FCNR (B) account.
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Reporting Requirements

The reporting requirement for any Investment in India by a person resident outside India shall be as follows:

1.	Form Foreign Currency-Gross Provisional Return (FC-GPR):	An Indian Company issuing equity instruments to a person resident outside India and w, shall report such issue in Form FC-GPR, not later than thirty days from the date of issue of equity instruments..
2.	Annual Return on Foreign Liabilities and Assets (FLA):	An Indian Company which has received FDI or an LLP which has received investment by way of capital contribution in the previous year including the current year, shall submit form FLA to the Reserve Bank on or before the 15th day of July of each year. Explanation: Year for this purpose shall be reckoned as April to March.
3.	Form Foreign Currency-Transfer of Shares (FC-TRS):	Form FCTRS shall be filed for transfer of equity instruments in accordance with the rules, between:
		(a) (i) a person resident outside India holding equity instruments in an Indian company on a repatriable basis/ non repatriable basis and
		(ii) The onus of reporting shall be on the resident transferor/transferee or the person resident outside India holding equity instruments on a non-repatriable basis.

		(b) Transfer of equity instruments on a recognised stock exchange by a person resident outside India shall be reported by such person in Form FC-TRS.
		(c) Transfer of 'participating interest/rights' in oil fields shall be reported Form FC-TRS. The form FCTRS shall be filed within sixty days of transfer of equity instruments or receipt/ remittance of funds whichever is earlier.
4.	Form Employees' Stock Option (ESOP):	An Indian company issuing employees' stock option to persons resident outside India who are its employees/ directors or employees/directors of its holding company/ joint venture / wholly owned overseas subsidiary/ subsidiaries shall file Form-ESOP, within 30 days from the date of issue of employees' stock option.
5.	Form Depository Receipt Return (DRR):	The Domestic Custodian shall report in Form DRR, the issue / transfer of depository receipts issued in accordance with the Depository Receipt Scheme, 2014 within 30 days of close of the issue.
6.	Form LLP (I):	A Limited Liability Partnerships (LLP) receiving an amount of consideration for capital contribution and acquisition of profit shares shall file Form LLP (I), within 30 days from the date of receipt of the amount of consideration.
7.	Form LLP (II):	The disinvestment/transfer of capital contribution or profit share between a resident and a non-resident (or vice versa) shall be filed in Form LLP(II) within 60 days from the date of receipt of funds. The onus of reporting shall be on the resident transferor/transferee.

8.	LEC (FII):	The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (FII) the purchase/transfer of equity instruments by FPIs on the stock exchanges in India.
9.	LEC (NRI):	The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (NRI) the purchase/transfer of equity instruments by Non-Resident Indians or Overseas Citizens of India on stock exchanges in India.
10.	Form InVI:	An Investment vehicle which has issued its units to a person resident outside India shall file Form InVI within 30 days from the date of issue of units.
11.	Downstream Investment	(a) An Indian entity or an investment vehicle making downstream investment in another Indian entity shall notify the Secretariat for Industrial Assistance, DPIIT within 30 days of such investment, even if equity instruments have not been allotted, along with the modality of investment in new/ existing ventures + shall file Form DI with the Reserve Bank within 30 days from the date of allotment of equity instruments.
12.	Form Convertible Notes (CN):	(a) The Indian Start-up Company issuing Convertible Notes to a person resident outside India shall file Form CN within 30 days of such issue.
		(b) A person resident in India, who may be a transferor or transferee of Convertible Notes issued by an Indian start-up company shall report such transfers to or from a person resident outside India, as the case may be, in Form CN within 30 days of such transfer.

OVERSEAS DIRECT INVESTMENT (ODI) MEANS

Acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Association of a foreign entity, or

Investment in 10% or more of the paid-up equity capital of a listed foreign entity, or

Investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity.

Control means the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten percent or more of voting rights or in any other manner in the entity.

Indian Entity	A Company defined under the Companies Act, 2013.
	A Body corporate incorporated by any law for the time being in force.
	A Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008.
	A Partnership firm registered under the Indian Partnership Act, 1932.

DEBT INSTRUMENTS ARE

(i) Government Bonds

(ii) Corporate Bonds

(iii) All tranches of securitisation structures which are not equity tranche;

(iv) Borrowings by firms through loans; and

(v) Depository receipts whose underlying securities are debt securities

PROCEDURE FOR MAKING OVERSEAS INVESTMENT

- The person intending to make any financial commitment shall fill up the Form FC duly supported by the requisite documents and approach the designated Authorised Dealer (AD) bank for making the investment/remittance.
- In respect of any case under the approval route, the applicant shall approach their designated AD bank who shall forward the proposal to the Reserve Bank after due scrutiny and with its specific recommendations. The application for overseas investment under the approval route would continue to be submitted to the Reserve Bank in physical/electronic form through email as hitherto, in addition to the online reporting.
- The designated AD bank before forwarding the proposal shall submit the relevant sections of the Form FC in the online OID application and the transaction number generated by the application shall be mentioned in their reference.
- The following documents shall be submitted along with the proposal:
 - ❖ Background and brief details of the transaction.
 - ❖ Reason(s) for seeking approval mentioning the extant FEMA provisions.
 - ❖ Observations of the designated AD bank with respect to the following:
 - ♦ Prima facie viability of the foreign entity;
 - ♦ Benefits which may accrue to India through such investment;
 - ♦ Financial position and business track record of the Indian entity and the foreign entity;
 - ♦ Any other material observation.
- Recommendations of the designated AD bank with confirmation that the applicant's board resolution or resolution from an equivalent body, as applicable, for the proposed transaction(s) is in place.
- Diagrammatic representation of the organisational structure indicating all the subsidiaries of the Indian entity horizontally and vertically with their stake (direct and indirect) and status (whether operating company or SPV).
- Valuation certificate for the foreign entity (if applicable)
- Other relevant documents properly numbered, indexed and flagged.
- The proposal shall be submitted to the Reserve Bank of India.

APPROVAL FROM THE RESERVE BANK

Financial commitment by an Indian entity, exceeding USD 1 (one) billion (or its equivalent) in a financial year shall require prior approval of the Reserve Bank even when the total financial commitment of the Indian entity is within the eligible limit under the automatic route.

No Objection Certificate (NOC) from the Lender Bank/Regulatory Body/ Investigative Agency

Any person resident in India having an account appearing as a Non-Performing Asset (NPA) or is classified as wilful defaulter or is under investigation by a financial sector regulator/investigative agency shall obtain an NOC from the lender bank/regulatory body/investigative agency concerned before making financial commitment or undertaking disinvestment.

Mode of Payment**A person resident in India making Overseas Investment may make payment -**

- | | |
|-------|---|
| (i) | by remittance made through banking channels; |
| (ii) | from funds held in an account maintained in accordance with the provisions of the Foreign Exchange Management Act; |
| (iii) | by swap of securities; |
| (iv) | by using the proceeds of American Depository Receipts or Global Depository Receipts or stock swap of such receipts or external commercial borrowings raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity. |

Pricing Guidelines

The AD bank, before facilitating an overseas investment related transaction, shall ensure compliance with the provisions of Overseas Investment Rules. The AD bank shall put in place a board approved policy within two months from the date of these directions.

Such policy may also provide for scenarios where the valuation may not be insisted upon, such as:

Transfer on account of merger, amalgamation or demerger or liquidation, where the price has been approved by the competent Court/Tribunal as per the laws in India and or the host jurisdiction; or

Price is readily available on a recognised stock exchange, etc.

TRANSFER OR LIQUIDATION

A person resident in India may transfer equity capital by way of sale to a person resident in India, who is eligible to make such investment under these rules, or to a person resident outside India.

In case the transfer is on account of merger, amalgamation or demerger or on account of buyback of foreign securities, such transfer or liquidation in case of liquidation of the foreign entity, shall have the approval of the competent authority as per the applicable laws in India or the laws of the host country or host jurisdiction, as the case may be.

RESTRUCTURING

A person resident in India who has made ODI in a foreign entity may permit restructuring of the balance sheet by such foreign entity, which has been incurring losses for the

previous two years as evidenced by its last audited balance sheets, subject to ensuring compliance with reporting, documentation requirements and subject to the diminution in the total value of the outstanding dues towards such person resident in India on account of investment in equity and debt, after such restructuring not exceeding the proportionate amount of the accumulated losses.

It may be noted that in case of such diminution where the amount of corresponding original investment is more than USD 10 million or in the case where the amount of such diminution exceeds twenty per cent of the total value of the outstanding dues towards the Indian entity or investor, the diminution in value shall be duly certified on an arm's length basis by a registered valuer as per the Companies Act, 2013 or corresponding valuer registered with the regulatory authority or certified public accountant in the host country.

Obligation of the Person Resident in India

1. A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit the evidence of investment to the AD bank within six months, failing which the funds remitted overseas shall be repatriated within the said period of six months.
2. The evidence of investment shall be retained by the designated AD bank, who shall monitor the receipt of required documents and satisfy themselves about the bona fides of the documents so received.
3. Form FC shall be submitted along with requisite documents to AD bank for obtaining UIN on or before making initial ODI.
4. The AD bank after due verification shall report the details in the OID application for allotment of UIN
5. Any remittance towards a foreign entity shall be facilitated by the AD bank only after obtaining the necessary UIN for such entity.
6. The allotment of UIN does not constitute an approval from the Reserve Bank for the investment made/to be made in the foreign entity.
7. The issue of UIN only signifies taking on record of the investment for maintaining the database.

MANNER OF MAKING ODI

The ODI may be made or held by way of:

- Subscription as part of memorandum of association or purchase of equity capital, listed or unlisted;
- acquisition through bidding or tender procedure;
- acquisition of equity capital by way of rights issue or allotment of bonus shares;
- capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or regulations made or directions issued thereunder;
- the swap of securities;
- merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

ODI in Financial Services Activity

An Indian entity engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, subject to the following conditions, namely

- The Indian entity has posted net profits during the preceding three financial years;
- The Indian entity is registered with or regulated by a financial services regulator in India;
- The Indian entity has obtained approval as may be required from the regulators of such financial services activity, both in India and the host country or host jurisdiction, as the case may be, for engaging in such financial services.

LIMIT FOR FINANCIAL COMMITMENT

The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

- Utilisation of the amount raised by the issue of American Depository Receipts or Global Depository Receipts and stock-swap of such receipts; and
- Utilisation of the proceeds from External Commercial Borrowings to the extent the corresponding pledge or creation of charge on assets to raise such borrowings has not already been reckoned towards the above limit

ODI BY REGISTERED TRUST OR SOCIETY

Any person being a registered Trust or a registered Society engaged in the educational sector or which has set up hospitals in India may make ODI in a foreign entity with the prior approval of the Reserve Bank, subject to the following conditions, namely

- The foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in;
- The Trust or the Society, as the case may be, should have been in existence for at least three financial years before the year in which such investment is being made;
- The trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society shall permit the proposed ODI;
- Such investment have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;
- In case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission has been obtained and submitted to the designated AD bank.

OVERSEAS INVESTMENT IN IFSC BY PERSON RESIDENT IN INDIA

Subject to the provisions of the Foreign Exchange Management (Overseas Investment) Rules, 2022 and the Foreign Exchange Management (Overseas Investment) Regulations, 2022, a person resident in India may make Overseas Investment in an IFSC in India.

Provided that

- In the case of an ODI made in an IFSC, the approval by the financial services regulator concerned, wherever applicable, shall be decided within forty-five days from the date of application complete in all respects failing which it shall be deemed to be approved;
- An Indian entity not engaged in financial services activity in India, making ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, who does not meet the net profit condition as required under Overseas Investment Rules, may make ODI in an IFSC;
- A person resident in India may make contribution to an investment fund or vehicle set up in an IFSC as OPI;
- A resident individual may make ODI in a foreign entity, including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or step down subsidiary outside IFSC where the resident individual has control in the foreign entity.

Reporting

A person resident in India who has made ODI or making financial commitment or undertaking disinvestment in a foreign entity shall report the following, namely:

- Financial commitment, whether it is reckoned towards the financial commitment limit or not, at the time of sending outward remittance or making a financial commitment, whichever is earlier;
- Disinvestment within thirty days of receipt of disinvestment proceeds;
- Restructuring within thirty days from the date of such restructuring.

A person resident in India other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment within sixty days from the end of the half-year in which such investment or transfer is made as of September or March-end.

Restrictions and Prohibitions

Unless otherwise provided in the FEMA or these ODI Rules, no person resident in India shall make ODI in a foreign entity engaged in

- Real estate activity;
- Gambling in any form; and
- Dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case may be, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

No PRI shall make financial commitment in foreign entity beyond 2 layers of subsidiaries. It may be noted that such restriction shall not apply to the following classes of companies mentioned in Rule 2(2) of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time, namely:

- A banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;
- A non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank and considered as systematically important non banking financial company by the Reserve Bank;
- An insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999; and
- A Government company referred to in clause (45) of section 2 of the Companies Act, 2013.

RESTRICTION ON ACQUISITION OR TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA

1. A person resident in India shall not acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank. However, following property excluded—
 - (a) held by a person resident in India who is a national of a foreign State;
 - (b) acquired by a person resident in India on or before the 8th day of July, 1947 and continued to be held by such person with the permission of the Reserve Bank;
 - (c) acquired by a person resident in India on a lease not exceeding five years.
2. A person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition. Further, a person resident in India may acquire immovable property outside India from a person resident outside India—
 - (a) by way of inheritance;
 - (b) by way of purchase out of foreign exchange held in RFC account;

- (c) by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank. Provided that such remittances under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme;
 - (d) jointly with a relative who is a person resident outside India;
 - (e) out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act.
3. An Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the directions issued by the Reserve Bank from time to time.
4. A person resident in India who has acquired any immovable property outside India in accordance with the foreign exchange provisions in force at the time of such acquisition may
 - (a) transfer such property by way of gift to a person resident in India who is eligible to acquire such property under these rules or by way of sale;
 - (b) create a charge on such property in accordance with the Act or the rules or regulations made thereunder or directions issued by the Reserve Bank from time to time.
5. The holding of any investment in immovable property or transfer thereof in any manner shall not be permitted if the initial investment in immovable property was not permitted under the Foreign Exchange Management Act.

What is ECB?

External commercial borrowing (ECBs) are loans in India made by non-resident lenders in foreign currency to Indian borrowers. They are used widely in India to facilitate access to foreign money by Indian corporations and PSUs (public sector undertakings).

Parameters	Foreign Currency denominated ECB:	Indian Rupee denominated ECB
Currency of Borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
Forms of ECB	<p>Loans including bank loans; floating/fixed rate notes/bonds/debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; Foreign Currency Convertible Bonds; Foreign Currency Exchangeable Bonds and Financial Lease.</p> <p>It may be noted that Foreign Currency Convertible Bonds (FCCBs) refers to foreign currency denominated instruments which are issued in accordance with the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993, as amended from time to time. Issuance of FCCBs shall also conform to other applicable regulations. Further, FCCBs should be without any warrants attached.</p> <p>Further, Foreign Currency Exchangeable Bonds (FCEBs) refers to foreign currency denominated instruments which are issued in accordance with the Issue of Foreign Currency Exchangeable Bonds Scheme, 2008, as amended from time to time. FCEBs are exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. Issuance of FCEBs shall also conform to other applicable regulations.</p>	<p>Loans including bank loans; floating/fixed rate notes/bonds/debentures/preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease.</p> <p>Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per host country regulations.</p>

Eligible borrowers	<p>All entities eligible to receive Foreign Direct Investment (FDI). Further, the following entities are also eligible to raise ECB:</p> <ol style="list-style-type: none"> Port Trusts; Units in SEZ; SIDBI; and EXIM Bank of India. 	<ol style="list-style-type: none"> All entities eligible to raise Foreign Currency ECB; and Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non- Government Organisations.
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“Recognised Lenders The lender should be resident of Financial Action Task Force (FATF) or International Organisation of Securities Commission’s IOSCO compliant country, including on transfer of ECB. However, Regional Financial Institutions where India is a member country will also be considered as recognised lenders;

Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and Foreign branches/subsidiaries of Indian banks are permitted as recognised lenders.

Foreign Currency ECB (except FCCBs and FCEBs). Foreign branches/subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.

MINIMUM AVERAGE MATURITY PERIOD (MAMP)

Category	Minimum Average Maturity Period (MAMP)
(a) ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year
(b) ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans. It may be noted that: <ol style="list-style-type: none"> ECB cannot be raised from foreign branches/subsidiaries of Indian banks. the prescribed MAMP will have to be strictly complied with under all circumstances. 	5 year

(c) ECB raised for <ol style="list-style-type: none"> Working capital purposes or general corporate purposes. on-lending by NBFCs for working capital purposes or general corporate purposes. It may be noted that: <ol style="list-style-type: none"> ECB cannot be raised from foreign branches/subsidiaries of Indian banks. the prescribed MAMP will have to be strictly complied with under all circumstances. 	10 year
(d) ECB raised for <ol style="list-style-type: none"> repayment of Rupee loans availed domestically for capital expenditure. on-lending by NBFCs for the same purpose. It may be noted that: <ol style="list-style-type: none"> ECB cannot be raised from foreign branches/subsidiaries of Indian banks. the prescribed MAMP will have to be strictly complied with under all circumstances. 	7 year
(e) ECB raised for <ol style="list-style-type: none"> repayment of Rupee loans availed domestically for purposes other than capital expenditure. on-lending by NBFCs for the same purpose. 	10 year
It may be noted that for the categories mentioned at (B) to (E) <ol style="list-style-type: none"> ECB cannot be raised from foreign branches/subsidiaries of Indian banks. the prescribed MAMP will have to be strictly complied with under all circumstances. 	

End-uses (Negative List)

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- Real estate activities.
- Investment in capital market.
- Equity investment.

Working capital purposes, except ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and except ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by Non-Banking Financial Companies (NBFCs) for working capital purposes or general corporate purposes.

General corporate purposes, except in case of ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and except ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes.

Repayment of Rupee loans, except in case of ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose and except ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose.

On-lending to entities for the above activities, except in case of ECB raised by NBFCs for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes and (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose and except ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose.

Exchange rate	Change of currency of Foreign Currency ECB into Indian Rupee ECB can be at the exchange rate prevailing on the date of the agreement for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender
Limit and Leverage	All eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route. Further, in case of Foreign Currency denominated ECB raised from a direct foreign equity holder, ECB liability- equity ratio for ECB raised under the automatic route cannot exceed 7:1.
Issuance of guarantee, etc. by Indian banks and Financial Institutions	Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted.
Parking of ECB proceeds	ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below: Parking of ECB proceeds abroad: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilization. Till utilization, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

S.No.	Activities
1.	All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework.
2.	For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals.
3.	ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank.
4.	The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee.
5.	Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.

REPORTING REQUIREMENTS

Loan Registration Number (LRN):	Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051. Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.
Changes in terms and conditions of ECB:	Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the Department of Statistics and Information Management through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.
Monthly Reporting of actual transactions:	The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach Department of Statistics and Information Management within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.
Late Submission Fee (LSF) for delay in reporting:	Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of prescribed late submission fees.
Standard Operating Procedure (SOP) for Untraceable Entities:	The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

The followings actions are to be undertaken in respect of 'untraceable entities':

File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;

No fresh ECB application by the entity should be examined/processed by the AD bank;

Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and

No inward remittance or debt servicing will be permitted under auto route.

CONVERSION OF ECB INTO EQUITY

Conversion of ECB, including matured but unpaid ones, into equity is permitted subject to the following conditions:

- The activity of the borrowing company is covered under the automatic route for Foreign Direct Investment or Government approval is received, wherever applicable.
- The conversion, which should be with the lender's consent and without additional cost;
- Applicable pricing guidelines for shares are complied with;
- In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be done for the converted portion in FC-GPR.
- If the borrower concerned has availed of other credit facilities from the Indian banking system RBI Guidelines are complied with;
- Consent of other lenders, if any, to the same borrower is available, or at least information regarding conversions is exchanged with other lenders of the borrower;
- For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender.

ECB Facility for Oil Marketing Companies

Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging and individual limit requirements. ECB facility for Startups.

AD Category-I banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

Eligibility:	An entity recognised as a Startup by the Central Government as on date of raising ECB.
Maturity:	Minimum average maturity period will be 3 years.

Recognised lender:	Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.
Forms:	The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.
Currency:	The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non-resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.
Amount:	The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

All-in-cost:	Shall be mutually agreed between the borrower and the lender.
End uses:	For any expenditure in connection with the business of the borrower.
Conversion into equity:	Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.
Security:	The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a non-resident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.

Hedging:	The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis. Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.
Conversion rate:	In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement
Other Provisions:	Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework.

FTP 2023 is a flexible and responsive policy focused on:

- ❖ **Trust & partnership** with exporters
- ❖ **Ease of doing business** through **process automation**
- ❖ Promoting **e-commerce exports, SCOMET items, and merchanting trade**
- ❖ Encouraging new **Towns of Export Excellence** and **Status Holder exporters**
- ❖ Launching **Amnesty Scheme** to settle old pending export obligations
- ❖ Based on 4 pillars:
 1. Incentive to Remission
 2. Export promotion through collaboration
 3. Ease of doing business & e-initiatives
 4. Focus on Emerging Areas (E-commerce, DEH, SCOMET)



HIGHLIGHTS OF FTP 2023

1. Process Re-engineering & Automation

- ♦ Online, paperless systems with risk-based approval.
- ♦ Advance Authorization & EPCG schemes continue with tech upgrades.
- ♦ Reduced fees – easier access for MSMEs.

2. Towns of Export Excellence (TEE)

- ♦ 4 new towns added: Faridabad, Mirzapur, Moradabad, Varanasi.
- ♦ Access to MAI funds & CSP benefits under EPCG.

3. Recognition of Exporters

- ♦ Status holders (2-star & above) to train others.
- ♦ Easier norms for 4 & 5-star rating → better branding.

4. Districts as Export Hubs (DEH)

- ♦ Export action plans at district level.
- ♦ State & District Committees to promote local exports.

5. SCOMET Policy

- ♦ Stronger export control system.
- ♦ Easier export of high-tech dual-use goods.

6. E-Commerce Exports

- ♦ Export cap via courier raised: ₹5L → ₹10L.
- ♦ Plans for e-commerce hubs & ICEGATE integration.
- ♦ Training artisans & MSMEs for online selling.

7. EPCG Scheme

- ♦ PM MITRA scheme eligible for EPCG CSP.
- ♦ Dairy sector exempt from Average EO.
- ♦ Green tech items (like BEVs) get reduced EO.



8. Advance Authorization Scheme

- ♦ Special scheme for Apparel sector – self-declaration basis.
- ♦ Self-Ratification extended to 2-star status holders.

9. Merchanting Trade

- ♦ Allowed for restricted/prohibited goods (not SCOMET/CITES).
- ♦ India to become a hub like Dubai/Singapore.

10. Amnesty Scheme

- ♦ One-time relief for exporters defaulting EO under EPCG/AA.
- ♦ Pay pending duties + capped interest (no interest on Addl. Duty).

LEGAL FRAMEWORK & TRADE FACILITATION – FTP 2023

1. Legal Basis

- ♦ FTP 2023 is notified under **Section 5** of **Foreign Trade (Development & Regulation) Act, 1992**.

2. Duration

- ♦ **Effective from 1st April 2023** and continues until amended/changed.

3. Amendments

- ♦ Central Govt. can **amend FTP** using **Section 3 & 5** of FT(D&R) Act in public interest.

4. Hand Book of Procedures (HBP)

- ♦ DGFT can notify HBP, Appendices & **Aayat Niryat Forms (ANFs)** through Public Notice.

5. Importer Definition

- ♦ Person who imports/intends to import & **holds IEC**, unless exempted.

6. Specific vs General Provisions

- ♦ **Specific provision** in FTP/HBP will **prevail over general** provisions.

7. Transitional Arrangements

- ♦ Benefits issued **before FTP 2023** remain valid unless otherwise stated.
- ♦ Item-wise import/export governed by **ITC (HS) Schedule I & II**.
- ♦ Date of import/export = Date of **Shipping Bill/Bill of Lading** (as per HBP Para 2.17).
- ♦ Changes in policy (Free → Restricted) apply **prospectively**.
- ♦ **High Sea Sales** not eligible for exemption.
- ♦ **ICLC-based imports/exports** allowed for pending commitment if registered within 15 days of restriction.

8. Key Terms

- ♦ **“Free”**: No authorisation needed.
- ♦ **ITC (HS)**: Indian Trade Classification – Harmonized System (8-digit code).
- ♦ **“Authorisation”**: Legal permission to import/export.

Trade Facilitation & Ease of Doing Business

1. NCTF (National Committee on Trade Facilitation)

- ♦ Formed after India **ratified WTO's TFA in April 2016**.

- ♦ An **inter-ministerial body** to coordinate and implement TFA provisions.

2. Four Pillars of FTP

- ♦ **Transparency**: Easy access to **accurate info** for all stakeholders.
- ♦ **Technology**: Use of **digital tools** & detection tech to remove trade bottlenecks.
- ♦ **Simplification & Risk-based Assessments**: Uniform procedures with **risk-based approach**.
- ♦ **Infrastructure Upgradation**: Better **road, rail, port, airport, ICDs, Land Customs** infra to support trade.

3. National Trade Facilitation Action Plan – Goals

- ♦ **Improve Ease of Doing Business**
- ♦ **Reduce transaction cost & cargo release time**
- ♦ Move towards a **paperless system**
- ♦ Create a **transparent & predictable legal environment**
- ♦ Boost **investment climate** with strong infrastructure

4. DGFT's Role

- ♦ Acts as a **facilitator** of exports/imports.
- ♦ Focus on **transparency, efficiency & accountability**.
- ♦ Regular consultation with **Export Promotion Councils & Trade bodies**.
- ♦ **Free Passage of Export Consignments**
- ♦ Export consignments **should not be delayed** by Govt. agencies.
- ♦ If in doubt, **undertaking** can be taken from exporter and consignment released.

5. No Seizure of Export Stock

- ♦ Stock **should not be seized** to avoid disruption in export schedule.
- ♦ If seized (exceptional cases), it must be **released within 7 days** unless irregularities are proved.

6. Export of Perishable Products

- ♦ **Single Window** system through **APEDA** to reduce cost & ease export of perishables.

7. Niryat Bandhu Scheme

- ♦ Handholding for **new exporters** through training, mentoring & outreach.
- ♦ Includes **Districts as Export Hubs** initiative.

8. DGFT Online Services

- ♦ **All info** (Acts, Rules, Policies) at: <https://dgft.gov.in>

9. e-IEC (Importer Exporter Code)

- ♦ Issued **electronically** via DGFT website.

10. e-RCMC / RC Platform

- ♦ Common **online platform** for RCMC/RC issuance, renewal, amendment.

11. e-Certificate of Origin (e-CoO)

- ♦ Digital CoO issued online via: <https://coo.dgft.gov.in>
- ♦ Includes **QR Code & UDIN** for authentication.

12. Electronic Monitoring of Export Proceeds

- ♦ **e-BRC**: Tracks export payments electronically via banks.

- ♦ **EDPMS (RBI)**: Monitors export data and integrates with DGFT portal.

13. Online QCTD Portal

- ♦ Platform for handling **Quality Control & Trade Disputes** online.

14. IT Initiatives

- ♦ Promotes **paperless, contactless, transparent** trade environment.
- ♦ Details in Para 1.04 of HBP.

15. Trade Data & Statistics

- ♦ Available at:
 - https://commerce.gov.in
 - https://tradestat.commerce.gov.in
 - http://www.dgciskol.gov.in
 - https://niryat.gov.in

Trade Facilitation at Customs

- ♦ DGFT works as a **facilitator** for smooth exports/imports through **transparent, efficient, and accountable systems**.
- ♦ **Export consignments** should not be delayed; if needed, an **undertaking** can be taken.
- ♦ **No seizure of export stock** unless serious irregularities found—must be released in **7 days** if not proven.
- ♦ **Single window** system via **APEDA** for **perishable Agri products** (Appendix 1C).
- ♦ **Niryat Bandhu Scheme** – Mentoring new exporters via training, outreach & “Districts as Export Hubs.”
- ♦ **DGFT Portal** (https://dgft.gov.in) – All export-import info, policies, and procedures available online.
- ♦ **e-IEC** – Importer Exporter Code issued online via DGFT website.
- ♦ **e-RCMC / RC** – Online process for registration with export councils.
- ♦ **e-CoO** – Online Certificate of Origin with **UDIN & QR Code**.
- ♦ **QCTD Portal** – Online platform to resolve quality/trade disputes.
- ♦ **e-BRC & EDPMS** – Digital tracking of export proceeds via banks/RBI.
- ♦ **Trade Data** – Available at **commerce.gov.in, dgciskol.gov.in, niryat.gov.in**.
- ♦ **IT Initiatives** – Focus on **paperless, faceless, contactless** customs.

CBIC Trade Facilitation

- ♦ **24x7 customs clearance** at major ports and airports.
- ♦ **Single Window, e-Sanchit, Faceless e-Assessment, TURANT Customs** – for paperless & fast clearance.
- ♦ **e-Docs like e-LEO SB, e-Gatepass** issued digitally.
- ♦ **ICE-DASH Dashboard** – Tracks ease of doing business.
- ♦ **DPD/DPE** – Direct port delivery/entry reduces delays.
- ♦ **Compliance Info Portal** – Regulatory info in one place.
- ♦ **Simplified duty concession imports** for specific goods.

AEO (Authorised Economic Operator) Programme

- ♦ Recognizes **compliant and secure traders** with fast-track customs clearance.
- ♦ Offers benefits like **faster clearance, reduced checks, MRA with US, S. Korea, etc.**
- ♦ Includes **MSMEs** under its benefits.

Towns of Export Excellence (TEE)

- ♦ Recognizes towns with export > ₹750 Cr (₹150 Cr for Agri/handicrafts).
- ♦ Benefits include **financial aid under MAI scheme & EPCG authorisation** for common service providers.
- ♦ List in **Appendix 1B**.

Duty-Free Entitlements

- ♦ **Marine sector**: Import up to **1% of FOB** export value.
- ♦ **Sports goods & toys**: Import up to **3% of FOB** export value.
- ♦ Duty exemption applies to **basic customs duty only**.

Status Holder Certification

- ♦ Recognizes **top exporters** as leaders to promote international trade.
- ♦ Based on **export performance** in last **3 years** (2 for gems & jewellery).
- ♦ Must have **IEC** and performance in **freely convertible foreign currency or INR**.
- ♦ For deemed exports, conversion to USD as per CBIC rate (1st April).

Status Holder Categories (FOB Value in US\$ Million)

- ♦ One Star Export House – 3
- ♦ Two Star Export House – 15
- ♦ Three Star Export House – 50
- ♦ Four Star Export House – 200
- ♦ Five Star Export House – 800

Double Weightage (Only for One Star)

Double weightage is allowed for:

- ♦ Micro & Small Enterprises (as per MSMED Act)
- ♦ ISO/BIS certified manufacturing units
- ♦ Units in NE States, Sikkim, J&K, Ladakh
- ♦ Export of fruits & vegetables (Chapter 7 & 8 of ITC HS)
- ♦ *A shipment can get double weightage only once.*

Other Conditions

- ♦ Export performance of one IEC can't be used by another.
- ♦ Export under Authorisation (incl. SCOMET) allowed.
- ♦ Re-export not counted.

Privileges of Status Holders

- ♦ Self-declaration for import/export clearance
- ♦ Priority fixation of Input-Output norms
- ♦ No Bank Guarantee (unless specified)
- ♦ No compulsory document negotiation through banks
- ♦ Two Star & above can set up Export Warehouses
- ♦ Priority in consignment handling
- ♦ 3*/4*/5* Manufacturer exporters can **self-certify origin** under FTAs, PTAs etc.
- ♦ Export freely exportable items (excluding Gold/Jewellery) on **FOC basis** up to:
 - ♦ ₹1 Cr or 2% of average exports (whichever is less)
 - ♦ For pharma to UN/WHO etc.: up to **8% of average export realization** (*No drawback or export incentives on FOC exports*)

Meaning of Manufacturer & Manufacturer Exporter

- ♦ **Manufacturer**: Anyone who makes or processes goods (includes repacking, labelling, testing etc., and Agri/fishery/mining too)
- ♦ **Manufacturer Exporter**: Exports goods manufactured by self
- ♦ **Skilling & Mentorship Obligations (Status Holders as Partners)**

To boost international trade skills, **Status Holders** must **mentor/train** as follows:

Status Holder	Minimum Trainees
Two Star	5
Three Star	10
Four Star	20
Five Star	50

- ♦ **Model training program** (6 weeks minimum) to be published as a guide.
- ♦ **Training details** (eligibility, curriculum, selection) – decided by Status Holder.
- ♦ **Other Provisions**
- ♦ **Inter-Ministerial Committee for MSME Grievances**
 - ♦ A dedicated committee to examine **MSME trade-related policy issues**.
 - ♦ Ensures faster resolution via **Whole of Government** approach.
- ♦ **Citizen's Charter (DGFT)**
 - ♦ DGFT provides **time-bound service delivery** via its Citizen's Charter.
 - ♦ Refer **Chapter 11 of HBP** for timelines of application disposal.
- ♦ **General Provisions for Imports & Exports**
 - Import/Export is Free** unless:
 - ♦ **Prohibited** (Not allowed)
 - ♦ **Restricted** (Allowed with DGFT authorisation)
 - ♦ **STE** (Only through State Trading Enterprises)
 - Some “Free” items may still need to follow rules under other laws.
 - ITC (HS)**:
 - ♦ A coding system used to classify goods for import/export.
 - ♦ Based on 2/4/6/8-digit codes.
 - ♦ Follows international system (WCO) till 6 digits, India uses 8-digit system.
 - ♦ **Schedule I** → Import Policy
 - ♦ **Schedule II** → Export Policy
 - Import Policy is generally for **new goods**, rules for **second-hand goods** are in **Para 2.31 of FTP**.
- ♦ **Imports Must Follow Indian Laws**
 - ♦ Imported goods must follow **Indian rules & standards** (like safety, health, environment), same as domestic goods.
 - ♦ DGFT may **exempt** standards for inputs used to make export goods.
- ♦ **Importer Exporter Code (IEC)**
 - ♦ IEC = **10-digit alpha-numeric code**, needed for any import/export.
 - ♦ IEC = **PAN number**, issued by **DGFT online**.
 - ♦ IEC must be **updated every year (Apr–June)**, else will be **deactivated**.
 - ♦ IEC is **mandatory** unless exempt (see Para 2.07 HBP).
 - ♦ System may flag IECs for **scrutiny** if issues found.
- ♦ **Mandatory Documents**
 - ♦ **For Exports**:
 - Bill of Lading / Airway Bill / Lorry Receipt / Rail Receipt / Postal Receipt
 - Commercial Invoice cum Packing List
 - Shipping Bill / Bill of Export / Postal Bill of Export
 - ♦ **For Imports**:
 - Bill of Lading / Airway Bill / etc.
 - Commercial Invoice cum Packing List
 - Bill of Entry
- ♦ More documents may be needed for restricted goods or special cases.

- ◆ **Principles of Restrictions (DGFT)**

DGFT can restrict trade for reasons like:

- ❖ Food/essential goods shortage
- ❖ Standards and quality regulations
- ❖ Financial safety of the country
- ❖ National security (arms, war materials, fissionable materials)
- ❖ Public morals, safety, health
- ❖ Conservation of natural resources
- ❖ Protection of domestic industry
- ❖ Compliance with law (e.g., IPR)
- ❖ UN obligations for peace & security

- ❖ **Export/Import of Restricted Goods/Services**

- ◆ Restricted goods/services can be exported/imported **only with Authorisation** or as per Notification/Public Notice.

- ❖ **Actual User Condition**

- ◆ Freely importable goods can be imported by **any person**.
- ◆ If goods require Authorisation → **only Actual User** can import, unless DGFT allows otherwise.

- ❖ **Actual User** = Person who uses goods in their own premises (with postal address)

- ◆ **Actual User (Industrial):** Uses imported goods in their **own factory** or **jobbing unit**
- ◆ **Actual User (Non-Industrial):** Uses goods in business place, lab, R&D, hospital, school, etc.

- ❖ **Jobbing** = Processing of raw/semi-finished goods to complete or finish manufacturing.

- ❖ **Terms in Authorisation**

Authorisation may include:

- ◆ Description, quantity & value of goods
- ◆ Actual User condition
- ◆ Export obligation
- ◆ Minimum value addition
- ◆ Export/import price limits
- ◆ Bank guarantee/undertaking/bond
- ◆ Validity period (as per Handbook of Procedures)

- ❖ **Application Fee**

- ◆ Pay fee online (as per Appendix 2K) for:
 - ◆ IEC, Authorisation, License, Scrips, Registration
- ◆ **Fee is non-refundable** except in special cases (as per Appendix 2K)

- ❖ **Customs Clearance Against Authorisation**

- ◆ Goods **already arrived but not cleared** can be cleared if Authorisation is obtained later.
- ◆ First, **warehouse** the goods → then clear for home use after getting Authorisation.
- ◆ Not allowed for **Restricted goods** or **STEs** unless DGFT specifically permits.

- ❖ **Authorisation is Not a Right**

- ◆ No one can demand Authorisation as a right.
- ◆ DGFT/RA can **refuse or deny** issue/renewal as per law/FTP.

PENAL ACTION & DENIED ENTITY LIST (DEL)

- ❖ **When can penal action be taken?**

- ❖ If Authorisation holder:
 - ◆ Violates any condition
 - ◆ Fails to fulfill Export Obligation
 - ◆ Doesn't pay dues as per demand notice (DGFT/Dept. of Revenue)

- ❖ **Self-Certification**

Applicants must **fill details carefully**.

If info is false = **penal action** under:

- ◆ FT (D&R) Act, 1992
- ◆ Other applicable laws

- ❖ **Denied Entity List (DEL)**

RA can place a firm on DEL (Rule 7, Foreign Trade (Regulation) Rules, 1993)

If on DEL:

- ◆ Licences/Authorisations/Scrips **cannot be issued or renewed**

Order must record **reasons in writing**

- ❖ **Abeyance of DEL**

DEL order can be put **on hold for max 60 days** at a time (reasons to be recorded)

- ❖ **Removal from DEL**

Possible if firm:

- ◆ Completes Export Obligation
- ◆ Pays penalties
- ◆ Complies with demand notice
- ◆ Submits required documents

❖ **Export Obligation** = Must export goods (as per authorisation) in specified quantity, value or both

- ❖ **Firms Under NCLT**

Must inform RA & NCLT about:

- ◆ Any **outstanding Export Obligations**
- ◆ **Duty saved**, interest & penalties = count as **dues to Government**

TRADE PROHIBITIONS

- Arms Trade with Iraq**

- ◆ **Prohibited** import/export of arms to/from Iraq
- ◆ Allowed only to **Govt. of Iraq** with **NOC from Department of Defence Production**

- Trade with ISIL, ANF, Al-Qaida groups**

- ◆ As per **UNSC Resolution 2199 (2015)**
- ◆ **Banned Items:**
 - ◆ Oil/refined oil
 - ◆ Modular refineries
 - ◆ Cultural, scientific, religious items
- ◆ Applies to groups associated with **Al-Qaida**

- Trade with North Korea (DPRK)**

- ◆ Direct/Indirect **Import/Export Prohibited**
- ◆ Detailed in **Appendix I** of FTP

- Trade with Iran**

Only allowed **if compliant** with:

- ◆ UNSC Res. 2231 (2015)
- ◆ IAEA docs:

- ◆ INFCIRC/254/Rev.14/Part1
- ◆ INFCIRC/254/Rev.11/Part2
- ◆ S/2015/546

◆ Refer to UNSC Website and IAEA Website

- Charcoal Import from Somalia**

- ◆ Fully **prohibited** as per **UNSC Res. 2036 (2012)**
- ◆ Importer must declare to Customs:
- ◆ Not from Somalia

Denied Entity List (DEL) & Penal Action

- ❖ Violation of Authorisation conditions or non-fulfilment of export obligations can lead to penal action under FT (D&R) Act.
- ❖ False info under self-certification → Legal action.
- ❖ DGFT can place firms in DEL (no new Authorisations allowed).
- ❖ DEL can be **put in abeyance** for max 60 days at a time.
- ❖ Removal from DEL if obligations are fulfilled/penalty paid.

NCLT Proceedings

- ❖ Companies before NCLT must inform RA & NCLT about export obligations; unpaid dues are treated as Govt dues.

Trade Prohibitions

- ❖ **Iraq:** Import/export of arms & related items = **Prohibited** (except with NOC for Govt of Iraq).
- ❖ **ISIL/ANF/Al-Qaida:** No trade in oil, antiques, etc. as per UNSC Res. 2199.
- ❖ **DPRK (North Korea):** All imports/exports (direct/indirect) = Prohibited.
- ❖ **Iran:** Allowed *only for specific items* as per UNSC Res. 2231.
- ❖ **Somalia:** Import of charcoal = **Prohibited**.

IMPORT/EXPORT THROUGH STATE TRADING ENTERPRISES

State Trading Enterprises (STEs)

- ❖ Govt/Non-govt bodies with exclusive rights to trade certain goods.
- ❖ Must trade fairly, on commercial terms.
- ❖ DGFT can authorize others to trade such items too.
- ❖ List of STEs in **Appendix 2J**.

TRADE WITH SPECIFIC COUNTRIES

- ❖ DGFT may issue special rules for neighbouring countries or Russia (under Debt Repayment Agreement).
- ❖ **Transit of goods** allowed as per bilateral agreements.

IMPORT OF SPECIFIC GOODS

- ❖ **Samples:** Allowed (except for restricted/defence items).
- ❖ **Gifts:** Prohibited (except life-saving drugs & Rakhi).
- ❖ **Passenger Baggage:** Allowed as per Baggage Rules (no restricted/prohibited items without Authorisation).
- ❖ **Re-import of repaired goods:** Allowed without Authorisation.
- ❖ **Projects Abroad:** Used goods (min. 1 year) can be imported back without Authorisation.
- ❖ **Prototypes:** New/2nd-hand prototypes allowed with duty for R&D upon self-declaration.

IMPORT POLICY FOR SECOND-HAND GOODS

Sl. No.	Category of Second-Hand Goods	Import Policy	Conditions (if any)
I(a)	<ul style="list-style-type: none"> Desktop Computers Refurbished/re-conditioned spares of PCs/Laptops Air Conditioners Diesel Generating Sets 	Restricted	Importable against Authorisation
I(b)	Electronics & IT Goods under Electronics & IT Goods (Compulsory Registration) Order, 2012	Restricted / Prohibited	(i) Importable against Authorisation & compliance with CRO, 2012 (ii) Import of unregistered / non-compliant products is Prohibited
I(c)	Refurbished / Re-conditioned spares of Capital Goods	Free	Subject to Chartered Engineer Certificate confirming 80% residual life
I(d)	All other second-hand capital goods (not covered above)	Free	—
II	Second-hand goods other than capital goods	Restricted	Importable against Authorisation
III	Second-hand goods for repair / refurbishing / reconditioning / re-engineering	Free	(i) Waste must be treated as per domestic norms (ii) Goods must be re-exported as per Customs Notification

Import Policy for Metallic Waste and Scrap – Key Points

- ❖ **Import allowed** only if scrap **does not contain** hazardous, toxic, or radioactive waste, arms, ammunition, explosives, etc.
- ❖ Types and procedure for importing **shredded/un-shredded/compressed/loose** metallic scrap are given in Para 2.51 of Handbook of Procedures.
- ❖ **Scrap/waste from SEZ units** can be sold in DTA **without Authorisation**, but **Customs Duty must be paid**.
- ❖ **Developer** includes any private/government entity approved by the Central Government to develop SEZ infrastructure.

Other Provisions related to Imports

- ❖ **Import under lease financing** of capital goods: No permission from DGFT is needed.
- ❖ **LUT/BG/Bond** must be submitted to Customs (or DGFT in case of local sourcing) for duty-free imports or as specified.
- ❖ **Bonded Warehouses (Private/Public)** in DTA can store imported goods (except prohibited, arms, hazardous waste). Duty is paid at clearance.
- ❖ **Hides, skins, semi-finished leather** can be imported in bonded warehouses for DTA sale. Unsold goods may be re-exported after paying export duty.
- ❖ **Sale on High Seas** allowed as per FTP/laws.
- ❖ **Merchanting Trade** (between two foreign countries via Indian intermediary) is allowed except for **CITES/SCOMET** items, as per RBI rules.
- ❖ **SCOMET** refers to sensitive dual-use items that require export authorisation.

EXPORTS

- ❖ **Free Exports:** All goods can be exported freely unless restricted by ITC(HS), FTP, or any other law. DGFT may allow export of goods (not in ITC(HS)) via Public Notice without Authorisation.
- ❖ **Supporting Manufacturer Benefits:**
 - ♦ Both **merchant exporter** and **supporting manufacturer** must be mentioned in documents like Tax Invoice, Shipping Bill, etc., to claim benefits.
 - ♦ Supporting Manufacturer: Makes goods/components for a merchant/manufacturer exporter.
 - ♦ For **EPCG**, the Capital Goods must be installed at supporting manufacturer's premises.
- ❖ **Third-Party Exports:**
 - ♦ Allowed under FTP (except deemed exports).
 - ♦ Shipping bill must show both the **manufacturer exporter** and **third-party exporter**.
 - ♦ BRC/e-BRC, Export Order & Invoice must be in the name of third-party exporter.

EXPORTS OF SPECIFIC CATEGORIES

- ❖ **Export of Samples:**
 - ♦ Trade and technical samples of freely exportable items can be exported without any limit.
 - ♦ Export procedure governed by **Para 2.63** of Handbook of Procedures.
- ❖ **Export of Gifts:**
 - ♦ Gifts (goods of value not exceeding Rs. 5,00,000/- per licensing year) may be exported freely, but restricted items in ITC (HS) require Authorisation.
 - ♦ **Licensing Year:** 1st April to 31st March of the following year.
- ❖ **Export of Passenger Baggage:**
 - ♦ Personal baggage may be exported with or without the passenger within one year, but restricted items need Authorisation.
 - ♦ Government officials can carry food items (restricted or prohibited) for personal use when posted abroad.
 - ♦ **Samples of freely exportable items** can be exported as part of baggage without Authorisation.
- ❖ **Goods Import for Export:**
 - ♦ Items imported as per FTP can be exported in same/substantially same form **without Authorisation** if not in restricted list.
 - ♦ Import under **Customs Bond** allowed if:
 - ♦ Goods are freely exportable (not restricted/prohibited/STE).
 - ♦ Export is against freely convertible currency.
 - ♦ **Capital goods** can also be imported for export with **LUT/BG**.
- ❖ **Re-export of Imported Goods:**
 - ♦ Allowed if:
 0. Not of Indian origin.
 1. Stored in **bonded warehouse**.
 2. Not cleared for home use.
 3. Subject to **Section 69 of Customs Act**.
- ❖ **Currency Condition:**
 - ♦ Goods imported in foreign currency must be re-exported in foreign currency (unless notified).
 - ♦ Export to **Iran** allowed in INR with **15% value addition**.
 - ♦ No value addition needed for food/medicine/medical items (except eggs & rice).
- ❖ **No Export Incentive** for such re-exports.

Special Cases

- ❖ **Replacement Goods:**
 - ♦ Defective exports can be replaced free of charge.
 - ♦ Replacement must not be restricted or in SCOMET list.
 - ♦ If restricted, **Authorisation required**.
- ❖ **Repaired Goods:**
 - ♦ Defective exports can be imported, repaired & re-exported without Authorisation.
 - ♦ Benefits/incentives must be **returned**.
 - ♦ Import Authorisation needed if item is restricted.
- ❖ **Export of Spares:**
 - ♦ Warranty spares can be exported with main product or during warranty period (RBI approval needed).
 - ♦ "Spares" = part/sub-assembly/assembly for substitution that is ready to replace an identical or similar part or sub-assembly or assembly.
- ❖ **Re-export of Unsuitable Imports:**
 - ♦ Defective/unsuitable imported goods can be re-exported as per **Customs Act**.
- ❖ **Private Bonded Warehouses (for Export):**
 - ♦ Can be set up in DTA.
 - ♦ Allowed to procure goods from domestic market for export-related manufacturing under **Section 65 of Customs Act**.

EXPORT PAYMENT RULES

- ❖ **Currency of Contracts:**
 - ♦ Export contracts/invoices can be in **freely convertible currency** or **INR**,
 - ♦ But export proceeds must be **realized in freely convertible currency**, *except* in certain cases.
- ❖ **Realisation in INR Permitted:**
 - ♦ INR receipts allowed through **freely convertible Vostro A/c** of non-resident banks (not in ACU/Nepal/Bhutan).
 - ♦ Buyer must pay in **free foreign currency** to his bank, which credits INR in Vostro A/c.
 - ♦ This is treated as **valid export realization** under FTP schemes.
- ❖ **ACU Transactions:**
 - ♦ Contracts under **Asian Clearing Union (ACU)** to be in **ACU Dollar/Euro** (as per RBI).
 - ♦ Central Govt. can relax rules if needed.
- ❖ **Exports in INR via Special Vostro Account** (as per RBI Circular dated 11 July 2022):
 - ♦ **Importers** pay INR → credited to Special Vostro A/c of foreign bank.
 - ♦ **Exporters** receive INR from that A/c.

EXPORT INCENTIVES ON INR REALISATION

- ❖ INR receipts for **exports to Iran** or under **para 2.52(d)(ii)** are **eligible for benefits/incentives** under FTP – same as foreign currency.

NON-REALISATION OF EXPORT PROCEEDS

- ❖ If export proceeds are **not realized within RBI time**, exporter must **return all benefits/incentives** and may face legal action under FT (D&R) Act and FTP.
- ❖ If **non-realization is due to force majeure**, exporter can approach **RBI for write-off** (Para 2.72 of HBP).
- ❖ **Insurance payout** for export losses is considered as **realized payment**, eligible for FTP benefits (Para 2.71 of HBP).

Supreme Court Judgment – Incentives Not a Right

- ❖ DGFT/Union has the **right to change FTP policies/incentives** anytime.
- ❖ **Incentives are not a legal right** of exporter; **promissory estoppel** does not apply to policy changes.
- ❖ Incentives depend on **actual exports made**, not on order date.

EXPORT CREDIT AGENCIES (ECAS)

- ❖ **ECGC** and **Exim Bank** are ECAs that help exporters by:
 - ♦ Providing **credit insurance**,
 - ♦ **Guarantees**,
 - ♦ And **loans for MLT exports**.
- ❖ **ECGC covers** risks like:
 - ♦ Buyer's **default or insolvency**,
 - ♦ **Political risks** (e.g. war, import ban, law change after shipment).
- ❖ **Project Exports** include:
 - ♦ Civil construction,
 - ♦ Turnkey projects,
 - ♦ Capital goods on deferred payment,
 - ♦ Consultancy services.

EXPORT PROMOTION COUNCILS (EPCS)

- ❖ **Role:** Promote and develop Indian exports.
- ❖ **Responsibility:** Each EPC is assigned a particular product/project/service group.
- ❖ **Recognition as Registering Authority:**
 - ♦ EPCs can be recognized under **Para 2.78 of HBP** to issue **RCMC** to their members.
- ❖ **Registration-Cum-Membership Certificate (RCMC)**
 - ♦ **Requirement:** Needed for:
 - ♦ Applying for Authorization to import/export under FTP (except 'Restricted' items).
 - ♦ Availing FTP benefits or concessions.
- ❖ **Exceptions:**
 - ♦ **Spices Board's** Certificate (CRES) and **Coir Board's** Certificate are accepted in place of RCMC.
- ❖ **Definition of Terms**
 - ♦ **Competent Authority:** Any authority authorized under the Act, Rules, FTP, or HBP.
 - ♦ **RCMC:** Certificate of registration and membership from EPC/Commodity Board/Development Authority.
- ❖ **Interpretation of Policy**
 - ♦ **Final Authority:** DGFT's decision is binding in:
 - ♦ Interpretation of FTP, HBP, Appendices, ANFs, and classification of goods.
 - ♦ **Policy Interpretation Committee (PIC):**
 - ♦ **Chairman:** DGFT
 - ♦ **Members:**
 - ❖ All Additional DGFTs at HQ
 - ❖ All Joint DGFTs (Policy matters)
 - ❖ Joint DGFT (PRC/PIC): Member Secretary
 - ❖ Others as co-opted
- ❖ **Exemption from Policy/Procedures**
 - ♦ **By DGFT:** In public interest, due to genuine hardship or trade impact.
 - ♦ **Conditions:** May be imposed by DGFT post consultation with relevant committees.
- ❖ **Committee-wise Jurisdiction Table**

Sl. No.	Description	Committee
1.	Fixation/modification of product norms under all schemes	Norms Committees
2.	Nexus with Capital Goods (CG) and benefits under EPCG Schemes	EPCG Committee
3.	All other issues	Policy Relaxation Committee (PRC)

Foreign Trade Policy (FTP) 2023 is a policy document which is based on continuity of time-tested schemes facilitating exports as well as a document which is nimble and responsive to the requirements of trade. It is based on principles of 'trust' and 'partnership' with exporters.

Streamlining SCOMET Policy	Stands for Special Chemicals, Organisms, Materials, Equipment and Technologies
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Facilitation under Export Promotion of Capital Goods (EPCG) Scheme

The EPCG Scheme, which allows import of capital goods at zero Customs duty for export production, is being further rationalized. Some key changes being added are:

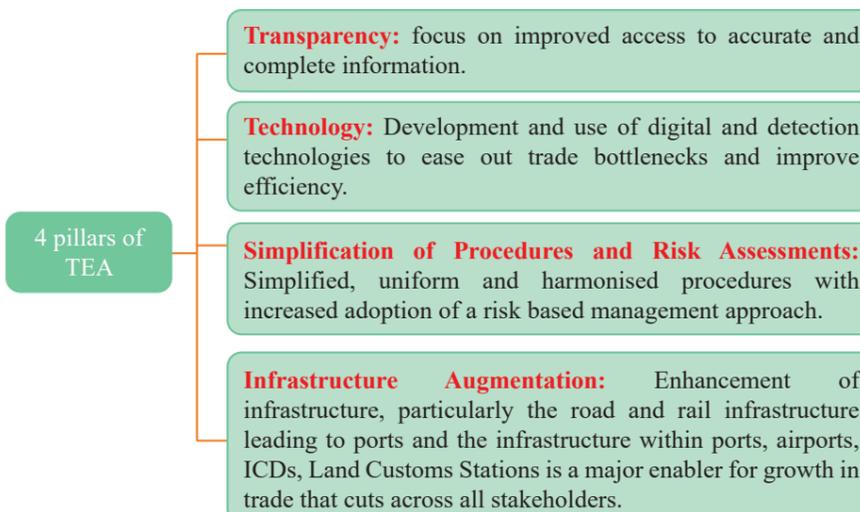
Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) scheme has been added under Export Promotion capital Goods Scheme (EPCG).

Dairy sector to be exempted from maintaining Average Export Obligation – to support dairy sector to upgrade the technology.

Battery Electric Vehicles (BEV) of all types, Vertical Farming equipment, Wastewater Treatment and Recycling, Rainwater harvesting system and Rainwater Filters, and Green Hydrogen are added to Green Technology products – will now be eligible for reduced Export Obligation requirement under EPCG Scheme.

LEGAL FRAMEWORK AND TRADE FACILITATION TRADE FACILITATION AND EASE OF DOING BUSINESS

National Committee on Trade Facilitation (NCTF)



National Trade Facilitation Action Plan aims to Achieve

Improvement in Ease of Doing Business through reduction in transaction cost and time

Reduction in cargo release time

A paperless regulatory environment

A transparent and predictable legal regime

Improved investment climate through better infrastructure

Export of perishable agricultural Products	To reduce transaction and handling costs, a single window system to facilitate export of perishable agricultural produce is being facilitated through Agricultural and Processed Food Products Export Development Authority (APEDA).
--	--

Electronic Record of Export Proceeds Through EBRC & EDPMS

e-BRC (Electronic Bank Realization Certificate) has enabled DGFT to capture details of realization of export proceeds directly from the Banks through secured electronic mode, without any physical interface with the stake holders.

RBI has developed a Export Data Processing and Monitoring System (EDPMS) for monitoring of export of goods and software and facilitating

Trade Facilitation at Customs

CBIC has undertaken a number of initiatives to facilitate Trade. Some of these are as follows:

i.	24 × 7 Customs clearance in 20 sea ports and 17 Airports and extended clearance in ICDs as per the needs of the Trade.
ii.	Single Window in Customs
iii.	E-Sanchit – Enabling Paperless clearance environment
iv.	Pan-India Implementation of Faceless e-Assessment in imports.
v.	TURANT Customs
vi.	Implementation of electronic messages from Document Clearance to Cargo Movement
vii.	Paperless Customs initiatives –Preparation and issuance of electronic documents like e-LEO SB, e-Gatepass/e-OOC etc.,
viii.	Contactless customs initiatives such as Turant Savidha Kendras (TKSs).
ix.	Release of ICE-DASH–Indian Customs EoDB Monitoring Dashboard
x.	Direct Port Delivery (DPD) on imports and Direct Port Entry (DPE) on exports
xi.	Compliance Information Portal (CIP)
xii.	End to End automated and simplified procedure for Import of certain specified Goods at Concessional Rate of Duty or for specified end use.

Authorised Economic Operator (AEO) Programme

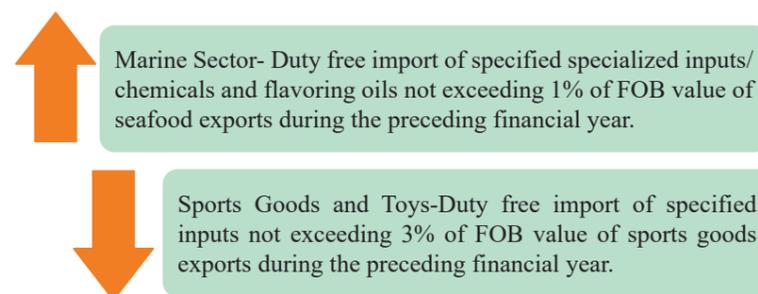
a.	Based upon WCO's SAFE Framework of Standards, Authorised Economic Operator (AEO) programme' has been developed by Indian Customs to enable business involved in the international trade to reap.
b.	The AEO programmes give AEO status holders preferential Customs treatment in terms of reduced examination, faster clearances and other benefits (to business including MSMEs)
	Indian Customs has signed MRA with South Korea, Taiwan, Hong Kong and US Customs to recognize respective AEO Programmes to enable trade to get benefits on reciprocal basis.

Towns of Export Excellence (TEE)

a.	A number of towns have emerged as dynamic industrial clusters contributing handsomely to India's exports.
b.	Selected towns producing goods of Rs. 750 Crore or more may be notified as TEE based on potential for growth in exports. However, for TEE in Handloom, Handicraft, Agriculture and Fisheries sector, the threshold limit would be Rs.150 Crore.

Four new towns, namely Faridabad, Mirzapur, Moradabad, and Varanasi, have been designated as Towns of Export Excellence (TEE). The TEEs will have priority access to export promotion funds under the MAI scheme and will be able to avail Common Service Provider (CSP) benefits.

Duty Free Entitlement to Selected Sectors



Status Holder Certification

- The objective behind certifying certain exporter firms as "Status Holder" is to recognize such exporter firms as business leaders who have excelled in international trade and have successfully contributed to country's foreign trade.
- All exporters of goods, services and technology having an import-export code (IEC) number, on the date of application, shall be eligible for recognition as a status holder based on export performance.
- For deemed export, FOR value of exports in Indian Rupees shall be converted in USD
- For granting status, an export performance would be necessary in all the three preceding financial years (and in all the two preceding financial years for Gems & Jewelry Sector).

Status Category	Export Performance Threshold In USD Million
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200ht
Five Star Export House	800

Key Highlights of Ftp 2023	
Process Re-Engineering and Automation	Greater faith is being reposed on exporters through automated IT systems with risk management system for various approvals in the new FTP. Considering the effectiveness of some of the ongoing schemes like Advance Authorisation under FTP 2015-20, they will be continued along with substantial process re-engineering and technology enablement for facilitating the exporters. FTP 2023 codifies implementation mechanisms in a paperless, online environment, building on earlier 'ease of doing business' initiatives. Reduction in fee structures and IT-based schemes will make it easier for MSMEs and others to access export benefits.
Towns of Export Excellence	Four new towns, namely Faridabad, Mirzapur, Moradabad, and Varanasi, have been designated as Towns of Export Excellence (TEE) in addition to the existing 39 towns. The TEEs will have priority access to export promotion funds.
Recognition of Exporters	Status recognition norms have been re-calibrated to enable more exporting firms to achieve 4 and 5-star ratings, leading to better branding opportunities in export markets.
Promoting Exports from district	The FTP aims at building partnerships with State governments and taking forward the Districts as Export Hubs (DEH) initiative to promote exports at the district level and accelerate the development of grassroots trade ecosystem. Efforts to identify export worthy products & services and resolve concerns at the district level will be made through an institutional mechanism – State Export Promotion Committee and District Export Promotion Committee at the State and District level, respectively. District specific export action plans to be prepared for each district outlining the district specific strategy to promote export of identified products and services.
Merchanting trade	To develop India into a merchanting trade hub, the FTP 2023 has introduced provisions for merchanting trade. Merchanting trade of restricted and prohibited items under export policy would now be possible. Merchanting trade involves shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This will be subject to compliance with RBI guidelines, and won't be applicable for goods/items classified in the CITES(The Convention on International Trade in Endangered species of wild Fauna and Flora) and SCOMET list. In course of time, this will allow Indian entrepreneurs to convert certain places like GIFT city etc. into major merchanting hubs as seen in places like Dubai, Singapore and Hong Kong.

Important Points

- DGFT has a commitment to function as a facilitator of exports and imports.
- Consignments of items meant for exports shall not be withheld/ delayed for any reason by any agency of Central/ State Government. In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment.
- No seizure shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock. However, such seizure should be lifted within 7 days unless the irregularities are substantiated.
- Importer Exporter Code (IEC) is mandatory for export/ import from/to India, DGFT issues Importer Exporter Code in electronic form (e-IEC)

Authorised Economic Operator (Aeo) Programme	
1.	Authorised Economic Operator (AEO) programme' has been developed by Indian Customs to enable business involved in the international trade to reap the following benefits: <ol style="list-style-type: none"> Secure supply chain from point of export to import, Ability to demonstrate compliance with security standards when contracting to supply overseas importers /exporters Enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries; Minimal disruption to flow of cargo after a security related disruption; Reduction in dwell time and related costs; and Customs advice/assistance if trade faces unexpected issues with Customs of countries with which India have MRA.
2.	The AEO programmes give AEO status holders preferential Customs treatment in terms of reduced examination, faster clearances and other benefits (to business including MSMEs)
	Indian Customs has signed MRA with South Korea, Taiwan, Hong Kong and US Customs to recognize respective AEO Programmes to enable trade to get benefits on reciprocal basis.

Privileges of Status Holders

- Companies can obtain authorization and customs clearances for both imports and exports through self-declaration.
- The Norms Committee will prioritize setting input-output norms within 60 days. DGFT will notify a special scheme for input-output norms for specified status holders.
- Bank Guarantee is not required for schemes under FTP unless specified otherwise in FTP or HBP.
- While compulsory negotiation of documents through banks is exempted, remittances and receipts must still go through banking channels.
- Export houses with a rating of two stars and above can establish Export Warehouses following Department of Revenue guidelines.
- Status holders are entitled to preferential treatment and priority handling of their consignments by relevant agencies.
- Status holders can freely export items (excluding Gems, Jewellery, Articles of Gold, and precious metals) for export promotion up to an annual limit of either Rs. One Crore or 2% of the average annual export realization in the past three years, whichever is lower. For pharmaceutical companies exporting pharma products, the limit is 2% of the average annual export realization in the preceding three years. If supplying pharmaceutical products to international health programs, the limit is up to 8% of the average annual export realization in the past three years.

GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports.

It may be noted that-

"Restricted" is a term indicating the import or export policy of an item, which can be imported into the country or exported outside, only after obtaining an Authorisation from the offices of DGFT.

Mandatory Documents for Export/Import of Goods from/into INDIA

1.	Mandatory documents required for export of goods from India: (i) Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt (ii) Commercial Invoice cum Packing List* (iii) Shipping Bill/Bill of Export/ Postal Bill of Export
2.	Mandatory documents required for import of goods into India (i) Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt in form CN-22 or CN 23 as the case may be. (ii) Commercial Invoice cum Packing List (iii) Bill of Entry

EXPORT/IMPORT OF RESTRICTED GOODS/SERVICES

Any goods /service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the Procedures prescribed in a Notification / Public Notice issued in this regard.

Actual user Condition

Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, Actual User alone may import such good(s) unless Actual User condition is specifically dispensed with by DGFT.

It may be noted that –

"Actual User" is a person (either natural & legal) who is authorized to use imported goods in

his/ its own premise which has a definitive postal address.

- "Actual User (Industrial)" is a person (either natural & legal) who utilizes imported goods for manufacturing in his own industrial unit or manufacturing for his own use in another unit including a jobbing unit which has a definitive postal address.
- Actual User (Non-Industrial)" is a person (either natural & legal) who utilizes the imported goods for his own use in
 - any commercial establishment, carrying on any business, trade or profession, which has a definitive postal address, or
 - any laboratory, Scientific or Research and Development(R&D) institution, university or other educational institution or hospital which has a definitive postal address, or
 - Any service industry which has a definitive postal address.

Application Fee

- Application for IEC/Authorisation/License/ Registration must be accompanied by application fees as indicated in the Appendix 2K of Appendices and Aayat Niryat Forms.
- The fee once received will not be refunded except in certain circumstances.

AUTHORISATION - NOT A RIGHT

No person can claim an Authorisation as a right and DGFT or RA shall have power to refuse to grant or renew the same.

Penal Action and Placing of an Entity in Denied Entity List (Del)

- If an Authorisation holder violates any condition of such Authorisation or fails to fulfil export obligation or fails to deposit the requisite amount within the period specified in demand notice issued by Department of Revenue and /or DGFT, he shall be liable for action.
- With a view to raising ethical standards and for ease of doing business, DGFT has provided for self- certification system under various schemes. In such cases, applicants shall undertake self certification with sufficient care and caution in filling up information/ particulars. Any information/particulars subsequently found untrue/ incorrect will be liable for action.
- A firm may be placed under Denied Entity List (DEL), on issuance of such an order, for reasons to be recorded in writing, a firm may be refused grant or renewal of a licence, authorisation, certificate or any instrument bestowing financial or fiscal benefits. If a firm is placed under DEL, all new licences, authorisations, scrips, certificates, instruments etc. will be blocked from printing/ issue/renewal.

It may be noted that:

"Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

Prohibitions on Trade

Prohibition on Import and Export of 'Arms and related material' from / to Iraq	The import/export of Arms and related material from/to Iraq is 'Prohibited'. However, export of Arms and related material to Government of Iraq shall be permitted subject to NOC.
Prohibition on Import of Charcoal from Somalia	Direct or indirect import of charcoal is prohibited from Somalia, irrespective of whether or not such charcoal has originated in Somalia.

IMPORT POLICY FOR SECOND HAND GOODS

Second Hand Goods Sl. No.	Categories of Second-Hand Goods	Import Policy	Conditions, if any
I. Second Hand Capital Goods			
I(a)	❖ Desktop ❖ Computers ❖ Air ❖ Conditioners	Restricted	Importable against Authorisation
I(b)	All electronics and IT Goods	Restricted	Importable against Authorisation
I(c)	Refurbished / reconditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare

I(d)	All other second-hand capital goods {other than (a) (b) & (c) above}	Free	
II	Second Hand Goods other than capital goods	Restricted	Importable against Authorisation
III	Second Hand Goods imported for the purpose of repair/refurbishing	Free	

Exemption from Policy/Procedures

DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any Procedures. While granting such exemption, DGFT may impose such conditions as he may deem fit after consulting the Committees as under

Sl. No.	Description	Committee
1.	Fixation/modification of product norms under all schemes	Norms Committees
2.	Nexus with Capital Goods (CG) and benefits under EPCG Schemes	EPCG Committee
3.	All other issues	Policy Relaxation Committee (PRC)

PERSONAL HEARING BY DGFT FOR GRIEVANCE REDRESSAL

- Government is committed to easy and speedy redressal of grievances from Trade and Industry. If an importer/exporter is aggrieved by any decision taken by Policy Relaxation Committee (PRC), or a decision/order by any authority in the Directorate General of Foreign Trade, a specific request for Personal Hearing (PH) along with the prescribed application fee has to be made to DGFT. DGFT may consider request for relaxation after consulting concerned Norms Committee, EPCG Committee or Policy Relaxation Committee (PRC) and the decision conveyed in pursuance to the personal hearing shall be final and binding.

SELF-CERTIFICATION OF ORIGINATING GOODS

Approved Exporter Scheme for Self-Certification of Certificate of Origin

- Currently, Certificates of Origin are issued by designated agencies. A new optional system of self-certification is being introduced with a view to reducing transaction cost.
- The Manufacturers who are also Status Holders shall be eligible for Approved Exporter Scheme. Approved Exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment. Self-certification will be permitted only for the goods that are manufactured as per the Industrial Entrepreneurs Memorandum (IEM) / Industrial License (IL) /Letter of Intent (LOI) issued to manufacturers.
- Status Holders will be recognized by DGFT as Approved Exporters for self-certification based on availability of required infrastructure, capacity and trained manpower.
- The details of the Scheme, along with the penalty provisions, are provided in Appendix 2F of Appendices and Aayaat Niryat Forms.

Grant of Double Weightage

- a. Double Weightage shall be available for grant of One Star Export House Status category only. The exports by IEC holders under the following categories shall be granted double weightage for calculation of export performance for grant of status:
- Micro and Small Enterprises as defined in Micro, Small & Medium Enterprises Development (MSMED) Act, 2006.
 - Manufacturing units having ISO/BIS Certification.
 - Units located in North Eastern States including Sikkim, and Union Territories of Jammu, Kashmir and Ladakh.

Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder.

Other Conditions for Grant of Status

Export of items under Authorization, including SCOMET items, would be included for calculation on of export performance.

Exports made on re-export basis shall not be counted for recognition.

Privileges of Status Holders

A Status Holder shall be eligible for privileges as under:

- Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;
- Input-Output norms may be fixed on priority within 60 days by the Norms Committee; Special scheme in respect of Input Output for specified status holder
- Exemption from furnishing of Bank Guarantee for Schemes under FTP
- Exemption from compulsory negotiation of documents through banks. Remittance / receipts, however, would be received through banking channels;
- Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.
- The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Skilling and Mentorship Obligations

- (a) To improve the trade ecosystem by enhancing the available skilling opportunities, Status Holders are being made “partners” in providing mentoring and training in international trade. Status Holders will endeavor to provide skill upgradation/ training in international trade as detailed below:

Status	Number of Trainees per year
Two Star Export House	5
Three Star Export House	10
Four Star Export House	20
Five Star Export House	20

- (b) A model training program of a minimum duration of 6 weeks would be put up in public domain for guidance.

Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports

ITC(HS) is a compilation of codes for all merchandise / goods for export/ import. Goods are classified based on their group or sub-group at 2/4/6/8 digits.

ITC(HS) is aligned at 6-digit level with international Harmonized System goods nomenclature maintained by World Customs Organization (<http://www.wcoomd.org>). However, India maintains national Harmonized System of goods at 8-digit level.

Importer-Exporter Code (IEC)

An IEC is a 10-character alpha-numeric number allotted to an entity (firm/company/LLP etc.) and is mandatory for undertaking any export/import activities. IEC shall be same as Permanent Account Number (PAN) and shall be separately issued by DGFT based on an online application.

- No export or import of goods shall be made by any person without obtaining an IEC unless specifically exempted. For export of services or technology, IEC shall be necessary on the date of rendering services for availing benefits under the Foreign Trade Policy.
- An IEC holder has to ensure that details in its IEC is updated electronically every year, during the April- June period. In cases where there are no changes in IEC details same also needs to be confirmed online. If not updated on time, it will be deactivated.
- An IEC may also be flagged for scrutiny. IEC holder(s) are required to ensure that any risks flagged by the system are timely addressed; failing which the IEC shall be de-activated

Principles of Restrictions

DGFT may, through a Notification, impose ‘Prohibition’ or ‘Restriction’:

- On export of foodstuffs or other essential products for preventing or relieving critical shortages;
- On imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
- On imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes;
- On import to safeguard country’s external financial position and to ensure a level of reserves;
- On imports to promote establishment of a particular industry;
- For preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury;
- For protection of public morals or to maintain public order;
- For protection of human, animal or plant life or health;
- Relating to the importations or exportations of gold or silver;
- Necessary to secure compliance with laws and regulations including those relating to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
- Relating to the products of prison labour;
- For the protection of national treasures of artistic, historic or archaeological value;

- For the conservation of exhaustible natural resources;
- For ensuring essential quantities for the domestic processing industry;
- Essential to the acquisition or distribution of products in general or local short supply;
- For the protection of country’s essential security interests
 - Relating to fissionable materials or the materials from which they are derived;
 - Relating to the traffic in arms, ammunition and implements of war;
 - Taken in time of war or other emergency in international relations; or

Terms and Conditions of an Authorisation

Every Authorisation shall, inter alia, include either all or some of the following terms and conditions (as applicable in terms of the para under which the Authorisation has been issued), in addition to such other conditions as may be specified:

- Description, quantity and value of goods;
- Actual User condition
- Export Obligation;
- Minimum Value addition to be achieved;
- Minimum export/import price;
- Bank guarantee/ Legal undertaking / Bond with Customs Authority/RA
- Validity period of import/export

IMPORT/EXPORT THROUGH STATE TRADING ENTERPRISES

State Trading Enterprises (STEs)

State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and / or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS).

Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

IMPORT OF SPECIFIC CATEGORIES OF GOODS

Import of Gifts

Import of goods, including those purchased from e-commerce portals, through post or courier, where Customs clearance is sought as gifts, is prohibited except for life saving drugs/ medicines and Rakhi (but not gifts related to Rakhi).

Import through Passenger Baggage

- Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules.
- Samples of such items that are otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorization subject to Baggage Rules.
- Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage, without an authorization subject to value limit under FTP or Customs notification(s).
- Any item(s) including Samples or Prototypes of items whose import policy is "restricted" or "prohibited" or is canalised through STEs are not permitted as part of passenger baggage unless authorized by DGFT.

Re-import of Goods Repaired Abroad

Capital goods, equipment, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorisation.

Import of goods used in projects abroad	Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.
Import of Prototypes	Import of new / second hand prototypes / second hand samples may be allowed on payment of duty without an Authorisation to an Actual User (industrial) engaged in production upon a self-declaration to that effect, to the satisfaction of Customs authorities.

IMPORT POLICY FOR METALLIC WASTE AND SCRAPS

Import of Metallic Waste and Scrap

Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material.

Removal of Scrap/Waste from SEZ

A SEZ unit/Developer/ Co-developer may be allowed to dispose of in DTA any waste or scrap, including any form of metallic waste and scrap, generated during manufacturing or processing activity, without an Authorisation, on payment of applicable Customs Duty.

Execution of Legal Undertaking (LUT) / Bank Guarantee (BG)

Wherever any duty-free import is allowed or where otherwise specifically stated, importer shall execute, Legal Undertaking (LUT) / Bank Guarantee (BG) / Bond with the Customs Authority before clearance of goods.

In case of indigenous sourcing, Authorisation holder shall furnish LUT/BG/Bond to the RA concerned before sourcing material from indigenous supplier/ nominated agency.

EXPORTS

Free Exports

All goods may be exported without any restriction except to the extent that such exports are regulated by ITC(HS) or any other provision of FTP or any other law for the time being in force..

Benefits for Supporting Manufacturers

For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the merchant exporter must figure in the concerned export documents, especially in Tax Invoice / Shipping Bill / Bill of Export/ Airway Bill.

It may be noted that "Merchant Exporter" means a person engaged in trading activity and exporting or in tending to export goods.

Third Party Exports

In such cases, export documents such as shipping bill shall indicate the name of both manufacturing exporter/manufacturer and third-party exporter(s). E-Bank Realization Certificate (e-BRC) or export Realizations from RBI's EDPMS wherever available in DGFT IT Systems, Export Order and Invoice should be in the name of a third-party exporter.

EXPORTS OF SPECIFIC CATEGORIES

Export of Samples

Exports of bonafide trade and technical samples of freely exportable item shall be allowed without any limit.

Export of Gifts

Goods including edible items, of value not exceeding Rs.5, 00,000/- in a licensing year (same as financial year), may be exported as a gift.

Export of Passenger Baggage

Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as restricted in ITC (HS) shall require an Authorisation. Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption.

Samples of such items that are otherwise freely exportable under FTP may also be exported as part of passenger baggage without an Authorisation.

Import for Export

- Goods imported, may be exported in same or substantially the same form without an Authorisation provided that item to be imported or exported is not in the restricted for import or export in ITC(HS) Schedules.
 - Goods, including capital goods (both new and second hand), may be imported for export provided

	<ol style="list-style-type: none"> Importer clears goods under Customs Bond; Goods are freely exportable, i.e., are not "Restricted" or "Prohibited" or subject to "exclusive trading through State Trading Enterprises" or any conditionality or requirement of the Export Policy of the ITC (HS); Export is against freely convertible currency.
	(c) Capital goods, which are freely importable and freely exportable, may be imported for export on execution of LUT/BG with the Customs Authority
II.	(a) Goods imported against payment in freely convertible currency would be permitted for export only against payment in freely convertible currency,
	(b) Export of such goods to the notified countries (presently only Iran) would be permitted against payment in Indian Rupees, subject to minimum 15% value addition.
	(c) However, re-export of food, medicine and medical equipment, will not be subject to minimum value addition requirement for export to Iran.

Export of Repaired Goods	Goods or parts thereof on being exported and found defective, damaged or otherwise unfit for use may be imported for repair and subsequent reexport. Such goods shall be allowed clearance without an Authorisation.
Export of Spares	Warranty spares (whether indigenous or imported) of plant, equipment, machinery, automobiles or any other goods may be exported along with main equipment or subsequently but within contracted warranty period of such goods, subject to approval of RBI.
Re-export of imported Goods found defective and unsuitable for use	Imported goods found defective after Customs clearance, or not found as per specifications or requirements may be re-exported back as per Customs Act, 1962.

Payments and Receipts on Imports/Exports

Denomination of Export Contracts

- All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.
- However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan.
- Contracts (for which payments are received through Asian Clearing Union (ACU) shall be denominated in ACU Dollar or in ACU Euro as per RBI Notifications. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/ Government of India line of credit.

Non-Realisation of Export Proceeds

If an exporter fails to realize export proceeds within time specified by RBI, he shall, without prejudice to any liability or penalty under any law in force, be liable to return all benefits / incentives availed against such exports and action.

In case an Exporter is unable to realize the export proceeds for reasons beyond his control (force majeure), he may approach RBI for writing off the unrealized amount

In the case of **Chowgule & Company Limited (Appellant) vs. Assistant Director General of Foreign Trade**, Hon'ble Supreme Court inter alia observed that DGFT/Union is free to change the Exim Policy and consider from time to time on which items there shall be an incentive and on which items there shall not be any incentive. To grant the benefit of an incentive is a policy decision which may be varied and/or even withdrawn. No exporter can claim the incentive as a matter of right. Under the circumstances, the doctrine of promissory estoppel shall not be applicable to such a policy decision with respect to incentive, more particularly when it is well within the right of DGFT/appropriate authority/Union to come out with a new Exim Policy.

Export Credit Agencies (ECAs)

- a. Export Credit Agencies (ECAs) are policy instruments for Government to support exports. ECAs support exports by insurance, guarantee and also direct lending. Export Credit Agencies (ECAs) like Export Credit Guarantee Corporation of India Ltd. (ECGC) provides credit insurance support to exports and export credit lending. Exim Bank is the other ECA in the business of lending for MLT exports and fronting the government's line of credit.
- b. ECGC indemnifies losses of exporters in export trade due to insolvency or default of the buyer. Further, losses due to political risk like war, sudden import restriction, promulgation of law or decree after the shipment has been affected are also covered

Export Promotion Councils

Recognition of EPCs to function as Registering Authority for issue of RCMC

Export Promotion Councils (EPCs) are organizations of exporters, set up with the objective to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/ projects/services.

EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC) to its members. The criteria for EPCs to be recognized as Registering Authorities for issue of RCMC to its members.

Interpretation of Policy

- (a) The decision of DGFT shall be final and binding on all matters relating to interpretation of Policy, or provision in Handbook of Procedures, Appendices and Aayat Niryat Forms or classification of any item for import / export in the ITC (HS).
- (b) A Policy Interpretation Committee (PIC) may be constituted to aid and advice DGFT. The composition of the PIC would be as follows:
 - (i) **DGFT:** Chairman
 - (ii) **All Additional DGFTs in Headquarters:** Members
 - (iii) **All Joint DGFTs in Headquarters looking after Policy matters:** Members
 - (iv) **Joint DGFT (PRC/PIC):** Member Secretary
 - (v) Any other person / representative of the concerned Ministry / Department, to be co-opted by the Chairman.

DEVELOPING DISTRICTS AS EXPORT HUBS

Each District shall constitute a District Export Promotion Committee (DEPC) chaired by Collector/DM/DC of the District and co-chaired by the designated DGFT Regional Authority with various other stakeholders as its members.

The primary function of the DEPC will be to prepare and implement district specific Export Action Plans in collaboration with all the relevant stakeholders at the Central, State and the District level.

District Export Action Plans for Each District	The District Export Action Plan (DEAP) may be prepared for each district. 2-3 high potential products/services from the districts may be prioritized and a comprehensive plan for their export growth may be prepared.
State/UT Export Promotion Committees	To synergies the efforts of the Department of Commerce/ DGFT and the State/UT governments in promotion of exports from the State, each State shall constitute a State Export Promotion Committee (SEPC).
Export Promotion Activities in Districts	Support in the form of product/sector specific training and development needs of local industries, dissemination of information through outreach activities including buyer- seller meets, trade fairs, workshops etc. may be provided in each District.
Implementation of District Export Action Plans	The District Export Action Plan notified by the District Export Promotion Committee in each District may include clear identification of products (goods and services) with export potential in the District, institutional/other responsibilities, specifics of policy, regulatory and operational reform, and infrastructure/utilities/logistics interventions required across the entire chain from producer/farm to the export destination.

DUTY EXEMPTION / REMISSION SCHEMES

Schemes

1. **Duty Exemption Schemes-** The Duty Exemption schemes consist of the following:
 - Advance Authorisation (AA) (which will include Advance Authorisation for Annual Requirement).
 - Duty Free Import Authorisation (DFIA).
2. **Duty Remission Scheme-** Duty Drawback (DBK) Scheme, administered by Department of Revenue.
3. Scheme for Rebate on State and Central Taxes and Levies (RoSCTL), as notified by the Ministry of Textiles.
4. Schemes for Remission of Duties and Taxes on Exported Products (RoDTEP) notified by Department of Commerce and administered by Department of Revenue.

Advance Authorisation

- (a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed/ utilized in the process of production of export product, may also be allowed.
- (b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:
 - (i) As per Standard Input Output Norms (SION) OR
 - (ii) On the basis of self declaration OR
 - (iii) Applicant-specific prior fixation of norm by the Norms Committee OR

Special Advance Authorisation Scheme for export of Articles of Apparel and Clothing accessories

Duty free import of fabric under 'Special Advance Authorisation Scheme for export of Articles of Apparel and Clothing Accessories' shall be allowed, subject to the following terms and conditions:

- a. The authorisation shall be issued based on Standard Input Output Norms (SION) or prior fixation of norms by Norms Committee.
- b. The authorisation may also be issued on the basis of self-declaration. In such cases, adhoc-norms shall be fixed within stipulated time period of 90 days.
- c. The authorisation shall be issued for the import of relevant fabrics including inter lining only as input. No other input, packing material, fuel, oil and catalyst shall be allowed for import under this authorisation.
- d. Exporters shall be eligible for All Industry Rate of Duty Drawback, for non-fabric inputs, as determined by Central Government for this scheme.
- e. Authorisation, and the fabric imported, shall be subject to actual user condition. The same shall be nontransferable even after completion of export obligation.

Eligible Applicant/Export/Supply

- a. Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- b. Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only.
- c. Advance Authorisation shall be issued for:
 - i. Physical export (including export to SEZ)
 - ii. Intermediate supply; and/or
 - iii. Supply of 'stores' on board of foreign going vessel / aircraft.

Self-Ratification Scheme

- i. Where there is no SION/valid Adhoc Norms for an export product or where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self-declaration and self-ratification basis.
- ii. A Certificate from a Chartered Engineer who has been not been penalised in the last five years under FT(D&R) Act 1992, Customs Act 1962, Central Excise Act 1944, GST Acts.
- iii. An exporter (manufacturer or merchant), who holds AEO Certificate under Common Accreditation Programme of CBEC is eligible to opt for this scheme.
- iv. A status holder who is a manufacturer cum actual user and holds valid 2-star or above status and who has already submitted its application for grant of AEO on CBIC's AEO portal is also eligible to apply for this scheme subject to following conditions:-
 - (a) Status holder submits copy of numbered and dated acknowledgement of its application for grant of AEO.
 - (b) Status holder undertakes to the DGFT that –
 1. Their application for grant of AEO certification has not yet been rejected;
 2. There is no case of infringement of Customs and allied laws against the status holder in the current year and last three FYs.
 3. Status holder has not been issued show cause notice by Customs or GST authorities in the current year and last three FYs.
 4. Status holder has positive net current assets.
 5. There are no insolvency, bankruptcy or liquidation proceedings taken against the status holder in the current year and last three FYs.
- v. The scheme shall not be available for the following export products:
 - (a) All items covered under Chapter-1 to 24 and Chapter-71 of ITC (HS) Classification;
 - (b) Biotechnology items and related products; and

	(c) SCOMET items
vi.	The scheme shall not be available for the following inputs: A. All vegetable / edible oils classified under Chapter-15 and all types of oil seeds B. All types of cereals classified; C. Horn, hoof and any other organ of animal; D. Wild animal products, organs and waste thereof; E. Honey; F. All items with basic customs duty of 30% or more; G. All types of fruits/ nuts/ vegetables H. Acetic Anhydride, Ephedrine and Pseudoephedrine; I. Vitamins; J. Biotechnology items and related products; K. Insecticides, Rodenticides, Fungicides, Herbicides, Anti sprouting products, and plant growth regulators, disinfectants and similar products of all forms, types and grades; L. Waste/Scrap of all types; and M. Second hand goods.
vii.	Wherever value of by-products and recoverable wastage generated during manufacturing process is more than 5% of CIF value, corresponding quantity of main input shall be reduced from the entitlement to the extent that value of disallowed quantity is equal to the value of by-products and recoverable wastage generated during manufacturing process.
viii.	Concerned Norms Committee may initiate special audit, considering the nature and complexity of the case and revenue of government, if he is of the opinion at any stage of scrutiny/enquiry/investigation that the norms have not been claimed correctly or the excess benefit has been availed. Special audit can be conducted even if the manufacturer has already been audited before.
ix.	If the audit results in detection of mis-declaration and/ or instances of claiming of inputs which are not used in manufacturing process or excess quantity of inputs than consumed, demand and recovery actions will be initiated with initiation of action against the authorisation holder, manufacturer and Chartered Engineer in terms of Foreign Trade Development and Regulation Act 1992 and/or Customs Act 1962.

ADVANCE AUTHORISATION FOR ANNUAL REQUIREMENT AND ELIGIBILITY CONDITION

Advance Authorisation for Annual Requirement shall only be issued for items notified in Standard Input Output Norms (SION).

Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement.

Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and / or FOR value of deemed export in preceding financial year or Rs 1 Crore, whichever is higher.

Value Addition

Value Addition for the purpose of this Chapter (except for Gems and Jewellery sector for which value addition shall be:

$$VA = \frac{A-B}{B} \times 100 \text{ where}$$

A = FOB value of export realized/FOR value of supply received.

B = CIF value of inputs covered by Authorisation, plus value of any other input used on which benefit of DBK is claimed or intended to be claimed.

Minimum Value Addition

- Minimum value addition required to be achieved under Advance Authorisation is 15%.
- Export Products where value addition could be less than 15%.
- In case of Tea, minimum value addition shall be 50%.
- In case of spices, minimum value addition shall be 25%.

Ineligible Categories of Import on Self-Declaration Basis

a.	Import of following products shall not be permissible on self-declaration basis: i. All vegetable/edible oils ii. All types of cereals iii. All Spices other than light black pepper (light berries) having a basic customs duty of more than 30%, iv. All types of fruits/ vegetables having a basic customs duty of more than 30%, under v. Horn, Hoof and any other organ of animal; vi. Honey; vii. Rough Marble Blocks/Slabs; viii. Rough Granite; ix. Vitamins except for use in pharmaceutical industry; and x. All items with a basic custom duty of more than 30%.
b.	For export of perfumes, perfumery compounds and various feed ingredients containing vitamins, no Authorisation shall be issued by Regional Authority
c.	Where export and/or import of biotechnology items and related products are involved, Authorisation shall be issued by Regional Authority only on submission of a "No Objection Certificate" from Department of Biotechnology.

Details of Duties Exempted

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti- dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty.

Actual user Condition for Advance Authorisation

- i. Advance Authorisation and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.
- ii. In case where CENVAT/input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer).
- iii. Waste / Scrap arising out of the manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

Importability/Exportability of Items that are Prohibited/Restricted/STE

- No export or import of an item shall be allowed under Advance Authorisation / DFIA if the item is prohibited for exports or imports respectively.
- Items reserved for imports by STEs cannot be imported against Advance Authorisation / DFIA. However, those items can be procured from STEs against ARO or Invalidation letter. STEs are also allowed to sell goods on High Sea Sale basis to holders of Advance Authorisation / DFIA holder.
- Items reserved for export/import by STE can be exported under Advance Authorisation / DFIA only after obtaining a 'No Objection Certificate' from the concerned STE.

Free of Cost Supply by Foreign Buyer

Advance Authorisation shall also be available where some or all inputs are supplied free of cost to exporter by foreign buyer. In such cases, notional value of free of cost input shall be added in the CIF value of import and FOB value of export for the purpose of computation of value addition.

Domestic Sourcing of Inputs

- i. Holder of an Advance Authorisation / Duty Free Import Authorisation can procure inputs from indigenous supplier/ State Trading Enterprise/EOU/EHTP/BTP/ STP in lieu of direct import. Such procurement can be against Advance Release Order (ARO), or Invalidation Letter.
- ii. When domestic supplier intends to obtain duty free material for inputs through Advance Authorisation for supplying resultant product to another Advance Authorisation / DFIA /EPCG Authorisation, Regional Authority shall issue Invalidation Letter.
- iii. Regional Authority shall issue Advance Release Order if the domestic supplier intends to seek refund of duties exempted through Deemed Exports mechanism as per provisions under Chapter-7 of FTP.
- iv. Regional Authority may issue Advance Release Order or Invalidation Letter at the time of issue of Authorisation simultaneously or subsequently.
- v. Advance Authorisation holder under DTA can procure inputs from / SEZ units against Certificate of supply till EDI message system between SEZ and Customs is enabled.
- vi. Validity of Advance Release Order/Invalidation Letter shall be co- terminous with validity of Authorisation.

Currency for Realisation of Export Proceeds

Export proceeds shall be realized in freely convertible currency or in Indian Rupees.

Export to SEZ Units shall be taken into account for discharge of export obligation provided payment is realised from Foreign Currency Account of the SEZ unit.

Export to SEZ Developers / Co-developers can also be taken into account for discharge of export obligation even if payment is realised in Indian Rupees.

Authorisation holder needs to file Bill of Export for export to SEZ unit/ developer / co-developer in accordance with the procedures given in SEZ Rules, 2006

DUTY FREE IMPORT AUTHORISATION SCHEME (DFIA)

DFIA Scheme

1. Duty Free Import Authorisation is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed/ utilised in the process of production of export product, may also be allowed.
2. Import of Tyre under DFIA scheme is not allowed.

Duties Exempted

Duty Free Import Authorisation shall be exempted only from payment of Basic Customs Duty (BCD).

Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

Eligibility

Duty Free Import Authorisation shall be issued on post export basis for products as per SION.

Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Bill of Export / Tax Invoice for export prescribed under the GST rules.

Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation.

No Duty Free Import Authorisation shall be issued for an input which is subjected to pre-import condition or where SION prescribes 'Actual User' condition or prescribes pre import condition for such an input.

Minimum Value Addition

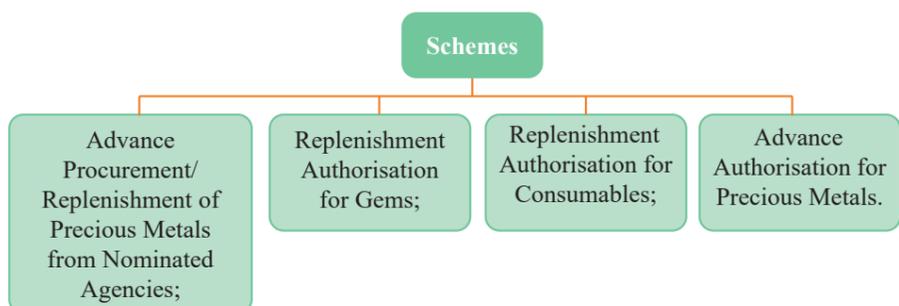
Minimum value addition of 20% shall be required to be achieved.

SCHEMES FOR EXPORTERS OF GEMS AND JEWELLERY

Items of Export

- (i) "Gold jewellery, including partly processed jewellery, and articles including medallions and coins (excluding legal tender coins), whether plain or studded, containing gold of 8 carats and above up to a maximum limit of 22 carats.
Gold religious idols (only gods and goddess) of 8 carats and above (up to 24 carats) subject to the following conditions:

	a. Exports would be subject to 100% examination by the Approved Government Valuer.
	b. Foreign remittance has to be realized within a period of 3 months from the date of export.
	c. Exporters must submit confirmed export order before effecting export.
	d. Distinction must be made between a religious idol and simply moulded gold article/idol.
	e. Exports may be allowed only be actual manufactures of such idols. The findings like posts, push backs, locks which help in collating the jewellery pieces together, containing gold of 3 carats and above up to a maximum limit of 22 carats.
(ii)	Silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% silver by weight;
(iii)	Platinum jewellery including partly processed jewellery and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% platinum by weight.



Advance Procurement/Replenishment of Precious Metals from Nominated Agencies

Exporter of gold/silver/platinum jewellery and articles thereof including mountings and findings may obtain gold/ silver/platinum as an input for export product from Nominated Agency, in advance or as replenishment after export

Replenishment Authorisation for Gems

Exporter may obtain Replenishment Authorisation for Gems from Regional Authority. Replenishment Authorisation for Gems shall be freely transferable.

In the case of studded gold/silver/platinum jewellery and articles thereof, the value of Gem Replenishment Authorisation shall be on the remaining FOB value of exports after deducting the value of gold/silver/platinum including admissible wastage.

Advance Authorisation for Precious Metals

1. Advance Authorisation shall be granted on pre-import basis with 'Actual User' condition for duty free (excluding Integrated Tax and Compensation Cess leviable Customs Tariff Act for import of:
 - a. Gold of fineness not less than 0.995 and mountings, sockets, frames and findings of 8 carats and above;

	b. Silver of fineness not less than 0.995 and mountings, sockets, frames and findings containing more than 50% silver by weight;
	c. Platinum of fineness not less than 0.900 and mountings, sockets, frames and findings containing more than 50% platinum by weight.
2.	Advance Authorisation Scheme is not available where the item of export is 'Gold Medallions and Coins' or 'Gold jewellery/articles manufactured by fully mechanized process'

Value Addition

Minimum Value Addition norms for gems and jewellery sector are given in paragraph 4.60 of Handbook of Procedures. It would be calculated as under:

$$VA = \frac{A - B}{B} \times 100$$

A = FOB value of the export realised/ FOR value of supply received.

B = Value of inputs (including domestically procured) such as gold/silver/platinum content in export product plus admissible wastage along with value of other items such as gemstone etc. Wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplier.

Nominated Agencies

- i. Exporters may obtain gold / silver / platinum from Nominated Agency. Exporter in EOU and units in SEZ.
- ii. Reserve Bank of India can authorize any bank as Nominated Agency.
- iii. A bank authorised by Reserve Bank of India is allowed export of gold scrap for refining and import standard gold bars as per Reserve Bank of India guidelines.

Import of Diamonds for Certification/Grading & Re-export

Following agencies are permitted to import diamonds to their laboratories without any import duty, for the purpose of certification/grading reports, but the same should be re-exported with the certification/grading reports:

1. Gemological Institute of America (GIA), Mumbai, Maharashtra.
2. Indian Diamond Institute, Surat, Gujarat, India.
3. De Beers India Private Ltd., Surat, Gujarat, India.
4. HRD Diamond Institute Private Limited, Mumbai, Maharashtra, India
5. International Gemological Institute (India) Pvt. Ltd., Bandra Kurla Complex, Mumbai,
6. Gemological Science International (GSI) Pvt. Ltd., Mumbai, Maharashtra, India.

Export against Supply by Foreign Buyer

Where export orders are placed on nominated agencies / status holder / exporters of three years standing having an annual average turnover of Rupees five crores during preceding three financial years, foreign buyer may supply in advance and free of charge, gold/silver/ platinum, alloys, findings and mountings of gold / silver / platinum for manufacture and export.

Such supplies can also be in advance and may involve semi- finished jewellery including findings/ mountings / components for repairs / re-make and export.

Exports may be made by nominated agencies directly or through their associates or by status holder / exporter. Import and Export of findings shall be on net to net basis.

Diamond & Jewellery Dollar Accounts

1.	Firms and companies dealing in purchase / sale of rough or cut and polished diamonds / precious metal jewellery plain having an average annual turnover of Rs. 3 crore or above during preceding three licensing years may also carry out their business through designated Diamond Dollar Accounts(DDA).
2.	Dollars in such accounts available from bank finance and / or export proceeds shall be used only for: <ol style="list-style-type: none"> Import / purchase of rough diamonds from overseas/ local sources; Purchase of cut and polished diamonds, coloured gemstones and plain gold jewellery from local sources; Import / purchase of gold from overseas / nominated agencies and repayment of dollar loans from the bank; and Transfer to Rupee Account of exporter. Details of this DDA Scheme are given in Handbook of Procedures.
3.	A non DDA holder is also permitted to supply cut and polished diamonds to DDA holder, receive payment in dollars and convert the same into Rupees within 7 days.

SCHEME FOR REMISSION OF DUTIES AND TAXES ON EXPORTED PRODUCTS

i.	The Scheme's objective is to refund, currently unrefunded: <ol style="list-style-type: none"> Duties/ taxes / levies, at the Central, State and local level, borne on the exported product, including prior stage cumulative indirect taxes on goods and services used in the production of the exported product and Such indirect Duties/ taxes / levies in respect of distribution of exported product.
ii.	The rebate under the Scheme shall not be available in respect of duties and taxes already exempted or remitted or credited.
iii.	The determination of ceiling rates under the Scheme will be done by a Committee in the Department of Revenue/Drawback Division with suitable representation of the DoC/DGFT.
iv.	No provision for remission of arrears or contingent liabilities is permissible under the Scheme to be carried over to the next financial year.
v.	The sequence of introduction of the Scheme across sectors, prioritization of the sectors to be covered, degree of benefit to be given on various items within the rates recommended will be decided and notified by the Department of Commerce (DoC) in consultation with Department of Revenue.
vi.	Under the Scheme, a rebate would be granted to eligible exporters at a notified rate as a percentage of FOB value with a value cap per unit of the exported product, wherever required, on export of items which are categorized under the notified 8 digit HS Code.
vii.	The rebate allowed is subject to the receipt of sale proceeds within time allowed under the Foreign Exchange Management Act, 1999 failing which such rebate shall be deemed never to have been allowed.

Ineligible Supplies/Items/Categories under the Scheme

The following categories of exports/ exporters shall not be eligible for rebate under RoDTEP Scheme:

i.	Exports through trans-shipment, meaning thereby exports that are originating in third country but trans shipped through India.
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ii.	Export products which are subject to Minimum export price or export duty.
iii.	Products which are restricted/prohibited for export under Schedule-2 of Export Policy in ITC (HS).
iv.	Deemed Exports.
v.	Supplies of products manufactured by DTA units to SEZ/FTWZ units.
vi.	Products manufactured in EHTP and BTP.
vii.	Products manufactured partly or wholly in a warehouse under section 65 of the Customs Act, 1962.
viii.	Products manufactured or exported in discharge of export obligation against an Advance Authorisation or Duty Free Import Authorization or Special Advance Authorisation issued under a duty exemption scheme of relevant Foreign Trade Policy.
ix.	Products manufactured or exported by a unit licensed as hundred per cent Export Oriented Unit (EOU) in terms of the provisions of the Foreign Trade Policy.
x.	Products manufactured or exported by any of the units situated in Free Trade Zones or Export Processing Zones or Special Economic Zones.
xi.	Goods which have been taken into use after manufacture.

EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME

1.	EPCG Scheme allows import of capital goods (except negative list) for pre-production, production and post-production at zero customs duty. Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess. <ol style="list-style-type: none"> Capital Goods including in CKD/SKD condition thereof; Computer systems and software which are a part of the Capital Goods being imported; Spares, moulds, dies, jigs, fixtures, tools & refractories; and Catalysts for initial charge plus one subsequent charge.
2.	Import under EPCG Scheme shall be subject to an Export Obligation (EO) equivalent to 6 times of duties, taxes and cess saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorisation.
3.	Import/procurement under EPCG scheme shall also be subjected to Average Export Obligation (AEO).
4.	Authorisation shall be valid for import for 24 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.
5.	In case Integrated Tax and Compensation Cess are paid in cash on imports under EPCG, incidence of the said Integrated Tax and Compensation Cess would not be taken for computation of net duty saved provided Input Tax Credit is not availed.
6.	Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.
7.	If the goods proposed to be exported under EPCG Authorisation are restricted for export, the EPCG Authorisation shall be issued only after approval for issuance of Export Authorisation from Exim Facilitation Committee (EFC) at DGFT Headquarters.

Coverage

(a)	EPCG scheme covers manufacturer exporters with or without supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) and service providers.
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(b)	Export Promotion Capital Goods (EPCG) Scheme also covers a service provider who is certified as a Common Service Provider (CSP) by the DGFT - HQs, Department of Commerce in a Town of Export Excellence or Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) subject to following conditions: <ol style="list-style-type: none"> Common utility services like providing Electricity, Water, Gas, Sanitation, Sewerage, Telecommunication, Transportation etc. shall not considered for benefit of CSP; Export by users of the common service shall be counted towards fulfillment of EO of the CSP provided the EPCG Authorisation details of the CSP is mentioned in the respective Shipping bills and concerned RA must be informed about the details of the users prior to such export; Such export will not count towards fulfillment of specific export obligation in respect of other EPCG Authorisations of the user; Authorisation holder shall be required to submit Bank Guarantee (BG) which shall be equivalent to the duty saved. BG can be given by CSP or by any one of the users or a combination thereof, at the option of the CSP; and Capital goods shall be installed within a Town of Export Excellence or PM MITRA.
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Export Obligation

Following conditions shall apply to the fulfillment of Export obligation-

a.	Export obligation shall be fulfilled by the Authorisation holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorisation has been granted.
b.	For export of goods, EPCG Authorisation holder may export either directly or through third party(ies).
c.	EO under the scheme shall be, over and above, the average level of exports achieved by the applicant in the preceding three licensing years for the same and similar products within the overall EO period. The Average Export Obligation (AEO) shall be fulfilled every financial year, till export obligation is completed. Exports/ supplies made over and above AEO shall only be considered for fulfillment of Export Obligation.
d.	Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme.
e.	Export obligation may be fulfilled both by physical exports as well as deemed exports.
f.	Exports made from DTA units shall only be counted for calculation and/or fulfillment of AEO and/or EO.
g.	Royalty payments received by the Authorisation holder in freely convertible currency and foreign exchange received for R&D services shall also be counted for discharge under EPCG.
h.	Payment received in rupee terms for such Services shall also be counted towards discharge of export obligation under the EPCG scheme.

Provision for Companies Admitted under the Provisions of Insolvency and Bankruptcy Code 2016

A company holding EPCG authorizations and having been admitted under the provisions of Insolvency and Bankruptcy Code 2016 for commencement of insolvency proceedings and in respect of whom the resolution plan has been approved under Section 31 of IBC 2016 by Adjudicating Authority may be permitted to relief, concessions and waivers in accordance with the resolution plan approved/ finalised by Adjudicating Authority/ Appellate Authorities as the case may be.

Exemption from Maintenance of Average Export Obligation

- (a) In case of export of goods relating to the following, the EPCG Authorisation holder shall not be required to maintain average export obligation.
- (i) Handicrafts, (ii) Handlooms, (iii) Industries covered under Khadi and Village Industries Commission (KVIC) (iv) Agriculture (v) Aquaculture (including Fisheries), Pisciculture, (vi) Animal husbandry and Dairying, (vii) Floriculture & Horticulture, (viii) Poultry, (ix) Viticulture, (x) Sericulture, (xi) Carpets, (xii) Coir, and (xiii) Jute
- (b) However, this exemption from maintenance of average export obligation shall not be allowed for import of fishing trawlers, boats, ships and other similar items.

EXPORT ORIENTED UNITS (EOUS), ELECTRONICS HARDWARE TECHNOLOGY PARKS (EHTPS), SOFTWARE TECHNOLOGY PARKS (STPS) AND BIO-TECHNOLOGY PARKS (BTPS)

- (a) Units undertaking to export their entire production of goods and services, may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture.

Export and Import of Goods

An EOU / EHTP / STP / BTP unit may export all kinds of goods and services.. However export of gold jewellery, including partly processed jewellery, whether plain or studded, and articles, containing gold of 8 carats and above up to a maximum limit of 22 carats only shall be permitted. The export of findings like posts, push backs, locks which help in collating the jewellery pieces together, containing gold of 3 carats and maximum limit of 22 carats only shall be allowed.

Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfillment of conditions.

Procurement and supply of export promotion material like brochure/literature, pamphlets, hoardings, catalogue, posters etc. upto a maximum value limit of 1.5% of FOB value of previous year's exports shall also be allowed.

- (a) State Trading regime shall not apply to EOU manufacturing units.
- (b) An EOU engaged in agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture may be permitted to remove specified goods in connection with its activities for use outside the premises of the unit.
- (c) Gems and jewellery EOUs obtaining gold / silver / platinum from nominated agencies, either on loan basis or outright purchase basis shall export gold / silver / platinum within 90 days from date of release of such metals by the nominated agencies.
- (d) EOU/EHTP/STP/BTP units, other than service units, may export to Russian Federation in Indian Rupees against repayment of State Credit/ Escrow Rupee Account of buyer subject to RBI clearance.

- (e) Procurement and export of spares / components, upto 5% of FOB value of exports, may be allowed to same consignee / buyer of the export article, without NFE and direct tax benefits.
- (f) An EOU/ EHTP/STP/BTP unit may sell capital goods and lease back the same from a Non Banking Financial Company (NBFC), subject to the following conditions:
- (g) (i) The unit should obtain permission from the jurisdictional Deputy/Assistant Commissioner of Customs for entering into transaction of 'Sale and Lease Back of Assets
- (ii) The goods sold and leased back shall not be removed from the unit's premises;
- (iii) The unit should be NFE positive at the time when it enters into sale and lease back transaction with NBFC;
- (iv) A joint undertaking by the unit and NBFC should be given to pay duty on goods in case of violation or contravention of any provision of Customs Act, 1962 or Central Excise Act, 1944,

DTA Sale of Finished Products/Rejects/Waste/Scrap/Remnants and By-products

Entire production of EOU/EHTP/STP/BTP units shall be exported. However, the following are allowed as exceptions subject to the conditions specified.

- a. (i) Units, other than those of gems and jewellery may sell finished goods manufactured by them on payment of excise duty and/ or payment of GST and compensation cess along with reversal of duties of Custom leviable. No DTA sale shall be permissible in respect of, pepper & pepper products, marble.
- (ii) Such DTA sale shall also not be permissible to units engaged in activities of packaging / labeling / segregation / refrigeration / compacting / micronisation / pulverization / granulation / conversion of monohydrate form of chemical to anhydrous form or vice-versa.
- (iii) Sales made to a unit in SEZ shall also be taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Currency Account of SEZ unit. Sale to DTA would also be subject to mandatory requirement of registration of pharmaceutical products (including bulk drugs).
- (iv) An amount equal to Anti Dumping duty under Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.
- b. For services sale in DTA in any mode, including on line data communication, shall also be permissible up to 50% of FOB value of exports or foreign exchange earned, where payment of such services is received in foreign exchange. At the time of DTA clearance, applicable GST and compensation cess as per GST classification would apply.
- c. Gems and jewellery units may sell upto 10% of FOB value of exports of the preceding year in DTA, subject subject to payment of applicable GST and compensation cess along with reversal of duties of Customs leviable
- d. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.
- e. Scrap / waste / remnants arising out of production process or in connection therewith and by products be sold in DTA, as per SION notified under Duty Exemption Scheme, on payment of applicable duties and/ or taxes and compensation cess and shall not be subject to achievement of positive NFE.

- f. There shall be no duties / taxes on scrap / waste / remnants, in case same are destroyed with permission of Customs authorities. The expression "no duties/taxes" shall not include applicable GST.
- g. In case of units manufacturing electronics hardware and software, NFE and DTA sale entitlement shall be reckoned separately for hardware and software.
- h. In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years.
- i. Procurement of spares / components, up to 2% of the value of manufactured articles, cleared into DTA, during the preceding year, may be allowed for supply to the same consignee / buyer for the purpose of after-sale-service. Subject to GST, Compensation Cess and Custom Duty Reversal.

Other Entitlements

Other entitlements of EOU/EHTP/STP/BTP units are as under:

- (a) Exemption from industrial licensing for manufacture of items reserved for micro and small enterprises.
- (b) Export proceeds will be realized within nine months.
- (c) Units will be allowed to retain 100% of its export earnings in the EEFC account.
- (d) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where:
- i. the unit has turnover of Rs. 5 crore or above; and
- ii. the unit is in existence for at least three years; and
- iii. the unit has achieved positive NFE / export obligation and has not been issued a show cause notice or a confirmed demand, during the preceding 3 years.
- (e) Unit will also not be required to furnish bank guarantee at the time of import or going for job work in DTA, if it has achieved necessary certification as an Authorised Economic Operator (AEO) and has not been issued a show cause notice or a confirmed demand, during the preceding 3 years.
- (f) 100% FDI investment permitted through automatic route similar to SEZ units.
- (g) The Units Approval Committee may consider on a case-to-case basis request for sharing of infrastructural facilities among EOUs with recommendations from Board of Approval.

Sub-Contracting

- (a) (i) EOU/EHTP/STP/BTP units, including gems and jewellery units, may be on the basis of annual permission from Customs authorities, subcontract production processes to DTA through job work which may also involve change of form or nature of goods, through job work by units in DTA.
- (ii) These units may sub-contract upto 50% of overall production of previous year in value terms in DTA with permission of Customs authorities.
- (b) (i) EOU may, with annual permission from Customs authorities, under take job work for export, on behalf of DTA exporter, provided that goods are exported directly from EOU and export document shall jointly be in name of DTA/EOU. For such exports, DTA units will be entitled for refund of duty paid on inputs by way of brand rate of duty drawback.
- (ii) Sub-contracting of both production and production processes may also be under taken without any limit through other EOU/EHTP/STP/ BTP/SEZ units, on the basis of records maintained in unit.

(iii) EOU/EHTP/STP/BTP units may sub-contract part of production process abroad and send intermediate products abroad. No permission would be required when goods are sought to be exported from sub-contractor premises abroad. When goods are sought to be brought back, prior intimation to concerned DC and Customs authorities shall be given.

(c) Scrap/waste/remnants generated through job work may either be cleared from job worker's premises on payment of applicable duty and/or taxes on transaction value or destroyed in presence of Customs authority or returned to unit. Destruction shall not apply to gold, silver, platinum, diamond, precious and semi-precious stones.

Sale of Unutilized Material and Capital Goods

(a) In case an EOU / EHTP/ STP/BTP unit is unable to utilize goods and services imported or procured from DTA, it may be:

- (i) Transferred to another EOU/EHTP/STP/BTP/ SEZ unit; or
- (ii) Disposed of in DTA with intimation to Customs authorities on payment of applicable duties and/ or taxes and compensation cess.
- (iii) Exported.
- (iv) Such transfer from EOU/EHTP/STP/BTP unit to another such unit would be treated as import for receiving unit.

(b) Capital goods and spares that have become obsolete/ surplus, may be exported or transferred to SEZ unit, transferred to another EOU/EHTP/STP/BTP/on payment of applicable GST and compensation cess

Replacement/Repair of Imported/Indigenous Goods

General provisions of FTP relating to export /import of replacement/repair of goods would also apply equally to EOU/EHTP/STP/BTP units.

Goods sold in DTA and not accepted for any reasons, may be brought back for repair/ replacement, under intimation to concerned jurisdictional customs authorities.

The unit can take free of cost replacement (duty paid) from the authorized agents in India of foreign suppliers, provided the defective part is re-exported or destroyed. However, destruction shall not apply to precious and semi-precious stones and precious metals.

Exit from the Scheme

(a) With approval of DC/Designated officer of EHTP/ STP/BTP, an EOU/EHTP/ STP/BTP unit may opt out of scheme. Such exit shall be subject to payment of applicable Excise and Customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force.

(b) If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

(c) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by DoC, at price to be determined by that agency.

(d) Unit proposing to exit out of the scheme shall intimate DC of EOU/Designated officer of EHTP/STP/BTP and Customs authorities in writing.

Export through Exhibitions/Export Promotion Tours/Showrooms Abroad/Duty Free Shops

EOU/EHTP/STP/BTP are permitted to:

Export goods for holding/participating in Exhibitions abroad with permission of DC /Designated officer.

Personal carriage of gold / silver / platinum jewellery, precious, semi-precious stones, beads and articles.

Export goods for display / sale in permitted shops set up abroad.

Display / sell in permitted shops set up abroad, or in showrooms of their distributors / agents.

Set up showrooms / retail outlets at International Airports.

Deemed Exports

“Deemed Exports” for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange, provided goods are manufactured in India.

“Deemed Exports” for the purpose of GST would include only the supplies notified under Section 147 of the CGST/SGST Act.

Categories of Supply

- A. Supply by manufacturer:**
 - (a) Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement / DFIA.
 - (b) Supply of goods to EOU / STP / EHTP / BTP.
 - (c) Supply of capital goods against EPCG Authorisation.
- B. Supply by main / sub-contractor(s):**
 - (i) Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF, where legal agreements provide for tender evaluation without including customs duty.
 - (ii) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral Agencies/ Funds
 - (iii) Supplies covered in this paragraph shall be under International Competitive Bidding (ICB).
- C. Supply of goods to United Nations or International organization for their official use or supplied to the projects financed by the said United Nations or an International organization approved by Government of India**
- D. Supply of goods to nuclear power projects provided:**
 - (i) Such goods are required for setting up of any Nuclear Power.

(ii) The project should have a capacity of 440 MW or more.

(iii) A certificate to the effect is required to be issued by an officer not below the rank of Joint Secretary to Government of India, in Department of Atomic Energy.

(iv) Tender is invited through National competitive bidding (NCB) or through ICB.

Benefits for Deemed Exports

Deemed exports shall be eligible for any / all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to terms and conditions:

- Advance Authorisation / Advance Authorisation for annual requirement / DFIA.
- Deemed Export Drawback.
- Refund of terminal excise duty for excisable goods mentioned in Schedule 4 of Central Excise Act, 1944 provided the supply is eligible under that category of deemed exports and there is no exemption.

Common Conditions for Deemed Export Benefits

Quality Complaints and Trade Disputes

The following type of complaints may be considered:

- Complaints received from foreign buyers in respect of quality of goods or services or technology supplied by exporters from India;
- Complaints of importers against foreign suppliers in respect of quality of the goods or services or technology supplied; and
- Complaints of unethical commercial dealings categorized mainly as non-supply/ partial supply of goods or services or technology after confirmation of order; supplying goods or services or technology other than the ones as agreed upon; non-payment; non-adherence to delivery schedules, etc.

Mechanism for Handling of Complaints/Disputes

- (a) Committee on Quality complaints and Trade Disputes (CQCTD) To deal effectively with the increasing number of complaints and disputes, a ‘Committee on Quality Complaints and Trade Disputes’.
- (b) Composition of the CQCTD
The CQCTD would be constituted under the Chairpersonship of the Head of Office..
- (c) Functions of CQCTD
The Committee (CQCTD) will be responsible for enquiring and investigating all Quality related complaints and other trade related complaints falling under the jurisdiction of the respective RAs. It will take prompt and effective steps to redress and resolve the grievances of the importers/ exporters and overseas buyers/ sellers preferably within three months of receipt of the complaint.

Corrective Measures

- (a) The Committee at RA level can authorize the Export Inspection Agency or any technical authority to assess whether there has been any technical failure of not meeting the standards, manufacturing/ design defects, etc. for which complaints have been received;
- (b) Initially, efforts will be made to settle the complaint/ dispute amicably. In case the matter is not settled amicably, action may be taken against the erring Indian entity in terms of the Foreign Trade (Development & Regulation) Act, 1992, and the Foreign Trade (Regulation) Rules, 1993
- (c) Complaints against foreign entities would be taken up for settlement by the respective 'Foreign Trade Division' in the Department of Commerce, Vanijya Bhavan, New Delhi through Indian Missions abroad. Indian Missions Abroad will take up the complaints against the foreign entities with authorities concerned; If they are satisfied of malafide intention, they will forward it to DGFT.

PROMOTING CROSS BORDER TRADE IN DIGITAL ECONOMY

A. Promotion of E-Commerce Exports

Handholding and outreach to promote e-Commerce Exports

The Niryat Bandhu Scheme (NBS) shall have a component for the promotion of e-Commerce and other emerging channels of exports. Under the given NBS component, DGFT shall organise outreach activities/workshops in partnership with Customs Authorities, Department of Post, 'Industry Partners' and 'Knowledge Partners' for promotion of e-Commerce exports.

In addition to increasing awareness as well as capacity building and skill development for promotion of e-Commerce exports, in partnership with Customs Authorities, Department of Post, 'Industry Partners' or the 'Knowledge Partners'.

B. E-Commerce Export Hubs (Ecehs)

Objective of E-Commerce Export Hubs

The objective is to establish designated areas as E-Commerce Export Hubs (hereafter called "ECEH"), which would act as a centre for favourable business infrastructure and facilities for Cross Border E-Commerce activities.

Creation of ECEH

The ECEH shall ordinarily be setup through private initiative. It may also be setup in Public-Private- Partnership (PPP) mode in partnership with the State governments/ Central government.

Existing facility with the required infrastructure may also apply to be designated as ECEH.

Nature of ECEH Operations

- i. ECEH will function to achieve benefits for e-commerce exporters. The ECEH may provide for storage (including cold storage facilities), packaging, labelling, certification & testing and other common facilities for the purposes of export.
- ii. The ECEH shall also provide for dedicated logistics infrastructure for connecting to and leveraging the services of the nearest Logistics hub(s).
- iii. All goods, including SCOMET and Restricted goods (subject to suitable compliance of regulations and conditions) and except prohibited, may be handled at ECEH.
- iv. Capital goods brought to a ECEH shall be utilized only for activities mentioned above on payment of the duties and taxes.

Scomet: Special Chemicals, Organisms, Materials, Equipment and Technologies

SCOMET List

SCOMET is an acronym for Special Chemicals, Organisms, Materials, Equipment and Technologies. Accordingly, the SCOMET list is our National Export Control List of dual use items munitions and nuclear related items, including software and technology and is aligned to the control lists of the all the multilateral export control regimes and conventions.

Different Types of Export Authorizations for SCOMET Items

- (i) Direct export to ultimate end user: Export to the ultimate end users abroad after due verification process;
- (ii) Export for repeat orders of same SCOMET items: Repeat export of items of same technical specifications which have earlier been allowed for export to the same countries/entities after due verification process;

- (iii) Export for Stock and Sale purpose: Export of items initially to the stockist abroad and then from the stockist to the ultimate end users in the same country or approved countries;
- (iv) Export of spare parts under SCOMET under Stock and Sale: Export of spare parts along with main item/equipment under stock and sale;
- (v) Export for/after repair / replacement of defective SCOMET items
- (vi) Temporary export of SCOMET items for demo/display/exhibition/tenders abroad or for return abroad after demo/ display/exhibition/ tenders in India;
- (vii) Export of imported items to the same foreign entity or to its OEM on obsolescence of technology, dead on arrival, cancellation of order, calibration, testing, etc.;
- (viii) Global Authorization for Intra-Company Transfers (GAICT) of SCOMET Items including Software/Technology:

Only one time authorization will be required, for export and/or re-export of SCOMET items where the export is an Intra-company transfer from the Indian parent company (applicant exporter) to its foreign subsidiary company or from the Indian subsidiary of foreign company (applicant exporter) to its foreign parent/another subsidiary of foreign parent company and; based on a Master Service Agreement / Contract between them for carrying out certain services but not limited to design, encryption, research, development, delivery, validation, calibration, testing, related services, etc. in specified countries for the one time validity of 3 years subject to the post export reporting of all the exports done under the authorisation.
- (ix) General Authorization for export after repair in India (GAER): Export of imported SCOMET items to the same entity abroad after repair in India will be allowed on the basis of a one-time General authorization subject to quarterly reporting basis.

While the policy relating to the Special Economic Zones is contained in the Foreign Trade Policy, incentives and other facilities offered to the Special Economic Zone developer and units are implemented through various notifications and circulars issued by the concerned Ministries/Departments. The system, therefore, did not lend enough confidence for investors to commit substantial funds for development of infrastructure and for setting up of the units in the Zones for export of goods and services. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, the Government enacted Special Economic Zones Act, 2005.

The salient features of the Act are as under:

Matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;

Matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;

The fiscal regime for developers of Special Economic Zones and units set up therein;

Single window clearance mechanism at the Zone level;

Establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and

Designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

ESTABLISHMENT OF SPECIAL ECONOMIC ZONE

Who can set up SEZs?

Any private/public/joint sector or State Government or its agencies can set up Special Economic Zone (SEZ)

Section 3 of the Act provides that the Central Government, State Government, or any other person, jointly or severally, may establish a Special Economic Zone. Any person who, intends to set up a Special Economic Zone, may, after identifying the area, make a proposal to the State Government concerned for the purposes of setting up a Special Economic Zone.

It also allows a person, at his option to make a proposal directly to the Board for the purpose of setting up Special Economic Zone. In cases where such proposal has been received directly from a person, the Board may grant approval and after receipt of such approval, the person concerned, is required to obtain the concurrence of the State Government within prescribed time.

In case a State Government intends to set up the Special Economic Zone, it may after identifying the area, forward the proposal directly to the Board of Approval for setting up of Special Economic Zone.

Central Government has been empowered to set up and notify the Special Economic Zone without consulting the State Government concerned; without referring the proposal to the Board.

The State Government may, on receipt of the proposal for setting Economic Zone forward the proposal together with its recommendations to the Board of Approval within the specified time.

The Board of Approval may, after receipt of the proposal for setting up a Special Economic Zone either approve the proposal or, approve the proposal subject to such terms and conditions as it may deem fit to impose. It can also modify or reject the proposal for setting up a Special Economic Zone.

The Central Government has been empowered to specify the minimum area of land for setting up a Special Economic Zone and other terms and conditions subject to which the Board may approve, modify or reject any such proposal received by it.

If the Board approves, the proposal without any modification, it shall communicate the same to the Central Government. If it approves the proposal with modification, it shall, communicate the same to the person or the State Government concerned if the modifications are accepted by the person or State Government, the Board of Approval shall communicate the approval to the Central Government, if the rejects the proposal, it shall record the reason therefor and communicate the rejection to the person or the State Government concerned.

Central Government to grant on receipt of communication from the Board of Approval, a letter of approval on such terms and conditions and obligations and entitlements, as approved by Board of Approval, to the person or the State Government concerned. However the Central Government may, on the basis of approval of the Board, approve more than one developer in one Special Economic Zone in cases where one Developer does not have in his possession the minimum area of contiguous land, as may be prescribed, for setting up a Special Economic Zone. In all such cases, each Developer is considered as a Developer in respect of the land in his possession.

Any person or a State Government, who intends to provide any infrastructure facilities in the identified area or undertaken any authorized operations may, after entering into an agreement with the Developer, make a proposal for the same to the Board of Approval, for its approval.

Every such person or State Government, whose proposal has been approved by the Board and who, or which, has been granted letter of approval by the Central. Government, shall be considered a Co- Developer of the Special Economic Zone.

What is Infrastructure Facilities?

Infrastructure facilities means industrial, commercial or social infrastructure or other facilities necessary for the development of a Special Economic Zone or such other facilities which may be prescribed.

Guidelines for notifying Special Economic Zone

Section 5 stipulates broader guidelines to be considered by the Central Government, while notifying any area as a Special Economic Zone or an area to be included in the SEZ and in discharging its functions under the Act. These include:

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| (a) | Generation of additional economic activity; |
| (b) | Promotion of exports of goods and services; |
| (c) | Promotion of investment from domestic and foreign sources; |
| (d) | Creation of employment opportunities; |
| (e) | Development of infrastructure facilities; and |
| (f) | Maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States. |

The Processing and Non-Processing Areas

Section 6 empowers the Central Government or any specified authority to demarcate the areas falling within the Special Economic Zones as.

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| (a) | The processing area for sitting up Units for activities, being the manufacture of goods, or rendering or services. |
| (b) | The area exclusively for trading or warehousing purposes. |
| (c) | The non-processing areas for activities other than those specified under (a) and (b) |

Exemption from Taxes, Duties or Cess

Section 7 exempts all goods or services exported out of, or imported into, or procured from the Domestic Tariff Area, by a Unit or Developer in a Special Economic Zone from the payment of taxes, duties or cess under all enactments specified in the First Schedule. The enactments specified in the First Schedule generally relate to levy and payment of cess.

Constitution of Board of Approval

Section 8 empowers the Central Government to constitute, by notification, the Board of Approval within fifteen days of the commencement of the Act. This section also provides for composition of Board, term of office of Members, co-option of certain persons as Members of the Board, its meetings and quorum, etc.

The powers and functions of the Board, inter alia, include:

Granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones;

Granting approval of authorised operations to be carried out in the Special Economic Zones by the Developer;

Granting of approval to the Developers or Units (other than the Developers or the Units which are exempt from obtaining approval under any law or by the Central Government) for foreign collaborations and foreign direct investments (including investments by a person resident outside India) in the Special Economic Zone for its development, operation and maintenance;

Granting of approval or rejecting proposal for providing infrastructure facilities in a Special Economic Zone or modifying such proposals;

Granting, a licence to an industrial undertaking referred to in section 3(d) of IDR Act, if such undertaking is established, as a whole or part thereof, or proposed to be established, in a Special Economic Zone;

Suspension of the letter of approval granted to a Developer and appointment of an Administrator under Section 10(1) of the Act;

Disposing of appeals preferred under Section 15(4) and Section 16(4) of the Act;

Performing such other functions as may be assigned to it by the Central Government.

Suspension of Letter of Approval and Transfer of Special Economic Zone in Certain Cases

Section 10 empowers the Board to suspend the letter of approval granted to the Developer for a whole or part of his area established as Special Economic Zone for a period not exceeding one year and appoint an Administrator to discharge the functions of the developer in accordance with the terms and conditions of the letter of approval and manage the Special Economic Zone accordingly. The suspension may be ordered by the Board, if in its opinion following circumstances exist:

- The developer is unable to discharge the functions for perform the duties imposed on him
- The developer has persistently defaulted in complying with the direction of the Board
- The financial position of the developer is such that he is unable fully and efficiently discharge the duties and obligations imposed on him by the letter of approval.

However, no letter of approval can be suspended unless the Board has given to the Developer not less than three months' notice, in writing, stating the grounds on which it proposes to suspend the letter of approval, and has considered any cause shown by the Developer within the period of that notice, against the proposed suspension.

Development Commissioner

Section 11 empowers the Central Government to appoint the Development Commissioner for one or more Special Economic Zones and such Officers and other employees as it considers necessary to assist every Development Commissioner.

Functions of the Development Commissioner

The functions of the Development Commissioner include:

- Guide the entrepreneurs for setting up of Units in the Special Economic Zone;
- Ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;
- Ensure proper coordination with the Central Government or State Government Departments concerned or agencies with respect to, or for above purposes;
- Monitor the performance of the Developer and the Units in SEZ;
- Discharge such other functions as may be assigned to him by the Central Government under this Actor any other law for the time being in force; and
- Any other functions as may be delegated to him by the Board of approval.

Approval Committee

An approval committee is a specialized committee concerned with the approval of operations and monitoring of the transactions within the Special Economic zone.

Powers and Functions

Section 14 empowers every Approval Committee to discharge the functions and exercise the powers in respect of the following matters:

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| (a) | Approve, the import or procurement of goods from the Domestic Tariff Area, for carrying on the authorised operations by a Developer in the Special Economic Zone; |
| (b) | Approve providing of services by a service provider from outside India or from the Domestic Tariff Area for carrying on the authorised operations by the Developer, in the Special Economic Zone; |
| (c) | Monitor the utilisation of goods or services or warehousing or trading in the Special Economic Zone; |
| (d) | Approve, modify or reject proposals for setting up Units for manufacturing or rendering of services or warehousing or trading in SEZ in accordance with the provisions of Section 15(8) of the Act; |
| (e) | Allow on receipt of approval foreign collaborations and foreign direct investments, including investments by a person outside India for setting up a Unit; |
| (f) | Monitor and supervise compliance of conditions subject to which the letter of approval or permission, if any, is granted to the Developer or entrepreneur; and |
| (g) | Perform any other functions as may be entrusted to it by the Central Government or the State Government concerned, as the case may be. |

Setting up of Unit

- ❖ Section 15 entitles any person, who intends to set up a Unit for carrying on the authorized operations in a Special Economic Zone, to submit a proposal to the Development Commissioner concerned.
- ❖ The Development Commissioner in turn place the proposal before the Approval Committee for its approval.
- ❖ The Approval Committee may approve the proposal with or without modification, or reject the proposal.
- ❖ In case of modification or rejection of a proposal, the Approval Committee has been put under obligation to afford a reasonable opportunity of being heard to the person concerned and after recording the reasons therefor, either modify or reject the proposal.

- ❖ A person aggrieved by an order of the Approval Committee, to make an appeal to the Board of Approvals, within the prescribed time and specified manner.
- ❖ The Central Government can prescribe the requirements (including the period for which a unit may be set up) subject to which the Approval Committee may approve, modify or reject the proposal.

Cancellation of Letter of Approval Granted to Entrepreneur

Section 16 empowers the Approval Committee to cancel the letter of approval of an entrepreneur after reasonable opportunity of being heard has been afforded to the entrepreneur. The Approval Committee may, at any time, cancel the letter of approval if it has any reason or cause to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligation subject to which the letter of approval was granted to the entrepreneur.

Setting up and Operation of Offshore Banking Unit

What do you mean by Offshore Banking Unit?

“Offshore Banking Unit” means a branch of a bank located in a Special Economic Zone and which has obtained the permission under clause (a) of sub-section (1) of Section 23 of the Banking Regulation Act, 1949.

What is the International Financial Services Centre?

“International Financial Services Centre” means an International Financial Services Centre which has been approved by the Central Government under Section 18(1).

Single enforcement officer or agency for notified offences	Section 21 empowers the Central Government to specify by notification, any act or omission made punishable under any Central Act, as notified offence for purposes of the proposed legislation. It further empowers the Central Government to authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence committed in a Special Economic Zone. Every officer or agency so authorised has been granted all the corresponding powers of investigation, inspection, search or seizure as provided under the relevant Central Act in respect of the notified offences.
Investigation, Inspection, Search or Seizure	Section 22 empowers the agency or officer to carry out the investigation, inspection, search or seizure in the Special Economic Zone if there is reason to believe that a notified offence has been committed or is likely to be committed in the Special Economic Zone. However, no investigation is allowed in SEZ without prior intimation or approval of the concerned Development Commissioner.
Appeal to High Court	Section 24 entitles any person aggrieved by any decision of the designated Court to file an appeal to the High Court within sixty days from the date of communication of the decision. However the High Court can, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the prescribed period of sixty days allow it to be filed within a further period not exceeding sixty days.
Offences by Companies	Section 25 dealing with offences by companies provides that where an offence has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However such person shall not be liable to any punishment 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.

	Section 25(2) provides that where an offence 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.
Transfer of ownership and removal of goods	Section 29 allows the transfer of ownership in any goods brought into, or produced or manufactured in, any Unit or Special Economic Zone or removal thereof from such Unit or Zone, subject to such terms and conditions as specified by the Central Government.
Domestic clearance by Units	Section 30 provides that any goods removed from a Special Economic Zone to the Domestic Tariff Area be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported. This section further provides that the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty. This section empowers the Central Government to make rules specifying conditions in this regard.
Special Economic Zone Authority	Section 31 dealing with the Constitution of Authority empowers the Central Government to constitute by notification in the Official Gazette, an Authority for every SEZ to exercise powers conferred on and discharge the functions assigned to it. Section 31(2) provides that every authority shall be a body corporate by name as assigned, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall sue and be sued. Section 31(9) stipulates that no act or proceedings of an authority shall be invalidated merely by reason of: <ul style="list-style-type: none"> (a) any vacancy in or any defect; (b) any defect in the appointment of a person as its member; or (c) any irregularity in the procedure of the authority not affecting the merits of the case.

Functions of Authority	Section 34 casts upon the Authority a duty to undertake such measures as it thinks fit for the development, operation and management of the respective Special Economic Zone. Section 34(2) provides for following measures: <ul style="list-style-type: none"> (a) the development of infrastructure in the Special Economic Zone; (b) promoting exports from the Special Economic Zone; (c) reviewing the functioning and performance of the Special Economic Zone; (d) levy user or service charges or fees or rent for the use of properties belonging to the Authority; (e) performing such other functions as may be prescribed.
Power of the Central Government to Supersede Authority	the Central Government is required to give reasonable time to that Authority to make representation against the proposed suppression and consider the representations, if any, of the Authority. Section 40(2) dealing with the consequences of publication of the notification superseding the Authority, provides that, <ul style="list-style-type: none"> (a) the Chairperson and other Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such; (b) all the powers, functions and duties which may, by or under the provisions of the Act, be exercised or discharged by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct; (c) all property vested in the Authority shall, during the period of supersession, vest in the Central Government.
Reference of Dispute and Limitation	Section 42 requires any dispute of civil nature arising among two or more entrepreneurs or two or more Developers or between the entrepreneur and Developer in the Special Economic Zone to be referred to arbitration provided, the court or the courts to try suits in respect of such dispute had not been designated. However no dispute should be referred to the arbitration on or after the date of the designation of court or courts under section 23(1). It further provides that where a dispute has been referred to arbitration, the same shall be settled or decided by the arbitrator to be appointed by the Central Government and the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitrations.

Identity Card

Section 46 requires that every person whether employed or residing or required to be present in a Special Economic Zone be provided an identity card by every Development Commissioner in prescribed form and containing specified particulars.

Power of State Government to grant exemption

Section 50 empowers the State Government to notify policies for Developers and Units and to take suitable steps for enactment of any law.

Granting exemption from the State taxes, levies and duties to the Developer or the entrepreneur;

Delegating the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur.

Section 51 giving overriding effect to this Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

SPECIAL ECONOMIC ZONES RULES, 2006

Section 55 empowers the Central Government to make rules in respect of specified matters and requires that the same be published in the Official Gazette and be laid before each House of Parliament. In this context, the Central Government notified the Special Economic Zones Rules, 2006 on February 10, 2006.

Rights of Appellant to Appear before the Board

According to Rules 61 of the Special Economic Zones Rules, 2006 every appellant may appear before the Board in person or authorize one or more Chartered Accountants or Company Secretaries or Cost Accountants or legal practitioners or any of his or its officers to present his or its case before the Board.

It may be noted that company secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

- ❖ Special Advance Authorisation Scheme extended to export of Apparel and Clothing sector under para 4.07 of H BP on self-declaration basis to facilitate prompt execution of export orders – Norms would be fixed within fixed timeframe
- ❖ Special Advance Authorisation Scheme extended to export of Apparel and Clothing sector under para 4.07 of HBP on self-declaration basis to facilitate prompt execution of export orders – Norms would be fixed within fixed timeframe.

The Foreign Contribution (Regulation) Act, 2010 has come into effect from May 1, 2011. The Ministry of Home Affairs had issued the necessary Gazette Notification vide S.O. 999 (E) dated the 29th April, 2011 in this regard. The Ministry of Home Affairs also issued a Gazette Notification vide G.S.R. 349 (E) dated the 29th April, 2011 notifying the Foreign Contribution (Regulation) Rules, 2011 made under section 48 of FCRA, 2010. The FCR Rules, 2011 have come into force simultaneously with FCRA, 2010.

The Foreign Contribution (Regulation) Act, 2010 was enacted to

Regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance

Utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

The salient features of the Foreign Contribution (Regulation) Amendment Act, 2020 inter alia, are as under:-

Amended Section 3(1) (c) of the Act to include “public servant” also within its ambit, to provide that no foreign contribution shall be accepted by any public servant;

Amended Section 7 of the Act to prohibit any transfer of foreign contribution to any association/ person;

Amended section 8(1) of the Act to reduce the limit for defraying administrative expenses from existing “fifty per cent.” to “twenty per cent.”;

Inserted of a new Section 12A empowering the Central Government to require Aadhaar number, etc., as identification document;

Inserted of a new Section 14A enabling the Central Government to permit any person to surrender the certificate granted under the Act;

Amended Section 17 of the Act to provide that every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as “FCRA Account” which shall be opened by him in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify and for other consequential matters relating thereto.

What is Foreign Contribution?

“Foreign Contribution” means the donation, delivery or transfer made by any foreign source,

Of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;

Of any currency, whether Indian or foreign

Any security defined in SCRA and FEMA.

Explanation 1. – A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 2. – The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3. – Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.

Example

A company ‘XYZ’ based in United States transferred Rs. 20,000 to a company ‘ABC’ in India by way of donation. The amount of Rs 20,000 shall be considered as foreign contribution in this case. Cto

What is foreign source?

“FOREIGN SOURCE” INCLUDES

- (i) The Government of any foreign country or territory and any agency of such Government;
- (ii) Any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;
- (iii) A foreign company;
- (iv) A corporation, not being a foreign company, incorporated in a foreign country or territory;
- (v) A multi-national corporation referred to in sub-clause (iv) of clause (g);
- (vi) A company within the meaning of the Companies Act, 1956, and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely—
 - (a) the Government of a foreign country or territory;
 - (b) the citizens of a foreign country or territory;
 - (c) corporations incorporated in a foreign country or territory;
 - (d) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;

- (vii) A trade union in any foreign country or territory, whether or not registered in such foreign country or territory;
- (viii) A foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;
- (ix) A society, club or other association of individuals formed or registered outside India;
- (x) A citizen of a foreign country.

Example

A company ‘XYZ’ based in United States transferred Rs. 20,000 to a company ‘ABC’ in India. The amount of company ‘XYZ’ based in United States shall be considered as foreign source in this case.

WHAT IS A FOREIGN COMPANY?

“Foreign Company” means any company or association or body of individuals incorporated outside India and includes—

- (i) A foreign company within the meaning of section 591 of the Companies Act, 1956;
- (ii) A company which is a subsidiary of a foreign company;
- (iii) The registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause (ii);
- (iv) A multi-national corporation.

Example

A company ‘XYZ’ a multi-national corporation having its office in United States transferred Rs. 20,000 to a company ‘ABC’ in India. The company ‘XYZ’ shall be considered a foreign company in this case.

WHO CAN RECEIVE FOREIGN CONTRIBUTION?

Any “Person” can receive foreign contribution subject to the following conditions:

- It must have a definite cultural, economic, educational, religious or social programme.
- It must obtain the FCRA registration/prior permission from the Central Government
- It must not be prohibited under Section 3 of FCRA, 2010.

Who Cannot Receive Foreign Contribution?

Section 3(1) prohibits following person to accept foreign contribution:

- (a) Candidate for election;
- (b) Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) Public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) Member of any Legislature;

(e)	Political party or office-bearer thereof;
(f)	Organisation of a political nature as may be specified under section 5(1) by the Central Government;
(g)	Association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in section 2(1)(r) of the Information Technology Act, 2000 or any other mode of mass communication;
(h)	Correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

Section 3(2) States that

(a)	No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.
(b)	No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.
(c)	No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to <ul style="list-style-type: none"> (i) Any political party or any person referred to in sub-section (1), or both; or (ii) Any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

Persons to Whom Section 3 Shall Not Apply

According to Section 4 of the Act, nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of section 10,

By way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

By way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or

As an agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or

by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or

from his relative; or

by way of remittance received, in the ordinary course of business through any official channel, post office, or any authorised person in foreign exchange under the Foreign Exchange Management Act, 1999; or

by way of any scholarship, stipend or any payment of like nature.

PROCEDURE TO NOTIFY AN ORGANISATION OF A POLITICAL NATURE

1. The Central government may, having regard to the activities of the organisation or the ideology propagated by the organisation, specify such organisation as an organisation of a political nature not being a political party.

2. Before making such order, central government shall give the organisation a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organisation of political nature under that sub-section.

3. The organisation to whom a notice has been served under may, within a period of thirty days from the date of the notice, make a presentation to the central government giving reasons for not specifying such organisation.

4. The Central Government may, if it considers it appropriate, forwards the representation referred before to any authority to report on such representation.

The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.

Every order under sub-section (1) shall be made within a period of one hundred and twenty days from the date of issue of notice under sub-section (2). In case no order is made within the said period of one hundred and twenty days, the Central Government shall, after recording the reasons therefor, make an order under sub-section (1) within a period of sixty days from the expiry of the said period of one hundred and twenty days.

It may be noted that “Political Party” means—

- (i) An association or body of individual citizens of India—
 - (a) To be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or
 - (b) Which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;
- (ii) A political party mentioned in column 2 of Table 1 and Table 2 to the notification of the Election Commission of India No. 56/J&K/02, dated the 8th August, 2002, as in force for the time being.

In the case of *Indian Social Action Forum (INSAF) vs. Union of India*, Hon’ble Supreme Court of India inter-alia observed that “the object sought to be achieved by the Act is the regulation of acceptance and utilization of foreign contribution is for the purpose of protecting national interest. Candidates for election and political parties or office bearers of political parties are barred from accepting any foreign contribution.”

Further, Hon’ble Supreme Court observed that prevention of foreign contributions routed through voluntary organisations which are not connected to party politics is the reason behind introduction of Section 3 (1) (f) and Section 5 of the Act. The intention of the legislature is to prohibit foreign funds in active politics, an Association with avowed political objectives (i.e. to play a role in active politics or party politics) cannot be permitted access to foreign funds. There is no ambiguity in the provision and hence, cannot be termed as vague. Therefore, we find no substance in the contention of the Appellant that Rule 3 (i) is ultra vires the Act.

A balance has to be drawn between the object that is sought to be achieved by the legislation and the rights of the voluntary organizations to have access to foreign funds. Therefore,

such organizations which are working for the social and economic welfare of the society cannot be brought within the purview of the Act or the Rules by enlarging the scope of the term ‘political interests’. We are of the opinion that the expression ‘political interests’ in Rule 3 (v) has to be construed to be in connection with active politics or party politics. Xc.

What is Foreign Hospitality?

Foreign Hospitality means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free board, lodging, transport or medical treatment.

State the categories of persons requires prior approval from Ministry of Home Affairs before accepting Foreign Hospitality?

The following categories of persons require prior approval from Ministry of Home Affairs before accepting Foreign Hospitality:

- Members of a Legislature
- Office bearers of political parties
- Judges
- Government servants, Public Servants
- Employees of any corporation or any other body owned or controlled by the Government.

Provided that it shall not be necessary to obtain any such permission for an emergent medical aide needed on account of sudden illness contracted during a visit outside India. But, where such foreign hospitality has been received, the person receiving such hospitality shall give an intimation to the Central Government as to the receipt of such hospitality within one month from the date of receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received time frame.

Restriction to Utilise Foreign Contribution for Administrative Purpose

According to Section 8 of the Act, every person, who is registered and granted a certificate or given prior permission under the Act and receives any foreign contribution—

- (a) Shall utilise such contribution for the purposes for which the contribution has been received:
 - Provided that any foreign contribution or any income arising out of it shall not be used for speculative business;
 - Provided further that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;
- (b) Shall not defray as far as possible such sum, not exceeding twenty percent of such contribution, received in a financial year, to meet administrative expenses:
 - Provided that administrative expenses exceeding twenty percent of such contribution may be defrayed with prior approval of the Central Government.

POWER OF CENTRAL GOVERNMENT TO PROHIBIT RECEIPT OF FOREIGN CONTRIBUTION, ETC., IN CERTAIN CASES

According to Section 9 of the Act, the Central Government may

- (a) Prohibit any person or organisation not specified in section 3, from accepting any foreign contribution;
- (b) Require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;

- (c) Require any person or class of persons not specified in section 11, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;
- (d) Without prejudice to the provisions of sub-section (1) of section 11, require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;
- (e) Require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received;
- Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially
- The sovereignty and integrity of India; or
 - Public interest; or
 - Freedom or fairness of election to any Legislature; or
 - Friendly relations with any foreign State; or
 - Harmony between religious, racial, social, linguistic or regional groups, castes or communities.

REGISTRATION

How does a person obtain permission to accept Foreign Contribution?

There are two modes of obtaining permission to accept foreign contribution according to FCRA, 2010:

- Registration
- Prior Permission

Eligibility Criteria for Grant of Registration

For grant of registration under FCRA, 2010, the association should:

Be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 (Now Section 8 of Companies Act, 2013) etc;

Be in existence for at least three years and has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised. The applicant NGO/ association will be free to choose its items of expenditure (excluding the administrative expenditure as defined in Rule 5 of FCRR, 2011) to become eligible for the minimum threshold of Rs. 15.00 lakh spent during the last three years. If the association wants inclusion of its capital investment in assets like land, building, other permanent structures, vehicles, equipments etc, then the Chief Functionary shall have to give an undertaking that these assets shall be utilized only for the FCRA activities and they will not be diverted for any other purpose till FCRA registration of the NGO holds.

ELIGIBILITY CRITERIA FOR GRANT OF PRIOR PERMISSION

An organization in formative stage is not eligible for certificate of registration. Such organization may apply for grant of prior permission under FCRA, 2010. Prior permission is granted for receipt of a specific amount from specific donor/donors for carrying out specific activities/projects. For this purpose, the association should meet following criteria:

Be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956 (Now Section 8 of Companies Act, 2013) etc;

Submit a specific commitment letter from the donor indicating the amount of foreign contribution and the purpose for which it is proposed to be given; and

For Indian recipient organizations and foreign donor organizations having common members.

FCRA Prior Permission shall be granted to the Indian recipient organizations subject to its satisfying the following:

The Chief Functionary of the recipient Indian organization should not be a part of the donor organization.

At least 75% of the office-bearers/ members of the Governing body of the Indian recipient organization should not be members/employees of the foreign donor organization.

In case of foreign donor organization being a single person/individual that person should not be the Chief Functionary or office bearer of the recipient Indian organization.

In case of a single foreign donor, at least 75% office bearers/members of the governing body of the recipient organization should not be the family members and close relatives of the donor.

Conditions for the Grant of Registration and Prior Permission

In terms of Section 12 (4) of FCRA, 2010, the following shall be the conditions for the grant of registration and prior permission:

- The 'person' making an application for registration or grant of prior permission-
 - is not fictitious or benami;
 - has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
 - has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
 - has not been found guilty of diversion or mis-utilisation of its funds;
 - is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
 - is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
 - has not contravened any of the provisions of this Act;
 - has not been prohibited from accepting foreign contribution;
 - the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;
 - the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him.

- The acceptance of foreign contribution by the association/ person is not likely to affect prejudicially-
 - the sovereignty and integrity of India;
 - the security, strategic, scientific or economic interest of the State;
 - the public interest;
 - freedom or fairness of election to any Legislature;
 - friendly relation with any foreign State;
 - harmony between religious, racial, social, linguistic, regional groups, castes or communities.
- The acceptance of foreign contribution
 - shall not lead to incitement of an offence;
 - shall not endanger the life or physical safety of any person.

SUSPENSION OF CERTIFICATE

According to Section 13 of the Act, where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds mentioned in section 14(1), it is necessary so to do, it may, by order in writing, suspend the certificate for a period of one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified in the order.

Every person whose certificate has been suspended shall not receive any foreign contribution during the period of suspension of certificate.

It may be noted that the Central Government, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify.

Every person whose certificate has been suspended shall utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.

CANCELLATION OF CERTIFICATE

Section 14 provides that the Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if-

- the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or
 - the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or
 - in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or
 - the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder; or
 - if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.
- No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.
- Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

RENEWAL OF CERTIFICATE

Section 16 of the Act provides that every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.

the Central Government may, before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in section 12(4).

The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.

The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years.

the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant

FOREIGN CONTRIBUTION THROUGH SCHEDULED BANK

Section 17(1) of the Act, every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as “FCRA Account” by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi.

Provided that such person may also open another “FCRA Account” in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his “FCRA Account” in the specified branch of State Bank of India at New Delhi.

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his “FCRA Account” in the specified branch of the State Bank of India at New Delhi or kept by him in another “FCRA Account” in a scheduled bank of his choice.

Provided also that no funds other than foreign contribution shall be received or deposited in any such account.

Section 17 (2) states that the specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified—

The prescribed amount of foreign remittance;

The source and manner in which the foreign remittance was received; and

Other particulars;

In such form and manner as may be prescribed.

Section 39 provides that where an offence under this Act or any rule or order made thereunder has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render such person liable to any punishment 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.

Notwithstanding anything contained above, where an offence under this Act or any rule or order made thereunder 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 that offence and shall be liable to be proceeded against and punished accordingly.

COMPOSITION OF CERTAIN OFFENCES

Section 41(1) of the Act, any offence punishable under this Act, not being an offence punishable with imprisonment only, may, before the institution of any prosecution, be compounded by such officers or authorities and for such sums as the Central Government. Section 41(2) provides that nothing in sub-section (1) shall apply to an offence committed by an individual or association or its officer or other employee within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation. – For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

As per Section 41(3), every officer shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government.

Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

In the case of Association for Democratic Reforms & Anr (Petitioners) Vs. Union of India (Respondent), W.P.(C)

Hon’ble Delhi High Court inter-alia observed that a perusal of the scheme of the Act shows that the Central Government plays an important role in enforcing and bringing into action the provisions of the FCRA.

It has the power to delineate what organisations qualify as ‘political’ in nature so as to prohibit them from receiving foreign contribution.

It also designates the authority which investigates offences under the FCRA.

It is well settled that there is a presumption of constitutionality in favour of a Statute and mere apprehension that an Act is capable of being misused is no ground for replacing the wisdom of the legislature with that of the judiciary.

PROCESS OF MONEY LAUNDERING

The process of money laundering can be classified into three stages, namely, placement, layering and integration.

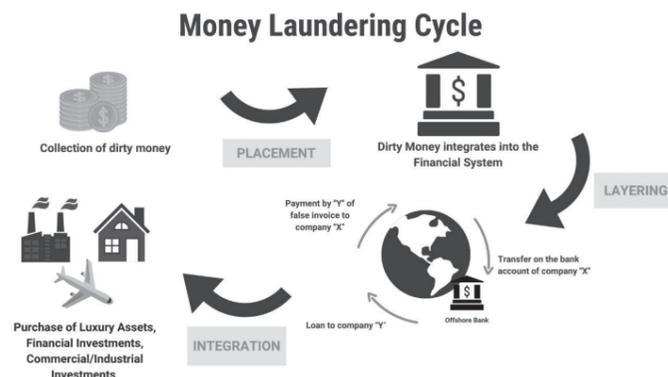


Money laundering is a process which typically follows three stages to finally release laundered funds into the legal financial system. Three Stages of Money Laundering are:

Placement (i.e. moving the funds from direct association with the crime)

Layering (i.e. disguising the trail to foil pursuit)

Integration (i.e. making the money available to the criminal from what seem to be legitimate sources)

**What is the Connection of Money Laundering with Society at Large?****The possible social and political costs of money laundering:**

Organised crime can infiltrate financial institutions.

Acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments.

The economic and political influence of criminal organisations can weaken the social fabric, collective ethical standards.

In the case of *Vijay Madanlal Choudhary vs. Union of India*, Special Leave Petition (Criminal) No. 4634 of 2014 judgement dated 27 July, 2022, Supreme Court of India inter

alia observed that the rudimentary understanding of 'money-laundering' is that there are three generally accepted stages to money-laundering, they are:

Placement: which is to move the funds from direct association of the crime.

Layering: which is disguising the trail to foil pursuit.

Integration: which is making the money available to the criminal from what seem to be legitimate sources.

It is common experience world over that money-laundering can be a threat to the good functioning of a financial system. However, it is also the most suitable mode for the criminals to deal in such money. It is the means of livelihood of drug dealers, terrorist, white collar criminals and so on. Tainted money breeds discontent in any society and in turn leads to more crime and civil unrest. Thus, the onus on the Government and the people to identify and seize such money is heavy.

Prevention of Money Laundering – Global Initiatives

The process of money laundering involves cleansing of money earned through illegal activities like extortion, drug trafficking and gun running etc. The tainted money is projected as clean money through intricate processes of placement, layering and laundering. The serious threat posed by money laundering to the financial systems and sovereignty was being progressively realized by various countries of the world.

The Vienna Convention

The first major initiative in the prevention of money laundering was the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in December 1988 (popularly known as Vienna Convention). This convention laid the groundwork for efforts to combat money laundering by obliging the member states to criminalize the laundering of money from drug trafficking and confiscation of proceeds derived from such offence. It promotes international cooperation in investigations and makes extradition between member states applicable to money laundering. The convention also establishes the principle that domestic bank secrecy provisions should not interfere with international criminal investigations.

Council of Europe Convention

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, 1990 establishes a common policy on money laundering. It sets out a common definition of money laundering and common measures for dealing with it. The Convention lays down the principles for international cooperation among the member states, which may also include states outside the Council of Europe. This convention came into force in September 1993. One of the purposes of the convention is to facilitate international cooperation as regards investigative assistance, search, seizure and confiscation of the proceeds of all types of criminality, particularly serious crimes, such as, drug offences, arms dealing, terrorist offences etc. and other offences which generate large profits.

European Union Money Laundering Directive

In response to the new opportunities for money laundering opened up by the liberalization of capital movements and cross-border financial services in the European Union, the Council of the European Communities in June, 1991 issued a directive on the Prevention of Use of the Financial System for the Purpose of Money Laundering. The directive requires member states to outlaw money laundering. The member states have been put under obligation to require financial institutions to establish and maintain internal systems to prevent laundering, to obtain the identification of customers with whom they enter into transaction of more than a particular amount and to keep proper records for at least five years. The financial institutions are also required to report suspicious transactions and ensure that such reporting does not result in liability for the institution or its employees.

Basel Committee's Statement of Principles

In December 1988 the Basel Committee on Banking Regulation Supervisory Practices issued a statement of principles to be complied by the international banks of member states. These principles include identifying customers, avoiding suspicious transactions, and cooperating with law enforcement agencies. The statement aims at encouraging the banking sector to adopt common position in order to ensure that banks are not used to hide or launder funds acquired through criminal activities.

The International Organization of Securities Commissions (IOSCO) adopted, in October 1992, a resolution encouraging its members to take necessary steps to combat money laundering in securities and futures markets.

Global Programme against Money Laundering (GPML)

The Global Programme against Money Laundering (GPML) was established in 1997 in response to the mandate given by the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The broad objective of GPML is to strengthen the ability of UN Member States to implement measures in anti-money laundering and countering the financing of terrorism.

GPML fulfils its mandate principally through technical cooperation and assistance. It commits itself to providing a repository of best practices and information on AML/CFT and to promoting dissemination through its various initiatives. It focuses on assisting legal, financial, law enforcement and judicial authorities, as well as the private sector, to develop the necessary AML/CFT infrastructure. Over the years, GPML has developed and maintained strategic relationships and conducted many joint activities with partner international organizations working in this field.

<p>The Financial Action Task Force (FATF)</p>	<p>The Financial Action Task Force (FATF) was established in July 1989 by a Group of Seven (G-7) Summit in Paris, initially to examine and develop measures to combat money laundering.</p> <p>The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.</p> <p>The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.</p> <p>The FATF's decision making body, the FATF Plenary, meets three times per year. With more than 200 countries and jurisdictions committed to implementing them, the FATF has developed the FATF Recommendations, or FATF Standards, which ensure a co-ordinated global response to prevent organised crime, corruption and terrorism. They help authorities go after the money of criminals dealing in illegal drugs, human trafficking and other crimes. The FATF also works to stop funding for weapons of mass destruction.</p>
<p>Egmont Group</p>	<p>The Egmont Group serves as an international network fostering improved communication and interaction among Financial Intelligence Units (FIUs). Egmont Group is named after the venue in Brussels where the first such meeting of FIUs was held in June of 1995. The goal of the Egmont Group is to provide a forum for FIUs around the world to improve support to their respective governments in the fight against money laundering, terrorist financing and other financial crimes. This support includes:</p> <ul style="list-style-type: none"> Expanding and systematizing international cooperation in the reciprocal exchange of financial intelligence information; Increasing the effectiveness of FIUs by offering training and personnel exchanges to improve the expertise and capabilities of personnel employed by FIUs; Fostering better and secure communication among FIUs through the application of technology, presently via the Egmont Secure Web (ESW); and Promoting the establishment of FIUs in those jurisdictions without a national anti-money laundering/ terrorist financing program in place, or in areas with a program in the beginning stages of development.
<p>The Asia/Pacific Group on Money Laundering (APG)</p>	<p>The Asia/Pacific Group on Money Laundering (APG) was officially established as an independent regional anti money laundering body in February 1997 at the Fourth (and last) Asia/Pacific Money Laundering Symposium in Bangkok, Thailand. The purpose of the APG is to facilitate the adoption, implementation and enforcement of internationally accepted anti-money laundering and anti-terrorist financing standards set out in the recommendations of the Financial Action Task Force (FATF).</p>

	<p>The APG's role includes assisting jurisdictions in the region to enact laws dealing with the proceeds of crime, mutual legal assistance, confiscation, forfeiture and extradition. The APG allows for regional factors to be taken into account in the implementation of anti-money laundering and anti-terrorist financing measures and provides for peer review by means of a mutual evaluation process.</p> <p>The APG is a voluntary and co-operative international body established by agreement among its members and is autonomous. It does not derive from an international treaty nor is it part of any international organization. The work to be done by the APG and its procedures is decided by consensus agreement among its members.</p>
<p>Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG)</p>	<p>The Eurasian Group on Combating Money Laundering and financing of terrorism is an FATF-style regional body. The EAG was established in 2004 and is currently an associate member of the FATF.</p> <p>The EAG was created for the countries of the Eurasian region not included in the existing FATF-style regional groups and is intended to play an important role in reducing the threat of international terrorism and ensure the transparency, reliability and security of the financial systems of states and their further integration into the international infrastructure for combating money laundering and terrorism financing (AML/CFT).</p>
	<p>The primary goal of the EAG is to ensure effective interaction and cooperation at the regional level and integration of EAG member-states into the international system of anti-money laundering and combating financing of terrorism in accordance with the Recommendations of the FATF and the anti-money laundering and combating financing of terrorism standards of other international organizations, to which EAG member-states are party.</p>

What influence does money laundering have on economic development?

1. Economies with growing or developing financial centres, but inadequate controls are particularly vulnerable as established financial centre countries implement comprehensive anti-money laundering regimes.
2. Differences between national anti-money laundering systems will be exploited by launderers, who tend to move their networks to countries and financial systems with weak or ineffective countermeasures.
3. Fighting money laundering and terrorist financing is therefore a part of creating a business friendly environment which is a precondition for lasting economic development.

PREVENTION OF MONEY LAUNDERING ACT, 2002

Beneficial Owner

The term Beneficial Owner under Section 2 (1) (fa) means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.

What are Proceeds of Crime?

Proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Proceeds of crime include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

Money Laundering

Section 3 of the Act states that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it is an untainted property shall be guilty of offence of money laundering.

What is a Money Laundering Offence?

A person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:— (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever.

The process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

In the case of Vijay Madanlal Choudhary vs. Union of India (Special Leave Petition (Criminal) No. 4634 of 2014 judgement dated 27 July, 2022)

1. Supreme Court of India inter alia observed that the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished.
2. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence.
3. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.

Directorate of Enforcement {Appellant(s)} vs. Padmanabhan Kishore {Respondent(s)} (Arising out of SLP (Crl.) No. 2668 of 2022) Judgement dated October 31, 2022:

1. Supreme Court of India inter-alia observed that the definition of “proceeds of crime” in PML Act, inter alia, means any property derived or obtained by any person as a result of criminal activity relating to a scheduled offence.
2. The offences punishable under Sections 7, 12 and 13 are scheduled offences, as is evident from paragraph 8 of Part-A of the Schedule to the PML Act. Any property thus derived as a result of criminal activity relating to offence mentioned in said paragraph 8 of Part-A of the Schedule would certainly be “proceeds of crime”.
3. Section 3 states, inter alia, that whoever knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-laundering.

The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person.

Further, Supreme Court of India held that on a bare perusal of the complaint made by the Enforcement Directorate, it is quite clear that the respondent was prima facie involved in the activity connected with the proceeds of crime.

ATTACHMENT OF PROPERTY INVOLVED IN MONEY LAUNDERING



Section 5 of the Act authorises the Director on the basis of material in his possession that any person is in possession of any proceeds of money laundering; such person has been charged of having committed a scheduled offence and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime to, provisionally attach by order in writing such property for a period not exceeding 180 days from the date of the order.

The said provisional attachment does not debar the person who has the possession of the property from enjoying the same but the said person is prohibited from creating any third party interest in the said property.

Adjudication

1. If the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income
2. According to Section 8(2) the Adjudicating Authority shall, after considering the reply, hearing the aggrieved person, by an order record a finding whether all or any of the properties are involved in money laundering:-
3. Section 8(3) provides that where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property.
4. The AA can also order retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect.

Continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

Become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court.

Vesting of Property in Central Government

Section 9 provides that Where an order of confiscation in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances: Where the Special Court or the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may be declared void.

Obligation of Banking Companies, Financial Institutions and Intermediaries

Chapter IV of the Act deals with obligations of Banking companies, financial institutions and intermediaries. According to Section 12(1) requires every reporting entity shall—

- Maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
- Furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
- Maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.



Summon, Searches and Seizures, etc.	<p>Section 16 empowers an authority to enter any place within the limits of the area assigned to him.</p> <p>Section 17 empowers authority to search and seizure.</p> <p>Section 18 of the Act deals with search of persons and provides that if an authority has reason to believe that any person has secreted about his person or in anything under his possession, he may search that person and seize such record or property under this Act</p>
Power to Arrest	<p>Section 19(1) of the Act states that if the Director has on the basis of material in his possession, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.</p> <p>Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the 2 [Special Court or] Magistrate's Court.</p> <p>In the case of Pankaj Bansal v. Union of India & Ors. Criminal Appeal Nos. 3053-3054 of 2023 {@ Special Leave Petition (CrI.) Nos. 9275-76 of 2023} judgment dated 03.10.2023, Hon'ble Supreme Court of India noted that the language of Section 19 of the Act of 2002 puts it beyond doubt that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offense punishable under the Act of 2002. He/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) of the Act of 2002.</p> <p>Further the Apex Court noted that the grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation.</p>

RETENTION OF PROPERTY

Section 20 of the Act deals with retention of property

1. Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorized by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.
2. The officer authorized by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.
3. On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.
4. The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is prima facie involved in money-laundering and the property is required for the purposes of adjudication under section 8.
5. After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, the Special Court shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.
6. Where an order releasing the property has been made by the Special Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under the Act.

RETENTION OF RECORDS

Section 21 deals with retention of records.

1. Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.
2. The person, from whom records seized or frozen, shall be entitled to obtain copies of records.
3. On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.
4. The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

5. After passing of an order of confiscation or release under sub-section (5) or subsection (7) of section 8 or Section 58B, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

6. Where an order releasing the records has been made by the Court, Adjudicating Authority under section 21(5), the Director or any officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of such order, if he is of the opinion that such record is relevant for the appeal proceedings under the Act.

APPELLATE TRIBUNAL

The Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 shall be the Appellate Tribunal for hearing appeals against the orders of the Adjudicating Authority and the other authorities under this Act. Section 26 lays down the matters where appeal lies to the Appellate Tribunal and which include orders made by Adjudicating Authority, reporting authority aggrieved by the order of the Director, etc. Further appeal from the orders of the Appellate Tribunal would lie to the High Court under Section 42 of the Act.

SPECIAL COURTS

Sections 43 to 47 of the Act deal with provisions relating to Special Courts. Section 43(1) empowers the Central Government to designate, in consultation with the Chief Justice of the High Court, one or more Courts of Session as Special Courts or Court for such area or areas or for such case or class or group of cases as may be specified in the notification, for trial of offence punishable under Section 4.

Offences to be cognizable and Non-bailable

Section 45 declares every offence punishable under the Act to be cognizable. It provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while in bail.

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail.

All offences under this Act shall be cognizable offences and non-bailable offences and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant.

Agreement with Foreign Countries

Section 56 empowers the Central Government to enter into an agreement with the Government of any country for enforcing the provisions of the Act and also for exchange of information for the prevention of any offence under the this Act.

Assistance to a Contracting State in Certain Cases

Section 58 provides that, where a letter of request is received by the Central Government, from a court or authority in a contracting State requesting for investigation into an offence or proceedings under the Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority as it thinks fit for execution of such request in accordance with the provisions of the Act or as the case may be, any other law for the time being in force. Section 58A empowering Special Court to release the property.

AUTHORITIES UNDER PMLA

There shall be the following classes of authorities namely:

- Director or Additional Director or Joint Director,
- Deputy Director,
- Assistant Director, and
- Such other class of officers as may be appointed for the purposes of this Act.

JURISDICTION OF AUTHORITIES

The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

In issuing the directions or orders by the Central Government may have regard to any one or more of the following criteria:

- Territorial area;
- Classes of persons;
- Classes of cases; and
- Any other criterion specified by the Central Government in this behalf.

ATTACHMENT, SEIZURE AND CONFISCATION OF PROPERTY, ETC.

Section 60(1) provides that where the Director has made an order for attachment of any property under Section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub section (6) of section 8 and such property is suspected to be in a contracting state, the Special Court on an application by the Director or the Administrator appointed under Section 10(1) as the case may be, may issue a letter of request to a court or an authority in the contracting state for execution of such order.

Section 60(2) prescribes that where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment, seizure, freezing or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under a corresponding law committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.

RBI MASTER DIRECTION - KNOW YOUR CUSTOMER (KYC) DIRECTION

The Objective of KYC Norms/AML Measures/CFT Guidelines

The objective of Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Measures/Combating of Financing of Terrorism (CFT) guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities. KYC procedures also enable banks to know/understand

their customers and their financial dealings better which in turn help them manage their risks prudently.

It may be noted that “Regulated Entities” (REs) means:

All Scheduled Commercial Banks (SCBs)/ Regional Rural Banks (RRBs)/ Local Area Banks (LABs)/ All Primary (Urban) Co-operative Banks (UCBs) /State and Central Co-operative Banks (StCBs / CCBs) and any other entity which has been licenced under Section 22 of Banking Regulation Act, 1949, which as a group shall be referred as ‘banks’.

All India Financial Institutions (AIFIs).

All Non-Banking Finance Companies (NBFCs), Miscellaneous Non-Banking Companies (MNBCs) and Residuary Non-Banking Companies (RNBCs).

All Payment System Providers (PSPs)/ System Participants (SPs) and Prepaid Payment Instrument Issuers (PPI Issuers).

All authorised persons (APs) including those who are agents of Money Transfer Service Scheme (MTSS), regulated by the Regulator.

Know Your Customer (KYC) Policy of Regulated Entities (REs)

According to the RBI Master Direction - Know Your Customer (KYC) Direction, there shall be a Know Your Customer (KYC) policy duly approved by the Board of Directors of Regulated Entities (Res) or any committee of the Board to which power has been delegated. The KYC policy shall include following four key elements:



Money Laundering and Terrorist Financing Risk Assessment by Regulated Entities (REs)

(a) REs shall carry out ‘Money Laundering (ML) and Terrorist Financing (TF) Risk Assessment’ exercise periodically to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas, products, services, transactions or delivery channels, etc.

The assessment process should consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied. While preparing the internal risk assessment, REs shall take cognizance of the overall sector-specific vulnerabilities, if any, that the regulator/supervisor may share with REs from time to time.

(b) The risk assessment by the RE shall be properly documented and be proportionate to the nature, size, geographical presence, complexity of activities/structure, etc. of the RE. Further, the periodicity of risk assessment exercise shall be determined by the Board of the RE, in alignment with the outcome of the risk assessment exercise. However, it should be reviewed at least annually.

(c) The outcome of the exercise shall be put up to the Board or any committee of the Board to which power in this regard has been delegated, and should be available to competent authorities and self regulating bodies.

(d) REs shall apply a Risk Based Approach (RBA) for mitigation and management of the identified risk and should have Board approved policies, controls and procedures in this regard. Further, REs shall monitor the implementation of the controls and enhance them if necessary.

FINANCIAL INTELLIGENCE UNIT – INDIA (FIU-IND)

Financial Intelligence Unit - India (FIU-IND) is the central, national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions to enforcement agencies and foreign FIUs. Coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

The main Functions of FIU-IND are

- ❖ **Analysis of Information:** Analyse received information in order to uncover patterns of transactions suggesting suspicion of money laundering and related crimes.
- ❖ **Sharing of Information:** Share information with national intelligence/law enforcement agencies, national regulatory authorities and foreign Financial Intelligence Units.
- ❖ **Act as Central Repository:** Establish and maintain national data base on the basis of reports received from reporting entities.

- ❖ **Coordination:** Coordinate and strengthen collection and sharing of financial intelligence through an effective national, regional and global network to combat money laundering and related crimes.
- ❖ **Research and Analysis:** Monitor and identify strategic key areas on money laundering trends, typologies and developments.

The Directorate of Enforcement (ED)

The Directorate of Enforcement or the ED is a multi-disciplinary organization mandated with investigation of economic crimes and violations of foreign exchange laws. This Unit with Delhi as Headquarters was headed by a Legal Service Officer, as Director of Enforcement, assisted by an Officer drawn on deputation from Reserve Bank of India (RBI) and 03 Inspectors of Special Police Establishment. There were 02 branches – at Bombay and Calcutta.

Recently, with the increase in number of cases relating to economic offenders taking shelter in foreign countries, the Government has passed the Fugitive Economic Offenders Act, 2018 (FEOA) and ED is entrusted with its enforcement with effect from 21st April, 2018. The Directorate of Enforcement is a multi-disciplinary organization mandated with investigation

of offence of money laundering and violations of foreign exchange laws. The statutory functions of the Directorate include enforcement of following Acts:

- ❖ The Prevention of Money Laundering Act, 2002 (PMLA)
- ❖ The Foreign Exchange Management Act, 1999 (FEMA)
- ❖ The Fugitive Economic Offenders Act, 2018 (FEOA)

Freezing of Assets under Section 51A of Unlawful Activities (Prevention) Act, 1967

According to the UAPA, unlawful activity in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), – (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India.

Fugitive Economic Offenders Act, 2018 provides for measures to prevent fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts, to preserve the sanctity of the rule of law in India.

Salient Features of the Act

Defines the term such as “Fugitive Economic Offender”, “Key Managerial Personnel”, “Proceeds of Crime”.

Provisions for attachment of the property of a fugitive economic offender and proceeds of crime.

Empowers Director relating to survey, search and seizure and search of persons.

Confiscation of the property of a fugitive economic offender and proceeds of crime.

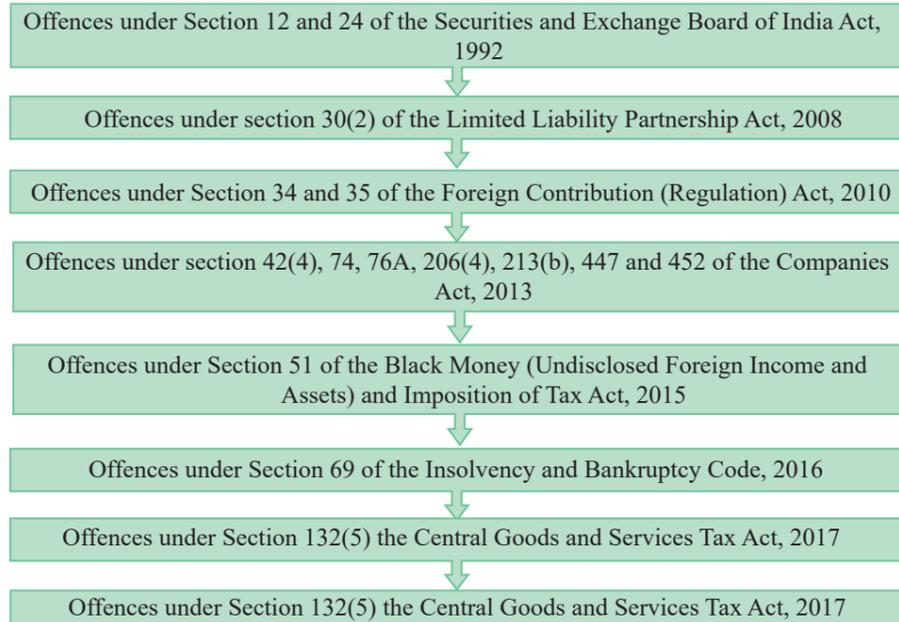
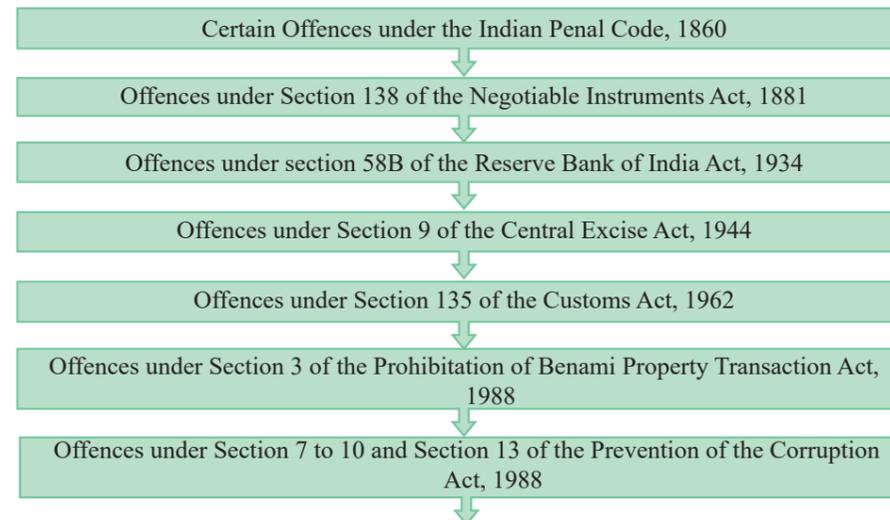
Disentitlement of the fugitive economic offender from putting forward or defending any civil claim.

Appointment of an Administrator.

Appeal to the High Court against the orders issued by the Special Court.

Any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who – (i) has left India so as to avoid criminal prosecution; or (ii) being abroad, refuses to return to India to face criminal prosecution is a fugitive economic offender.

FOLLOWING OFFENCES ARE SCHEDULED OFFENCE



PROCEDURE FOR DECLARATION OF FUGITIVE ECONOMIC OFFENDER

- Where the Director appointed for the purposes of the Prevention of Money-laundering Act, 2002 or any other officer not below the rank of Deputy Director authorised by the Director, has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that any individual is a fugitive economic offender, he may file an application in such form and prescribed manner in the Special Court that such individual may be declared as a fugitive economic offender.
- The application shall contain—
 - reasons for the belief that an individual is a fugitive economic offender;
 - any information available as to the whereabouts of the fugitive economic offender;
 - a list of properties or the value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought;
 - a list of properties or benami properties owned by the individual in India or abroad for which confiscation is sought; and
 - a list of persons who may have an interest in any of the properties listed under clauses (c) and (d) above.

- Where an application has been duly filed, the Special Court shall issue a notice to an individual who is alleged to be a fugitive economic offender.
- The notice shall also be issued to any other person who has any interest in the property mentioned in the application.
- A notice of Special Court shall—
 - require the individual to appear at a specified place and time not less than six weeks from the date of issue of such notice; and
 - state that failure to appear on the specified place and time shall result in a declaration of the individual as a fugitive economic offender and confiscation of property under the Act.
- A notice shall also be forwarded to such authority, as the Central Government may notify, for effecting service in a contracting State. The authority shall make efforts to serve the notice within a period of two weeks in such prescribed manner.
- A notice may also be served to the individual alleged to be a fugitive economic offender by electronic means to—
 - his electronic mail address submitted in connection with an application for allotment of Permanent Account Number under section 139A of the Income-tax Act, 1961;
 - his electronic mail address submitted in connection with an application for enrolment under section 3 of the Aadhaar; or
 - any other electronic account as may be prescribed, belonging to the individual which is accessed by him over the internet, subject to the satisfaction of the Special Court that such account has been recently accessed by the individual and constitutes a reasonable method for communication of the notice to the individual.
- Where any individual to whom notice has been issued by the Special Court shall appears in person at the place and time specified in the notice, the Special Court may terminate the proceedings under the Act.
- Where any individual to whom notice has been issued fails to appear at the place and time specified in the notice, but enters appearance through counsel, the Special Court may in its discretion give a period of one week to file a reply to the application.
- Where any individual to whom notice has been issued fails to enter appearance either in person or through counsel, and the Special Court is satisfied—
 - that service of notice has been effected on such party; or
 - that notice could not be served in spite of best efforts because such individual has evaded service of notice, it may, after recording reasons in writing, proceed to hear the application.

DECLARATION OF FUGITIVE ECONOMIC OFFENDER

1. After hearing the application, if the Special Court is satisfied that an individual is a fugitive economic offender, it may, by an order, declare the individual as a fugitive economic offender for reasons to be recorded in writing.
2. On a declaration, the Special Court may order that any of the following properties stand confiscated to the Central Government—
 - (a) the proceeds of crime in India or abroad, whether or not such property is owned by the fugitive economic offender; and
 - (b) any other property or benami property in India or abroad, owned by the fugitive economic offender.
3. The confiscation order of the Special Court shall, to the extent possible, identify the properties in India or abroad that constitute proceeds of crime which are to be confiscated and in case such properties cannot be identified, quantify the value of the proceeds of crime.
4. The confiscation order of the Special Court shall separately list any other property owned by the fugitive economic offender in India which is to be confiscated.
5. Where the Special Court has made an order for confiscation of any property and such property is in a contracting State, the Special Court may issue a letter of request to a Court or authority in the contracting State for execution of such order.
6. Every letter of request to be transmitted to a contracting State shall be transmitted in such form and manner as the Central Government may, by notification, specify in this behalf.
7. The Special Court may, while making the confiscation order, exempt from confiscation any property which is a proceed of crime in which any other person, other than the fugitive economic offender, has an interest if it is satisfied that such interest was acquired bona fide and without knowledge of the fact that the property was proceeds of crime.
8. All the rights and title in the confiscated property shall, from the date of the confiscation order, vest in the Central Government, free from all encumbrances.
9. Where on the conclusion of the proceedings, the Special Court finds that the individual is not a fugitive economic offender, the Special Court shall order release of property or record attached or seized under this Act to the person entitled to receive it.
10. Where an order releasing the property has been made by the Special Court, the Director or any other officer authorised by him in this behalf may withhold the release of any such property or record for a period of ninety days from the date of receipt of such order, if he is of the opinion that such property is relevant for the appeal proceedings under the Act.

POWER TO DISALLOW CIVIL CLAIMS

Not with standing anything contained in any other law for the time being in force,

On a declaration of an individual as a fugitive economic offender, any Court or tribunal in India, in any civil proceeding before it, may, disallow such individual from putting forward or defending any civil claim; and

Any Court or tribunal in India in any civil proceeding before it, may, disallow any company or limited liability partnership from putting forward or defending any civil claim, if an individual filing the claim on behalf of the company or the limited liability partnership, or any promoter or key managerial personnel or majority shareholder of the company or an individual having a controlling interest in the limited liability partnership has been declared as a fugitive economic offender.

ATTACHMENT OF PROPERTY

The Director or any other officer authorised by the Director, not below the rank of Deputy Director, may, with the permission of the Special Court, attach any by an order in writing in prescribed manner.

Director or any other officer, not below the rank of Deputy Director, authorised by the Director, may, by an order in writing, at any time prior to the filing of the application to the Special Court, attach any property—

- ❖ For which there is a reason to believe that the property is proceeds of crime, or is a property or benami property owned by an individual who is a fugitive economic offender; and
- ❖ Which is being or is likely to be dealt with in a manner which may result in the property being unavailable for confiscation.

Director or any other officer who provisionally attaches any property shall within a period of thirty days from the date of such attachment, file an application before the Special Court.

POWER OF SURVEY

Where a Director or any other officer authorised by the Director, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing), that an individual may be a fugitive economic offender, he may enter any place:

- Within the limits of the area assigned to him; or
- In respect of which he is authorised for the purposes of this section, by such other authority, who is assigned the area within which such place is situated.

Where the Director or any other officer authorised by him, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an individual may be a fugitive economic offender and it is necessary to enter any place, he may request any proprietor, employee or any other person who may be present at that time, to—

Afford him the necessary facility to inspect such records as he may require and which may be available at such place;

Afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and

Furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings .

The Director, or Any Other Officer Acting Under this Section May

Place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom;

Place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom;

Record the statement of any person present at the property which may be useful for, or relevant to, any proceeding .

SEARCH AND SEIZURE

Where the Director or any other officer not below the rank of Deputy Director authorised by him, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person:

(Step 1)	May be declared as a fugitive economic offender;
(Step 2)	Is in possession of any proceeds of crime;
(Step 3)	Is in possession of any records which may relate to proceeds of crime; or
(Step 4)	Is in possession of any property related to proceeds of crime, then, subject to any rules made in this behalf, he may authorise any officer subordinate to him to— <ol style="list-style-type: none"> (a) Enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept; (b) Break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available; (c) Seize any record or property found as a result of such search; (d) Place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom; (e) Make a note or an inventory of such record or property; and (f) Examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act.

Where an authority, upon information obtained during survey, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence.

Search of Persons

Notwithstanding anything contained in any other law for the time being in force—

1. If an authority has reason to believe that any person has secreted about hit person or anything under his possession, he may search that person and seize property.

2. Where an authority is about to search any person, he shall, if such person so required, take such person within twenty-four hours to magistrate.

3. The magistrate before whom any such person is brought shall, if he sees not reasonable ground for search, forthwith discharge such person

4. Before making the search, the authority shall call upon two or more person to attend and witness the search

5. The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list:

RULES OF EVIDENCE

The burden of proof for establishing (a) that an individual is a fugitive economic offender; or (b) that a property is the proceeds of crime or any other property in which the individual alleged to be a fugitive economic offender has an interest, shall be on the Director or the person authorised by the Director to file the application.

Notwithstanding anything contained in any other law for the time being in force, where any person claims that any interest in any property was acquired bona fide and without knowledge of the fact that, such property constitutes proceeds of crime, the burden of proving such fact shall lie upon him.

The standard of proof applicable to the determination of facts by the Special Court under the Act shall be preponderance of probabilities.

APPEAL

1. An appeal shall lie from any judgment or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
2. Every appeal shall be preferred within a period of thirty days from the date of the judgment or order appealed from.
3. High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.
4. No appeal shall be entertained after the expiry of period of ninety days.

Overriding Effect

The provisions of Fugitive Economic Offender Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

In the case of Union of India & Anr. Vs. M/s. Ganpati Dealcom Pvt. Ltd, {Civil Appeal No. 5783 of 2022, Special Leave Petition (C) No. 2784/2020} the Hon'ble Supreme Court of India inter alia observed that:

1. The term 'benami transaction' generally implies that one purchases the property in the name of somebody else, i.e., a name lender, and the purchaser does not hold beneficial interest in the property. Literally, 'benami' means 'without a name'.
2. The simplest example is if person 'A' (real owner) purchases a property from 'B' in the name of 'C' (benamidar/ostensible owner), wherein 'A' exercise rights/ interest over the property.
3. Conceptually, there are two views which arise from the Doctrine of Benami. The first view is that the benamidar does not hold title over the property, and the second view is that although the title passes to the benamidar, he holds it in trust.

Eventually, there developed two loose categories of transactions that were colloquially termed as benami, which can be explained through the following examples:

- (i) **Tripartite:** 'B' sells a property to 'A' (real owner), but the sale deed mentions 'C' as the owner/benamidar.
- (ii) **Bipartite:** 'A' sells property to 'B' without intending to pass the title to 'B'.

The first instance was usually termed as a real benami transaction, and the second transaction was considered either as a sham transaction or "loosely" benami transaction.

The Preamble of the Act Reads as under

An Act to prohibit benami transactions and the right to recover properly held benami and for matters connected therewith or incidental thereto.

Salient Features of the Benami Transactions (Prohibition) Act, 1988

It defines a benami transaction and benami property and also provides for exclusions and transactions which shall not be construed as benami.

It provides the consequences of entering into prohibited benami transactions.

It lays down the procedure for determination and related penal consequences in the case of a prohibited benami transaction.

It also provides that the powers of civil court shall be available to authorities under the said Act.

Miscellaneous Provisions have been provided for service of notice, protection of action taken in good faith, etc.

Central Government empowers to make rules for the implementation of the provisions of the Act.

It enables the Central Government in consultation with the Chief Justice of the High Court to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Act.

It provides a penalty for entering into benami transactions and for furnishing any false documents in any proceeding under the Act.

It provides for transfer of any suit or proceeding in respect of a benami transaction pending in any court (other than High Court) or Tribunal or before any authority to the Appellate Tribunal.

"Benami Property"

Benami Property means any property which is the subject matter of a benami transaction and also includes the proceeds from such property. [Section 2(8)]

"Benami Transaction"

As per Section 2 (9) of the benami transaction means–

- (A) A transaction or an arrangement –
 - (a) Where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
 - (b) The property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, Except when the property is held by–
 - (i) A Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;
 - (ii) A person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;
 - (iii) Any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;
 - (iv) Any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint- owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or
- (B) A transaction or an arrangement in respect of a property carried out or made in a fictitious name (For Example: Mr. X purchases a property in the name of Mr. Y, who is non-existent); or
- (C) A transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership(Mr. X is holding a flat in the name of Mr. Y. Upon inquiry by authorities, Mr. Y denies the ownership of the flat);

- (D) A transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious(Mr. A purchased a flat, payment of which was made by an unknown person)

"Benamidar"	Benamidar means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.[Section 2(10)]
"Beneficial Owner"	"Beneficial Owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar. [Section 2(10)]

Prohibition of Benami Transactions

As per Section 3, no person shall enter into any benami transaction.

Act provides that whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

According to Section 3 where any person enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall be punishable in accordance with the provisions contained in Chapter VII.

Chapter VII deals with offenses and prosecution. It provides that if a person is found guilty of offense of benami transaction by the competent court, he shall be punishable with rigorous imprisonment for a term not less than one year but which may extend to 7 years and shall also be liable to fine which may extend to 25% of the fair market value of the property.

PROHIBITION OF THE RIGHT TO RECOVER PROPERTY HELD BENAMI

Section 4(1) provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held

Section 4(2) provides that no defense based on any right in respect of any property held benami.

Hon'ble Supreme Court of India in the case of Union of India Vs. M/s. Ganpati Dealcom Pvt. Ltd held that Section 3(2) of the 2016 Act is unconstitutional as it is violative of Article 20(1) of the Constitution. In rem forfeiture provision under Section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retroactively.

Prohibition on Re-transfer of Property by Benamidar

Section 6 provides that a person, being a benamidar, shall not re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.

Where any property is re-transferred in contravention of the above the transaction of such property shall be deemed to be null and void.

Authorities and Jurisdiction

The following shall be the Authorities for the purposes of Benami Transactions Prohibition Act

- The Initiating Officer;
- The Approving Authority;
- The Administrator; and
- The Adjudicating Authority.

The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it. The authorities shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit.

Every proceeding shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

The following officers shall assist the authorities in the enforcement of the Act, namely:

- | | |
|-----|--|
| (a) | Income-tax authorities appointed under section 117(1) of the Income-tax Act, 1961; |
| (b) | Officers of the Customs and Central Excise Departments; |
| (c) | Officers appointed under section 5(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985; |
| (d) | Officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 ; |
| (e) | Officers of the Reserve Bank of India constituted under section 3(1) of the Reserve Bank of India Act, 1934; |
| (f) | Police; |
| (g) | Officers of enforcement appointed under section 36(1) of the Foreign Exchange Management Act, 1999; |
| (h) | Officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992; |
| (i) | Officers of any other body corporate constituted or established under a Central or a State Act; and |
| (j) | Such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf. |

Notice and Attachment of Property Involved in Benami Transaction

Section 24 relates to notice and attachment of property involved in benami transaction.

1. The Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to such person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.
2. This section provides that a copy of the notice may also be served upon such other person who is a beneficial owner. Section 24(2A) provides that the benamidar, to whom a notice has been issued under sub-section (1), or the beneficial owner to

whom a copy of such notice has been issued under sub-section (2), shall furnish the explanation or submissions, if any, within the period specified in the said notice or such period as may be extended by the Initiating Officer, not exceeding three months from the end of the month in which the said notice is issued.

3. Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate such property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally such property in the manner as may be prescribed, for a period not exceeding 4 months from the date of issue of notice.
4. The Initiating Officer, after making such inquires and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of 4 months from the date of issue of notice.

(a) Where the provisional attachment has been made

pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or (ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) Where provisional attachment has not been made

Pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order made by the Adjudicating Authority under sub-clause (3) of section 26; or

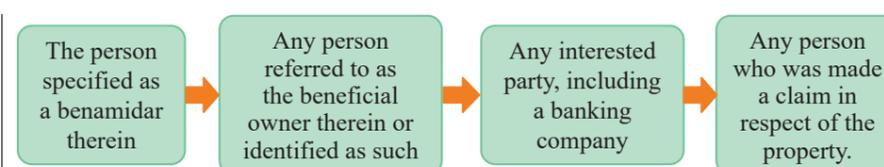
Decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

Manner of Service of Notice

- In case of an individual, to such individual;
- In the case of a firm, to the managing partner or the manager of the firm;
- In the case of a Hindu undivided family, to karta or any member of such family;
- In the case of a company, to the principal officer thereof;
- In the case of any other association or body of individuals, to the principal officer or any member thereof;
- In the case of any other person (not being an individual), to the person who manages or controls his affairs.

ADJUDICATION OF BENAMI PROPERTY

Section 26 relates to adjudication of benami property. On receipt of a reference, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons:



1. The Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is benami property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part or properties is held benami.
2. When the Adjudicating Authority has reason to believe that a property, other than a property referred to him by the Initiating Officer is benami property, it shall provisionally attach the property and the property shall be deemed to be a property referred to it on the date of receipt of the reference.
3. The Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or suo moto, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable it to adjudicate upon and settle all the questions involved in the reference.

CONFISCATION AND VESTING OF BENAMI PROPERTY

1. Section 27 deals with confiscation and vesting of benami property. The Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a benami property.
2. The above shall not apply to a property held or acquired by a person from the benamidar for adequate consideration.
3. Where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances.
4. Any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.

POSSESSION OF THE PROPERTY

Section 29 relates to possession of the property. Where an order of confiscation in respect of a property under section 27 has been made, the Administrator shall proceed to take the possession of such property.

The Administrator shall

In the event of non-compliance of the order referred to in clause (a), or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty such officer to comply with the requisition.

By notice in writing, order within seven days of the date of the service of notice any person, who may be in possession of the benami property, to surrender or deliver possession thereof to the Administrator or any other person duly authorised in writing by him in this behalf;

Appellate Tribunal

The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

Appeal to High Court

Section 49 relates to appeal to High Court. Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.

High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

Special Courts Offences by Companies

Section 50 relates to Special Courts. The Central Government, in consultation with the Chief Justice of the High Court, shall for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Section 62 relates to consequences in case of offences by companies.

Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

No person shall be liable to punishment, if he proves that the contravention took place without his knowledge.

Where a contravention of any of the provisions of this Act has been committed by a company and it is proved that the contravention has taken place with the consent or approval of or to any neglect on the part of any director, manager, or other officer, such an officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

It may be noted that for the purpose of section 62, a “Company” means a body corporate, and includes

- (i) A firm; and
- (ii) An association of persons or a body of individuals whether incorporated or not; and

“Director”, in relation to –

- (i) A firm, means a partner in the firm;
- (ii) Any association of persons or a body of individuals, means any member controlling the affairs thereof.

POWER TO TENDER IMMUNITY FROM PROSECUTION

Section 55A deals with power to tender Immunity from prosecution. It provides that:

1. The Initiating Officer may, with a view to obtaining the evidence of the benamidar or any other person as referred to in section 53, other than the beneficial owner, tender immunity from prosecution for any offence under the said section to the benamidar or such other person, with the previous sanction of the competent authority as referred to in section 55, on the condition that the benamidar or such other person makes a full and true disclosure of the whole circumstances relating to the benami transaction.
2. The tender of immunity made to, and accepted by, the benamidar or such other person, shall, to the extent to which the immunity extends, render him immune from prosecution for the offence in respect of which the tender was made and from the imposition of any penalty under section 53.
3. If it appears to the Initiating Officer that any person to whom immunity has been tendered under this section has not complied with the conditions subject to which the tender was made, or is wilfully concealing anything, or is giving false evidence, the Initiating Officer may record a finding to that effect, and with the previous sanction of the competent authority as referred to in section 55, withdraw the immunity tendered.
4. Any person against whom the immunity tendered is withdrawn in accordance with sub-section (3), may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have committed in connection with the same transaction and shall also be liable to any penalty under this Act to which he would otherwise have been liable.

WHAT IS COMPETITION IN THE MARKET?

In common parlance, competition in the market means sellers striving independently for buyers' patronage to maximize profit (or other business objectives). A buyer prefers to buy a product at a price that maximizes his benefits whereas the seller prefers to sell the product at a price that maximizes his profit.

The World Trade Organisation (WTO) defines competition policy as: "the full range of measures that may be used to promote competitive market structures and behaviour, including but not limited to a comprehensive competition law dealing with anti-competitive practices of enterprises". World Bank also provides a definition of competition policy as: "government measures that directly affect the behaviour of enterprises and the structure of industry. An appropriate competition policy includes both: (a) policies that enhance competition in local and national markets, and (b) competition law, also referred to as antitrust or antimonopoly law".

Competition Law-Evolution and Development

The first Indian competition law was enacted in 1969 and was christened as the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). The genesis of the MRTP Act, 1969 is traceable to Articles 38 and 39 of the Constitution of India. The Directive Principle of State Policy in those Articles lays down, inter-alia that the State shall strive to promote the welfare of the people by securing and protecting as effectively, as it may, a social order in which justice - social, economic and political- shall inform all the institutions of the national life, and the State shall, in particular, direct its policy towards securing:

That the ownership and control of material resources of the community are so distributed as best to subserve the common good; and

That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

The principal objectives of the Act, as spelt out in the preamble were:

Prevention of concentration of economic power to the common detriment;

Control of monopolies;

Prohibition of monopolistic trade practice;

Prohibition of restrictive trade practices.

Recommendations of Sachar Committee

An obligation is to be cast on the seller to speak the truth when he advertises and also to avoid half truths

Committee also focused on price deception, and fictitious deception i.e., selling goods at nominal value.

Prices may be advertised as greatly reduced and cut when in reality the goods may be sold at sellers regular prices.

Consumer has no protection against false or deceptive advertisements.

The Government of India appointed a Committee in August, 1977 under the Chairmanship of Justice Rajinder Sachar to look into the simplification of the working of the companies and the MRTP Act. The Committee submitted its report in the year 1978 and as far as recommendations pertaining to the MRTP Act are concerned, far reaching changes were suggested by the Committee. For the first time, the Committee highlighted the need for introduction of suitable provisions to curb unfair trade practices.

Accordingly, the Committee specified certain unfair trade practices which were notorious and suggested prohibition of such practices. The main category of unfair trade practices recommended for prohibition by the Sachar Committee were: (a) misleading advertisements and false representations (b) bargain sale, bait and switch selling; (c) offering gifts or prizes with the intention of not providing them and conducting promotional contests; (d) supplying goods not conforming to safety standards; and (e) hoarding and destruction of goods.

Recommendations of Raghavan Committee

A High Level Committee on Competition Policy and Law was constituted under Chairmanship of Mr. S.V.S Raghavan. The Committee submitted its report on 22nd May 2000 recommending replacement of the MRTP Act with a modern competition law for fostering competition and for eliminating anticompetitive practices in the economy. After consulting the stakeholders, Competition Bill, 2001 was introduced in the Parliament which eventually became the Competition Act, 2002.

COMPETITION ACT, 2002

The Competition Act, 2002 has been enacted to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in the markets, to protect the interest of consumers and to ensure freedom of trade carried on by other participant in the markets in India and for matters connected therewith or incidental thereto Hon'ble Supreme Court in CCI v. Bharati Airtel Civil Appeals arising out of SLP (C) No. 35574 of 2017 & Ors December 05, 2018 observed that in the wake of globalisation and keeping in view the economic development of the country, responding to opening of its economy and resorting to liberalisation, need was felt to enact a law that ensures fair competition in India by prohibiting trade practices which cause an appreciable adverse effect on competition within markets in India and for establishment of an expert body in the form of Competition Commission of India, which would discharge the duty of curbing negative aspects of competition, the Competition Act, 2002 has been enacted by the Parliament.

The Act deals with three kinds of practices which are treated as anti-competitive and are prohibited. These are:

Where agreements are entered into by certain persons with a view to cause an appreciable adverse effect on competition;

Where any enterprise or group of enterprises, which enjoys dominant position, abuses the said dominant position; and

Regulating the combination of enterprises by means of mergers or amalgamations to ensure that such mergers or amalgamations do not become anti-competitive or abuse the dominant position which they can attain.

Hon'ble Supreme Court in Competition Commission of India v. SAIL (2010) 10 SCC 744 observed that it is well settled that the Competition Act, 2002 is a regulatory legislation enacted against concentration of unjust monopolistic powers at the hands of private individuals which might be detrimental for freedom of trade.

The advantages of perfect competition are threefold:

1. allocative efficiency, which ensures the effective allocation of resources,
2. productive efficiency, which ensures that costs of production are kept at a minimum and
3. dynamic efficiency, which promotes innovative practices. These factors by and large have been accepted all over the world as the guiding principles for effective implementation of competition law.

In the case of Excel Crop Care Limited v. Competition Commission of India and Another (Civil Appeal No. 2480 of 2014) the Hon'ble Supreme Court of India observed that the ultimate goal of competition policy (or for that matter, even the consumer policies) is to enhance consumer well-being. These policies are directed at ensuring that markets function effectively. Competition policy towards the supply side of the market aims to ensure that consumers have adequate and affordable choices. How these benefits accrue is explained in ASEAN Regional Guidelines on Competition Policy.

ASEAN REGIONAL GUIDELINES ON COMPETITION POLICY

In the case of Excel Crop Care Limited v. Competition Commission of India and Another the Hon'ble Supreme Court of India observed that the Act, which prohibits anti-competitive agreements, has a laudable purpose behind it. The benefits of which are explained in ASEAN Regional Guidelines on Competition Policy and are as follows:

"2.2 Main Objectives and Benefits of Competition Policy"

2.2.1.1 Economic efficiency: Economic efficiency refers to the effective use and allocation of the economy's resources. Competition tends to bring about enhanced efficiency, in both a static and a dynamic sense, by disciplining firms to produce at the lowest possible cost and pass these cost savings on to consumers, and motivating firms to undertake research and development to meet customer needs.

2.2.1.2 Economic growth and development: Economic growth—the increase in the value of goods and services produced by an economy – is a key indicator of economic development. Economic development refers to a broader definition of an economy's well-being, including employment growth, literacy and mortality rates and other measures of quality of life

2.2.1.3 Consumer Welfare: Competition policy contributes to economic growth to the ultimate benefit of consumers, in terms of better choice (new products), better quality and lower prices. Consumer welfare protection may be required in order to redress a perceived imbalance between the market power of consumers and producers.

Further, the Apex Court inter alia observed that in fact, there is broad empirical evidence supporting the proposition that competition is beneficial for the economy. Economists agree that it has an important role to play in improving productivity and, therefore, the growth prospects of an economy. It is achieved in the following manner:

“INTERNATIONAL COMPETITION NETWORK- ECONOMIC GROWTH AND PRODUCTIVITY

Competition contributes to increased productivity through:

Pressure on firms to control costs:	In a competitive environment, firms must constantly strive to lower their production costs so that they can charge competitive prices, and they must also improve their goods and services so that they correspond to consumer demands.
Easy market entry and exit:	Entry and exit of firms reallocates resources from less to more efficient firms. Overall productivity increases when an entrant is more efficient than the average incumbent and when an exiting firm is less efficient than the average incumbent. Entry – and the threat of entry –incentivizes firms to continuously improve in order not to lose market share to or be forced out of the market by new entrants
Encouraging innovation:	Innovation acts as a strong driver of economic growth through the introduction of new or substantially improved products or services and the development of new and improved processes that lower the cost and increase the efficiency of production. Incentives to innovate are affected by the degree and type of competition in a market.
Pressure to Improve Infrastructure: Competition puts pressure on communities to keep local producers competitive by improving roads, bridges, docks, airports, and communications, as well as improving educational opportunities.	
Benchmarking:	Competition also can contribute to increased productivity by creating the possibility of benchmarking. The productivity of a monopolist cannot be measured against rivals in the same geographic market, but a dose of competition quickly will expose inferior performance. A monopolist may be content with mediocre productivity but a firm battling in a competitive market cannot afford to fall behind, especially if the investment community is benchmarking it against its rivals.” Productivity is increased through competition by putting pressure on firms to control costs as the producers strive to lower their production costs so that they can charge competitive prices. It also improves the quality of their goods and services so that they correspond to consumers’ demands. Competition law enforcement deals with anti-competitive practices arising from the acquisition or exercise of undue market power by firms that result in consumer harm in the forms of higher prices, lower quality, limited choices and lack of innovation. Enforcement provides remedies to avoid situations that will lead to decreased competition in markets. Effective enforcement is important not only to sanction anti-competitive conduct but also to deter future anti-competitive practices.

IMPORTANT DEFINITIONS

“Cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services. [Section 2(c)].

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.

- ❖ An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country.
- ❖ An import cartel comprises enterprises (including an association of enterprises) that get together for the purpose of imports into the country.
- ❖ An export cartel is made up of enterprises based in one country with an agreement to cartelize markets in other countries.

Some of the conditions that are conducive to cartelization are:

- High concentration - few competitors
- High entry and exit barriers
- Homogeneity of the products (similar products)
- Similar production costs
- Excess capacity
- High dependence of the consumers on the product
- History of collusion

“Consumer” means any person who—

- Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
- Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use. [Section 2(f)]

“Enterprise” means a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

“Goods” means goods as defined in the Sale of Goods Act, 1930 and includes—

- Products manufactured, processed or mined;
- Debentures, stocks and shares after allotment;
- In relation to goods supplied, distributed or controlled in India, goods imported into India. Section 2(i)]

“Relevant Market” means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. [Section 2(r)]

“Relevant Geographic Market” means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas. [Section 2(s)]

“Relevant Product Market” means a market comprising of all those products or services:

- which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or
- the production or supply of, which are regarded as interchangeable or substitutable by the supplier, by reason of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices. [Section 2(t)]

PROHIBITION OF CERTAIN AGREEMENTS

Section 3(3) states that any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which:

- Directly or indirectly determines purchase or sale prices;
- Limits or controls production, supply, markets, technical development, investment or provision of services;
- Shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- Directly or indirectly results in bid rigging or collusive bidding,

Shall be presumed to have adverse effect on competition

BID RIGGING IS ANTI-COMPETITIVE

Bidding, as a practice, is intended to enable the procurement of goods or services on the most favourable terms and conditions. Invitation of bids is resorted to both by Government (and Government entities) and private bodies (companies, corporations, etc.). But the objective of securing the most favourable prices and conditions may be negated if the prospective bidders collude or act in concert. Such collusive bidding or bid rigging contravenes the very purpose of inviting tenders and is inherently anti-competitive.

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

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

Section 3(4) provides that any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- Tie-in arrangement;
- Exclusive dealing agreement;
- Exclusive distribution agreement;
- Refusal to deal;
- Resale price maintenance,

- (a) “Tie-In Arrangement” includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services;
- (b) “Exclusive Dealing Agreement” includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;
- (c) “Exclusive Distribution Agreement” includes any agreement to limit, restrict or withhold the output or supply of any goods or services or allocate any area or market for the disposal or sale of the goods or services;
- (d) “Refusal to Deal” includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods or services; are sold or from whom goods or services are bought;
- (e) “Resale Price Maintenance” includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

It may be noted that Section 3 shall not restrict—

- (i) The right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under—

The Copyright Act, 1957;

The Patents Act, 1970;

The Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999;

The Geographical Indications of Goods (Registration and Protection) Act, 1999;

The Designs Act, 2000; f. the Semi-conductor Integrated Circuits Layout-Design Act, 2000;

Any other law for the time being in force relating to the protection of other intellectual property rights.

- (ii) The right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

WHAT IS AN ANTI-COMPETITIVE AGREEMENT?

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

- Agreement to limit production and/or supply;
- Agreement to allocate markets;
- Agreement to fix price;
- Bid rigging or collusive bidding;
- Conditional purchase/sale (tie-in arrangement);
- Exclusive supply/distribution arrangement;
- Resale price maintenance; and
- Refusal to deal

PROHIBITION OF ABUSE OF DOMINANT POSITION

According to Section 4(1) of the Act, no enterprise or group shall abuse its dominant position.

Section 4(2) states that there shall be an abuse of dominant position under sub-section (1), if an enterprise or a group,

- a. Directly or indirectly, imposes unfair or discriminatory—
 - i. Condition in purchase or sale of goods or service; or
 - ii. Price in purchase or sale (including predatory price) of goods or service.
- b. Limits or restricts—
 - i. Production of goods or provision of services or market therefor; or
 - ii. Technical or scientific development relating to goods or services to the prejudice of consumers; or
- c. Indulges in practice or practices resulting in denial of market access in any manner; or
- d. Makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- e. Uses its dominant position in one relevant market to enter into, or protect, other relevant market.

“Predatory Price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

WHAT CONSTITUTES ABUSE OF DOMINANCE?

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or consumers or the market in its favour. Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with the dominant undertaking on merit. Abuse of dominant position includes:

- Imposing unfair conditions or price,
- Predatory pricing,
- limiting production/market or technical development,
- Creating barriers to entry,
- Applying dissimilar conditions to similar transactions,
- Denying market access, and
- Using dominant position in one market to gain advantages in another market

In the case of Mr. Umar Javeed and Others v. Google LLC and Another in Case No. 39 of 2018, the Competition Commission of India (CCI) observed that “dominant position” under the Act has been defined as meaning a position of strength, enjoyed by an enterprise, in the relevant market which enables it to operate independently of competitive forces or to affect its competitors or consumers in its favour.

Resultantly, once a dominant undertaking is found to have indulged in any of the acts provided in Section 4(2) of the Act, the contravention of the Act stands established. The moment there is any imposition of any unfair or discriminatory condition by a dominant player, the statutory prohibitions shall trigger.

THRESHOLDS FOR COMBINATION

Thresholds For Filing Notice				
		Assets		Turnover
Enterprise level	India	> 2500 INR Crore	OR	> 7500 INR Crore
	In India or Outside India	> USD 1.25 bn with at least > 1250 INR Crore in India		> USD 3.75 bn with at least > 3750 INR Crore in India
OR				
Group Level		Assets		Turnover
	India	> 10000 INR Crore	OR	> 30000 INR Crore
	Worldwide with India leg	> USD 5 bn with at least > 1250 INR Crore in India		> USD 15 bn with at least > 3750 INR Crore in India

De Minimis Exemption/ Target Exemption: Pursuant to Notification No. S.O. 1131 (E) dated March 7, 2024, the Central Government, in public interest, has exempted the enterprises being parties to —

- (a) Any acquisition referred to in clause (a) of section 5 of the Competition Act;
- (b) Acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise
- (c) Any merger or amalgamation, referred to in clause (c) of section 5 of the Competition Act, where the value of assets being acquired, taken control of, merged or amalgamated is not more than rupees four hundred and fifty (450) crores in India or turnover of not more than rupees One thousand two hundred and fifty crore in India,

THRESHOLDS FOR AVALING OF DE-MINIMIS EXEMPTION

		Assets		Turnover
Target Enterprise	In India	< Rs.450 Crore	OR	< Rs.1250 Crore

Open Offers, etc

Section 6A of the Act provides that nothing contained in section 6(2A) and section 43A shall prevent the implementation of an open offer or an acquisition of shares or securities convertible into other securities from various sellers, through a series of transactions on a regulated stock exchange from coming into effect, if—

- The notice of the acquisition is filed with the Commission within such time and in such manner as may be specified by regulations; and
- The acquirer does not exercise any ownership or beneficial rights or interest in such shares or convertible securities including voting rights and receipt of dividends or any other distributions, except as may be specified by regulations, till the Commission approves such acquisition in accordance with the provisions of sub-section (2A) of section 6 of the Act.

Explanation. —For the purposes of this section, “open offer” means an open offer made in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 made under the Securities and Exchange Board of India Act, 1992

REGULATION OF COMBINATIONS

Section 6(2) states that subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, after any of the following, but before consummation of the combination of—

Approval of the proposal relating to merger or amalgamation, referred to in clause (c) and clause (d) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

Execution of any agreement or other document for acquisition referred to in clause (a) and clause (d) of section 5 or acquiring of control referred to in clause (b) of that section.

COMPETITION COMMISSION OF INDIA

Selection Committee for Chairperson and Members of Commission

Section 9 provides that the Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

- Composition of Selection Committee
- The Chief Justice of India or his nominee-Chairperson;
 - The Secretary in the Ministry of Corporate Affairs- Members;
 - The Secretary in the Ministry of Law and Justice-Member;
 - Two experts of repute who have special knowledge of, and professional experience in international trade, economic, business, commerce, law, finance, accountancy, management, industry, technology, public affairs or competition matters including Members.

TERM OF OFFICE OF CHAIRPERSON AND OTHER MEMBERS

Section 9 of the Act states that the Chairperson and every other Member shall hold office as such for a term of five years and shall be eligible for re-appointment until the age of 65. In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson. When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions.

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

Restriction on Employment of Chairperson and other Members

According to Section 12(1) of the Act, Chairperson and other Members shall, for a period of two years from the date on which they cease to hold office, not accept any employment in or advise as a consultant, retainer or in any other capacity whatsoever, or be connected with the management or administration of—

Any enterprise which is or has been a party to a proceeding before the Commission under this Act; or

Any person who appears or has appeared before the Commission under section 35.

APPOINTMENT OF DIRECTOR GENERAL

Section 16 empowers the Commission with the prior approval of the Central Government appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act.

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

DUTIES AND FUNCTIONS OF COMMISSION

Section 18 of the Act deals with duties and functions of the Commission which are to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:

Inquiry into Certain Agreements and Dominant Position of Enterprise

Section 19(1) provides that the Commission may inquire into any alleged contravention of the provisions contained in section 391) or section 4(1) either on its own motion or on—

Receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

A reference made to it by the Central Government or a State Government or a statutory authority.

It may be noted that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen.

The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:

- Creation of barriers to new entrants in the market;
- Driving existing competitors out of the market;
- Foreclosure of competition;
- Benefits or harm to consumers;
- Improvements in production or distribution of goods or provision of services;
- Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:

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

The Commission shall, while determining the “relevant geographic market”, have due regard to all or any of the following factors, namely—

- Regulatory trade barriers;
- Local specification requirements;
- National procurement policies;
- Adequate distribution facilities;
- Transport costs;
- Language;
- Consumer preferences;
- Need for secure or regular supplies or rapid after-sales services;
- Characteristics of goods or nature of services;
- Costs associated with switching supply or demand to other areas.

The Commission shall, while determining the “relevant product market”, have due regard to all or any of the following factors, namely:

(a)	Physical characteristics or end-use of goods 1[or the nature of services];
(b)	Price of goods or service;
(c)	Consumer preferences;
(d)	Exclusion of in-house production;
(e)	Existence of specialised producers;
(f)	Classification of industrial products;
(g)	Costs associated with switching demand or supply to other goods or services;
(h)	Categories of customers.

The main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face.

The concept of relevant market implies that there could be an effective competition between the products which form part of it and there is a sufficient degree of interchangeability between all the products forming part of the same market insofar as specific use of such product is concerned. The relevant market has both:

1. a product dimension and
2. a geographic dimension.
 - (a) Relevant product market comprises all those products which are considered interchangeable or substitutable by buyers because of the products’ characteristics, prices and intended use.
 - (b) The relevant geographic market comprises all those regions or areas where buyers would be able or willing to find substitutes for the products in question.

As per Section 20(4), for the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely—

(a)	Actual and potential level of competition through imports in the market;
(b)	Extent of barriers to entry into the market;
(c)	Level of concentration in the market;
(d)	Degree of countervailing power in the market;
(e)	Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
(f)	Extent of effective competition likely to sustain in a market;
(g)	Extent to which substitutes are available or are likely to be available in the market;
(h)	Market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
(i)	Likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
(j)	Nature and extent of vertical integration in the market;
(k)	Possibility of a failing business;
(l)	Nature and extent of innovation;
(m)	Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
(n)	Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Procedure for Inquiry into Certain Agreements and Dominant Position of Enterprise

Section 26 deals with procedure for Inquiry into Certain Agreements and Dominant Position of Enterprise. It states that:

On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter: It may be noted that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(3)	The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.
(3A)	If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.
(3B)	The Director General shall, on receipt of direction under sub-section (3A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.
(5)	If the report of the Director General recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned.
(6)	If, after consideration of the objections or suggestions Commission agrees with the recommendation of the Director General, it shall close the matter.
(7)	If, after consideration of the objections or suggestions the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General.
(8)	If the report of the Director General referred to in sub-section (3) and (3B) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.
(9)	Upon completion of the investigation or inquiry the Commission may pass an order closing the matter or pass an order under section 27. Provided that before passing such order, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified by regulations and give a reasonable opportunity of being heard to the parties concerned.

In *Competition Commission of India v. Steel Authority of India (Civil Appeal No. 7779 of 2010, judgment dated September 09, 2010)*, looked into the ambit and scope of power vested with the Commission under Section 26(1) of the Act and whether the parties, including the informant or the affected party, are entitled to notice or hearing, as a matter of right, at the preliminary stage of formulating an opinion as to the existence of the prima facie case. With regard to notice and/or hearing at the stage of forming prima facie decision by the Commission under Section 26(1) of the Act, Supreme Court of India held that neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor any party can claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a prima facie case exists for issuance of a direction to the Director General to cause an investigation to be made into the

matter. However, the Commission, being a statutory body exercising, inter alia, regulatory jurisdiction, even at that stage, in its discretion and in appropriate cases may call upon the concerned party(s) to render required assistance or produce requisite information, as per its directive. Supreme Court also observed that the Commission is expected to form such prima facie view without entering upon any adjudicatory or determinative process. The Commission is entitled to form its opinion without any assistance from any quarter or even with assistance of experts or others. The Commission has the power in terms of Regulation 17 (2) of the Regulations to invite not only the information provider but even ‘such other person’ which would include all persons, even the affected parties, as it may deem necessary. In that event it shall be ‘preliminary conference’, for whose conduct of business the Commission is entitled to evolve its own procedure.

In the aforesaid context, Supreme Court noted kind of function the Commission is called upon to discharge while forming an opinion under Section 26(1) of the Act. Supreme court observed that at the face of it, this is an inquisitorial and regulatory power. The jurisdiction of the Commission, to act under this provision, does not contemplate any adjudicatory function. The Commission is not expected to give notice to the parties, i.e. the informant or the affected parties and hear them at length, before forming its opinion. The function is of a very preliminary nature and in fact, in common parlance, it is a departmental function. At that stage, it does not condemn any person and therefore, application of audi alteram partem is not called for. Formation of a prima facie opinion departmentally (Director General, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself) does not amount to an adjudicatory function but is merely of administrative nature. At best, it can direct the investigation to be conducted and report to be submitted to the Commission itself or close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal and only after this stage, there is a specific right of notice and hearing available to the aggrieved/affected party. Accordingly, keeping in mind the nature of the functions required to be performed by the Commission in terms of Section 26(1), Supreme Court observed that the right of notice of hearing is not contemplated under the provisions of Section 26(1) of the Act.

Supreme Court in the case of *Competition Commission of India v. Steel Authority of India* also looked into the issue whether it is obligatory for the Commission to record reasons for formation of a prima facie opinion in terms of Section 26(1) of the Act. Supreme Court held that in consonance with the settled principles of administrative jurisprudence, the Commission is expected to record at least some reason even while forming a prima facie view. However, while passing directions and orders dealing with the rights of the parties in its adjudicatory and determinative capacity, it is required of the Commission to pass speaking orders, upon due application of mind, responding to all the contentions raised before it by the rival parties. In the aforesaid context, Supreme Court of India noted that the proposition of law whether an administrative or quasi-judicial body, particularly judicial courts, should record reasons in support of their decisions or orders is no more res integra and has been settled by a recent judgment of this Court in the case of *Assistant Commissioner, C.T.D.W.C. v. M/s Shukla & Brothers [JT 2010 (4) SC 35]*. Reasons are the links between the materials on which certain conclusions are based and the actual conclusions.

By practice adopted in all courts and by virtue of judge made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and in fact, is a mandatory requirement of the procedural law. Supreme Court noted that recording reasons in support of decisions or orders is consistent with the settled canons of law and would apply to Section 26, under its different sub-sections, which requires the Commission to issue various directions, take decisions and pass orders, some of which are even appealable before the Tribunal. Supreme Court also noted that even if it is a direction under any of the provisions and not a decision, conclusion or order passed on merits by the Commission, it is expected that the same would be supported by some reasoning. At the stage of forming a prima facie view, as required under Section 26(1) of the Act, the Commission may not really record detailed reasons, but must express its mind in no uncertain terms that it is of the view that prima facie case exists, requiring issuance of direction for investigation

to the Director General. Such view should be recorded with reference to the information furnished to the Commission. Such opinion should be formed on the basis of the records, including the information furnished and reference made to the Commission under the various provisions of the Act, as afore-referred. However, other decisions and orders, which are not directions simpliciter and determining the rights of the parties, should be well reasoned analyzing and deciding the rival contentions raised before the Commission by the parties. In other words, the Commission is expected to express prima facie view in terms of Section 26(1) of the Act, without entering into any adjudicatory or determinative process and by recording minimum reasons substantiating the formation of such opinion, while all its other orders and decisions should be well reasoned.

Orders by Commission after Inquiry into Agreements or Abuse of Dominant Position

Section 27 of the Act provides that where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:

- Direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- Impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover or income, as the case may be, for the last three preceding financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position.
- Direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- Direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;
- Pass such other order or issue such directions as it may deem fit:

In *Excel Crop Care Limited vs. Competition Commission of India & Another* (Civil Appeal No. 2480 of 2014, judgment dated May 08, 2017), Hon'ble Supreme Court of India observed that a plain reading of Section 27 (b) elucidates that the commission is empowered to impose penalty and to the extent as it deems fit but not exceeding ten percent of the turnover.

In the aforesaid context, Hon'ble Supreme stated that the principle of proportionality needs to be imbibed into any penalty imposed under Section 27 of the Act. Supreme Court laid out a two-step calculation that has to be followed while imposing the penalty under Section 27 of the Act.

- A. Under Step 1:** Hon'ble Supreme Court observed that relevant turnover is the entity's turnover pertaining to products and services that have been affected by such contravention. The authority should have regard to the entity's audited financial statements. Where audited financial statements are not available, the Commission may consider any other reliable records reflecting the entity's relevant turnover.
- B. Under Step 2:** Relating to determination of appropriate percentage of penalty Hon'ble Supreme Court observed that commission may consider appropriate percentage, as the case may be, by taking into consideration nature, gravity, extent of the contravention, role played by the infringer, the duration of participation etc.

Division of Enterprise Enjoying Dominant Position

Section 28(1) of the Act provides that the Commission may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

Section 28(2) states that in particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely—

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

Procedure for Investigation of Combinations

Section 29 of the Act deals with procedure of investigation of Combinations. It provides that:

- (1) Where the Commission is of the prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within fifteen days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.
- (1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.
- (1B) The Commission shall, within thirty days of receipt of notice under sub-section (2) of section 6, form its prima facie opinion referred to in sub-section (1).
- (2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven days from the date of receipt of the response of the parties to the combination, or the receipt of the report from Director General called under sub section (1A), whichever is later, direct the parties to the said combination to publish details of the combination within seven days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.
- (3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within ten days from the date on which the details of the combination were published under sub-section (2).
- (4) The Commission may, within seven days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.

- (5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within ten days from the expiry of the period specified in sub-section (4).
- (6) After receipt of all information, the Commission shall proceed to deal with the case in accordance with the provisions contained in section 29A or section 31, as the case may be.

ORDERS OF COMMISSION ON COMBINATIONS

Section 31 deals with order of the commission on combination. It states that:

- 1. Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination.
- 2. Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.
- 3. Where the Commission is of the opinion that any appreciable adverse effect on competition that the combination has, or is likely to have, can be eliminated by modification proposed by the parties or the Commission, it may approve the combination subject to such modifications as it thinks fit.
- 4. If no order is passed or direction issued by the Commission within a period of one hundred and fifty days from the date of notice, the combination shall be deemed to have been approved by the Commission.

Acts Taking Place outside India but Having an Effect on Competition in India

According to Section 32 of the Act, the Commission shall, notwithstanding that—

- An agreement referred to in section 3 has been entered into outside India; or
- Any party to such agreement is outside India; or
- Any enterprise abusing the dominant position is outside India; or
- A combination has taken outside India; or
- Any party to combination is outside India; or
- Any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

In *Competition Commission of India v. Steel Authority of India* (Civil Appeal No. 7779 of 2010, judgment dated September 09, 2010), Supreme Court observed that during an inquiry and where the Commission is satisfied that the act is in contravention of the provisions stated in Section 33 of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders without giving notice to such party, where it deems it necessary. This power has to be exercised by the Commission sparingly and under compelling and exceptional circumstances. The Commission, while recording a reasoned order inter alia should : (a) record its satisfaction (which has to be of much higher degree than formation of a prima facie view under Section 26(1) of the Act) in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed; (b) It is necessary to issue order of restraint and (c) from the record before the Commission, it is apparent that there is every likelihood of the party to the lis, suffering irreparable and irretrievable damage or there is definite apprehension that it would have adverse effect.

APPEARANCE BEFORE COMMISSION

Section 35(1) states that a party or the Director General may either appear in person or authorise one or more chartered accountants or Company Secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

Power of Commission to Regulate its Own Procedure

Section 36 provides that in the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—

Summoning enforcing the attendance of any person and examining him on oath;

Requiring the discovery and production of documents;

Receiving evidence on affidavit;

Issuing commission for the examination of witnesses or documents;

Issuing commission for the examination of witnesses or documents;

Requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 and public record or document or copy of such record or document from any office.

The Commission may Direct any Person

To produce before the Director General or the Secretary or an officer authorised by it, such books or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purpose of this Act;

To furnish to the Director General or the Secretary or any other officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person as may be required for the purposes of this Act.

RECTIFICATION OF ORDERS

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

An amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

An amendment under sub-section (1) of its own motion;

EXECUTION OF ORDERS OF COMMISSION IMPOSING MONETARY PENALTY

If a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty in such manner as may be specified by the regulations.

In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.

Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income-tax Act, 1961 and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made there under shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under the Income-tax Act, 1961 and to the Commission instead of the Assessing Officer.

DUTIES OF DIRECTOR GENERAL

Section 41 of the Act empowers the Director General to investigate contraventions. It provides that:

1. The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.
2. Without prejudice to sub-section (2), it shall be the duty of all officers, other employees and agents of a party which are under investigation—
 - (a) to preserve and to produce all information, books, papers, other documents and records of, or relating to, the party which are in their custody or power to the Director General or any person authorised by it in this behalf; and
 - (b) to give all assistance in connection with the investigation to the Director General.
3. The Director General may keep in his custody any information, books, papers, other documents for a period of one hundred and eighty days and thereafter shall return the same.
4. The Director General may examine on oath—
 - (a) any of the officers and other employees and agents of the party being investigated; and
 - (b) with the previous approval of the Commission, any other person, in relation to the affairs of the party being investigated and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.
5. Where in the course of investigation, the Director General has reasonable grounds to believe that information, relating to, any party may be destroyed, the Director General may make an application to the Chief Metropolitan Magistrate, Delhi for an order for seizure of such information.
6. The Director General may make requisition of the services of any police officer or any officer of the Central Government to assist him for all or any of the purposes specified in sub-section (10) and it shall be the duty of every such officer to comply with such requisition.
7. Explanation.—For the purposes of this section—
 - (a) “Agent”, in relation to any person, means any one acting or purporting to act for or on behalf of such person, and includes the bankers, and persons employed as auditors and legal advisors, by such person;
 - (b) “Officers”, in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;
 - (c) any reference to officers and other employees or agents shall be construed as a reference to past as well as present officers and other employees or agents, as the case may be.

POWER TO IMPOSE LESSER PENALTY

Section 46(1) provides that the Commission may, if it is satisfied that any producer, seller which is alleged to have violated section 3, has made a full and true disclosure in respect

of the alleged violations and such disclosure is vital impose upon such producer a lesser penalty.

Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure:

Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission.

Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings—

not complied with the condition on which the lesser penalty was imposed by the Commission; or

had given false evidence; or

the disclosure made is not vital, and thereupon such producer, seller, distributor, trader or service provider may be tried for the contravention with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

SETTLEMENT

According to Section 48A of the Act, any enterprise, against whom any inquiry has been initiated under section 26(1) for contravention of section 3(4) or section 4, may, for settlement of the proceeding initiated for the alleged contraventions, submit an application in writing to the Commission.

The Commission may, after taking into consideration the nature, gravity and impact of the contraventions, agree to the proposal for settlement.

While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

If the Commission is of the opinion that the settlement offered above is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the settlement within such time as may be specified by regulations, it shall, by order, reject the settlement application and proceed with its inquiry under section 26.

The procedure for conducting the settlement proceedings under this section shall be such as may be specified by regulations.

No appeal shall lie under section 53B against any order passed by the Commission under this section.

All settlement amounts, realised under this Act shall be credited to the Consolidated Fund of India.

COMPETITION ADVOCACY

Section 49 deals with Competition Advocacy. It provides that the Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a State.

Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.

The opinion given by the Commission shall not be binding upon the Central Government or the State Government, as the case may be, in formulating such policy.

The Commission shall take suitable measures for the promotion of competition or culture advocacy, creating awareness and imparting training about competition issues.

APPELLATE TRIBUNAL

According to Section 53A of the Act, the National Company Law Appellate Tribunal constituted under section 410 of the Companies Act, 2013 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall—

Hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under Sub-section (6) of Section 6, Sub-sections (2), (2A), (6) and (9) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39 section 43 section 43A, section 44, section 45 or section 46 of this Act; and

Adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53 N of this Act.

APPEAL TO APPELLATE TRIBUNAL

Section 53B provides that the Central Government or the State Government or a local authority or enterprise or any person may prefer an appeal to the Appellate Tribunal.

Every appeal shall be filed within a period of sixty days from the date on decision or order made by the Commission is received.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the Commission, shall be entertained by the Appellate Tribunal unless the appellant has deposited twenty-five per cent. of that amount in the manner as directed by the Appellate Tribunal.

In *Samir Agrawal vs. Competition Commission of India & Ors* (Civil Appeal No. 3100 of 2020) judgement dated December 15, 2020, Supreme Court held that a reading of the provisions of the Act and the 2009 Regulations would show that the definition of “person” in section 2(l) of the Act, set out hereinabove, is an inclusive one and is extremely wide, including individuals of all kinds and every artificial juridical person.

By way of contrast, section 53N(3) speaks of making payment to an applicant as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II of the Act, having been committed by an enterprise. By this sub-section, clearly, therefore, “any person” who makes an application for compensation, under sub-section (1) of section 53N of the Act, would refer only to persons who have suffered loss or damage, thereby, qualifying the expression “any person” as being a person who has suffered loss or damage.

Thus, the preliminary objections against the Informant/Appellant filing Information before the CCI and filing an appeal before the NCLAT are rejected.

When the CCI performs inquisitorial, as opposed to adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act.

RIGHT TO LEGAL REPRESENTATION

According to Section 53-S of the Act, a person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

The Commission may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

APPEAL TO SUPREME COURT

Section 53T provides that the Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them:

Consumer Protection Act, 2019, certainly create a consumer-friendly ecosystem in the country and strengthen the consumer rights with timely and effective administration of consumer disputes.

In the case of M/S Emaar Mgf Land Limited vs. Aftab Singh, the Hon'ble Supreme Court of India held that the Consumer Protection Act, 1986 has been enacted to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes.

COMPLAINANT

Complainant means –

- | | |
|-------|---|
| (i) | A consumer; or |
| (ii) | Any voluntary consumer association registered under any law for the time being in force; or |
| (iii) | The Central Government or any State Government; or |
| (iv) | The Central Authority; or |
| (v) | One or more consumers, where there are numerous consumers having the same interest; or |
| (vi) | In case of death of a consumer, his legal heir or legal representative; or |
| (vii) | In case of a consumer being a minor, his parent or legal guardian. [Section 2(5)] |

COMPLAINT

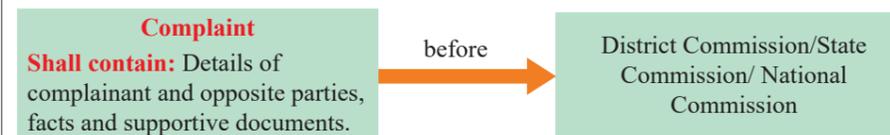
Complaint means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that –

- | | |
|-------|---|
| (i) | An unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider; |
| (ii) | The goods bought by him or agreed to be bought by him suffer from one or more defects; |
| (iii) | The services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency; |
| (iv) | A trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price –
(a) Fixed by or under any law for the time being in force; or
(b) Displayed on the goods or any package containing such goods; or
(c) Displayed on the price list exhibited by him by or under any law for the time being in force; or
(d) agreed between the parties. |
| (v) | The goods, which are hazardous to life and safety when used, are being offered for sale to the public –
(a) In contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
(b) Where the trader knows that the goods so offered are unsafe to the public. |

(vi) The services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;

(vii) A claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be. [Section 2(6)]

How to Make the Complaint?



Consumer

Consumer means any person who–

Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

Hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

In Laxmi Engineering Works vs. P.S.G. Industrial Institute, Supreme Court held that the explanation to Section 2(1)(d) is clarificatory in nature. It observed that whether the purpose for which a person has bought goods is a 'commercial purpose' is always a question of facts and to be decided in the facts and circumstances of each case. Commercial purpose includes self employment/ earning for livelihood/ working with assistance of some persons. But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.

In Bhupendra Jang Bahadur Guna vs. Regional Manager and Others (II 1995 CPJ 139), the National Commission held that a tractor purchased primarily to till the land of the purchaser and let out on hire during the idle time to till the lands of others would not amount to commercial use. He will be still considered as a consumer.

The question as to whether the widow of the deceased policy holder was a 'consumer' under the Act?

A Narasamma vs. LIC of India. The State Commission held that as the term 'consumer' includes any beneficiary of service other than the person who hires the services for

consideration, the widow being the beneficiary of services is a 'consumer' under the Act entitled to be compensated for the loss suffered by her due to negligence of the LIC.

Northern Western Railway and Another vs. Sanjay Shukla Supreme Court held that railways are liable to pay compensation for late arrival of trains if delay is not explained or justifiable. At least the railways were required to explain the delay which the railways failed. Every passenger's time is precious and they might have booked the tickets for further journey, unless the evidence is laid explaining the delay and it is established and proved that delay occurred which was beyond their control and/or even there was some justification for delay, the railway is liable to pay the compensation for delay and late arrival of trains.

Who is a not a Consumer?

A person who:

- Obtains goods free of charge.
- Obtains avails services free of charge.
- Obtains goods for resale or for any commercial purposes.
- Who avails services for any commercial purposes.
- Who avails services under contract of service.

What are the Consumer Rights?

Consumer Rights include–

- | | |
|-------|---|
| (i) | The right to be protected against the marketing of goods, products or services which are hazardous to life and property; |
| (ii) | The right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices; |
| (iii) | The right to be assured, access to a variety of goods, products or services at competitive prices; |
| (iv) | The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forums; |
| (v) | The right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and |
| (vi) | The right to consumer awareness. |

DEFICIENCY

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—

Any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and

Deliberate withholding of relevant information by such person to the consumer. [Section 2(11)]

SGS India vs. Dolphin International Ltd, Hon'ble Supreme Court of India Complainant has to prove the deficiency in goods or services. After complainant, burden will shift to respondent. The rule of evidence before the civil proceedings is that the onus would lie on the person who would fail if no evidence is led by the other side.

Dr. Harish Kumar Khurana vs. Joginder Singh, It was held that medical professionals cannot be held negligent merely because the treatment is not successful or patient dies during surgery. Every death of a patient cannot on the face of it be considered as death due to medical negligence unless there is evidence on record.

Restrictive Trade Practice

Restrictive trade practice means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in any manner as to impose on the consumers unjustified costs or restrictions and shall include—

Delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

Any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent for buying, hiring or availing of other goods or services. [Section 2(41)]

Service

Service means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. [Section 2(42)]

Indian Merchants Association vs. V P Shantha

The employer could not be regarded as a consumer in respect of the services rendered by his employee in pursuance of contract of employment. By affixing the adjective 'personal' to the word 'service' the nature of the contracts which were excluded were not altered. The expression contract of personal service in the exclusionary Section 2(1)(o) from definition of service, be construed as excluding the services rendered by an employee to his employer under the contract of personal service free from the ambit of the expression service.

Contract for service	Contract of Service
One party undertakes to do for another some services of professional nature	One party undertakes to do for another services as per detailed directions of his master
There is no such relationship of master and servant, service provider has to use his own skills and techniques	It implies relationship of master and servant and involves an obligation to obey orders in the work to be performed

UNFAIR TRADE PRACTICE

Unfair Trade Practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely—

- Falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- Falsely represents that the services are of a particular standard, quality or grade;
- Falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
- Represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
- Represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
- Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- Gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof.
- Makes to the public a representation in a form that purports to be –
 - A warranty or guarantee of a product or of any goods or services; or
 - A promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service
- Materially misleads the public concerning the price at which a product or like products or goods or services, have been ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers
- Gives false or misleading facts disparaging the goods, services or trade of another person.
 - Permitting the publication of any advertisement, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price,
 - Permitting—
 - The offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge
 - The conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except game of chance or skill
 - Withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.
 - Permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority;
 - Permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;
 - Manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;

- Not issuing bill or cash memo or receipt for the goods sold or services rendered
- Refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration
- Disclosing to other person any personal information given in confidence by the consumer unless such disclosure is as per law. [Section 2(47)]

Councils and Dispute Redressal Commission

Consumer Protection Council	Commissions Dispute Redressal Commission
District Consumer Protection Council	District Consumer Dispute Redressal Commission
State Consumer Protection Council	State Consumer Dispute Redressal Commission
Central Consumer Protection Council	National Consumer Dispute Redressal Commission

Consumer Protection Council

Central Consumer Protection Council (by CG)	The Central Council shall be an advisory council and consist of the Minister-in-charge of the Department of Consumer Affairs in the Central Government, who shall be the Chairperson; and some other official or non-official members from other interests. The Central Council shall meet at least one meeting of the Council shall be held every year.
State Consumer Protection Councils (by SG)	The State Council shall be an advisory council and consist of the Minister-in-charge of Consumer Affairs in the State Government who shall be the Chairperson; few other official or non-official members representing such interests upto ten members, as may be nominated by the Central Government. The State Council shall meet not less than two meetings shall be held every year.
District Consumer Protection Council (by SG)	The State Government is empowered to establish for every District with effect from such date as it may specify in such notification, a District Consumer Protection Council to be known as the District Council. The District Council shall be an advisory council and consist the Collector of the district (by whatever name called), who shall be the Chairperson; and some official and non-official members. The District Council shall meet have atleast two meetings every year.
Establishment of Central Consumer Protection Authority (by CG)	Section 10, Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

Vacancy, etc., not to invalidate proceedings of Central Authority

No act or proceeding of the Central Authority shall be invalid merely by reason of –

- Any vacancy in, or any defect in the constitution of, the Central Authority; or
- Any defect in the appointment of a person acting as the Chief Commissioner or as a Commissioner; or
- Any irregularity in the procedure of the Central Authority not affecting the merits of the case.

Investigation Wing of Central Authority

The Central Authority shall have an Investigation Wing headed by a Director General for the purpose of conducting inquiry or investigation under this Act as may be directed by the Central Authority.

The Central Government may appoint a Director General and such number of Additional Director General, Director, Joint Director, Deputy Director and Assistant Director, from amongst persons who have experience in investigation and possess such qualifications, in such manner, as may be prescribed.

Every Additional Director General, Director, Joint Director, Deputy Director and Assistant Director shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director-General.

The Director General may delegate all or any of his powers to the Additional Director General or Director, Joint Director or Deputy Director or Assistant Director, as the case may be, while conducting inquiries or investigations under this Act.

The inquiries or the investigations made by the Director General shall be submitted to the Central Authority in such form, in such manner and within such time, as may be specified by regulations.

Powers and functions of Central Authority (Section 18)

- (a) Protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;
- (b) Prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
- (c) Ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;
- (d) Ensure that no person takes part in the publication of any advertisement which is false or misleading.

Central Authority may–

- (a) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government;
- (b) file complaints before the District Commission, the State Commission or the National Commission,
- (c) intervene in any proceedings before the District Commission or State Commission or National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;
- (d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers
- (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
- (f) undertake and promote research in the field of consumer rights;
- (g) spread and promote awareness on consumer rights;
- (h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;
- (i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;

- (j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
- (k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;
- (l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

Power of Central Authority to Recall Goods

As per section 20 of the Act, where the Central Authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or unfair trade practice by a person, it may pass such order as may be necessary, including–

Recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;

Reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and

Discontinuation of practices which are unfair and prejudicial to consumers' interest.

Power of Central Authority to Issue Directions and Penalties against False or Misleading Advertisements

Misleading Advertisement in relation to any product or service, means an advertisement, which–

- Falsely describes such product or service; or
- Gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- Conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- Deliberately conceals important information. [Section 2(28)]

Endorsement in relation to an advertisement, means–

- Any message, verbal statement, demonstration; or
- Depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or
- Depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement. [Section 2(18)]

While determining the penalty, regard shall be had to the following, namely

- The population and the area impacted or affected by such offence;
- The frequency and duration of such offence;
- The vulnerability of the class of persons likely to be adversely affected by such offence; and
- The gross revenue from the sales effected by virtue of such offence.

SEARCH AND SEIZURE

According to section 22 of the Act, for the purpose of conducting an investigation after preliminary inquiry, the Director General or District Collector may, if he has any reason to believe that any person has violated any consumer rights or committed unfair trade practice or causes any false or misleading advertisement to be made, shall–

- (a) Enter at any reasonable time into any such premises and search for any document or record or article or any other form of evidence and seize such document, record, article or such evidence;
- (b) Make a note or an inventory of such record or article; or
- (c) Require any person to produce any record, register or other document or article.

Vexatious Search (Without Reasonable Grounds)

The Director General or any other officer, who knows that there are no reasonable grounds for so doing, and yet

Searches, or causes to be searched any premises; or

Seizes any record, register or other document or article, shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

District Consumer Disputes Redressal Commission (Section 28)

The State Government to establish a District Consumer Disputes Redressal Commission/ District Commission, in each district of the State.

Each District Commission shall consist of– (a) a President; and (b) not less than two members in consultation with the Central Government.

JURISDICTION OF DISTRICT COMMISSION

According to section 34, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees.

A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction–

The opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

Any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or

The cause of action, wholly or in part, arises; or

The complainant resides or personally works for gain.

Manner in Which Complaint shall be Made (Section 35)

- (a) The consumer–
 - (i) To whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or
 - (ii) Who alleges unfair trade practice in respect of such goods or service.

- (b) Any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice, is a member of such association or not;
- (c) One or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission or
- (d) The Central Government, the Central Authority or the State Government,

What is the Procedure for Filing the Complaint before Consumer Commission?

A complainant or his agent can submit complaint:

- ❖ Should be in writing
- ❖ Can be filed in a regular way (offline)

3 copies of complaint:

Complainant, Opposite Party, retained for official purpose by consumer commission

- ❖ Can be filed online – <http://edaakhil.nic.in/>

Proceedings before District Commission (DC)

According to Section 36, every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together.

REFERENCE TO MEDIATION

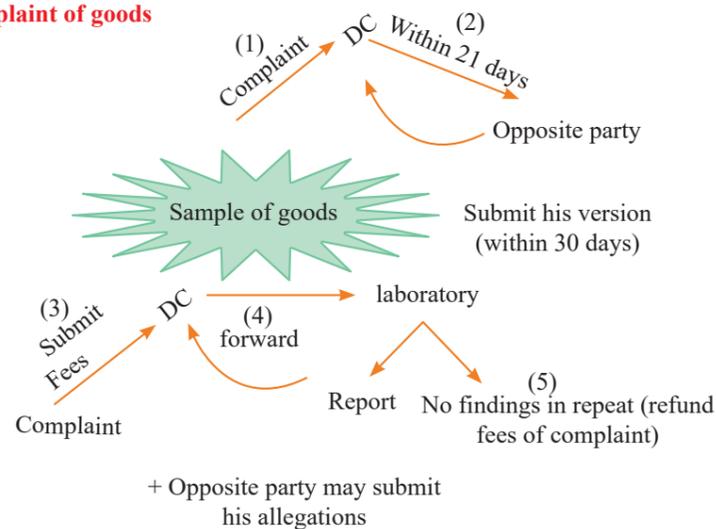
According to Section 37, at the first hearing of the complaint anytime after admission, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation.

Procedure on Admission of Complaint

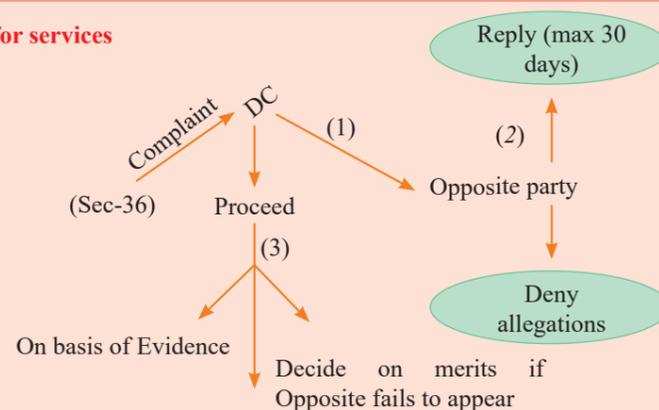
Section 38 deals with procedure on admission of complaint by the District Commission (DC). Section 38 provides that:

1. The District Commission shall (DC), on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint.

2. Complaint of goods



3. Complaint for services



4. District Commission may, require an electronic service provider to provide such information, documents or records,.
5. Proceedings should continue considering principles of Natural Justice
6. Every complaint shall be heard by the District Commission on the basis of affidavit and documentary evidence placed on record: Provided that where an application is made for hearing or for examination of parties in person or through video conferencing, the District Commission may, on sufficient cause being shown, and after recording its reasons in writing, allow the same.
7. Every complaint shall be disposed of as expeditiously as possible within a period of three months from the date of receipt of notice by opposite party (where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities).
8. Where during the pendency of any proceeding before the District Commission, it may pass such interim order as is just and proper in the facts and circumstances of the case.
9. For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:
 - (a) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
 - (b) requiring the discovery and production of any document or other material object as evidence;
 - (c) receiving of evidence on affidavits;
 - (d) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
 - (e) issuing of commissions for the examination of any witness, or document; and
 - (f) any other matter which may be prescribed by the Central Government.
10. Every proceeding before the District Commission shall be deemed to be a judicial proceeding as per sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for Code of Criminal Procedure, 1973.

Brigade Enterprises Limited v. Anil Kumar Virmani, Supreme Court inter alia observed that Section 35(1)(c) enables one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, to file a complaint, on behalf of or for the benefit of all consumers so interested. Oftenly known as representative capacity.

Rule 8, CPC, unlike Section 35 operates both ways and contains provisions for a two way traffic. It not only permits plaintiffs to sue in a representative capacity but also permits people to be sued and to be defended in an action, in a representative capacity.

In simple terms, the salient features of the stipulations contained in Rule 8 CPC can be summed up as follows:

- (i) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue on behalf of or for the benefit of all persons so interested;
- (ii) Where there are numerous persons having the same interest in one suit, one or more of such persons may be sued or one or more such persons may defend such suit, on behalf of or for the benefit of all persons so interested;
- (iii) The Court itself may, without the plaintiffs or defendants seeking any permission under Rule 8(1)(a), direct that one or more such persons may sue or be sued or may defend the suit on behalf of and for the benefit of all persons interested;
- (iv) Notice of the institution of the suit to all persons so interested either by personal service or by public advertisement should be ordered by the Court in both categories of cases, namely, where permission is given by the Court on the application of the individuals or direction is issued by the Court itself;
- (v) Any person on whose behalf or for whose benefit the suit is instituted or defended may seek to be made a party to the suit;
- (vi) Abandonment of the whole or part of the claim, withdrawal of the suit or the recording of any agreement, compromise or satisfaction shall not be allowed by the Court unless notice to all persons interested in the matter is issued either by personal service or by public advertisement;
- (vii) The Court may at any time substitute the person suing or defending in a representative capacity, with any other person, if the former was not prosecuting the suit or defence with due diligence;
- (viii) The decree passed in the suit covered by this Rule will be binding on all persons.

Findings of District Commission (Section 39)

Where the District Commission is satisfied that the goods complained against suffer from any of the defects or that any of the allegations contained in the complaint about the services or any unfair trade practices, or claims for compensation under product liability are proved, it shall issue an order to the opposite party directing him to do one or more of the following, namely–

- (a) To remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) To replace the goods with new goods of similar description which shall be free from any defect;
- (c) To return to the complainant the price, or, as the case may be, the charges paid by the complainant along with such interest on such price or charges as may be decided;
- (d) To pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;
- (e) To pay such amount as may be awarded by it as compensation in a product liability action under Chapter VI;
- (f) To remove the defects in goods or deficiencies in the services in question;
- (g) To discontinue the unfair trade practice or restrictive trade practice and not to repeat them;
- (h) Not to offer the hazardous or unsafe goods for sale;
- (i) To withdraw the hazardous goods from being offered for sale;
- (j) To cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

- (k) To pay such sum, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently. (Minimum 25% of value of goods)
- (l) To issue corrective advertisement to neutralise the effect of misleading advertisement
- (m) To provide for adequate costs to parties; and
- (n) To cease and desist from issuing any misleading advertisement.

APPEAL AGAINST ORDER OF DISTRICT COMMISSION

According to Section 41 of the Act, any person aggrieved by an order made by the District Commission may prefer an appeal to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, + sufficient cause period may be allowed.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Section 42 empowers the State Government to establish a State Consumer Disputes Redressal Commission/State Commission, in the State.

Each State Commission shall consist of

A President; and

Not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

Jurisdiction of State Commission

According to Section 47(1) of the Act, State Commission shall have jurisdiction—

- (a) To entertain –
 - (i) Complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore;
 - (ii) Complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;
 - (iii) Appeals against the orders of any District Commission within the State; and
- (b) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

Unfair contract means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:

- Requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- Imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- Refusing to accept early repayment of debts on payment of applicable penalty; or

- Entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- Permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- Imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

Appeal to National Commission

Section 51, Any person aggrieved by an order made by the State Commission may prefer an appeal against such order to the National Commission within a period of thirty days + extension due to sufficient cause. An appeal shall be entertained by the National Commission only if appellant has deposited fifty per cent. of that amount.

An appeal filed under this section shall be disposed off within 90 days.

Manohar Infrastructure and Constructions Private Limited vs. Sanjeev Kumar Sharma, Supreme Court held that the condition of pre-deposit for entertaining appeal under Section 51 of the Consumer Protection Act, 2019 is mandatory. Section 51 of the Consumer Protection Act, 2019 provides that no appeal by a person, who is required to pay any amount in terms of order of the State Commission shall be entertained by the NCDRC unless the appellant has deposited 50 percent of that amount.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Section 53 empowers the Central Government to establish a National Consumer Disputes Redressal Commission, National Commission.

COMPOSITION OF NATIONAL COMMISSION

Section 54 provides that the National Commission shall consist of

A President; and

Not less than four and not more than such number of members as may be prescribed.

Jurisdiction of National Commission (Section 58)

- (a) To entertain—
 - (i) Complaints where the value of the goods or services paid as consideration exceeds rupees ten crore.
 - (ii) Complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;
 - (iii) Appeals against the orders of any State Commission;
 - (iv) Appeals against the orders of the Central Authority; and
- (b) To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

PROCEDURES FOR SERVICE OF NOTICE

Section 65 states that all notices, required by this Act to be served, shall be served by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by speed post or by such courier service, approved by the District Commission, the State Commission or

the National Commission, as the case may be, or by any other mode of transmission of documents including electronic means.

Section 65, the notice required by this Act may be served on an electronic service provider at the address provided by it on the electronic platform from where it provides its services as such and for this purpose, the electronic service provider shall designate a nodal officer to accept and process such notices.

Appeal against Order of National Commission

According to Section 67 of the Act, any person, aggrieved by an order made by the National Commission may prefer an appeal to the Supreme Court within a period of thirty days from the date of the order+ extension for sufficient cause. + deposit of 50% amount is mandatory.

What if the Consumer is Not Satisfied with the Order of the Consumer Commission?

Any consumer who is aggrieved by the order of a commission can prefer an appeal in the higher commission within a period of thirty days from the date of the order. The appeal can be preferred.

Against order of the District Commission before the State Commission within 30 days

Against order of the State Commission before the National Commission within 30 days

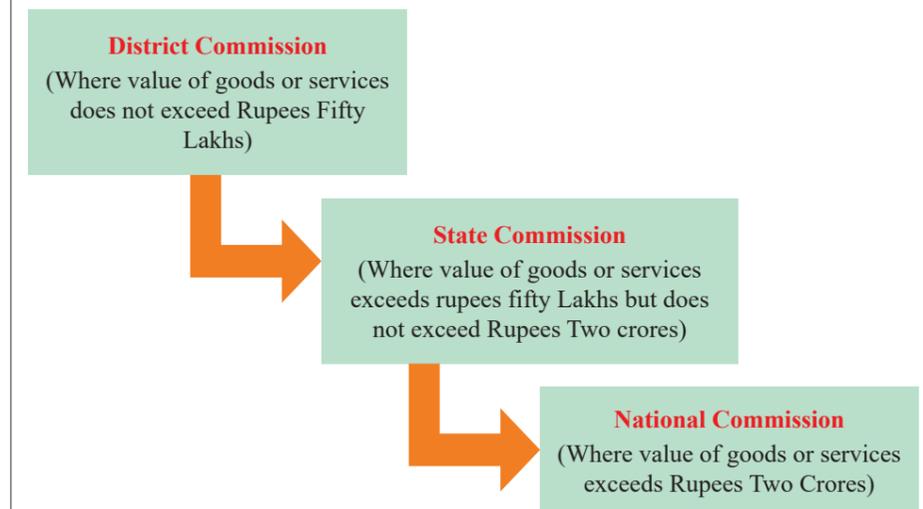
Against order of the National Commission before the Supreme Court, within 45 days

Appeal

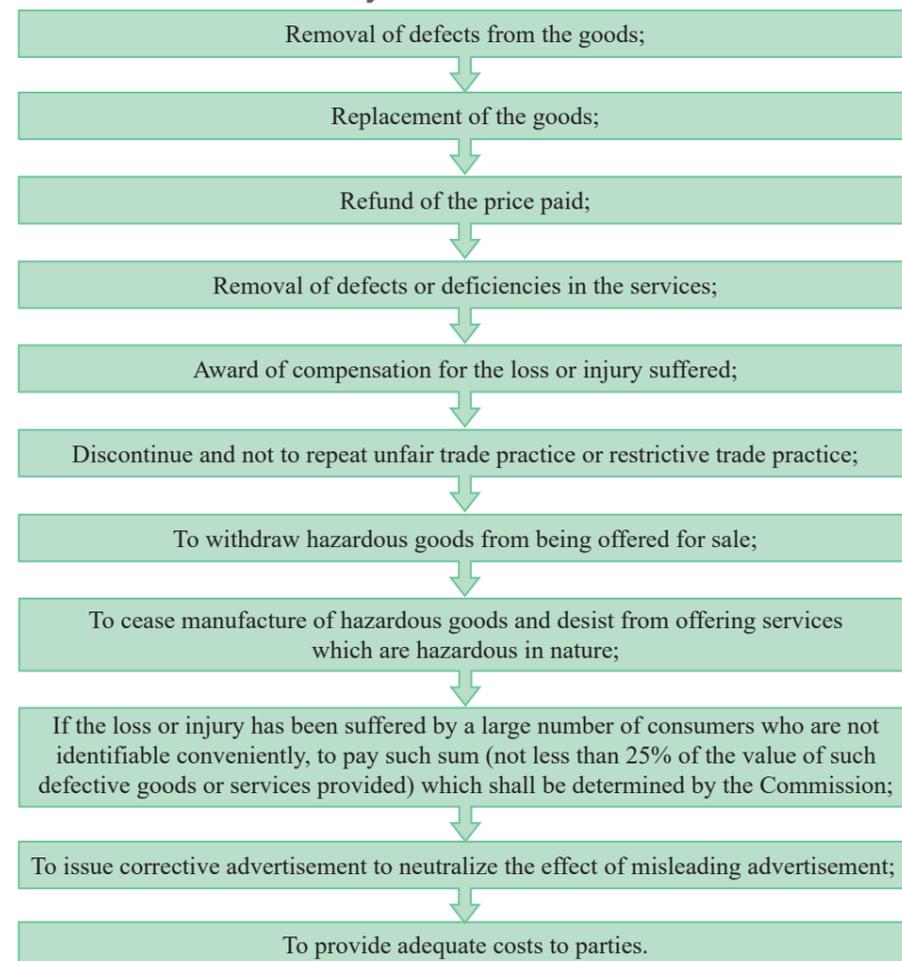


What is the Time Limit for Filing the Complaint under Limitation Act?

- ❖ The complaint shall be filed within two years from the date on which the cause of action has arisen or day of deficiency in service or defect in goods.
- ❖ This would mean two years from the day the deficiency in service or defect in goods has arisen/detected.



What Reliefs are Provided by Consumer Commissions?



Penalty for Non-compliance of Order of Commissions

Imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.

MEDIATION

Establishment of Consumer Mediation Cell

Section 74 empowers the State Government to establish a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.

A consumer mediation cell shall consist of such persons as may be prescribed. Every consumer mediation cell shall maintain.

- A list of empanelled mediators;
- A list of cases handled by the cell;
- Record of proceeding; and
- Any other information as may be specified by regulations.

Procedure for Mediation

Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, considering the rights and obligations of the parties, the usages of trade, the circumstances giving rise to the consumer dispute and such other relevant factors, + shall be guided by the principles of natural justice while carrying out mediation.

Settlement Through Mediation

Section 80 provides that pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues or some of the issues involved in dispute, the terms of such agreement shall be reduced to writing and signed by the parties to such dispute or their authorised representatives.

Section 80 states that the mediator shall prepare a settlement report of the settlement and forward the signed agreement and report to the concerned Commission.

Product Liability

Section 82 to 87 deal with Product Liability. It applies to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller.

Harm in relation to a product liability, includes–

- Damage to any property, other than the product itself;
- Personal injury, illness or death;
- Mental agony or emotional distress attendant to personal injury or illness or damage to property; or
- Any loss of consortium or services or other loss resulting from a harm

Who can initiate Product Liability Action and against whom?

A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, for any harm caused to him on account of a defective product.

Liability of Product Manufacturer

Section 84 states that a product manufacturer shall be liable in a product liability action, if–

- The product contains a manufacturing defect; or
- The product is defective in design; or
- There is a deviation from manufacturing specifications; or
- The product does not conform to the express warranty; or
- The product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

Liability for Product of Product Service Provider (Section 85)

- (a) The service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance or
- (b) There was an act of omission or commission or negligence or conscious withholding any information which caused harm; or
- (c) The service provider did not issue adequate instructions or warnings to prevent any harm; or
- (d) The service did not conform to express warranty or the terms and conditions of the contract.

Liability of Product Sellers (Section 86)

- He has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
- He has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or
- He has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or
- The product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or
- He is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

Exceptions to Product Liability Action for Product Manufacturer

- (a) The product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;
- (b) The product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material;
- (c) The product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or
- (d) The complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.

Offences and Penalties

Penalty for Non-compliance of Direction of Central Authority

Punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty lakh rupees, or with both.

Punishment for False or Misleading Advertisement

Punishable with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

Punishment for Manufacturing for Sale or Storing, Selling or Distributing or Importing Products Containing Adulterant

Section 90 provides that whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any product containing an adulterant shall be punished, if such act—

Consequences	Punishment
Does not result in any injury to the consumer	Imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees
Causing injury not amounting to grievous hurt to the consumer	Imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;
Causing injury resulting in grievous hurt to the consumer	Imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees;
Results in the death of a consumer	Imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees

The court may, in case of first conviction, suspend any licence issued to the person for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

Punishment for Manufacturing for Sale or for Storing or Selling or Distributing or Importing Spurious Goods

Section 91 provides that whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any spurious goods shall be punished, if such act—

(a)	causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;
(b)	causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees;
(c)	results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

E-COMMERCE

E-Commerce means buying or selling of goods or services including digital products over digital or electronic network.

Scope and Applicability of the Consumer Protection (E-Commerce) Rules, 2020:

All goods and services bought or sold over digital or electronic network including digital products;

All models of e-commerce, including marketplace and inventory models of e-commerce;

All e-commerce retail, including multi-channel single brand retailers and single brand retailers in single or multiple formats; and

All forms of unfair trade practices across all models of e-commerce.

Duties of E-Commerce Entities

An e-commerce entity shall:

- Where an e-commerce entity is a company incorporated under the Companies Act, 2013 or previous company law or a foreign company section 2 (42) of the Companies Act, 2013 or an office, branch or agency outside India owned or controlled by a person resident in India, it shall appoint a nodal officer or an alternate senior designated functionary who is resident in India, to ensure compliance with the provisions of the Act or the rules made thereunder.
- Every e-commerce entity shall provide the following information in a clear and accessible manner on its platform, displayed prominently to its users, namely:
 - legal name of the e-commerce entity;
 - principal geographic address of its headquarters and all branches;
 - name and details of its website; and
 - contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer.
- No e-commerce entity shall adopt any unfair trade practice, whether in the course of business on its platform or otherwise.
- Every e-commerce entity shall establish an adequate grievance redressal mechanism having regard to the number of grievances ordinarily received by such entity from India, and shall appoint a grievance officer for consumer grievance redressal, and shall display the name, contact details, and designation of such officer on its platform.
- Every e-commerce entity shall ensure that the grievance officer acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint.
- Where an e-commerce entity offers imported goods or services for sale, it shall mention the name and details of any importer from whom it has purchased such goods or services, or who may be a seller on its platform.
- Every e-commerce entity shall endeavour on a best effort basis to become a partner in the convergence process of the National Consumer Helpline of the Central Government.
- No e-commerce entity shall impose cancellation charges on consumers cancelling after confirming purchase unless similar charges are also borne by the e-commerce entity, if they cancel the purchase order unilaterally for any reason.
- Every e-commerce entity shall only record the consent of a consumer for the purchase of any good or service offered on its platform where such consent is expressed through an explicit and affirmative action, not automatic, including in the form of pre-ticked checkboxes.
- Every e-commerce entity shall effect all payments towards accepted refund requests of the consumers directed by the Reserve Bank of India
- No e-commerce entity shall-
 - manipulate the price of the goods or services offered on its platform in such a manner as to gain unreasonable profit by imposing on consumers any unjustified price having regard to the prevailing market conditions, the essential nature of the good or service, any extraordinary circumstances under which the good or service is offered, and any other relevant consideration in determining whether the price charged is justified;

- Discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights under the Act.

Liabilities of Marketplace E-Commerce Entities

- Every marketplace e-commerce entity shall require sellers through an undertaking to ensure that descriptions, images, and other content pertaining to goods or services on their platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such good or service.
- Every marketplace e-commerce entity shall provide the following information in a clear and accessible manner, displayed prominently to its users at the appropriate place on its platform:
 - Details about the sellers offering goods and services, including the name of their business, whether registered or not, their geographic address, customer care number, any rating or other aggregated feedback about such seller, and any other information necessary for enabling consumers to make informed decisions at the pre-purchase stage.
 - A ticket number for each complaint lodged through which the consumer can track the status of the complaint;
 - Information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism, and any other similar information which may be required by consumers to make informed decisions;
 - Information on available payment methods, the security of those payment methods, any fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, if any, and the contact information of the relevant payment service provider;
 - An explanation of the main parameters which, are most significant in determining the ranking of goods or sellers on its platform and the relative importance of those main parameters through an easily and publicly available description drafted in plain and intelligible language.

Duties and Liabilities of Inventory E-Commerce Entities

Inventory E-Commerce Entity means an e-commerce entity which owns the inventory of goods or services and sells such goods or services directly to the consumers and shall include single brand retailers and multi channel single brand retailers.

- Every inventory e-commerce entity shall provide the following information in a clear and accessible manner, displayed prominently to its users:
 - Accurate information related to return, refund, exchange, warranty and guarantee, delivery and shipment, cost of return shipping, mode of payments, grievance redressal mechanism, and any other similar information which may be required by consumers to make informed decisions;
 - All mandatory notices and information required by applicable laws;
 - Information on available payment methods, the security of those payment methods, the procedure to cancel regular payments under those methods, any fees or charges payable by users, charge back options, and the contact information of the relevant payment service provider;
 - All contractual information required to be disclosed by law;
 - Total price in single figure of any good or service along with the breakup price for the good or service, showing all the compulsory and voluntary charges, such as delivery charges, postage and handling charges, conveyance charges and the applicable tax; and
 - A ticket number for each complaint lodged, through which the consumer can track the status of their complaint.

2. No inventory e-commerce entity shall falsely represent itself as a consumer and post reviews about goods and services or misrepresent the quality or the features of any goods or services.
3. Every inventory e-commerce entity shall ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.
4. No inventory e-commerce entity shall refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if such goods or services are defective, deficient spurious, or if the goods or services are not of the characteristics or features as advertised or as agreed to, or if such goods or services are delivered late from the stated delivery schedule. (except late delivery due to force majeure).
5. Any inventory e-commerce entity which explicitly or implicitly vouches for the authenticity of the goods or services sold by it, or guarantees that such goods or services are authentic, shall bear appropriate liability in any action related to the authenticity of such good or service.

DIRECT SELLING

Direct Selling means marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location.

Mandatory Maintenance of Records

Every direct selling entity shall maintain at its registered office, including the following documents or records, namely:

- (a) Certificate of Incorporation;
- (b) Memorandum of Association and Articles of Association;
- (c) Permanent Account Number and Tax Deduction and Collection Account Number;
- (d) Goods and Services Tax registration;
- (e) Income Tax Returns;
- (f) Balance Sheet, Audit Report and such other relevant reports;
- (g) Register of direct sellers;
- (h) Certificate of Importer-Exporter code (in case of imported goods);
- (i) License issued under the Food Safety and Standards Authority of India Act, 2006
- (j) License and Registration Certificate issued under the Drugs and Cosmetics Act, 1940 for manufacture or sale of drugs, including Ayurvedic, Siddha and Unani drugs and Homeopathic Medicines;
- (k) Certificate of Registration of Trademark.

Obligations of Direct Selling Entity

Direct Selling Entity means the principal entity which sells or offers to sell goods or services through direct sellers, but does not include an entity which is engaged in a Pyramid Scheme or money circulation scheme.

1. Every direct selling entity shall
 - (a) If a company, be incorporated under the Companies Act, 2013 or if a partnership firm, be registered under the Partnership Act, 1932 or if a limited liability partnership, be registered under the Limited Liability Partnership Act, 2008;
 - (b) Have a minimum of one physical location as its registered office within India;
 - (c) Make self-declaration to the effect that it has complied with the provisions of these rules and is not involved in any Pyramid Scheme or money circulation scheme;

- (d) Maintain proper and updated website with all relevant details of that entity, contact information which is current and updated, details of its nodal officer, grievance redressal officer, its management, products, product information, price and grievance redressal mechanism for consumers;
 - (e) Own, hold or be the licensee of a trademark, service mark or any other identification mark which identifies that entity with the goods or services to be sold or supplied;
 - (f) Obtain all applicable trade registrations and licenses, including Permanent Account Number and Goods and Services Tax Registration;
 - (g) Get all information provided by it on its website duly certified by a Company Secretary;
 - (h) Have a prior written contract with its direct sellers in order to authorize them to sell or offer to sell its goods or services, and the terms of such agreement shall be just, fair and equitable;
 - (i) Ensure that all its direct sellers have verified identities and physical addresses and issue identity cards and documents only to such direct sellers;
 - (j) Create adequate safeguards to ensure that goods and services offered by its direct sellers conform to applicable laws;
 - (k) Be liable for the grievances arising out of the sale of goods or services by its direct sellers.
2. Every direct selling entity shall provide the following information on its website in a clear and accessible manner, which shall be displayed prominently to its users, namely:
 - (a) Registered name of the direct selling entity;
 - (b) Registered address of the direct selling entity and of its branches;
 - (c) Contact details, including e-mail address, fax, land line and mobile numbers of its customer care and grievance redressal officers;
 - (d) A ticket number for each complaint lodged through which the complainant can track the status of the complaint;
 - (e) Information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, grievance redressal mechanism and such other information which may be required by the consumers to make informed decisions;
 - (f) Information on available payment methods, the security of those payment methods, the fees or charges payable by users, the procedure to cancel regular payments under those methods, charge-back options, and the contact information of the relevant payment service provider;
 - (g) Total price of any goods or service in single figure, along with its break-up price showing all compulsory and voluntary charges, including delivery charges, postage and handling charges, conveyance charges and the applicable tax;
 - (h) Provide correct and complete information at pre-purchase stage to enable buyers to make informed purchase decisions, and in addition to the mandatory declarations to be provided under the Legal Metrology (Packaged Commodities) Rules, 2011, contain the following information, namely:
 - (i) The name of purchaser and seller;
 - (ii) Description of goods or services;
 - (iii) Quantity of goods or services;
 - (iv) The estimated delivery date of goods or services;
 - (v) The process of refund;
 - (vi) Warranty of the goods;

- (vii) Exchange or replacement of goods in case of it being defective;
 - (viii) All contractual information required to be disclosed by or under any law for the time being in force.
3. No direct selling entity shall adopt any unfair trade practice in the course of its business or otherwise, and shall abide by the requirements specified in any law for the time being in force.
 4. All products of a direct selling entity shall comply with the declarations to be made under the Legal Metrology Act, 2009.
 5. Every direct selling entity shall establish an adequate grievance redressal mechanism and appoint one or more grievance redressal officers for redressal of consumers' grievances and display the current and updated name, contact details including telephone number, email address and designation of such officer on its website, and the details of its website shall also be prominently printed on the product information sheet or pamphlet.
 6. Every direct selling entity shall establish a mechanism for filing of complaints by consumers through its offices or branches or direct sellers, either in person or through post, telephone, e-mail or website.
 7. Every direct selling entity shall maintain a record of all its direct sellers, including their identity proof, address proof, e-mail and such other contact information.

OBLIGATIONS OF DIRECT SELLER

Direct Seller means a person authorized by a direct selling entity through a legally enforceable written contract to undertake direct selling business on principal to principal basis.

1. Every direct seller shall
 - (a) Have a prior written contract with the direct selling entity for undertaking sale of, or offer to sell, any goods or services of such entity;
 - (b) At the initiation of any sale representation, truthfully and clearly identify himself, disclose the identity of the direct selling entity, the address of place of business, the nature of goods or services sold and the purpose of such solicitation to the prospect;
 - (c) Make an offer to the prospect providing accurate and complete information, demonstration of goods and services, prices, credit terms, terms of payment, return, exchange, refund policy, return policy, terms of guarantee and after-sale service;
 - (d) Provide an order form to the consumer at the time of the initial sale, which shall identify the direct selling entity and the direct seller and shall contain the name, address, registration number or enrollment number, identity proof and contact number of the direct seller, complete description of the goods or services to be supplied, the country of origin of the goods, the order date, the total amount to be paid by the consumer, the time and place for inspection of the sample and delivery of goods, consumer's rights to cancel the order or to return the product in saleable condition and avail full refund on sums paid and complete details regarding the complaint redressal mechanism of the direct selling entity;
 - (e) Obtain goods and service tax registration, Permanent Account Number registration, all applicable trade registrations and licenses and comply with the requirements of applicable laws, rules and regulations for sale of a product;
 - (f) Ensure that actual product delivered to the buyer matches with the description of the product given;

2. A direct seller shall not
- Visit a consumer's premises without identity card and prior appointment or approval;
 - Provide any literature to a prospect, which has not been approved by the direct selling entity;
 - Require a prospect to purchase any literature or sales demonstration equipment;
 - In pursuance of a sale, make any claim that is not consistent with claims authorized by the direct selling entity.

Duties of Direct Selling Entity and Direct Seller

1. Every direct selling entity and every direct seller shall ensure that
- The terms of the offer are clear, so as to enable the consumer to know the exact nature of offer being made and the commitment involved in placing any order;
 - The presentations and other representations used in direct selling shall not contain any product description, claim, illustration or other element which is likely to mislead the consumer;
 - The explanation and demonstration of the goods or services offered are accurate and complete, particularly with regard to price and to credit conditions, terms of payment, cooling off periods or right to return, terms of guarantee, after-sales service and delivery;
 - The descriptions, claims, illustrations or other elements relating to verifiable facts are capable of substantiation;
 - Any misleading, deceptive or unfair trade practices are not used;
 - Direct selling is not represented to the consumer as being a form of market research;
 - The promotional literature, advertisement or mail contain the name and address or telephone number of the direct selling company, and include the mobile number of the direct seller;

- The terms of any guarantee or warranty, including the name and address of the guarantor, shall be easily available to the consumer and limitations on consumer rights or remedies, where permitted by law, shall be clear and conspicuous;
- The remedial action open to the consumer shall be clearly set out in the order form or other accompanying literature provided with the goods or service;
- The presentation of the offer does not contain or refer to any testimonial, endorsement or supportive documentation unless it is genuine, verifiable and relevant;
- When after-sales service is offered, details of the service are included in the guarantee or stated elsewhere in the offer and if the consumer accepts the offer, information shall be given on how the consumer can activate the service and communicate with the service agent;
- Products, including, where applicable, samples, are suitably packaged for delivery to the consumer and for possible return, in compliance with the appropriate health and safety standards;
- Orders shall be fulfilled within the delivery date proposed to the consumer at the time of purchase and the consumer shall be informed of any undue delay;
- Right of return offered by that entity shall be in writing;
- Whether payment for the offer is on an immediate sale or installment basis, the price and terms of payment shall be clearly stated with the nature of any additional charges such as postage, handling and taxes and, whenever possible, the amounts of such charges;
- In the case of sales by installment, the credit terms, including the amount of any deposit or payment on account, the number, amount and periodicity of such installments and the total price compared with the immediate selling price, shall be clearly shown in the offer;
- Any information needed by the consumer to understand the cost, interest and terms of any other form of credit is provided;

2. A direct selling entity or direct seller shall not
- Indulge in fraudulent activities or sales and shall take reasonable steps to ensure that participants do not indulge in false or misleading representations or any other form of fraud, coercion, harassment, or unconscionable or unlawful means;
 - Engage in, or cause or permit any act that is misleading or likely to mislead with regard to any material particulars relating to its direct selling business, or to the goods or services being sold by itself or by the direct seller;
 - Indulge in mis-selling of products or services to consumers;
 - Use, or cause or permit to be used, any fraudulent, coercive, unconscionable or unlawful means, or cause harassment, for promoting its direct selling business, or for sale of its goods or services;
 - Refuse to take back spurious goods or deficient services and refund the consideration paid for goods and services provided;
 - Charge any entry fee or subscription fee.

Prohibition of Pyramid Scheme and Money Circulation Scheme

Direct Selling Entity or Direct Seller shall not

Promote a Pyramid Scheme or enroll any person to such scheme or participate in such arrangement in the garb of doing direct selling business;

Participate in money circulation scheme in the garb of doing direct selling business.

Money Circulation Scheme means Schemes defined under section 2(c) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

“Pyramid Scheme” means a multi layered network of subscribers to a scheme formed by subscribers enrolling one or more subscribers in order to receive any benefit, directly or indirectly, as a result of enrolment or action or performance of additional subscribers to the scheme, in which the subscribers enrolling further subscribers occupy a higher position and the enrolled subscribers a lower position, resulting in a multi-layered network of subscribers with successive enrolments.

Legal metrology can be defined as that part of metrology which deals with units of measurement, methods of measurement and measuring instruments in so far as they concern statutory, technical and legal requirements which have the ultimate object of assuring public guarantee from the point of view of security and of appropriate accuracy of measurements.

International Organization of Legal Metrology (OIML)

The International Organization of Legal Metrology (OIML) is an intergovernmental treaty organization whose membership includes Member States, countries which participate actively in technical activities, and Corresponding Members, countries which join the OIML as observers. It was established in 1955 in order to promote the global harmonization of legal metrology procedures.

According to OIML, Legal Metrology is the entirety of the legislative, administrative and technical procedures established by, or by reference to public authorities, and implemented on their behalf in order to specify and to ensure, in a regulatory or contractual manner, the appropriate quality and credibility of measurements related to official controls, trade, health, safety and the environment.

The International Organization of Legal Metrology is an intergovernmental treaty organization which:

Develops model regulations, standards and related documents for use by legal metrology authorities and industry;

Provides mutual recognition systems which reduce trade barriers and costs in a global market;

Represents the interests of the legal metrology community within international organizations and forums concerned with metrology, standardization, testing, certification and accreditation;

Promotes and facilitates the exchange of knowledge and competencies within the legal metrology community worldwide;

Cooperates with other metrology bodies to raise awareness of the contribution that a sound legal metrology infrastructure can make to a modern economy.

The OIML Certificate System for Measuring Instruments was introduced in 1991 to facilitate administrative procedures and lower the costs associated with the international trade of measuring instruments subject to legal requirements. The System provides the possibility for a manufacturer to obtain an OIML Certificate and a Test Report indicating that a given instrument type (pattern) complies with the requirements of the relevant OIML International Recommendations.

The objectives of the OIML Certification System are:

(a) To promote the global harmonization, uniform interpretation and implementation of legal metrological requirements for measuring instruments and/or modules;

(b) To avoid unnecessary re-testing when obtaining national type evaluations and approvals, and to support the recognition of measuring instruments and/or modules under legal metrological control, while achieving and maintaining confidence in the results in support of facilitating the global trade of individual instruments; and

(c) To establish rules and procedures for fostering mutual confidence among participating OIML Member States and Corresponding Members in the results of type evaluations that indicate conformity of measuring instruments and/or modules, under legal metrological control, to the metrological and technical requirements established in the applicable OIML Recommendation(s).

LEGAL METROLOGY

As per section 2(g) “legal metrology” means that part of metrology which treats units of weight and measurement, methods of weight and measurement and weighing and measuring instruments, in relation to the mandatory technical and legal requirements which have the object of ensuring public guarantee from the point of view of security and accuracy of the weightings and measurements.

MANUFACTURE

As per section 2(i) “manufacturer” in relation to any weight or measure, means a person who

Manufactures weight or measure;

Manufactures one or more parts, and acquires other parts, of such weight or measure and, after assembling those parts, claims the end product to be a weight or measure manufactured by himself or itself, as the case may be;

Does not manufacture any part of such weight or measure but assembles parts thereof manufactured by others and claims the end product to be a weight or measure manufactured by himself or itself, as the case may be;

Puts, or causes to be put, his own mark on any complete weight or measure made or manufactured by any other person and claims such product to be a weight or measure made or manufactured by himself or itself, as the case may be.

PRE-PACKED COMMODITY

Section 2(l) define “pre-packaged commodity” as to mean a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.

Standard Weights and Measures

Chapter II of the Act containing deals with standard weight and measure.

Section 4 of the Act provides that every unit of weight or measure shall be in accordance with the metric system based on the international system of units.

Section 6 states that the base unit of numeration shall be the unit of the international form of Indian numeral. Every numeration shall be made in accordance with the decimal system.

As per section 7 of the Act the base units of weights and measures specified in section 5 shall be the standard units of weights and measures. Central Government shall prepare or cause to be prepared objects or equipments in such manner as may be prescribed. The physical characteristics, configuration, constructional details, materials, equipments, performance, tolerances, period of re-verification, methods or procedures of tests shall be such as may be prescribed.

Section 8 provides that any weight or measure which conforms to the standard unit of such weight or measure and also conforms to such of the provisions of section 7 as are applicable to it shall be the standard weight or measure. Any numeral which conforms to the provisions of section 6 shall be the standard numeral.

Section 11 of the Act provides that no person shall, in relation to any goods, things or service, quote, or make an announcement of, whether by word of mouth or otherwise, any price or charge otherwise than in accordance with the standard unit of weight, measure or numeration.

Section 12 provides that any custom, usage, practice or method of whatever nature which permits a person to demand, receive or cause to be demanded or received, any quantity of article, thing or service in excess of or less than, the quantity specified by weight, measure or number in the contract or other agreement in relation to the said article, thing or service, shall be void.

Appointment and Power of Director, Controller and legal metrology officers

Section 13 of the Act empowers the Central Government to appoint (by Notification) a Director of legal metrology, Additional Director for exercising the powers and discharging the duties conferred or imposed on them by or under this Act in relation to inter-State trade and commerce.

Section 14 of the Act, provides that the State Government may, by notification, appoint a Controller of legal metrology, Additional Controller etc. for exercising the powers and discharging the duties conferred or imposed on them.

POWER OF INSPECTION, SEIZURE

Section 15 of the Act confer powers of inspection on the Director, Controller or any legal metrology officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing that any weight or measure in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation.

The powers include entry at any reasonable time into any such premises and search for and inspect any weight, measure or other goods. The power also include seizure of any weight, measure or other goods which he has reason to believe may furnish evidence indicating that an offence punishable under the Act has been, or is likely to be, committed in the course of or in relation to, any trade and commerce.

Forfeiture

Every non-standard or unverified weight or measure and every package used in the course of, or in relation to, any trade and commerce and seized under section 15, shall be liable to be forfeited, to the State Government. However, such unverified weight or measure shall not be forfeited to the State Government if the person from whom such weight or measure was seized gets the same verified and stamped within such time as may be prescribed. Every weight, measure or other goods seized under section 15 but not forfeited shall be disposed of by such authority and in such manner as may be prescribed.

Under the Legal Metrology (Packaged Commodities) Rules, 2011 certain mandatory declarations are required to be made on all pre-packaged commodities in the interest of consumers like name and address of the manufacturer/packer/importer, country of origin, name of the commodity, net quantity, month and year of manufacturing, retail sale price in the form of Maximum Retail Price (MRP) Rs. (inclusive of all taxes) and consumer care details etc.

The penalty provisions are made under section 36(1) of the Legal Metrology Act, 2009 for the violation in respect of the mandatory declarations on the label. Under the provisions of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011, State Governments take action for violations of the Rules.

What is Pre-Packaged Commodity?

“Pre-packaged commodity” means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre determined quantity.

Declarations on Pre Packaged Commodities	Manner in which Declaration Shall be Made
Section 18 states that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.	<p>Rule 9 of the Legal Metrology (Packaged Commodities) Rules, 2011 deals with the manner in which declaration shall be made. It provides that:</p> <ol style="list-style-type: none"> Every declaration which is required to be made on a package under these rules shall be: <ol style="list-style-type: none"> legible and prominent; numerals of the retail sale price and net quantity declaration shall be printed, painted or inscribed on the package in a colour that contrasts conspicuously with the background of the label. <p>It may be noted that</p> <ol style="list-style-type: none"> where any label information is blown, formed or molded on a glass or plastic surface such information need not be required to be presented in a contrasting colour; where any declaration on a package is printed either in the form of hand-writing or hand-script, such declaration shall be clear, unambiguous and legible. No declaration shall be made so as to require it to be read through any liquid commodity contained in the package. Where a package is provided with an outside container or wrapper such container or wrapper shall also contain all the declarations which are required to appear on the package except where such container or wrapper itself is transparent and the declarations on the package itself are easily readable through such outside wrapper. Provided that no such declarations on the inner package is required if the inner package does not contain any declaration on its outer cover. The particulars of the declarations required to be specified under this rule on a package shall either be in Hindi in Devnagri script or in English.

What is Principal Display Panel?

In relation to a package means the total surface area of package where the information required under these rules are to be given in the following manner:

All the information could be grouped together and given at one place; or

The pre-printed information could be grouped together and given in one place and on-line information grouped together in other place.

What is the Area prescribed for Principal Display Panel for Declaration?

The area not including the top, bottom, flange at top and bottom of cans, and shoulders and neck of bottle and jar shall be determined as follows:

Approval of model	Every person, before manufacturing or importing any weight or measure shall seek the approval of model of such weight or measure in such manner, on payment of such fee and from such authority. However, such approval of model may not be required in respect of any cast iron, brass, bullion, or carat weight or any beam scale, length measures (not being measuring tapes) which are ordinarily used in retail trade.
Prohibition on manufacture, repair or sale of weight or measure without licence	<p>Section 23 of the Act provides that no person shall manufacture, repair or sell, or offer, expose or possess for repair or sale, any weight or measure unless he holds a licence issued by the Controller. However, no licence to repair shall be required by a manufacturer for repair of his own weight or measure in a State.</p> <p>Section 24 provides for verification and stamping of weight or measure. Every person having any weight or measure in his possession, is being, or is intended or is likely to be, used by him in any transaction or for protection, shall, have such weight or measure verified at such place.</p>
Offences and Penalties	<p>Section 25 of the Act provides for penalty for use of non-standard weight or measure. Fine which may extend to twenty-five thousand rupees and for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine.</p> <p>Under section 26 whoever tampers with, or alters in any way, any reference standard, secondary standard or working standard or increases or decreases or alters any weight shall be punished with fine which may extend to fifty thousand rupees and for the second and subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to one year or with fine or with both.</p> <p>Section 27 provides that every person who manufactures or causes to be manufactured or sells or offers any weight or measure which does not conform to the standards of weight or measure shall be punished with a fine which may extend to twenty thousand rupees and for the second or subsequent offence with imprisonment for a term which may extend to three years or with fine or with both.</p> <p>Section 30 dealing with penalty for transaction in contravention of standard weight or measure provides that whoever shall be punished with fine which may extend to ten thousand rupees, and; for the second or subsequent offence, with imprisonment for a term which may extend to one year, or with fine, or with both.</p>

	Under section 36 whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.
Penalty for counterfeiting or seal	Section 44 provides that whoever counterfeits any seal specified by or under this Act or the rules made thereunder, or sells or otherwise disposes of any counterfeit seal or possesses any counterfeit seal, or counterfeits or removes or tampers with any stamp, specified by or under this Act or rules made thereunder, or affixes the stamp so removed on, or inserts the same into, any other weight or measure, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.
Offences by companies	Section 49 provides that where an offence under this Act has been committed by a company, the person, if any, who has been nominated to be in charge of, and responsible to, the company for the conduct of the business shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, such person shall not be liable to any punishment, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

THE ESSENTIAL COMMODITIES ACT, 1955

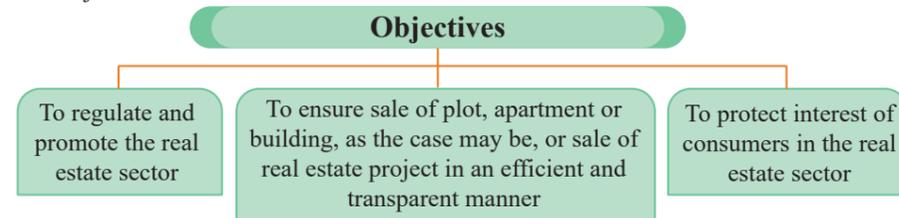
The Essential Commodities Act, 1955 was enacted to regulate the production, supply and distribution of, and trade and commerce in, certain commodities which are declared as essential commodities and specified in the Schedule to that Act.

Schedule to the Act lists out following commodities: (1) drugs: The explanation clarifies that for the purposes of this Schedule, “drugs” has the meaning assigned to it in clause (b) of Section 3 of the Drugs and Cosmetics Act, 1940; (2) fertilizer, whether inorganic, organic or mixed; (3) foodstuffs, including edible oilseeds and oils; (4) hank yarn made wholly from cotton; (5) petroleum and petroleum products; (6) raw jute and jute textiles; (7) (i) seeds of food-crops and seeds of fruits and vegetables; (ii) seeds of cattle fodder; and (iii) jute seeds.

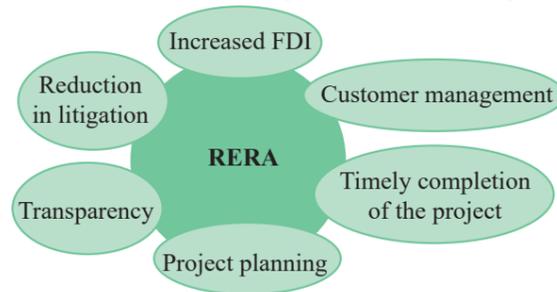
- The Essential Commodities Act, 1955 was enacted to ensure easy availability of essential commodities to the consumers and to protect them from exploitation by unscrupulous traders. The Act provides for regulation and control of production, distribution and pricing of commodities, which are declared as essential for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices.
- The Essential Commodities Act, 1955 envisages two independent proceedings against a person charged with contravention of the provisions of the Act. Under the Act, the Collector can confiscate the seized commodity.
- Every offence punishable under the Act shall be cognizable.
- The Act provides that if the person contravening an order under Section 3 is, a company, every person who, at the time of the contravention, was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the contravention.



The objectives of the Act are as under:



Advantages of Rera (Real Estate Regulation & Development Act)



Important Definitions

- ❖ **Advertisement:** Means any document described or issued as advertisement through any medium and includes:
 - any notice,
 - circular or
 - other documents or publicity in any form,
 Informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such as plot, building or apartment or to make advances or deposits for such purposes.
- ❖ **Building:** Includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;
- ❖ **Carpet area:** Means the net usable floor area of an apartment, excluding
 - the area covered by the external walls,
 - areas under services shafts, exclusive balcony or verandah area and
 - exclusive open terrace area,
 But, includes the area covered by the internal partition walls of the apartment

❖ “Common areas” mean:

- The entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;
- The stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
- The common basements, terraces, parks, play areas, open parking areas and common storage spaces;
- The premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
- Installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
- The water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- All community and commercial facilities as provided in the real estate project;

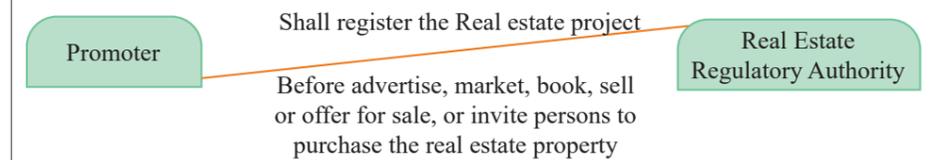
❖ **Appropriate Government:** mean as follows:

For the Union territory without Legislature,	Central Government;
For the Union territory of Puducherry,	Union Territory Government;
For the Union territory of Delhi,	Central Ministry of Urban Development;
For the State,	State Government

❖ **Promoter means,**

- A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- A person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
- Any development authority or any other public body in respect of allottees of:
 - Buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
 - Plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or
- An apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its members or in respect of the allottees of such apartments or buildings; or
- Any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

Prior Registration of Real Estate project with Real Estate Regulatory Authority (Section 3)



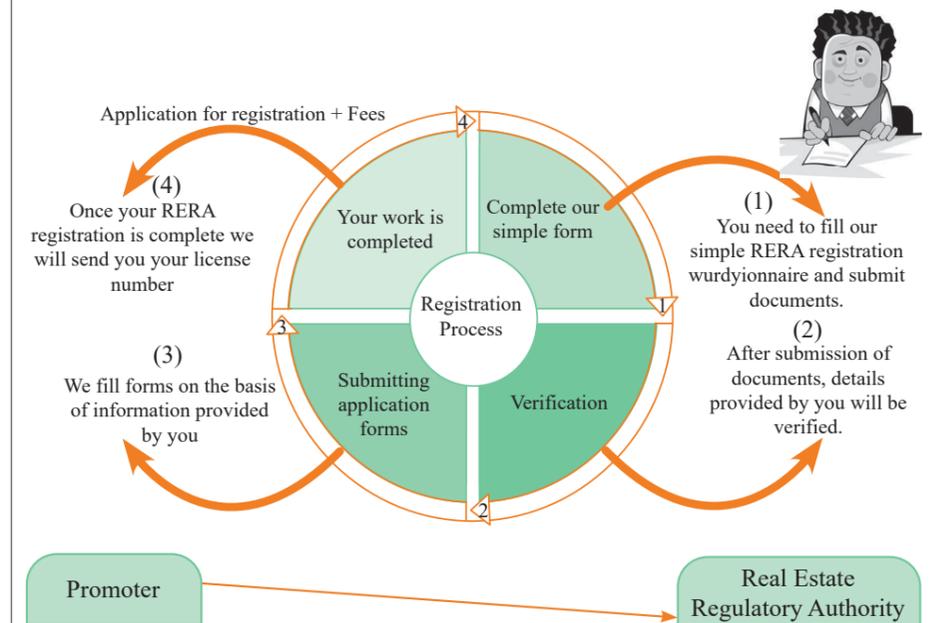
Projects Exempt from the Ambit of the Act

The following projects do not require to be registered under the Act:

- Area of land proposed to be developed does not exceed 500 Sq. Meters or No. of apartments proposed to be developed does not exceed eight inclusive of all phases
- Where the promoter has received completion certificate for a real estate project prior to commencement of this Act;
- For the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Application for Registration of Real Estate Projects (Section 4)

Every promoter shall make an application to the Authority for registration of the real estate project.



Attachments:	
A brief details of his enterprise	
A brief detail of the projects in the past five years launched.	
An authenticated copy of the approvals and commencement certificate from the competent authority	
The sanctioned plan, layout plan and specifications of the proposed project	
The location details of the project.	
Proforma of the allotment letter, agreement for sale, and the conveyance deed	
The number and areas of garage for sale in the project.	
The names and addresses of his real estate agents.	
The names and addresses of the contractors, architect, structural engineer.	
A declaration, supported by an affidavit stating:	
❖ He has a legal title to the land.	
❖ The land is free from all encumbrances	
❖ The time period within which he undertakes to complete the project.	
❖ Seventy per-cent of the amounts realized for the real estate project from the allottees, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose	

Granting of Registration by the Authority (Section 5)

On receipt of the application, the Authority shall within a period of thirty days

Grant registration subject to the provisions of the Act and the rules and regulations made thereunder. A registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

Reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder. Application shall not be rejected unless the applicant has been given an opportunity of being heard in the matter.

Deemed Approval = If the Authority fails to grant the registration or reject the application within a period of thirty days.

Extension of Registration (Section 6)

An extension of registration may be granted at the sole discretion of the Regulator due to Force Majeure conditions or if there are reasonable circumstances which merit extension. The Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year.

Revocation of Registration (Section 7)

The Authority may, on receipt of a complaint or suo moto in this behalf or on the recommendation of the competent authority, revoke the registration granted, after being satisfied that—

- The promoter makes default in doing anything required by or under this Act or the rules or the regulations made there under;
- The promoter violates any of the terms or conditions of the approval given by the competent authority;

- The promoter is involved in any kind of unfair practice or irregularities.

The term “unfair practice means” a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:

 - The practice of making any statement, whether in writing or by visible representation which,
 - The promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;
- The promoter indulges in any fraudulent practices.

The Authority, upon the revocation of the registration—

- Debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;
- Facilitate the remaining development works to be carried out in accordance with the provisions of section 8;
- Direct the bank holding the project back account to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;
- To protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

Registration of Real Estate Agents

Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents.

The Authority shall, within such period, in such manner and upon satisfying itself of the fulfillment of such conditions.



- Grant a single registration to the real estate agent for the entire State of Union territory, as the case may be;
- Reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or the rules or regulations made there under.

Functions of Real Estate Agents (Section 10)

Every real estate agent maintains and preserves such books of account, records and documents as may be prescribed. Every real estate agent not to involve himself in any unfair trade practices, namely:

- The practice of making any statement, whether orally or in writing or by visible representation which
 - Falsely represents that the services are of a particular standard or grade;
 - Represents that the promoter or himself has approval or affiliation which such promoter or himself does not have
 - Makes a false or misleading representation concerning the services.
- Permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.

Functions and Duties of Promoter (Section 11)

The promoter shall, upon receiving his Login Id and password, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project for public viewing, including—

- Details of the registration granted by the Authority;
- Quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;
- Quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;
- Quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
- Quarterly up-to-date status of the project; and
- Such other information and documents as may be specified by the regulations made by the Authority.

The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:

- Sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;
- The stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity

The Promoter shall be responsible for

- All obligations, responsibilities and functions under the provisions of the Act
- Obtain the completion certificate or the occupancy certificate or both, as applicable, from the relevant competent authority
- to obtain the lease certificate, where the real estate project is developed on a leasehold land
- Providing and maintaining the essential services, on reasonable charges
- Execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas.

No Deposit or Advance to be taken by Promoter without First Entering into Agreement for Sale.



- ❖ A promoter shall not accept a sum more than 10% of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale.

Adherence to Sanctioned Plans and Project Specifications by the Promoter

- ❖ Section 14 mandates that the promoter must develop and complete the project according to approved plans and specifications.
- ❖ Once plans and specifications are disclosed to buyers, the promoter cannot make additions or alterations without their consent.
- ❖ Minor changes may be made with the allottee's approval or due to architectural/structural reasons, verified by an authorized professional.
- ❖ "Minor additions or alterations" exclude structural changes.
- ❖ Any other alterations to buildings or common areas require written consent from at least two-thirds of the allottees.

Obligations of Promoter in case of Transfer of a Real Estate Project to a Third Party

- ❖ The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority.

Obligations of Promoter regarding Insurance of Real Estate Project

- ❖ The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of

- Title of the land and building as a part of the real estate project; and
- Construction of the real estate project.

The promoter shall be liable to pay the premium and charges in respect of the insurance and shall pay the same before transferring the insurance to the association of the allottees.

Transfer of Title (Section 17)

The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority and hand over the physical possession of the plot, apartment or building to the allottee.

Return of Amount and Compensation (Section 18)

If the promoter fails to complete or is unable to give possession of an apartment, plot or building,

- In accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- Due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

He shall be liable on demand to the allottees to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Imperia Structures Ltd. Vs. Anil Patni and Another

Supreme Court held that—

- ❖ If a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project.
- ❖ Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed.

Rights and Duties of Allottees (Section 19)

1. Obtain information about sanctioned plans, layout plans, specifications, and other relevant details.
2. Know the stage-wise completion schedule of the project, including provisions for water, sanitation, electricity, and other amenities.
3. Claim possession of the apartment, plot, or building, and the association can claim possession of common areas.
4. Claim a refund with interest and compensation if the promoter fails to deliver possession as agreed or discontinues business.
5. Receive necessary documents and plans, including those for common areas, after taking possession.
6. The allottee shall be liable to pay interest for any delay in payment towards any amount or charges to be paid.
7. The obligations of the allottee and the liability towards interest may be reduced when mutually agreed to between the promoter and such allottee.
8. Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.
9. Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.
10. Participate in the registration of the conveyance deed as required.

THE REAL ESTATE REGULATORY AUTHORITY

- A corporate body with perpetual succession and a common seal.
- The power to acquire, hold, and dispose of both movable and immovable property
- Enter into contracts and has the legal capacity to sue or be sued under its name.

Qualifications of Chairperson and Members of Authority (Section 22)

1. The Chairperson and Members are appointed by the appropriate Government based on recommendations from a Selection Committee.
2. The Selection Committee includes:
 - ♦ The Chief Justice of the High Court or their nominee.
 - ♦ The Secretary of the Housing Department.

- ♦ The Law Secretary.
3. Candidates must have:
 - ♦ At least 20 years of professional experience for the Chairperson.
 - ♦ At least 15 years of professional experience for Members.
 4. Relevant fields of expertise include urban development, housing, real estate, infrastructure, economics, technical fields, planning, law, commerce, accountancy, industry, management, social service, public affairs, or administration.
 5. State Government service restrictions:
 - ♦ A person who is or has been in State Government service cannot be appointed as Chairperson unless they have held the post of Additional Secretary to the Central Government or an equivalent post.
 - ♦ A person who is or has been in State Government service cannot be appointed as a Member unless they have held the post of Secretary to the State Government or an equivalent post in the Central or State Government.

Term of Office of Chairperson and Members (Section 23)

The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for re-appointment.

Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member

Functions of Authority for Promotion of Real Estate Sector (Section 32)

- Protection of interest of the allottees, promoter and real estate agent;
- Creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project;
- Creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;
- Measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment;
- Measures to encourage construction of environmentally sustainable and affordable housing, promoting standardization and use of appropriate construction materials, fixtures, fittings and construction techniques;
- Measures to encourage grading of projects on various parameters of development including grading of promoters;
- Measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations;
- Measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee;

To render advice to the appropriate Government in matters relating to the development of real estate sector;

Any other issue that the Authority may think necessary for the promotion of the real estate sector

Advocacy and Awareness Measures (Section 33)

The appropriate Government can ask the Authority for its opinion on the impact of policies or laws related to the real estate sector.

The Authority must provide its opinion within 60 days of receiving the request.

The Government is not obligated to follow the Authority's opinion when formulating policies or laws.

The Authority should promote advocacy, create awareness, and provide training about real estate laws and policies

Functions of Authority (Section 34)

To register and regulate real estate projects and real estate agents registered under the Act;

To publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, including information provided in the application for which registration has been granted;

To maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;

To maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, including those whose registration has been rejected or revoked;

To fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act and the rules and regulations made thereunder;

To ensure compliance of its regulations or orders or directions made in exercise of its powers under the Act;

To perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of the Act.

Powers of Authority to Call for Information, Conduct Investigation (Section 35)

Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:

The discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

Summoning and enforcing the attendance of persons and examining them on oath;

Issuing commissions for the examination of witnesses or documents;

Any other matter which may be prescribed.

Powers of Authority (Section 38)

1. Impose Penalties:

- The Authority can impose penalties or interest for any violations by promoters, allottees, and real estate agents under the Act, rules, and regulations.

2. Guided by Natural Justice:

- The Authority will follow principles of natural justice and has the power to regulate its own procedures within the framework of the Act and rules.

3. Competition Issues:

- The Authority can refer issues to the Competition Commission of India if:
 - There is significant prevention, restriction, or distortion of competition in real estate development.
 - There is abuse of monopoly power adversely affecting the interests of allottees.

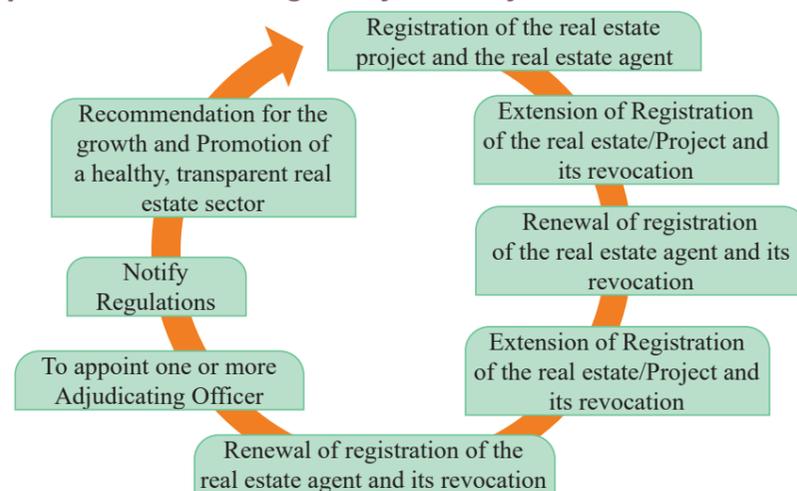
Rectification of Orders (Section 39)

- The Authority can amend any order to correct an obvious mistake within two years from the date of the order.
- Amendments can be made if the mistake is brought to the Authority's notice by the parties involved.

Recovery of Interest or Penalty or Compensation and Enforcement of Order (Section 40):

- If a promoter, allottee, or real estate agent fails to pay imposed interest, penalty, or compensation, it will be recovered as arrears of land revenue.
- The recovery process is prescribed by the adjudicating officer, Regulatory Authority, or Appellate Authority under the Act, rules, and regulations.

Responsibilities of the 'Regulatory Authority'



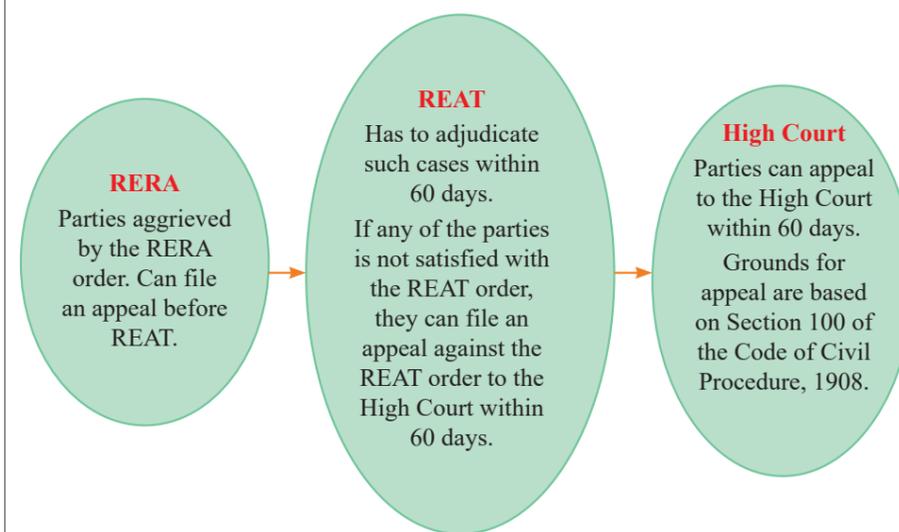
CENTRAL ADVISORY COUNCIL

Establishment of Central Advisory Council (Section 41)

- The Minister in charge of Housing in the Government of India will be the ex officio Chairperson.
- The Council will include representatives from:
 - Ministry of Finance
 - Ministry of Industry and Commerce
 - Ministry of Urban Development
 - Ministry of Consumer Affairs
 - Ministry of Corporate Affairs
 - Ministry of Law and Justice
 - Niti Aayog
 - National Housing Bank
 - Housing and Urban Development Corporation
 - Five State Government representatives (selected by rotation)
 - Five Real Estate Regulatory Authority representatives (selected by rotation)
 - Any other Central Government department as notified
- The Council will also include up to ten members representing:
 - Real estate industry
 - Consumers
 - Real estate agents
 - Construction labourers
 - Non-governmental organizations
 - Academic and research bodies in the real estate sector

THE REAL ESTATE APPELLATE TRIBUNAL

Appeals



Establishment of Real Estate Appellate Tribunal (Section 43)

The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal.

Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under the Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter.

M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.

The condition of pre-deposit under Section 43(5) for entertaining appeals is sustainable in law and ensures that the interests of the parties, especially the home buyers/allottees, are safeguarded.

Application for Settlement of Disputes and Appeals to Appellate Tribunal:

1. Appeal Timeline:

- Appeals must be filed within 60 days from the date the direction, order, or decision by the Authority or adjudicating officer is received.
- Appeals must be in the prescribed form and accompanied by the prescribed fee.



2. Late Appeals:

- The Appellate Tribunal can accept appeals filed after 60 days if there is a sufficient reason for the delay.

3. Hearing and Orders:

- Upon receiving an appeal, the Tribunal will give the parties an opportunity to be heard.

4. Communication of Orders:

- A copy of the Tribunal's order will be sent to the parties involved and to the Authority or adjudicating officer.

5. Expedited Process:

- The Tribunal aims to dispose of appeals as quickly as possible, ideally within 60 days from the date of receipt of the appeal.

Restrictions on Chairperson or Judicial Member or Technical or Administrative Member on Employment after Cessation of Office (Section 50)

The Chairperson or Judicial Member or Technical or Administrative Member, ceasing to hold office as such shall not:

Accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office.

Act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or Judicial Member or Technical or Administrative Member had, before cessation of office, acted for or provided advice to the Authority;

Give advice to any person using information which was obtained in his capacity as the Chairperson or Judicial Member or Technical or Administrative Member and being unavailable to or not being able to be made available to the public;

Enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

Powers of Tribunal (Section 53)

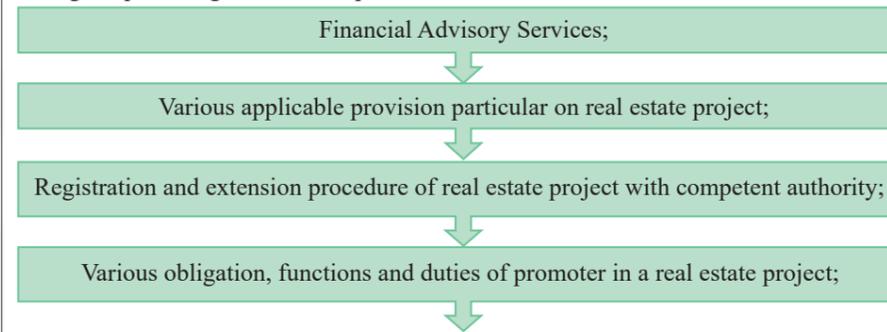
Right to Legal Representation (Section 56)	Section 56 guarantees the right to have legal representation.
	Applicants or appellants can either represent themselves or authorize certain professionals to represent them.
	These professionals include chartered accountants, company secretaries, cost accountants, legal practitioners, or the applicant's own officers.
	This representation is valid for cases presented before the Appellate Tribunal, Regulatory Authority, or adjudicating officer.

Real Estate Regulatory Authority and Appellate Tribunal

Role of Company Secretary



Company Secretaries: One Stop Professional Advisory Services for Real Estate Projects
Company Secretaries holding Certificate of Practice by becoming an expert in the act can indulge in providing advice in respect of:



A Company Secretary Holding Certificate of Practice Can

- Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
- Represent a person before real estate appellate tribunal.
- Represent a person before any other competent authority for any other purpose under Real Estate (Regulation and Development) Act, 2016.

Important Penalties

Penalty for Non-registration of Project (Section 59):

- If a promoter fails to register a real estate project as required by the Act:
 - Penalty: Rs. 10,000 for each day of default.
 - Cumulative penalty can reach up to five percent of the cost of the plot, apartment, or building involved in the real estate project, as determined by the Authority.

Factors to be considered by the Adjudicating Officer (Section 72):

- Quantum of Compensation or Interest:
 - The adjudicating officer determines the amount of compensation or interest under Section 71.
- Consideration Factors:
 - The officer must take into account several factors:

- Disproportionate gain or unfair advantage resulting from the default, if quantifiable.
- Loss incurred due to the default.
- Whether the default is repetitive.
- Any other factors deemed necessary by the adjudicating officer for the sake of justice.

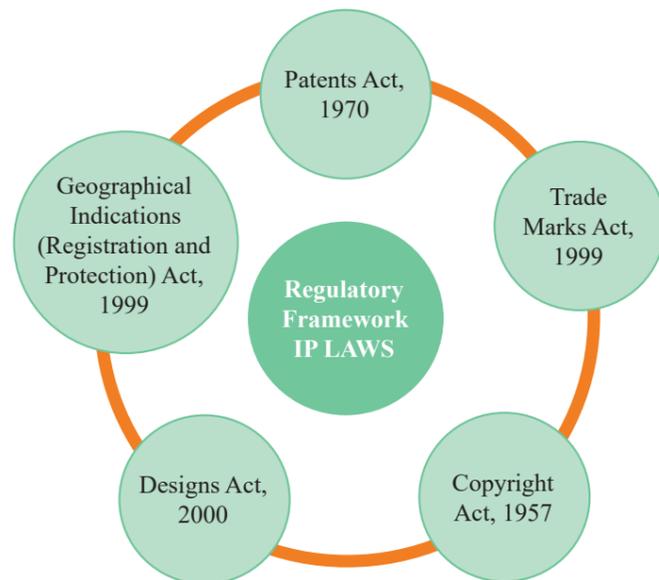
Act to Have Overriding Effect (Section 89)

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Intellectual Property is the Property, which has been created by exercise of Intellectual Faculty. It is the result of persons Intellectual Activities. Thus Intellectual Property refers to creation of mind such as inventions, designs for industrial articles, literary, artistic work, symbols which are ultimately used in commerce. Intellectual Property rights allow the creators or owners to have the benefits from their works when these are exploited commercially. These rights are statutory rights governed in accordance with the provisions of corresponding legislations. Intellectual Property rights reward creativity & human endeavor which fuel the progress of humankind.

Intellectual property is a vital component of economic growth and a tool for corporate competitiveness in today's highly competitive global market. Intellectual property rights serve as a catalyst for the development of innovations and inventions. Ideas, innovations, and creative expressions on the basis of which there is a public desire to grant the status of property are referred to as intellectual property rights (IPR). In order for the inventors or developers of that property to profit commercially from their creative efforts or reputation, IPR grant them specific exclusive rights. There are various forms of intellectual property protection, including trademark, copyright, and patent.

REGULATORY FRAMEWORK



NATURE OF INTELLECTUAL PROPERTY

Intangible Rights over Tangible Property:

IP's intangibility is the primary characteristic that sets it apart from other types of property. Although there are many significant differences between the various types of IP, one characteristic they all share is the establishment of property protection over intangible objects like ideas, inventions, signs, and information as opposed to close relationships and other intangible assets, which are tangible objects.

Right to sue:	IP is a resource that can be owned and managed, to use the language of the law. The majority of intellectual property is challenged through legal rights of action that can only be carried out by people who have legal standing. Since intellectual property (IP) is a property right, it can be inherited, purchased, gifted, sold, licenced, entrusted, or pledged.
Rights and Duties:	IP results in both obligations and property rights. The owner of the IP is entitled to carry out specific tasks in connection with his creations. He has the sole authority to create, copy, sell, and otherwise exploit the work. Additionally, there is a negative right that bars others from using their statutory rights.
Coexistence of different rights:	In relation to a specific function, various IPR kinds may coexist. For instance, an image of an innovation might be copyrighted and the invention itself might be patented. A design may be included in a trademark and may also be protected under the Design Act. The numerous rights that can coexist in IP share many similarities and distinctions.
Exhaustion of rights:	The doctrine of exhaustion generally applies to intellectual property rights. Exhaustion fundamentally means that after the first sale made by the right holder or by the authority designated for its exhaustion, that person's right expires and he is no longer permitted to halt the movement of the goods moving forward.
Dynamism:	IPR is undergoing continual improvement. The realm of IP is expanding as quickly as technology in all spheres of human activity. New things are being added to the IPR scope and the scope of its protection is being enlarged in accordance with the demands of scientific and technical advancement. Biopatents, Software Copyrights, and Plant Diversity Protection are just a few examples of terms that highlight recent advancements in the IPR area.

THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

The General Agreement on Trade in Services (GATS) is the first ever collection of legally binding, multinational regulations governing global trade in services. One of the most important outcomes of the Uruguay Round, whose conclusions came into effect in January 1995, was the founding of the GATS. The General Agreement on Tariffs and Trade (GATT), the GATS's counterpart in merchandise trade, served as a model for it, sharing many of the same goals: establishing a trustworthy and reliable system of international trade regulations; guaranteeing the non-discrimination of all participants; boosting economic activity through guaranteed policy bindings; and advancing trade and development through progressive liberalization.

The two key pillars that support the GATS' contribution to global services trade are:

- (a) increasing the openness and predictability of pertinent rules and regulations and
- (b) fostering progressive liberalisation through subsequent rounds of talks. The latter idea is equivalent, within the meaning of the Agreement, to enhancing market access and extending national treatment to foreign services and service providers across a broader variety of sectors. But it doesn't involve deregulation.

Although one of the fundamental principles of the GATS is the idea of progressive liberalisation, Article XIX stipulates that liberalisation must take place with due consideration for national policy objectives and members' levels of development, both generally and in specific sectors. Thus, developing nations are given the option to gradually expand market access while opening fewer sectors and fewer types of transactions in accordance with their stage of development. Other sections make sure that developing nations have more freedom to pursue economic integration policies, uphold balance of payments limits, and control who can access and utilise their telecommunications transport networks and services. Additionally, the WTO Secretariat is permitted to provide technical assistance to developing nations.

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

The United Nations organisation devoted to using intellectual property as a tool to foster innovation and creativity is known as the World Intellectual Property Organization (WIPO). Following the WIPO Convention's entrance into effect in 1967, WIPO was founded in 1970 with a mission from its Member States to advance the protection of intellectual property all over the globe through intergovernmental cooperation and cooperation with other international organisations. Its goal is to foster innovation and creativity through the creation of a fair and efficient international intellectual property system for the benefit of all nations' economic, social, and cultural development.

The World Intellectual Property Organization works to advance the growth and application of the global intellectual property system by:

- Services - run systems which make it easier to obtain protection internationally for patents, trademarks, designs and appellations of origin; and to resolve IP disputes.
- Law - develop the international legal IP framework in line with society's evolving needs.
- Infrastructure - build collaborative networks and technical platforms to share knowledge and simplify IP transactions, including free databases and tools for exchanging information.
- Development - build capacity in the use of IP to support economic development.

LEGAL FRAMEWORKS UNDER WIPO

- ❖ **Patent Cooperation Treaty (PCT):** The Paris Convention's Patent Cooperation Treaty (PCT) enables public access to a plethora of technical data pertaining to such inventions while also assisting applicants in securing patent protection for their ideas on a global scale. Applicants are able to concurrently apply for protection of an innovation in a large number of nations by submitting a single worldwide patent application under the PCT.
- ❖ **Madrid Agreement:** The Madrid Agreement, signed in 1891, and the Protocol pertaining to that Agreement, signed in 1989, set forth the rules for the Madrid System for the International Registration of Marks. By acquiring an international registration

that is valid in each of the specified Contracting Parties, the method enables the protection of a mark across a wide range of nations.

- ❖ **Vienna Agreement:** For marks that are composed of or incorporate figurative features, the Vienna Agreement creates an International Classification of the Figurative Elements of Marks known as the Vienna Classification.
- ❖ **Nice Agreement:** Regarding the International Classification of Goods and Services for the Registration of Marks, the Nice Agreement came into force.
- ❖ **Locarno Agreement:** The Locarno Agreement creates the Locarno Classification, an international classification system for industrial designs.
- ❖ **WIPO Copyright Treaty (WCT):** A particular agreement under the Berne Convention known as the WIPO Copyright Treaty (WCT) deals with the protection of works and the rights of their authors in the digital sphere. The Treaty also addresses two items that must be covered by copyright protection: (i) computer programmes, regardless of how they are expressed; and (ii) collections of data or other materials (“databases”).
- ❖ **WIPO Performances and Phonograms Treaty (WPPT):** In especially in the digital context, the WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two categories of beneficiaries: (i) performers (actors, singers, musicians, etc.); and (ii) manufacturers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds).
- ❖ **WIPO Intergovernmental Committee:** According to its mandate, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore is engaging in text-based negotiations to find a text or texts for an international legal instrument that will effectively protect traditional knowledge (TK), traditional cultural expressions (TCEs), and genetic resources (GRs).
- ❖ **Standing Committee on Copyright and Related Rights (SCCR):** During the biennium of 1998–1999, the Standing Committee on Copyright and Related Rights (SCCR) was established to look into issues of substantive law or harmonisation in the area of copyright and related rights.
- ❖ **Hague System/Agreement:** Through the submission of a single international application, the Hague System for the International Registration of Industrial Designs

offers a useful commercial option for registering up to 100 designs in 74 contracting parties spanning 91 countries.

- ❖ **Lisbon System/Agreement:** By using a single registration process and a single set of costs, the Lisbon System for the International Registration of Appellations of Origin and Geographical Indications provides a way to secure protection for an appellation of origin or a geographical indication in the contracting parties.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The TRIPS Agreement is essential for facilitating intellectual property trade, settling intellectual property trade disputes, and giving WTO members the freedom to pursue their own national goals. The Agreement formally acknowledges the importance of the connections between intellectual property and trade. That was accomplished by the Uruguay Round. The TRIPS Agreement is an attempt to put these rights under common international law and to close the gaps in how they are safeguarded and upheld globally. It provides minimal requirements for enforcement and protection of intellectual property owned by citizens of other WTO members by each government.

The TRIPS Agreement addresses five main topics:

- How general rules and fundamental ideas of the global trading system apply to international intellectual property?
- What are the minimum protection criteria for intellectual property rights that members should offer?
- What mechanisms should members offer to defend those rights in their home countries?
- Specific interim framework for resolving intellectual property disputes between WTO members in order to implement TRIPS requirements.
- Special transitional arrangements for the implementation of TRIPS provisions.

NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY

The Indian government has provided the exclusive right of intellectual property to safeguard the originality of inventors’ works. The simplest form of intellectual property is

an intangible work of human imagination. This intellectual property contains rights centred on copyright, patents, trademarks, trade names, industrial designs, and merchandise. Maintaining intellectual property rights is crucial for the quality, safety, and effectiveness of all pharmaceutical products and services. For the certification and identification of products in a large market, it serves as a standard authority and certification body. The privileges granted to individuals over the works of their imaginations are known as intellectual property rights.

IPR Policy focus on:

Improving access to healthcare, food security, and environmental protection, among other areas of critical social, economic, and technological importance.

fostering creativity and innovation and thereby promote entrepreneurship and enhance socio-economic and cultural development.

The Policy outlines seven goals that are further defined with actions that must be taken by the designated nodal Ministry or Department. The goals are briefly discussed below:-

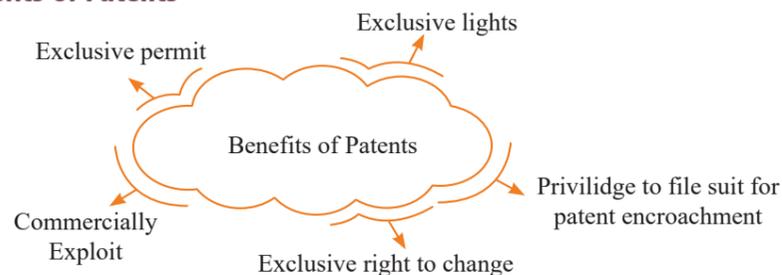
IPR Awareness: Outreach and Promotion	To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
Generation of IPRs	To stimulate the generation of IPR.
Legal and Legislative Framework	To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.
Administration and Management	To modernize and strengthen service oriented IPR administration.
Commercialization of IPR	Get value for IPRs through commercialization.
Enforcement and Adjudication	To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
Human Capital Development	To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

WHAT IS A PATENT?

A patent grants an inventor exclusive rights to their invention for a specific period. This invention can be a new product, process, or design that provides a technical solution to a problem.



An invention is considered as new (novel), if it is not anticipated by prior publication in patent and non-patent literature, i.e., an invention is novel if it has not been disclosed in the prior art, where the prior art means everything that has been published, presented or otherwise disclosed to the public before the date of filing/ priority date of complete specification. An invention is considered as novel, if it has not been anticipated by prior use or prior public knowledge in India.

Benefits of Patents**What are not Inventions?**

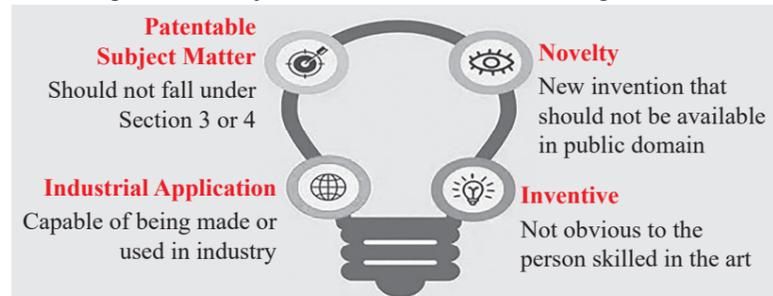
The following are not inventions within the meaning of Section 3 of the Act:

- An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- An invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature;
- The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

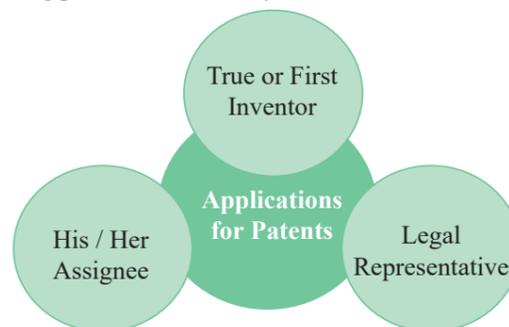
- The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- A method of agriculture or horticulture;
- Any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products;
- Plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- A mathematical or business method or a computer programme per se or algorithms;
- A literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- A mere scheme or rule or method of performing mental act or method of playing game;
- A presentation of information;
- Topography of integrated circuits;

What are the Criteria of Patentability?

An invention is patentable subject matter if it meets the following criteria-

**Persons Entitled to make Application for Patent**

Section 6 of the Act provides that an application for a patent for an invention may be made by any of the following persons, that is to say:

**What is the Patent Cooperation Treaty (PCT)?**

The PCT is an international treaty with more than 150 Contracting States which are bound with certain formal requirements set out in the Treaty and Regulations. The PCT makes it possible to seek patent protection for an invention simultaneously in a large number of countries by filing a single international patent application instead of filing several separate national or regional patent applications however, granting of patents remains under the control of the national or regional patent offices after the corresponding national phase application has been filed and the national phase application is assessed as per patent law of that jurisdiction.

When should an Application for a Patent be Filed?

An application for a patent can be filed at the earliest possible date and should not be delayed. An application filed with provisional specification, disclosing the essence of the nature of the invention helps to register the priority of the invention. Delay in filing an application may entail some risks such as:

Some other inventor might file a patent application on the said invention and

There may be either an inadvertent publication of the invention by the inventor himself/herself or by others independently of him/her.

Contents of Specifications

Section 10 Every complete specification is required to

- Fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
- Disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection;
- End with a claim or claims defining the scope of the invention for which protection is claimed; and
- Be accompanied by an abstract to provide technical information on the invention.

The application shall be completed by depositing the material to an International Depository Authority under the Budapest Treaty and by fulfilling the following conditions, namely:

The deposit of the material shall be made not later than the date of filing the patent application in India and a reference thereof shall be made in the specification within the prescribed period;

All the available characteristics of the material required for it to be correctly identified or indicated are included in the specification including the name, address of the depository institution and the date and number of the deposit of the material at the institution;

Access to the material is available in the depository institution only after the date of the application for patent in India or if a priority is claimed after the date of the priority;

Disclose the source and geographical origin of the biological material in the specification, when used in an invention.

How is a Patent Specification prepared?

Component of a complete patent specification



Publication of Applications

Section 11A(1) provides that save as provided otherwise, no application for patents shall ordinarily be open to the public for such period as may be prescribed. Sub-section (2) entitles an applicant to request the Controller, in the prescribed manner, to publish his application at any time before the expiry of the period prescribed under sub-section (1) and subject to the provisions of sub-section (3). The Controller on receipt of such request shall publish such application as soon as possible. Every application for patent shall be published on expiry of the period specified in sub-section (1) except those applications in which secrecy direction is imposed under section 35; or application has been abandoned under section 9(1); or application has been withdrawn three months prior to the period specified under sub-section (1).

When is an Application for Patent Published?

Every application for a patent is published after expiry of 18 months from the date of its filing or priority date whichever is earlier. However, the following applications are not published.

Application in which secrecy direction is imposed.

Application which has been abandoned u/s 9(1) and i.e. when a provisional application has been filed and the complete application has not been filed with 12 months from the filing of the provisional application.

Application which has been withdrawn 3 months prior to 18 months.

Request for Examination

Section 11B provides that no application for a patent shall be examined unless the applicant or any other interested person makes a request for such examination.

In case the applicant or any other interested person does not make a request for examination of the application for a patent within the specified period, the application shall be treated as withdrawn by the applicant. However the applicant may, at any time after filing the application but before the grant of the patent, withdraw the application by making a request in the prescribed manner; and in a case secrecy direction has been issued under Section 35, the request for examination may be made within the prescribed period from the date of revocation of the secrecy direction.

Examination of Application

Section 12 dealing with examination of application provides that when the request for examination has been filed in respect of an application for a patent in the prescribed manner, the application and specification and other documents related thereto shall be referred at the earliest by the Controller to an examiner for making a report to him in respect of the following matters, namely:



Whether the application and the specification and other documents relating thereto are in accordance with the requirements of the Act and of any rules made thereunder;

Whether there is any lawful ground of objection to the grant of the patent in pursuance of the application;

The result of investigations made under Section 13; and

Any other matter which may be prescribed.

Search for Anticipation by Previous Publication and by Prior Claim

Section 13 dealing with search for anticipation by previous publication and by prior claim provides that the examiner to whom the application for a patent is referred shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification:

Has been anticipated by publication before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;

Is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.

Power of Controller to make Orders Respecting Dating of Application and Cases of Anticipation

Section 17 provides that at any time after the filing of an application and before the grant of the patent, the Controller may at the request of the applicant direct that the application shall be post-dated to such date as mentioned in the request and proceed with the application accordingly. However, no application shall be post-dated to a date later than six months from the date on which it was actually made or would be deemed to have been made.

Section 18 says that where it appears to the Controller that the invention so far as claimed in any claim of the complete specification has been anticipated, he may refuse the application unless the applicant:

Shows to the satisfaction of the Controller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published; or

Amends his complete specification to the satisfaction of the Controller.

Potential Infringement

Patent infringement is the violation of the exclusive rights of the patent holder. The Patents Act 1970, does not specifically define activities or situations that constitute patent infringement. Section 48 of the Patents Act gives the patent holder/ patentee an 'exclusive right' to exclude any third- party from making, using, offering, selling, manufacturing etc. the patented invention/ product/process, during the valid term of the patent. This essentially creates monopolistic rights over the patented invention/ product/ process. Thus, any activity which violates such a monopoly can be considered a patent infringement. In cases of patent infringement, the patent holder has the right to sue the infringing party to get relief and compensation for the damage caused. Sections 104-114 of the Act provide certain guidelines relating to patent infringement.

Section 19 provides that if in consequence of the investigations it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent, be inserted in the applicant's complete specification by way of notice to the public within such time as may be prescribed, unless

The applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or

The complete specification is amended to the satisfaction of the Controller.

Where after a reference to another patent has been inserted in a complete specification in pursuance of a direction under Section 19:

That other patent is revoked or otherwise ceases to be in force; or

The specification of that other patent is amended by the deletion of the relevant claim; or

It is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention, the Controller may, on the application of the applicant delete the reference to that other patent.

Substitution of Applicants

No such direction shall, however, be given by virtue of any assignment or agreement made by one of the two or more joint applicants for a patent except with the consent of the other joint applicant or applicants. Further, no such direction shall be given by virtue of any assignment or agreement for the assignment of the benefit of an invention unless:

The invention is identified therein by reference to the number of the applications for the patent; or

There is produced to the Controller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or

The rights of the claimant in respect of the invention have been finally established by the decision of court; or

The Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).

Time for Putting Application in Order for Grant

Section 21 says if the patent office returns your application papers because of missing stuff, you haven't met the requirements until you fix it. You can either re-file the papers, or convince the office it wasn't your fault you couldn't re-file.

OPPOSITION TO THE PATENT

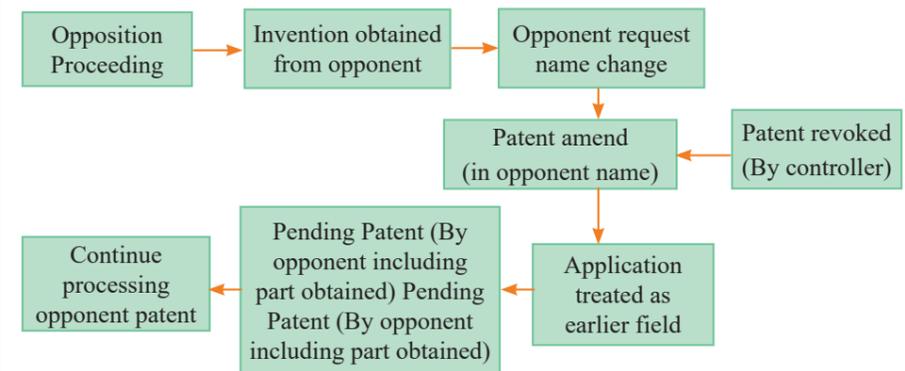
Section 25 of the Act deals with opposition to grant of patent and provides that where an application for a patent has been published but a patent has not been granted, any person may, in writing, represent by way of opposition to the Controller against the grant of patent on the following grounds and the Controller on request of such person shall hear him and dispose of the representation in the prescribed manner and specified time:

- (a) That the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;
- (b) That the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim —
 - (i) In any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or
 - (ii) In India or elsewhere, in any other document.
- (c) That the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;
- (d) That the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.
- (e) That the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;
- (f) That the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;
- (g) That the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;
- (h) That the applicant has failed to disclose to the Controller the information required or has furnished the information which in any material particular was false to his knowledge;

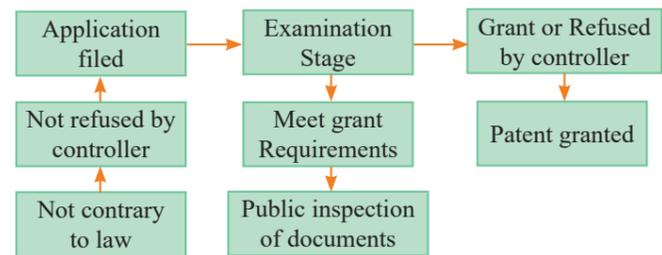
- (i) That in the case of convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title;
- (j) That the complete specification does not disclose or wrongly mention the source of geographical origin of biological material used for the invention;
- (k) That the invention so far as claimed in any claim of the complete specification is anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.

Controller to Treat Application as Application of Opponent

Section 26 of the Act provides that where in any opposition proceeding the Controller finds that the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent and revokes the patent on that ground, he may, on request by such opponent, direct that the patent shall stand amended in the name of the opponent.



GRANT OF PATENTS



Grant of Patents Subject to Conditions

Section 47 dealing with grant of patents subject to conditions provides that the grant of a patent shall be subject to the conditions that:

- This law allows the government to import or make a patented invention for their own use. This includes things like machines, devices, or anything created using the patented process.
- Any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;
- Someone can experiment with a patented invention for research or teaching purposes. This includes using the invention itself, or anything made using the patented process. and

This law says the government can import patented medicine or drugs for their own use. This includes government hospitals and clinics, and also other medical facilities the government decides are important enough to get these medicines.

Rights of Patentees

Section 48 provides that subject to the other provisions contained in the Patents Act and the conditions specified in section 47, a patent granted under the Act shall confer upon the patentee:

Where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

Where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India.

What are the Rights of a Patentee once the Patent is Granted?

A patentee enjoys the exclusive right to make and use the patented invention. The patentee also has the right to assign the patent, grant licences, or otherwise deal with the patent, for any consideration. These rights, created by statute, are circumscribed by various conditions and limitations as prescribed under the Patents Act, 1970.

What is the Term of a Patent in the Indian System?

The term of every patent granted is 20 years from the date of filing of application. However, for application filed under national phase under Patent Cooperation Treaty (PCT), the term of patent will be 20 years from the international filing date accorded under PCT.

PATENTS OF ADDITION

Section 54, 55 and 56 deals with patents of addition.

1. Section 54 provides that where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.
2. Where an invention being an improvement in or modification of another invention, is the subject of an independent patent the Controller may, if the patentee so requests, revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date of the patent so revoked.
3. However a patent shall not be granted as a patent of addition unless the date of filing of the application is the same as or later than the date of filing of the application in respect of the main invention. A patent of addition shall not be granted before the grant of the patent for the main invention.
4. A patent of addition application cannot be rejected on the grounds that the disclosure in the primary application or patent lacked innovative steps. However, the disclosure in the main application or patent may be used as evidence of innovation against the patent addition application.

In the matter of Ravi Kamal Bali v/s Kala Tech and others the Bombay High Court on 12th February, 2008 dismissed the defendant's arguments that Patent of addition can only be granted if it has an inventive step over the main application.

RESTORATION OF LAPSED PATENTS

Procedure for Disposal of Applications for Restoration of Lapsed Patents

Section 61 provides that if, after hearing the applicant, Controller is prima facie satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall publish the application, any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds that—

The failure to pay the renewal fee was not unintentional; or

There has been undue delay in the making of the application.

SURRENDER AND REVOCATION OF PATENTS

Grounds for Revocation of Patents

Section 64 deals with revocation of patents. A patent may be revoked on any of the following grounds:

Where an invention as claimed in a valid claim of earlier priority date which is included in the complete specification of another patent granted in India;

Where the patent application was filed by a person who is not entitled under the provisions of the Act and was granted a patent on such application;

Where the patent was wrongfully obtained and the rights of the petitioner or any person under/through whom he claims, were contravened;

When the subject of a claim of the complete specification is not an invention within the meaning of the Act;

Where the invention that is being claimed is not new having regard to what was publicly known or used in India before the priority date of the claim and also having regard to what was published in any of the documents, whether in India or elsewhere;

Where the invention that is claimed is obvious and lacks any inventive step, having regard to what was publicly known, used or published in India, before the priority date of the claim;

Where the invention is not useful;

Where the invention and the method by which it is to be performed is not sufficiently and fairly described by the complete specification. In other words, the description of the method or the instructions for the working of the invention as specified in the complete specification are insufficient to enable a person of average skill and knowledge of the art to which the invention relates, to operate or work the invention or where the best method of performing the invention which is known to the applicant is not disclosed;

Where the scope of any claim is not defined properly or based on the matter which has not been disclosed in the specification;

Where a false suggestion or representation was made to obtain the patent;

Where the subject of any claim of the complete specification is not patentable under the Act;

The invention that is being claimed was secretly used in India before the priority date of the claim;

Where the information required under Section 8 has not been disclosed by the applicant of the patent to the Controller or the information that has been furnished is false to his knowledge;

Where any direction of secrecy passed under Section 35 has been contravened by the applicant or made an application in contravention of Section 39 for the grant of a patent outside India;

Where the permission to amend the complete specification under Section 57 or 58 was obtained by fraud;

The complete specification does not disclose or mentions the wrong source or geographical origin of biological material used for the invention;

The invention was anticipated having regard to the knowledge which was available within any local or indigenous community within India or elsewhere..

WORKING OF PATENTED INVENTIONS – GENERAL PRINCIPLES

Section 83 dealing with general principles applicable to working of patented invention provides that in exercising the powers conferred for working of patents and compulsory licences, regard shall be had to the following general considerations, namely:

- (a) That patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;
- (b) That they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;
- (c) That the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;
- (d) That patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;
- (e) That patents granted do not in any way prohibit Central Government in taking measures to protect public health;
- (f) That the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and
- (g) That patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

COMPULSORY LICENCES

Compulsory licenses are authorizations given to a third-party by the Controller General to make, use or sell a particular product or use a particular process which has been patented, without the need of the permission of the patent owner. This concept is recognised at both national as well as international levels, with express mention in both (Indian) Patent Act, 1970 and TRIPS Agreement. There are certain pre-requisite conditions, given under sections 84-92, which need to be fulfilled if a compulsory license is to be granted in favour of someone.

Section 84 provides that at any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely:

That the reasonable requirements of the public with respect to the patented invention have not been satisfied, or

That the patented invention is not available to the public at a reasonably affordable price, or

That the patented invention is not worked in the territory of India.

In considering the application of compulsory licence, the Controller is required to take into account—

The nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;

The ability of the applicant to work the invention to the public advantage;

The capacity of the applicant to undertake the risk in providing capital and working the invention, if the application were granted;

As to whether the applicant has made efforts to obtain a licence from the patentee on reasonable terms and conditions and such efforts have not been successful within a reasonable period as the Controller may deem fit.

In this context, it has been clarified that, the reasonable requirements of the public shall be deemed not to have been satisfied if—

- (a) By reason of the refusal of the patentee to grant a licence or licences on reasonable terms,
 - (i) An existing trade or industry or the development thereof or the establishment of any new trade or industry in India or the trade or industry in India or the trade or industry of any person or class of persons trading or manufacturing in India is prejudiced; or
 - (ii) The demand for the patented article has not been met to an adequate extent or on reasonable terms; or
 - (iii) A market for export of the patented article manufactured in India is not being supplied or developed; or
 - (iv) The establishment or development of commercial activities in India is prejudiced; or
- (b) By reason of conditions imposed by the patentee upon the grant of licences under the patent or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent, or the establishment or development of any trade or industry in India, is prejudiced; or
- (c) The patentee imposes a condition upon the grant of licences under the patent to provide exclusive grant back, prevention to challenges to the validity of patent or coercive package licensing; or
- (d) The patented invention is not being worked in the territory of India on a commercial scale to an adequate extent or is not being so worked to the fullest extent that is reasonably practicable; or
- (e) The working of the patented invention in the territory of India on a commercial scale is being prevented or hindered by the importation from abroad of the patented article by —

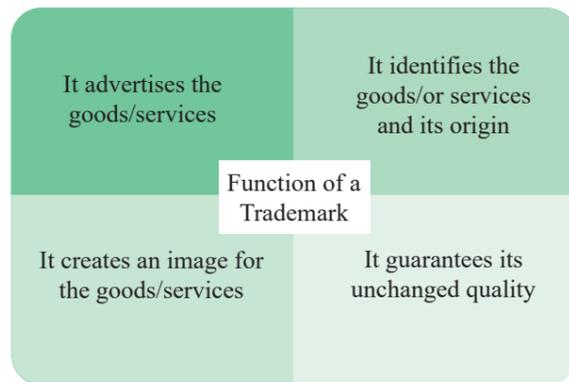
	(i) The patentee or persons claiming under him; or
	(ii) Persons directly or indirectly purchasing from him; or
	(iii) Other persons against whom the patentee is not taking or has not taken proceedings for infringement.
Procedure for Dealing with Applications	Section 87 provides that where the Controller is satisfied, upon consideration of an application for compulsory licence or revocation of patent, that a prima facie case has been made out for the making of an order, he shall direct the applicant to serve copies of the application upon the patentee and any other person appearing from the register to be interested in the patent in respect of which the application is made, and shall publish the application in the Official Journal.
Powers of Controller in granting compulsory licences	1. Where an application for compulsory licence is made under Section 84 by a person being the holder of a licence under the patent, the Controller may, if he makes an order for the grant of a licence to the applicant, order the existing licence to be cancelled, or may, if he thinks fit, instead of making an order for the grant of a licence to the applicant, order the existing licence to be amended.
	2. Where two or more patents are held by the same patentee and an applicant for a compulsory licence establishes that the reasonable requirements of the public have not been satisfied with respect to only some of the said patents, then, if the Controller is satisfied that the applicant cannot efficiently or satisfactorily work the licence granted to him under those patents without infringing the other patents held by the patentee and if those patents involve important technical advancement or considerable economic significance in relation to the other patents, he may, by order, direct the grant of a licence in respect of the other patents also to enable the licensee to work the patent or patents in regard to which a licence is granted under Section 84.

	3. Where the terms and conditions of a licence have been settled by the Controller, the licensee may, at any time after he has worked the invention on a commercial scale for a period of not less than twelve months, make an application to the Controller for the revision of the terms and conditions on the ground that the terms and conditions settled have proved to be more onerous than originally expected and that in consequence thereof the licensee is unable to work the invention except at a loss. However no such application shall be entertained a second time by the Controller.
Termination of compulsory licence	Section 94 provides that on an application made by the patentee or any other person deriving title or interest in the patent, a compulsory licence may be terminated by the Controller, provided the circumstances that give rise to the grant thereof no longer exist and such circumstances are unlikely to recur. In this regard the holder of the compulsory licence has been entitled to object to such termination.
International Arrangements	Section 133 A convention country is a country that offers similar patent rights to Indian applicants as it does to its own citizens. Section 134 If a convention country does not offer reciprocal patent rights to India, its citizens cannot apply for or own Indian patents or licenses.
	Section 135:
	❖ Allows claiming priority for a patent application in India based on an earlier application filed in a convention country (country with a patent treaty with India).
	❖ The priority date for your Indian claim can be the date you filed the application in the convention country, if done within 12 months.
	Section 136:
	❖ Requires complete specifications and details about the convention country filing to be included with your Indian patent application claiming convention priority.

	❖ You must also declare that no prior applications for the invention were filed in convention countries.
	Section 138:
	❖ If you claim convention priority, you must submit copies of the corresponding documents filed in the convention country's patent office within a set timeframe.
	❖ Translations into English are required for documents in foreign languages.
Patent Agent	The work relating to drafting of specifications, making of application for a patent, subsequent correspondence with the Patent office on the objections raised, representing the applicant's case at the hearings, filing opposition and defending application against opposition is entrusted to a qualified Patent Agent. Sections 125-132 of the Patents Act, 1970 read with the Patents Rules deal with the Patent Agents.
Patent Office and Its Establishment	The Controller General of Patents, Designs and Trade Marks appointed under Section 3(1) of the Trade Marks Act, 1999 shall be the Controller of Patents for the purposes of this Act. For the purposes of Patents Act, there shall be an office which shall be known as the patent office. The Central Government may, by notification in the Official Gazette, specify the name of the Patent Office.
Appeals to High Court	Section 117A, no appeal shall lie from any decision, order or direction made or issued under this Act by the Central Government, or from any act or order of the Controller for the purpose of giving effect to any such decision, order or direction.

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights. A trade mark is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

Types of trademarks



Trade Mark

The term trade mark has been defined under Section 2(1)(zb) of the Act as to mean a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and

- Essentials**
- The selected mark should be capable of being represented graphically (that is in the paper form).
 - It should be capable of distinguishing the goods or services of one undertaking from those of others.
 - It should be used or proposed to be used mark in relation to goods or services for the purpose of indicating or so as to indication in the course of trade between the goods or services and some person have the right to use the mark with or without identity of that person.

Certification Trade Mark (Section 2)	A certification trademark is a symbol that can be registered and shows that goods or services meet certain standards set by the owner of the mark. These standards can be related to the origin, materials, manufacturing process, performance, quality, accuracy, or other characteristics of the goods or services.
Collective Mark	Collective mark means a trade mark distinguishing the goods or services of members of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others.
Well Known Trade Mark	Well-known trade mark in relation to any goods or services means a mark which has become so well-known to the substantial segment of the public which uses such goods or services.

Who can Apply for a Trademark and How?

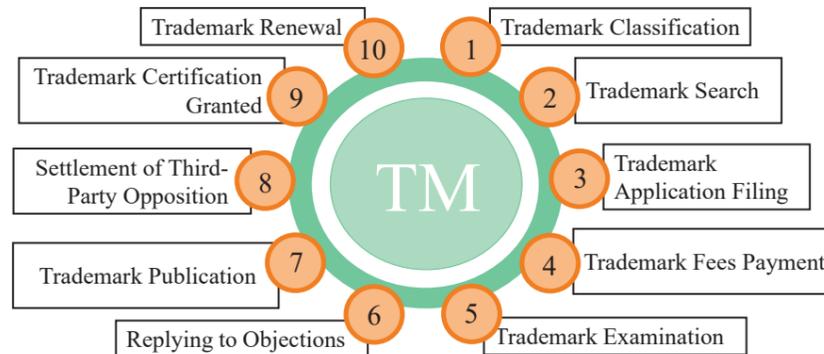
Any person, claiming to be the proprietor of a trademark used or proposed to be used by him, may apply in writing.

The application should contain the trademark, the goods/ services, name and address of applicant and agent (if any) with power of attorney, the period of use of the mark. The applications can be submitted personally at the Front Office Counter of the respective office or can be sent by post. These can also be filed online through the e-filing gateway available at the official website.

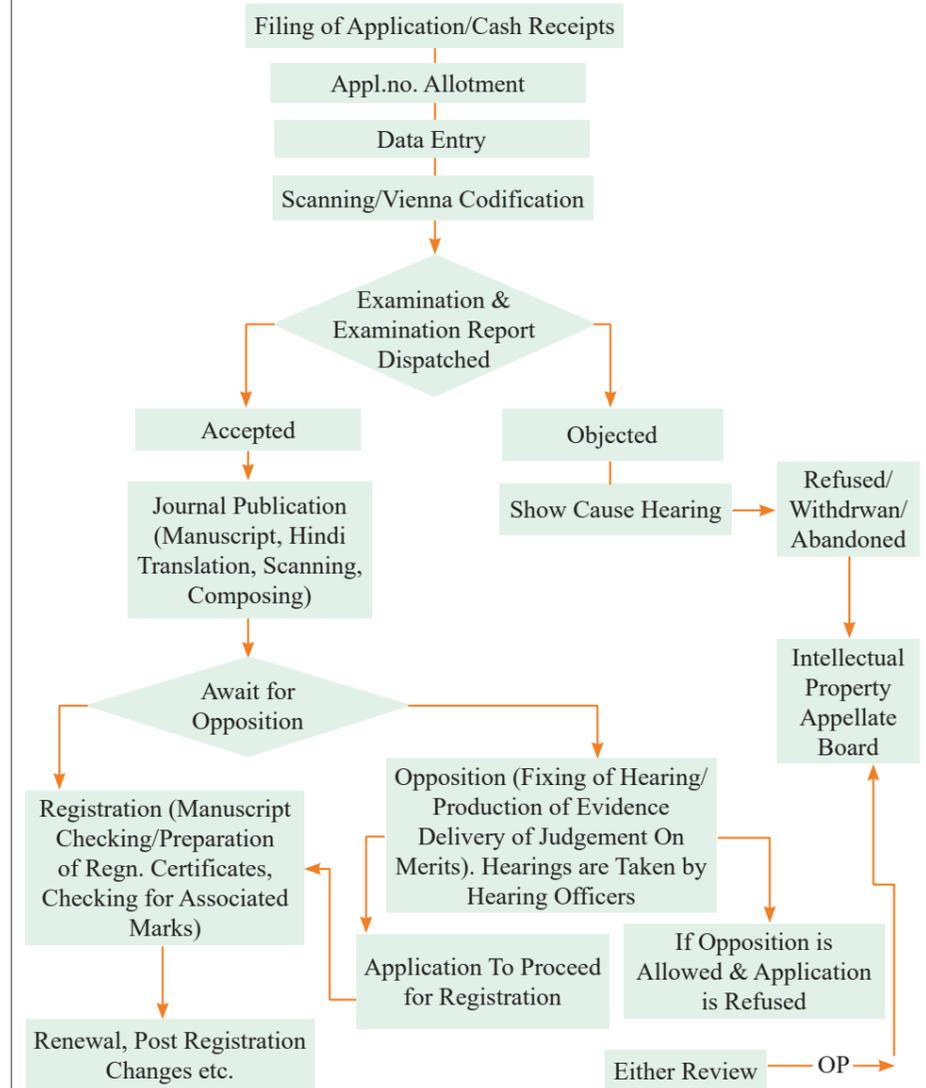
What are Different Types of Trademarks that may be Registered in India?



A brief description of stage wise processing in Trade Mark Registration is as follows:



Trade Mark Registration Workflow Chart



What are the Benefits of Registering a Trademark?

Registering a trademark gives the owner exclusive rights to use it for the specific goods or services it's registered for. This includes the right to use the ® symbol and sue for infringement.

Absolute Grounds for Refusal of Registration

Section 9 of the Act containing provisions relating to absolute grounds for refusal for registration prohibit the registration of those trademarks.

Which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;

Which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;

Trademarks that are common phrases or symbols used in everyday language or standard business practices cannot be registered.
A trademark can still be registered if it has become distinctive through use or is already well-known.

In the case of *Himalaya Drug Company vs. S.B.L. Ltd.*, the Appellant had filed a suit against the Respondent for infringement of trade mark "Liv.52" by use of the trade mark "Liv-T". The lower court dismissed the suit of the Appellants holding that the mark 'LIV' is publici juris ("belonging to the public." It refers to something that is not owned by any one individual but instead is available for everyone to enjoy or use.) and there is no similarity between the two trademarks.

The Defendant could not prove by way of its evidence that the word 'LIV' is generic. The Plaintiff on the other hand proved the distinctiveness of its mark by way of its evidence by providing the orders where the mark 'LIV.52' has been granted protection. The court also noted that consumer asked for Plaintiff's product as Liv.52 thus 'LIV' was the essential and prominent feature of the mark 'LIV.52' and restrained the Defendant from using the mark 'LIV-T' and the Court allowed the Defendant to amend its mark accordingly to a mark which will not be similar to the mark of the Plaintiff.

According to Section 9 the following Trademark Shall not be Registered

If the trademark tends to deceive the public or cause any confusion;

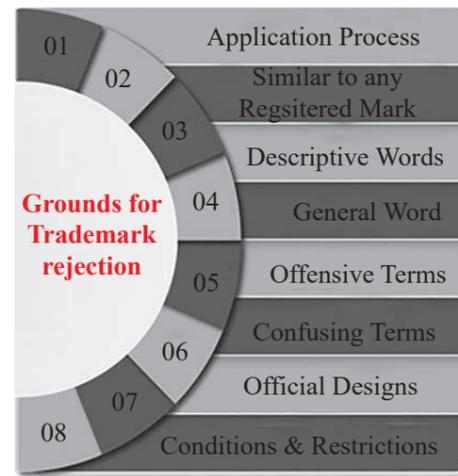
In any instance if the trademark hurts any religious sentiment of any demographic section of Indian citizens;

Trademark shall not be registered

In the case of *Amritpal Singh vs. Lal Babu Priyadarshi*, Intellectual Property Appellate Board (IPAB) the word RAMAYAN was refused registration on the grounds that: Firstly, it was not capable of distinguishing the goods of the applicant and Secondly, that it was likely to hurt religious sentiments of a class of society.

Relative Grounds for Refusal of Registration

Section 11 stipulates that a trade mark shall not be registered if, because of-



Earlier Trade Mark means

- (a) trademark application gets rejected if there's an earlier filing for the same product/service. In other words, "first come, first served" applies.
- (b) A trade mark which, on the date of the application for registration of the trade mark in question, or where appropriate, of the priority claimed in respect of the application, was entitled to protection as a well-known trade mark.

As per Section 11 of the Act, the Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including-

- (i) The knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;
- (ii) The duration, extent and geographical area of any use of that trade mark;
- (iii) The duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trademark applies;
- (iv) The duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;
- (v) The record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.

Prohibition of Registration of Names of Chemical Elements or International Non-Proprietary Names	Section 13 states that no word
	<ul style="list-style-type: none"> (a) which is the commonly used and accepted name of any single chemical element or any single chemical compound (as distinguished from a mixture) in respect of a chemical substance or preparation, or (b) which is declared by the World Health Organisation and Registrar from time to time, as an international non-proprietary name or which is deceptively similar to such name, shall be registered as a trade mark and any such registration shall be deemed for the purpose of section 57 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require.

Use of Names and Representations of Living Persons or Persons Recently Dead	Where an application is made for the registration of a trade mark which falsely suggests a connection with any living person, or a person whose death took place within twenty years prior to the date of application for registration of the trade mark, the Registrar may, before he proceeds with the application, require the applicant to furnish him with the consent in writing of such living person or, be, of the legal representative of the deceased person to the connection appearing on the trade mark, and may refuse to proceed with the application unless the applicant furnishes the Registrar with such consent.
Withdrawal of Acceptance	Section 19 provides that where, after the acceptance of an application for registration of a trade mark but before its registration, the Registrar is satisfied <ul style="list-style-type: none"> (a) that the application has been accepted in error; or (b) that in the circumstances of the case the trade mark should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations.
Advertisement of Application after acceptance	According to Section 20, The purpose of advertisement is to give information to the public at large in respect of the trademark advertised and afford an opportunity to oppose the registration of the mark on given grounds.
Registration	Section 23 states, when an application for registration of a trade mark has been accepted and either:- <ul style="list-style-type: none"> (a) the application has not been opposed and the time for notice of opposition has expired; or (b) the application has been opposed and the opposition has been decided in favor of the applicant, The Registrar shall register the said trade mark within eighteen months of the filing of the application and the trade mark when registered shall be registered as of the date of the making of the said application.
Duration, Renewal, Removal and Restoration of Registration	Section 25 allows registration of a trademark for a period of 10 years. and renewal of registration for successive periods of 10 years, from the date of the original registration or the last renewal.

Can a Registered Trademark be Removed from the Register?

Removal: A trademark can be removed upon application if it's determined to be wrongly registered. The registrar can also initiate removal on their own.



Infringement: Trademark infringement occurs when someone uses a mark that's identical or similar to a registered trademark, even for different goods/services. However, infringement only applies if the registered trademark has a strong reputation in India and the use of the similar mark would unfairly benefit from that reputation or damage the original trademark.

As per section 29 of the Act, a registered trademark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

Its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or

Its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or

Its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or is likely to have an association with the registered trade mark.

In the case of *Imperial Tobacco Co. of India Ltd. vs. The Registrar of TradeMarks* Calcutta High Court judgment dated 28 May, 1968, the Imperial Tobacco Company manufactured and distributed cigarettes with a label "simla" all over the country. ITC Ltd. made an application to the Registrar for the registration in the year 1960 and 1966. But both times the registration application was refused by the registrar. The Calcutta High Court rejected the appeal on the ground that the term "simla" is a famous geographical place. This term cannot be registered as a trademark. The trademark "Simla" with the label is composite in character. Its essential feature is the word Simla. "Simla" is neither an invented word nor is it a word having a dictionary meaning. It is a well-known hill-station of India. Its geographical significance is, therefore, plain and unequivocal. The snow-clad hills in outline on the label makes the geographical significance inescapable.

Limits on Effect of Registered Trade Mark

Section 30 enumerates certain acts which do not constitute infringement-

Is in accordance with honest practices in industrial or commercial matters, and

Is not such as to take unfair advantage of or be detrimental to the distinctive character or repute of the trade mark.

Section 30 states that a registered trademark is not infringed where—

- (a) Using terms that describe the product itself (kind, quality, etc.).
- (b) Using the trademark within limitations set during registration.
- (c) Using the trademark on goods or services that were originally trademarked by the owner or a permitted user.
- (d) Using the trademark to show that goods are compatible with another trademarked product.
- (e) Using one of several registered trademarks that are very similar.

As per Section 30 of the Act, where the goods bearing a registered trade mark are lawfully acquired by a person, the sale of the goods in the market or otherwise dealing in those goods by that person or by a person claiming under or through him is not infringement of a trade mark by reason only of—

The registered trademark having been assigned by the registered proprietor to some other person, after the acquisition of those goods; or

The goods having been put on the market under the registered trade mark by the proprietor or with his consent.

PASSING OFF

Black's Law Dictionary defines passing off as "the act or an instance falsely representing one's own product as that of another in an attempt to deceive potential buyers. Passing off is actionable in tort under the law of unfair competition. It may be actionable as trademark infringement".

Protect the interest of the consumer or purchaser of goods against acts tending to create false impressions and to deceive or confuse him by inducing the belief that the business or products of one manufacturer or trader are those of another.

Protect the interest of the trademark owner in his advantageous relations he has created in the market place.

Protect the social interest by promoting fair dealing in the market place and prevent unethical and unfair practices in trade.



In the case of *Mahendra and Mahendra Paper Mills Ltd. vs. Mahindra and Mahindra Ltd.* Supreme Court broadly stated, in an action for passing off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered—

The nature of the marks
The degree of resemblance between the marks, phonetically similar and hence similar in idea.
The nature of the goods in respect of which they are used as trademarks.
The similarity in nature, character and performance of the goods of the rival traders.
Class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and /or using the goods.
The mode of purchasing the goods or placing orders for the goods.
Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks.

Registration to be Prima Facie Evidence of Validity

The Supreme Court in *Uniply Industries Ltd. vs. Unicorn Plywood Pvt. Ltd. and Others* observed that:

For inherently distinctive marks ownership is governed by priority of use for such marks. The first user of sale of goods/services is the owner who is senior to others.

These marks are given legal protection against infringement immediately upon adoption and use in trade.

Some courts indicate that even prior sales of goods – though small in size with the mark – are sufficient to establish priority, the test being to determine continuous prior user and the volume of sale or the degree of familiarity of the public with the mark.

Therefore, the proprietorship of the trademark is decided by the date of usage of the mark by a person in business transactions.

Assignment and Transmission	1. Registered trademarks can be assigned with or without the associated business (goodwill). This applies to all or some of the goods/services covered by the trademark. (Sections 37 & 38)
	2. Unregistered trademarks can also be assigned with or without goodwill. (Section 39)
	3. There are limitations to prevent confusion: The assignment can't create multiple exclusive rights for the same product/service or mislead consumers. (Section 40)
	4. Assigning a registered trademark without the business goodwill requires specific procedures: approval from the Registrar and public advertisement. (Section 42)
	5. Special rules apply to certification trademarks. They can only be assigned with the Registrar's consent. (Section 43)
	6. Associated trademarks must be transferred together as a whole but are considered separate trademarks otherwise. (Section 44)
	7. The Registrar can refuse to register an assignment if the ownership rights are disputed in court. (Section 45)
Removal of Trade Mark for Non-use	A registered trademark can be removed if it's not used for five years after being officially entered in the register. This removal can apply to the entire trademark or just the specific goods/services that haven't been used with the mark. (Section 47)
Registered User	Section 48: This allows someone (the "registered user") to use a trademark with permission from the owner (the "proprietor").
	Section 49: This explains how to officially become a registered user.
	Section 50: This lets the government authority (the "Registrar") cancel someone's registered user status if they misuse the trademark or provide false information. But the Registrar has to give them a chance to explain themselves first.
	Section 51: To keep things clear, the Registrar can ask the owner to confirm if the agreement with the registered user is still valid. If they don't respond, the user's status can be removed.
	Section 52: Good news for registered users! They can take legal action if someone copies the trademark.
	Section 54: Registered users can't sell or transfer their rights to use the trademark. However, if they become part of a partnership, the partnership can still use the mark.

Collective Marks Collective

Marks means a trademark distinguishing the goods or services of members of an association of persons not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others.

Logo of the Organisation



Treated as any other normal device mark

Logo for Members



Collective Trademark

Certification Trade Marks

Certification trade mark as to mean a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics from goods or services not so certified and registerable as such in respect of those goods or services in the name, as proprietor of the certification trade mark, of that person.



Register of Trade Marks

Section 6 contains provisions relating to maintenance of a single Register of Trade Marks at Head Office including therein particulars of registered trademarks and other prescribed particulars, except notice of trust. A copy of the Register is to be kept at each branch office.



What does the Register of Trademark Contain?

The register of trademark currently maintained in electronic the class and goods/ services in respect of which it is registered including particulars affecting the scope of registration of rights conferred; the address of the proprietors; particulars of trade or other description of the proprietor; the convention application date (if applicable); where a trademark has been registered with the consent of proprietor of an earlier mark or earlier rights, that fact.

Classification of Goods and Services and Publication of Index

Section 7 empowers the Registrar to classify goods and services according to international classification of goods and services and to determine any question related thereto. Section 8 requires the Registrar to publish an alphabetical index of classification of goods and services.



Trade Mark Agent

Section 145 deals with agents and provide that Where, by or under the Trade Marks Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is—

- A legal practitioner, or
- A person registered in the prescribed manner as a trade marks agent, or
- A person in the sole and regular employment of the principal.

Qualifications for Registration

Rule 144 of the Trade Marks Rule states that subject to the provisions of Rule 145, a person shall be qualified to be registered as a trademarks agent if he—

(i)	Is a citizen of India,
(ii)	Is not less than 21 years of age;
(iii)	Is a graduate of any university in India or possesses an equivalent qualification and has passed the examination prescribed in rule 148 or is an Advocate within the meaning of the Advocates Act, 1961 or is a member of the Institute of Company Secretaries of India;
(iv)	Is considered by the Registrar as a fit and proper person to be registered as a trademark agent.

Copyright (or author’s right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.



What is the Purpose of Copyright Law?

The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

“Adaptation” Means

In relation to a dramatic work, the conversion of the work into a non-dramatic work;

In relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise;

In relation to a literary or dramatic work, any abridgment of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;

In relation to a musical work, any arrangement or transcription of the work; and

In relation to any work, any use of such work involves its re-arrangement or alteration.

“Communication to the Public”

This refers to making a work (like a song or movie) available for people to see, hear, or otherwise enjoy. It can be done directly or through various methods like displaying it online or broadcasting it. Importantly, it doesn’t matter if everyone actually sees or hears it, as long as it’s accessible. Specific examples include satellite or cable transmissions.

“Sound recording” This is any recording of sounds, regardless of the format (CD, digital file, etc.) or how the sounds were originally produced.

Works in which Copyright Subsists

Section 13(1) of the Act provides that copyright shall subsist throughout India in the following classes of works, that is to say—

- Literary Works
- Dramatic Works
- Musical Works
- Artistic Works
- Cinematography Films
- Sound Recordings

Section 41 deals with provisions as to works of certain international organizations apply, unless—

Section 41

In the case of a published work, the work is first published in India, or where the work is first published outside India, the author (living or dead) is a citizen of India;

In the case of an unpublished work other than a work of architecture , the author is at the date of making of the work a citizen of India or domiciled in India; and

In the case of a work of architecture the work is located in India.

MEANING OF COPYRIGHT

Section 14. Meaning of Copyright— For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely—

- (a) in the case of a literary, dramatic or musical work, not being a computer programme,
- (b) in the case of a computer programme,
- (c) in the case of an artistic work,
- (d) in the case of a cinematograph film,
- (e) in the case of a sound recording,



Case Law Example:

The case of *Microfibers Inc. vs. Girdhar and Co. and Anr.* highlights the limitations of copyright protection for works with commercial application. The court ruled that artistic designs for fabrics could be protected under the Designs Act, 2000, and since they weren’t registered under that Act, copyright protection wasn’t available.

TERM OF COPYRIGHT

Term of Copyright in Published Literary, Dramatic, Musical and Artistic Works	During your lifetime of author, copyright guards it for your entire life and an additional 60 years after you he passes away.
Term of Copyright in Anonymous and Pseudonymous Works	Copyright shall subsist until sixty years from the beginning of the calendar year following the year in which the work is first published. If the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the author dies.
Term of Copyright in Posthumous Work (happening after death of author)	Copyright lasts for the author’s lifetime plus 60 years after death. However, the date of publish will start from the day when such work was made public.
Term of Copyright in Cinematograph Films	Copyright shall subsist until sixty years from the beginning of the calendar year following the year in which the film is published.
Term of Copyright in Sound Recording	
Term of Copyright Government Works	
Term of Copyright in Works Of Public Undertakings	
Term of Copyright in Works of International Organizations	

ASSIGNMENT OF COPYRIGHT

The case of *Video Master vs. Nishi Production (1998)* clarifies the scope of video rights in film copyright. Here’s the breakdown:

- ❖ The court ruled that simply assigning “video rights” to a film doesn’t automatically include the right to broadcast it via satellite.
- ❖ The judge acknowledged that films can be distributed through various channels like video tapes, satellite broadcasts, and traditional TV broadcasts.
- ❖ Copyright protection applies to each of these channels separately.
- ❖ The film owner can choose to assign rights for each channel independently.

Mode of Assignment

As per Section 19 of the Copyright Act, any assignment of copyright rights must be done in writing and signed by the copyright owner (author) or their authorized agent. Oral agreements for copyright assignment are not valid.

Disputes with respect to Assignment of Copyright	Section 19 provides that if an assignee fails to make sufficient exercise of the rights assigned to him, then, the Commercial Court may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.
Licences by Owners of Copyright	The law gives the creator exclusive rights to decide how it's used. They can give permission to others to use their work, by written agreement. They can even give permission for things they haven't created yet, but that permission only applies once the work actually exists.
Compulsory Licence in Works withheld From Public	Section 31 lets someone complain if a copyright owner prevents a published work from being available to the public (e.g., by refusing reprint) or broadcast on fair terms.
Compulsory Licence in Unpublished or Published Works	This section lets someone get permission to publish an unpublished work, or publish or broadcast an existing work that's not available to the public in India. This applies if the author is unreachable (dead, unknown, etc.) or the copyright owner can't be found. The person wanting to publish must first announce their plan in a major English newspaper and potentially another newspaper in the language they want to publish in.
Statutory Licence for Broadcasting of Literary and Musical Works and Sound Recording	Broadcasters can use published creative works (writings, music, recordings) on air, but with conditions: 1. Notice & Payment: 2. Respect the Work: 3. Record Keeping:

A copyright society is a registered collective administration society under Section 33 of the Copyright Act, 1957. Such a society is formed by authors and other owners. A copyright society can issue or grant licences in respect of any work for which it is authorised to by the authors or owners of the work.

The Copyright Society is a legal body that protects or safeguards the interest of the owner in the product in which copyright subsists. Copyright societies give assurance to the creative author of the commercial management of their works. It can also be described as a registered collective administration society for the management and protection of copyright.

Registration of Copyright Society

Section 33 prohibits any person or association of persons to commence or carry on the business of issuing or granting licences in respect of any work in which copyright subsists.

- In the interests of the authors and other owners of rights;
- The interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights; and
- The ability and professional competence of the applicants.

However, the owner of copyright in his individual capacity, continues to have the right to grant licences in respect of his own works consistent with his obligations as a member of the registered copyright society.

Section 33 provides that Central Government registers association of persons as a copyright society after taking into account the following factors:

Administration of Rights of Owner by Copyright Society

Copyright society is competent to enter into agreement with any foreign society or organization administering rights corresponding to rights. Copyright Society empower to—

- Issue licences under section 30 in respect of any rights under this Act;
- Collect fees in pursuance of such licences;
- Distribute such fees among author and other owners of right after making deductions for its own expenses;
- Perform any other functions consistent with the provisions of section 35.

Broadcast Reproduction Right

The Broadcast reproduction right shall subsist twenty-five years from the first broadcast. A per Section 37 Broadcast reproduction right shall contain:

- Re-broadcasts the broadcast; or
- Causes the broadcast to be heard or seen by the public on payment of any charges; or
- Makes any sound recording or visual recording of the broadcast; or
- Makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or,
- Where it was licensed, for any purpose not envisaged by such licence; or sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording.

Exclusive Right of Performer (Section 38)

- (a) To make a sound recording or a visual recording of the performance, including—
 - (i) Reproduction of it in any material form including the storing of it in any medium by electronic or any other means;
 - (ii) Issuance of copies of it to the public not being copies already in circulation;
 - (iii) Communication of it to the public;
 - (iv) Selling or giving it on commercial rental or offer for sale or for commercial rental any copy of the recording;
- (b) To broadcast or communicate the performance to the public except where the performance is already broadcast.

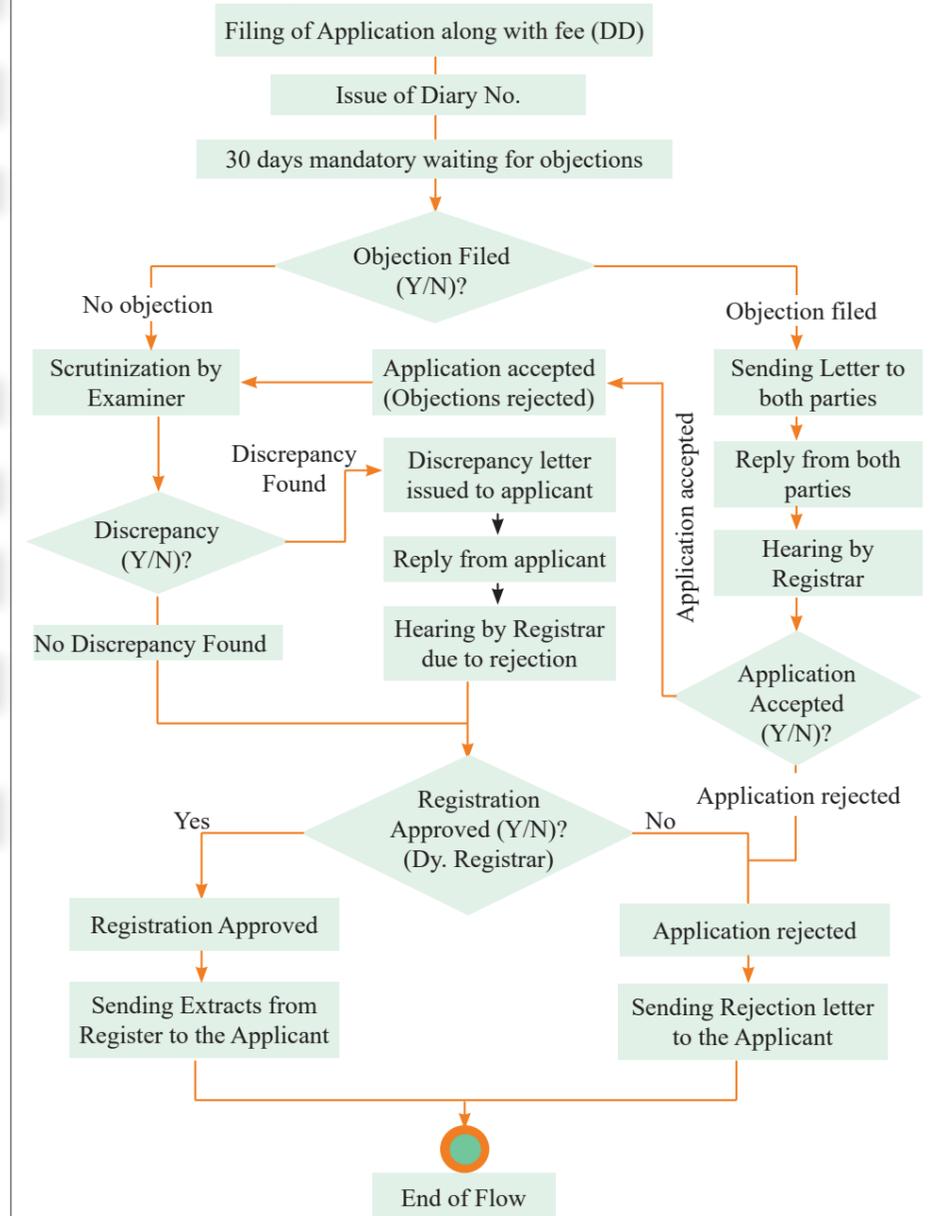
Moral Right of Performer

Performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right to claim to be identified as the performer of his performance and to restrain or claim damages in respect of any distortion, mutilation or other modification of his performance that would be prejudicial to his reputation.

REGISTRATION OF COPYRIGHT

An artistic work which is used or is capable of being used in relation to any goods or services, the application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of TradeMarks referred to in section 3 of the Trade Marks Act, 1999 to the effect that no trademark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that no application has been made under that Act for such registration by, any person other than the applicant.

The Procedure for Registration Workflow Chart



INFRINGEMENT OF COPYRIGHT

Copyright infringement refers to the unauthorized use of someone's copyrighted work. Copyright is infringed when any person without a licence granted by the owner of the copyright or the Registrar of Copyright or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority:

Does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

Permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

Section 51 when any person

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or (iii) by way of trade exhibits in public, or (iv) imports into India, any infringing copies of the work.

Which are the Common Copyright Infringements?

The following are some of the commonly known acts involving infringement of copyright:

Copyright Infringement

1. Making infringing copies for sale or hire or selling or letting them for hire;
2. Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
3. Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright;
4. Public exhibition of infringing copies by way of trade; and
5. Importation of infringing copies into India.

Statutory Exceptions-Certain acts not to be Infringement of Copyright

(i)	A fair dealing with any work, not being a computer programme, for the purposes of private or personal use, including research; criticism or review, whether of that work or of any other work; reporting of current events and current affairs, including the reporting of a lecture delivered in public.
(ii)	The making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, or to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied.
(iii)	The doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available.
(iv)	The observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underlie any elements of the programme while performing necessary functions for which the computer programme was supplied.
(v)	The making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use.

(vi)	The transient or incidental storage of a work or performance purely in the technical process of electronic transmission or communication to the public.
(vii)	Transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy.
(viii)	The reproduction of any work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding.
(ix)	The reproduction or publication of any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature.
(x)	The reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force.
(xi)	The reading or recitation in public of reasonable extracts from a published literary or dramatic work.
(xii)	The publication in a collection, mainly composed of non-copyright matter, bona fide intended for instructional use, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for such use in which copyright subsists. However, not more than two such passages from works by the same author are published by the same publisher during any period of five years.
(xiii)	The reproduction of any work— <ul style="list-style-type: none"> ❖ by a teacher or a pupil in the course of instruction; or ❖ as part of the questions to be answered in an examination; or ❖ in answers to such questions.
(xiv)	The performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution.
(xv)	The reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction.
(xvi)	The storing of a work in any medium by electronic means by a noncommercial public library, for preservation if the library already possesses a non-digital copy of the work.
(xvii)	The making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a non-commercial public library for the use of the library if such book is not available for sale in India.
(xviii)	the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access.
(xix)	The reproduction or publication of any matter which has been published in any Official Gazette except an Act of a Legislature; <p>Any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;</p> <p>The report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;</p>

	Any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be.
(xx)	The production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder
(xxi)	The making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture.
(xxii)	The making or publishing of a painting, drawing, engraving or photograph of a sculpture, if such work is permanently situated in a public place or any premises to which the public has access.
(xxiii)	The inclusion in a cinematograph film of any artistic work permanently situated in a public place or any premises to which the public has access; or any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film.
(xxiv)	The use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work.
(xxv)	The making of a three-dimensional object from a two-dimensional artistic work, such as a technical drawing, for the purposes of industrial application of any purely functional part of a useful device.
(xxvi)	The reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed. However, the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans.
(xxvii)	In relation to a literary, "dramatic, artistic or" musical work recorded or reproduced in any cinematograph film the exhibition of such film after the expiration of the term of copyright therein.
(xxviii)	The making of an ephemeral (short duration) recording, by a broadcasting organisation using its own facilities for its own broadcast by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character.
(xxix)	The performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority. <p>However, religious ceremonies include a marriage procession and other social festivities associated with a marriage.</p>

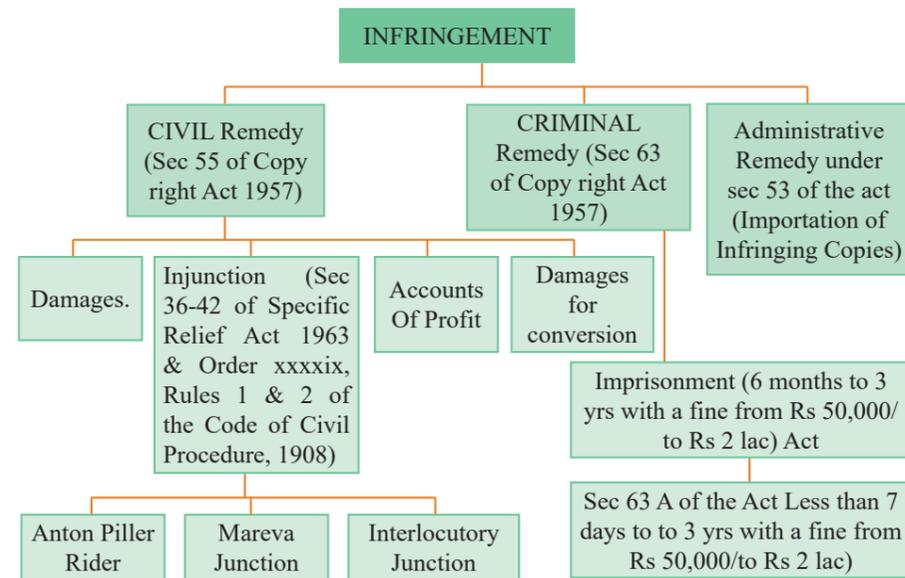
Remedies against Infringement of Copyright

Section 54 defines the term "owner of copyright" shall include:

An exclusive license;

In the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or, in the case of an anonymous work of joint authorship, or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher or is otherwise establishment to the satisfaction of the Commercial Court by that author or his legal representatives.

The Copyright law in India provided for remedies to be made available to the author against a copyright infringer. The Copyright Act, 1957 provides to an author both Civil, Criminal and border enforcement remedies. They are:



Protection of Right of Management Information

As per section 65B any person, who knowingly removes or alters any rights management information without authority, or distributes, imports for distribution, broadcasts or communicates to the public, without authority, copies of any work, or performance knowing that electronic rights management information has been removed or altered without authority, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.

It may be noted that “Rights Management Information” means—

- (a) The title or other information identifying the work or performance;
- (b) The name of the author or performer;
- (c) The name and address of the owner of rights;
- (d) Terms and conditions regarding the use of the rights; and
- (e) Any number or code that represents the information referred to in sub-clauses (a) to (d), but does not include any device or procedure intended to identify the user.

OFFENCES & PENALTIES

Section 63 criminalises the infringement of copyright and other associated rights conferred by the Copyright Act except for the right to resale share in original copies under section 53 A. It prescribes imprisonment for a term not less than 6 months which may extend up to 3 years and with a fine, not less than fifty thousand rupees which may extend to two lakh rupees.

Jitendra Prasad Singh vs. State of Assam (2003)

the Hon’ble Gauhati High Court held that the phrase “punishable with imprisonment for a term, which may extend to three years” will mean that the imprisonment can be for a term as long as three years, but the expression, “punishable with imprisonment for less than three years” will mean that the imprisonment can be for a term less than three years. Therefore, offences under Section 63 of the Act are non-bailable in nature, and as such an application for anticipatory bail will be maintainable.

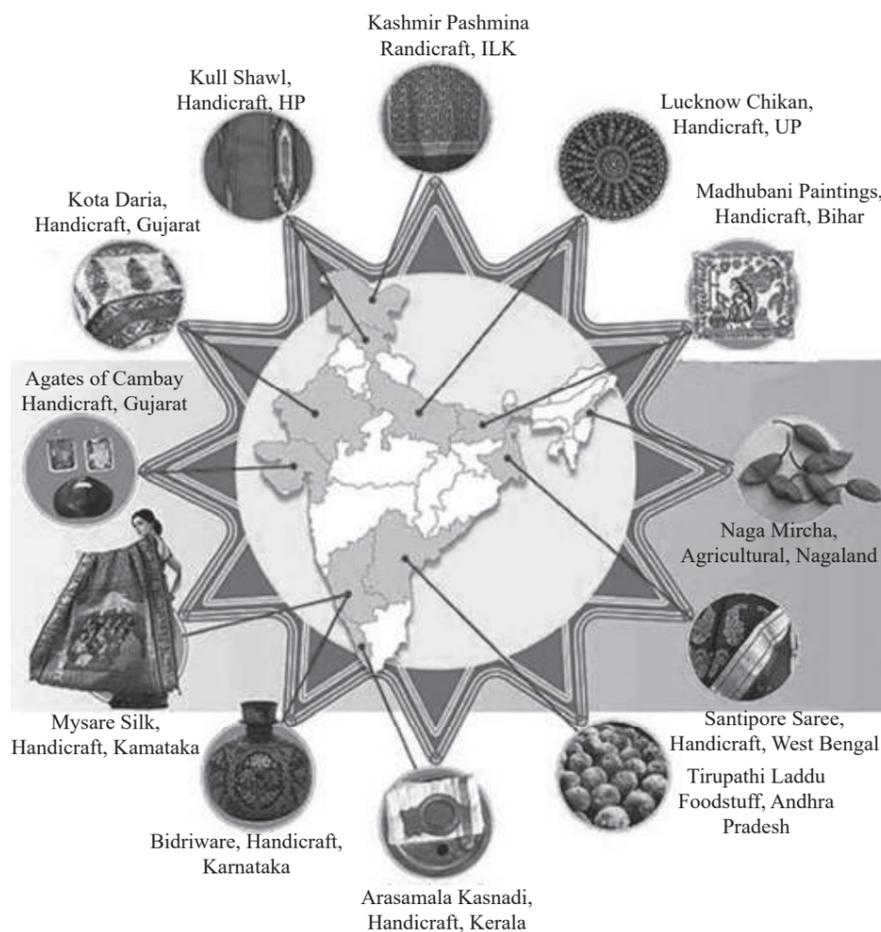
M/s Knit Pro International vs. the State of NCT of Delhi

The Hon’ble Supreme Court provided for the offence under Section 63 of the Copyright Act, the punishment provided is imprisonment for a term which shall not be less than six months but which may extend to three years and with fine. Therefore, the maximum punishment which can be imposed would be three years. The language of the provision in Part II of First Schedule is very clear and there is no confusion. Under the circumstances the High Court has committed a grave error in holding that the offence under Section 63 of the Copyright Act is a non-cognizable offence. Thereby the High Court has committed a grave error in quashing and setting aside the criminal proceedings and the FIR. Therefore, the impugned judgment and order passed by the High Court quashing and setting aside the criminal proceedings/FIR under Section 63 of the Copyright Act deserves to be quashed and set aside. It is clear that offence under Section 63 of the Copyright Act is a cognizable and non-bailable offence.

“Geographical Indications” as being used currently includes both the above concepts and it refers to “... indications which identify a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.” (Article 22.1 of the TRIPS Agreement). Consequent upon India joining as a member state of the TRIPS Agreement a sui-generis legislation for the protection of Geographical Indications was enacted in 1999.

The object of the *Geographical Indications of Goods (Registration and Protection) Act, 1999* is three fold, firstly by specific law governing the geographical indications of goods in the country which could adequately protect the interest of producers of such goods, secondly, to exclude unauthorized persons from misusing geographical indications and to protect consumers from deception and thirdly, to promote goods bearing Indian geographical indications in the export market.

Examples of Indian Geographical Indications are: Darjeeling Tea, Kanchipuram Silk Saree, Alphonso Mango, Nagpur Orange, Kolhapuri Chappal, Bikaneri Bhujia, Agra Petha etc.



GEOGRAPHICAL INDICATION

- Geographical Indication**
1. It is an indication.
 2. It originates from a definite geographical territory.
 3. It is used to identify agricultural, natural or manufactured goods.
 4. The manufactured goods should be produced or processed or prepared in that territory.
 5. It should have a special quality or reputation or other characteristics.

Prohibition of Registration of Certain Geographical Indications

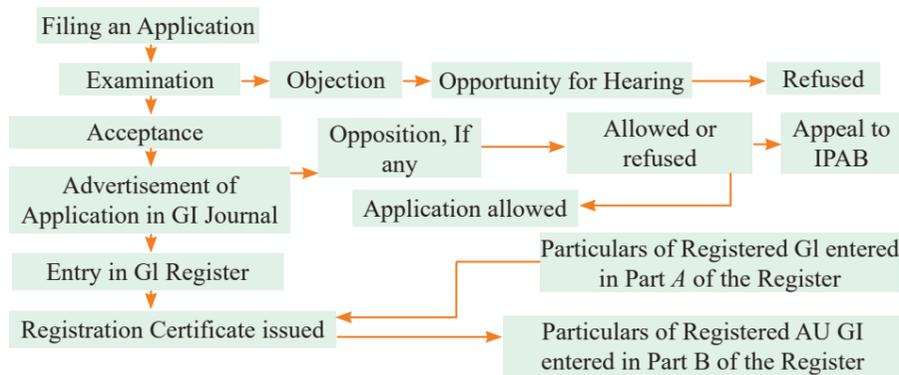
Section 9 of the Act prohibits registration of certain geographical indications. They are as follows:

- (a) The use of which would be likely to deceive or cause confusion; or
 - (b) The use of which would be contrary to any law for the time being in force; or
 - (c) Which comprises or contains scandalous or obscene matter; or
 - (d) Which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or
 - (e) Which would otherwise be disentitled to protection in a court; or
 - (f) Which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or
 - (g) Which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be;
- Shall not be registered as a geographical indication.

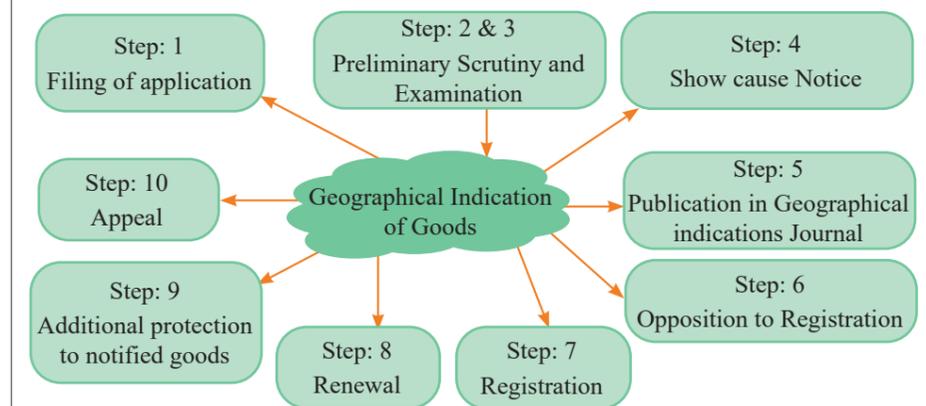
APPLICATION FOR REGISTRATION

Under section 11 any association of persons representing the interest of the producers of the concerned goods, who are desirous of registering a geographical indication in relation to such goods shall apply in writing to the Registrar.

The application shall contain–



Step by Step Guide on Geographical Indication of Goods Registration Process



What is the benefit of registration of Geographical Indications?

- It confers legal protection to Geographical Indications in India.
- Prevents unauthorised use of a Registered Geographical Indication by others.
- It provides legal protection to Indian Geographical Indications which in turn boost exports.
- It promotes economic prosperity of producers of goods produced in a geographical territory.

Duration of Registration

Section 18 of the Act covers the lifecycle of a Geographical Indication (GI) registration.

- ❖ **Validity:** GI registration lasts for ten years.
- ❖ **Renewal:** Registrations can be renewed for ten years at a time.
- ❖ **Who can renew:** The proprietor or authorized user can apply for renewal.
- ❖ **Renewal process:** The application must be submitted within a specific timeframe and include the prescribed fee.
- ❖ **Renewal effect:** A renewed registration is valid for ten years from the expiry of the previous registration.

Infringement of Registered Geographical Indications

Section 22 of the Act defines infringement of a registered Geographical Indication (GI).

In essence, someone infringes a GI if they:

- ❖ Are not an authorized user and yet.

- ❖ Use the GI on their goods' labeling or presentation in a way that:
 - ♦ Suggests the goods come from a different place than the true origin.
 - ♦ Misleads consumers about the true origin.
- ❖ Use any GI in a way that unfairly competes with the registered GI, including passing off their goods as originating from the registered GI area.

The law further clarifies that "unfair competition" means any dishonest practices in business. It provides some specific examples of such practices.

- All acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;
- False allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;
- Geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

When is a Registered Geographical Indication Said to be Infringed?

When an unauthorised user uses a geographical indication that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which mislead the public as to the geographical origin of such goods.

When the use of geographical indication result in an unfair competition including passing off in respect of registered geographical indication.

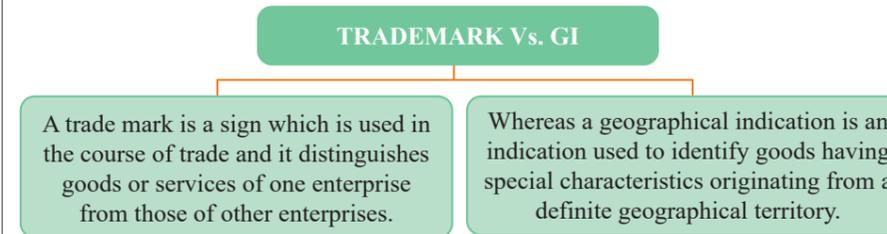
When the use of another geographical indication results in false representation to the public that goods originate in a territory in respect of which a registered geographical indication relates.

PROHIBITION OF REGISTRATION OF GEOGRAPHICAL INDICATION AS TRADE MARK

Section 25 of the Act provides that the Registrar of TradeMarks shall, suo-motu or at the request of an interested party, refuse or invalidate the registration of a trade mark which contains or consists of a geographical indication with respect to the goods or class or classes of goods not originating in the territory of a country, or a region or locality in

that territory which such geographical indication indicates, if use of such geographical indications in the trade mark for such goods, is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods.

How is a Geographical Indication different from a Trade Mark?



OFFENCES, PENALTIES AND PROCEDURE

Meaning of Applying Geographical Indications

Section 37 of the Act provides that a person shall be deemed to apply a geographical indication to goods who:

- Applies it to the goods themselves; or
- Applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture; or
- Places, encloses or annexes any goods which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a geographical indication has been applied; or
- Uses a geographical indication in any manner reasonably likely to lead to the belief that the goods in connection with which it is used are designated or described by that geographical indication; or
- In relation to the goods uses a geographical indication in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial documents and goods are delivered to a person in pursuance of a request or order made by reference to the geographical indication as so used.

Falsifying and Falsely Applying Geographical Indications

Section 38 states that a person shall be deemed to falsify a geographical indication who, either:

- Without the assent of the authorised user of the geographical indication makes that geographical indication or
- Deceptively similar geographical indication; or falsifies any genuine geographical indication, whether by alteration, addition, effacement or otherwise.

A person shall be deemed to falsely apply to goods a geographical indication who, without the assent of the authorised user of the geographical indication:

- Applies such geographical indication or a deceptively similar geographical indication to goods or any package containing goods;
- Uses any package bearing a geographical indication which is identical with or deceptively similar to the geographical indication of such authorised user, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the authorised user of the geographical indication.

Any geographical indication falsified or falsely applied is referred to as a false geographical indication.

In any prosecution for falsifying a geographical indication or falsely applying a geographical indication to goods, the burden of proving the assent of proprietor shall lie on the accused.

PENALTY FOR APPLYING FALSE GEOGRAPHICAL INDICATIONS

When a person does the following things then he will get punishment or penalty which are six months to three years of jail or fine of fifty thousand rupees to two lakh rupees.

- ❖ If he makes a duplicate copy of some geographical indication
- ❖ If he falsely applies geographical indication to some other product
- ❖ If he is making, disposing of or have anything like dice, block, machine or instrument which tells us that he is falsifying a geographical indication
- ❖ If he uses any product to make a fake geographical indication of a country, territory or some manufactures' name
- ❖ If he interferes with a geographical indication of origin he uses any goods.

However, he will not be punished or fined if he proves that he did not have any intention to falsify the geographical indication. The fine can be lessened if there is some special case.

According to Section 39 of the Act, any person who:

- Falsifies any geographical indication; or
- Falsely applies to goods any geographical indication; or
- Makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or
- Applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 71, a false indication of such country, place, name or address; or
- Tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 71; or
- Causes any of the things above-mentioned in this section to be done, shall, unless he proves that he acted, without intent to defraud.

The **Designs Act** protects **new and original designs** (Section 15) applied to articles manufactured industrially (Section 13). This encourages creativity and rewards designers for their aesthetic contributions (Section 1).

An artistic work as defined under Section 2(c) of the Copyright Act, 1957 is not a subject matter for registration which reads as follows:

“Artistic Works” means:

A painting, a sculpture, a drawing (including a diagram, map, chart or plan) on engraving or a photograph, whether or not such work possesses artistic quality;

An work of architecture; and

Any other work of artistic craftsmanship.

Designs and trademarks offer different types of protection for products.

- ❖ **Designs** protect the **overall appearance** or **aesthetics** of a product (think the shape of a bottle or a unique pattern). They are part of the product itself.

Trademarks, on the other hand, are separate identifiers, like logos or brand names, that *tell* consumers who made the product.

This distinction is important because copying a design is not the same as counterfeiting a trademark. This is according to the case *Narumal Khemchand vs. The Bombay Co., Ltd., (1914)*.

Following are the pictorial examples of design:



The Delhi High Court in the case of *Jayson Industries vs. Crown Craft (India) Pvt Ltd (CS(COMM) 580/2022)* relied on the Supreme Court judgment in *Bharat Glass Tubes (2008)* to define the scope of “design” under the Designs Act.

The definition refers to the visual characteristics of a product, such as its shape, configuration, pattern, or ornament, applied through industrial processes.

The following features of the definition of “design”, as contained in the Designs Act, are of significance:

- The Designs Act recognizes two-dimensional designs even though real-world objects are inherently 3D. This means a design can be protected even if it’s just a two-dimensional representation, like a blueprint or image, of how features like shape, configuration, or pattern would be applied to a 3D product. This broadens the scope of design protection beyond just the physical form of an article.
- The design is to be judged “solely by the eye”. The test to decide whether a particular application of shape, configuration, pattern, etc. to an article constitutes a design is, therefore, essentially ocular/visual.
- The Designs Act protects the visual aspects of a product, not its functionality. Designs focus on aesthetics and ocular appeal, meaning they must be pleasing to the eye, not just visually different. This is distinct from patents, which focus on inventive function. To be a registrable design, the shape, configuration, pattern, or ornament applied to an article must have aesthetic value. Simply applying these features in a novel way isn’t enough; they must also enhance the product’s appearance. This distinction between form and function is essential in design law.

Focus on Aesthetics, Not Functionality (Mohan Lal v. Sona Paint & Hardwares, 2013)
 The Designs Act protects designs based on their visual characteristics, excluding:
 Functional aspects: A design cannot be registered if its primary purpose is utilitarian rather than aesthetic.
 Mechanical devices: The Act doesn’t protect underlying mechanisms or how something works.
 Design vs. Article (Mohan Lal v. Sona Paint & Hardwares, 2013)
 Designs are the non-functional features of an article, such as shape, configuration, pattern, or ornament.
 The article itself can embody these design features (e.g., the shape of a bottle).
 This distinction between form and function is crucial. Designs with aesthetic value are protectable under the Designs Act, while purely functional elements are not.

Proprietor of a New or Original Design

Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed;

Where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

In any other case, means the author of the design; and where the property in or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

Prohibition of Registration of Certain Designs

A design which prohibited of registration under Section 4 of the Design Act, 2000 are as follows:

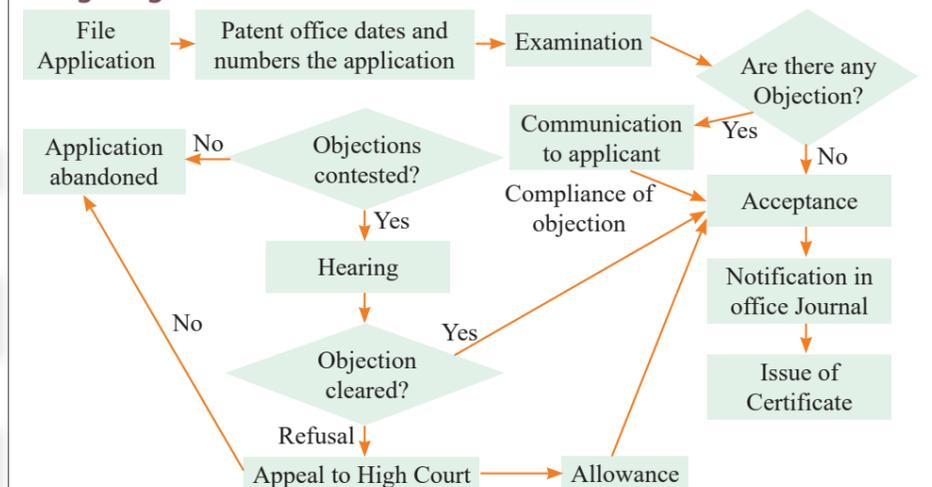
- Is not new or original; or
- Has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
- Is not significantly distinguishable from known designs or combination of known designs; or
- Comprises or contains scandalous or obscene matter, shall not be registered.

Design Novelty and Originality Requirements (*M/s Brighto Auto Industries vs. Shri Raj Chawla, ILR 1978 (I) Delhi*)

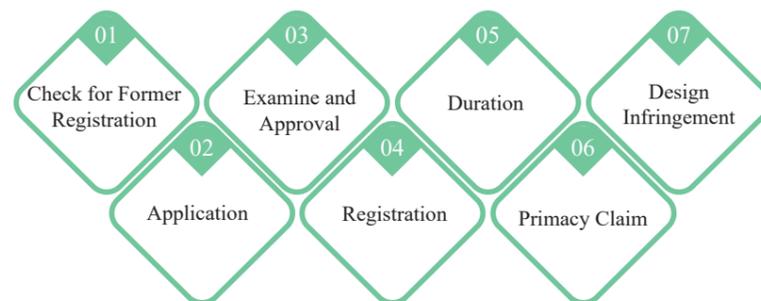
This case clarifies the criteria for design novelty and originality under the Designs Act:

- ❖ **New vs. Original:** “New” generally refers to being different from existing designs, while “original” means created by the designer.
- ❖ **Visual Novelty Test:** The “eye of the ordinary observer” determines if a design is new based on its overall visual impression.
- ❖ **No Prior Disclosure:** A design cannot be registered if an identical or substantially similar design already exists.
- ❖ **Substantial Variation:** Minor changes to a known design won’t qualify for protection. The change must be significant considering the product’s nature.

Design Registration Process Workflow



Essential requirements for the registration of 'Design' under the Act



Publication of Particulars of Registered Designs

Substitution of Applicant or Joint Claiming (Section 8)

(a)	Name of an applicant can be substituted or a joint claim can be made for an applied design, if the following requirements are met: <ol style="list-style-type: none"> The claim for substitution is made before the design has been registered; and Right of claimant shall be created only by: <ul style="list-style-type: none"> An assignment; Agreement in writing made by the applicant or one of the applicants; or Operation of law; The design under consideration shall be identified in the assignment or agreement specifically by reference to the number of application for registration; or The rights of the claimant in respect of the design have been finally established by a Court.
(b)	You'll need to file Form-2 and pay a fee. An official (the Controller) will then review your request to make sure the new applicant has a valid claim to the design. If approved, the application can proceed with either the new applicant only, or with both the new applicant and the original applicant(s) if it was a joint application, but only with their consent.
(c)	However, in case of joint applicants, the Controller shall not pass such direction without with the consent of the other joint applicant(s);
(d)	In case, joint applicant(s) die(s) at any time before the design has been registered, a request may be made for substitution by the survivor(s) and the Controller may direct that the application shall proceed in the name of the survivors alone. However, no such direction shall be issued without the consent of legal representative of the deceased;
(e)	In case of a disagreement between joint applicants on a design application, the Designs Act provides a dispute resolution mechanism. Any applicant can initiate the process by filing an application with the Controller. This official has the power to decide the application's future, including: <ul style="list-style-type: none"> Allowing one or more applicants to proceed independently. Setting guidelines for how the application progresses. Combining both options.

Certificate of Registration

Under section 9 of the Design Act, the Controller grants a certificate of registration to the proprietor of the design when it is registered.

The Controller may, in case of loss of the original certificate, furnish one or more copies of the certificate.

Effect of Registration of Design

The registration of a design confers upon the registered proprietor 'Copyright' in the design for the period of registration. 'Copyright' means the exclusive right to apply a design to the article belonging to the class in which it is registered.

Register of Designs

Section 10 of the Act provides that there shall be kept at the patent office a book called the register of designs containing the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such register may be maintained wholly or partly on computer, floppies or diskettes, subject to such safeguards as may be prescribed.

Copyright on Registration & Duration of Registration

Section 11 provides that when a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration. However, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of ten years.



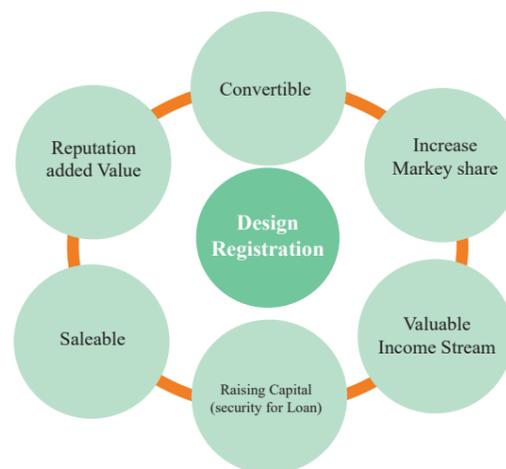
High Court of Delhi in the case of *Microfibers Inc. vs. Girdhar and Co. and Anr.* had inter alia criteria observed the following:

Dispute: Microfibers Inc., a company dealing in upholstery fabrics, accused Girdhar and Co. of copyright infringement. Microfibers claimed Girdhar copied their artistic designs for the fabric.

Issue: The court had to decide whether copyright law or design protection law applied in this case.

Finding: The court ruled that Microfibers' designs could be registered under the Designs Act, 2000, and since they weren't registered, copyright protection wasn't available.

Guidelines



- ❖ Copyright protects artistic works, but designs with commercial application might require registration under the Designs Act for protection.
- ❖ Failure to register a design under the Designs Act might restrict copyright protection.

Can the Registration of a Design be cancelled?

According to Section 19 of the Act, the registration of a design may be canceled at any time after the registration of design on a petition for cancellation in prescribed form with fee to the Controller of Designs on the following grounds:

- That the design has been previously registered in India; or
- That it has been published in India or elsewhere prior to date of registration; or
- The design is not new or original; or
- Design is not registrable; or
- It is not a design under Clause (d) of Section 2.

Piracy of Registered Design

During the existence of copyright in any design it shall not be lawful for any person, without the license or written consent of the registered proprietor:

- For the purpose of sale to apply or cause to be applied, to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, or to do anything with a view to enable the design to be so applied;
- to import such article for the purposes of sale;
- to publish or expose or cause to be published or exposed for sale, that article.

What is Piracy of a Design?

Piracy of a design means the application of a design or its imitation to any article belonging to a class of articles in which the design has been registered for the purpose of sale or importation of such articles without the written consent of the registered proprietor. Publishing such articles or exposing terms for sale with knowledge of the unauthorized application of the design to them also involves piracy of the design.

Appeal

An appeal lies to the High Court against an order passed by the Controller under the following provisions:

