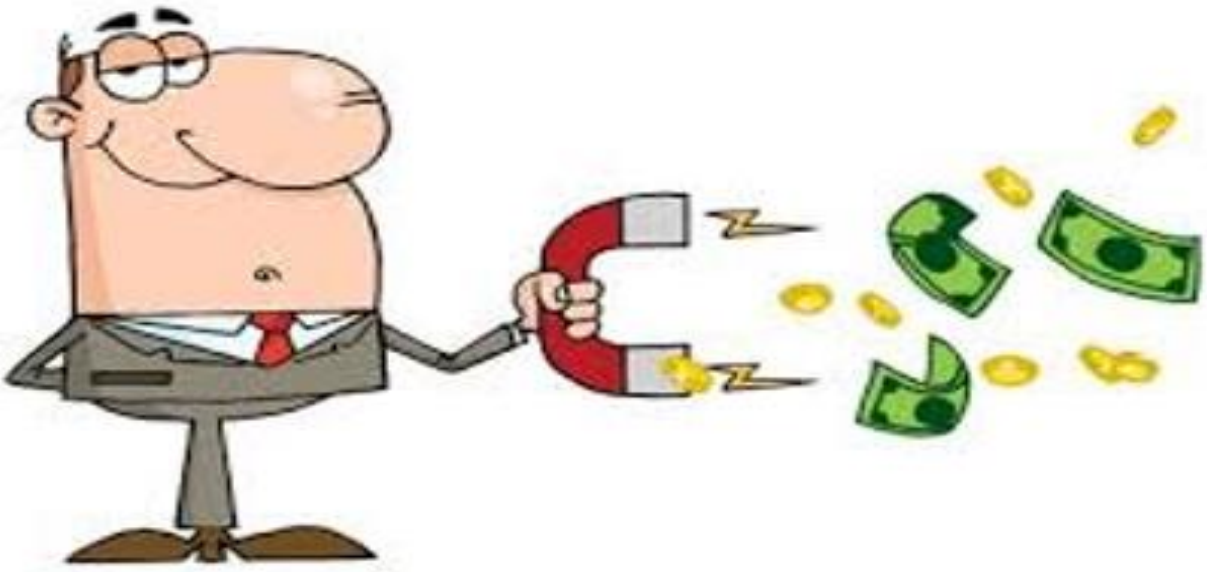


**ECONOMIC, COMMERCIAL &
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VOLUME 1**

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-BY CA MAYUR AGARWAL



FOREIGN EXCHANGE TRANSACTION AND COMPLIANCES

CHAPTER 1

FOREIGN EXCHANGE TRANSACTION AND COMPLIANCES

INTRODUCTION

Foreign Exchange Management Act, 1999 has replaced Foreign Exchange Regulation Act, 1973 and it came into effect from 1.6.2000.

Reserve Bank of India is overall controlling authority in respect of FEMA. In addition to RBI, Directorate of Enforcement has also been formed for the implementation of FEMA.

Sec.46 of FEMA authorizes Central Govt. to make Rules and Sec.47 authorizes RBI to make Regulations to carry out the provisions of the Act. Accordingly, the Central Govt. has issued number of Rules and RBI has issued number of Regulations for various purposes. The practical aspects are covered by these Rules and Regulations.

OBJECTIVE

1. To facilitate external trade and payments
2. To promote the orderly development and maintenance of foreign markets in India

IMPORTANT DEFINITIONS

1) Authorised Person-Section 2 (c)

Authorised person is defined to include an authorised dealer, money changer, offshore banking unit or any other person for the time being authorised to deal in foreign exchange or foreign securities.

2) Currency Notes-Section 2 (i)

Currency Notes' means and includes cash in the form of coins and bank notes

3) Current Account Transaction -Section 2 (j)

Current account transaction has been defined to **mean** a transaction other than a capital account transaction and **includes**

- Payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business
- Payments due as interest on loan and as net income from investments
- Remittances for living expenses of parents, spouse and children residing abroad and
- Expenses in connection with foreign travel, education and medical care of parents, spouse and children

4) 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.

5) 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.

6) Person resident in India-Section 2(v)

- Person resident in India has been defined to mean a person residing in India for more than 182 days during the course of the preceding financial year.
- Two categories of persons are excluded from the purview of definition.
 - **First Category**
 - Any person who has gone out of India or who stays outside India
 - ✓ for or on taking up employment outside India
 - ✓ for carrying on outside India a business or vocation
 - ✓ person who stays outside India for any other purpose would indicate his intention to stay outside India for an uncertain period.

- **Second Category**

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

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

7) Export [Section 2 (l)]

‘Export’, with its grammatical variations and cognate expressions, means (i) the taking out of India to a place outside India any goods (ii) provision of services from India to any person outside India.

8) 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.

9) Special Director (Appeals) [Section 2(zc)]

‘Special Director (Appeals)’ means an officer appointed under section 17. Section 17 empowers Central Government which shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals

against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.

PROHIBITION ON DRAWAL OF FOREIGN EXCHANGE FOR CERTAIN TRANSACTION-RULE 3

Drawal of foreign exchange is prohibited for the following

- 1) Transaction specified in Schedule I
- 2) Travel to Nepal/Bhutan
- 3) Transaction with the person resident in Nepal/Bhutan

SCHEDULE I: PROHIBITION ON DRAWAL OF FOREIGN EXCHANGE

- 1) Remittance out of lottery winnings
- 2) Remittance of income from racing/riding etc or any other hobby
- 3) Remittance for purchase of lottery tickets, banned/prescribed magazine, football pools, sweep skates

- 4) Payment of commission on exports made towards equity investment in joint ventures/wholly owned subsidiaries abroad of Indian Companies
- 5) Payment of commission on exports under Rupee State Credit Route, except commission upto 10% of invoice value of exports of tea and tobacco
- 6) Payment related to call back service of telephone
- 7) Remittance of interest income on funds held in Non-resident Special Rupee Scheme Account

PRIOR APPROVAL OF GOVERNMENT OF INDIA FOR CERTAIN TRANSACTION-RULE 4

1) Transaction need approval

Transaction specified in Schedule II needs prior approval of Government of India

2) Exception

It does not apply to the cases where the payment is made out of funds held in Resident Foreign Currency Account (RFC) of the remitter

PRIOR APPROVAL OF RESERVE BANK FOR CERTAIN TRANSACTION-RULE 5

1) Transaction need approval

Transaction specified in Schedule III needs prior approval of Reserve Bank

2) Exception

It does not apply to the cases where the payment is made out of funds held in Resident Foreign Currency Account (RFC) of the remitter

TRANSACTION INCLUDED IN SCHEDULE III

FACILITIES FOR INDIVIDUALS

1) Limit where prior approval not needed

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only

2) Additional Remittance

Any additional remittance in excess thereof requires prior approval of the Reserve Bank of India.

3) Purpose

- Private visits to any country (except Nepal and Bhutan)
- Gift or donation.
- Going abroad for employment
- Emigration
- Maintenance of close relatives abroad

- Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
- Expenses in connection with medical treatment abroad
- Studies abroad
- Any other current account transaction

FACILITIES FOR PERSON OTHER THAN INDIVIDUAL

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

1) Donation for Education

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-

- Creation of Chairs in reputed educational institutes,
- Contribution to funds (not being an investment fund) promoted by educational institutes; and
- Contribution to a technical institution or body or association in the field of activity of the donor Company.

2) Commission for sale of residential flats or commercial plots in India

Commission, per transaction, to agents abroad exceeding USD 25,000 or five percent of the inward remittance whichever is more.

3) Consultancy Services

Remittances exceeding USD 10,000,000 per project for any consultancy services in respect infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

4) Re-imbursment of pre-incorporation expenses

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.

PERMISSIBLE CAPITAL ACCOUNT TRANSACTION

- 1) Permissible capital account transaction Is dealt in Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.
- 2) Capital account transaction are classified into two heads under Schedule I and II

Schedule 1-Classes of Capital Account Transaction by Person Resident in India

Schedule 2-Classes of Capital Account Transaction by Person Resident Outside India

SCHEDULE 1-CLASSES OF CAPITAL ACCOUNT TRANSACTION BY PERSON RESIDENT IN INDIA

- 1) Investment by person resident in India in foreign securities
- 2) Foreign currency loans raised in India and abroad by a person resident in India
- 3) Transfer of immovable property outside by a person resident in India
- 4) Guarantees issued by a person resident in India in favour of a person resident outside India
- 5) Export, import and holding of currency/currency coins
- 6) Loans and overdrafts by a person resident in India from a person resident outside India
- 7) Maintenance of foreign currency account in India and outside India by a person resident in India
- 8) Taking out insurance policy by a person resident in India from an insurance company outside India
- 9) Loans and overdrafts by a person resident in India to a person resident outside India
- 10) Remittance outside India of capital asset of a person resident in India
- 11) Sale of purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India

SCHEDULE 2- CLASSES OF CAPITAL ACCOUNT TRANSACTION BY PERSON RESIDENT OUTSIDE INDIA

1. Investment in India by a person resident outside India, that is to say:
 - issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
 - investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India
2. Acquisition and transfer of immovable property in India by a person resident outside India
3. Guarantee by a person resident outside India in favour of, or on behalf of a person resident in India

4. Import and export of currency/currency notes into/from India by a person resident outside India
5. Deposits between a person resident in India and a person resident outside India
6. Foreign Currency accounts in India of a person resident outside India
7. Remittance outside India of capital assets in India of a person resident outside India.

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.

The limit of USD 2,50,000 per Financial Year (FY) under the Scheme also includes/subsumes remittances for current account transactions (viz. private visit; gift/donation; going abroad on employment; emigration; maintenance of relatives abroad; business trip; medical treatment abroad; studies abroad) available to resident individuals under Para 1 of Schedule III to Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015 dated May 26, 2015. Release of foreign exchange exceeding USD 2,50,000, requires prior permission from the Reserve Bank of India.

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.

ACQUISITION UNDER LIBERALISED REMITTANCE SCHEME

A resident individual can send remittances under the Liberalised Remittance Scheme for purchasing immovable property outside India

COMPANIES HAVING OVERSEAS OFFICE

1) Initial expenses

- 15% of average annual sales/turnover of Indian entity during last 2 years or
 - 25% of Net worth
- Whichever is higher

2) Recurring Expenses

10% of average annual sales/income or turnover during the last two financial years

LEGAL FRAMEWORK

REALISATION, REPATRIATION AND SURRENDER OF FOREIGN CURRENCY

1) Section 8

Section 8 requires the person resident in India to make all reasonable efforts to realise and repatriate the foreign exchange due or accrued as per the directions of the Reserve Bank.

2) Regulations

Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015

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 to authorised person**

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

- **Retain or Hold in account**

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

- **Discharge Debt or liability**

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.

DUTY OF PERSON TO REALISE FOREIGN EXCHANGE DUE

- 1) A person resident in India to whom any amount of foreign exchange is due or has accrued shall take all reasonable steps to realise and repatriate to India such foreign exchange.
- 2) He shall in no case do or refrain from doing anything which has the effect of securing
 - that the receipt by him of the whole or part of that foreign exchange is delayed; or
 - that the foreign exchange ceases in whole or in part to be receivable by him

PERIOD OF SURRENDER OF RECEIVED/REALISED/UNSPEND/UNUSED FOREIGN EXCHANGE BY RESIDENT INDIVIDUALS

A person being an individual resident in India shall surrender the received/ realised/ unspent/ unused foreign exchange whether in the form of currency notes, coins and travelers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/ realisation/ purchase/ acquisition or date of his return to India, as the case may be.

PERIOD OF SURRENDER OF FOREIGN EXCHANGE BY PERSION NOT BEING INDIVIDUAL RESIDENT IN INDIA

- 1) **Unused portion of forex acquired for any purpose**

Shall surrender such foreign exchange or the unused portion thereof to an authorised person within a period of sixty days from the date of its acquisition or purchase by him

- 2) **Unspent portion of forex acquired for purpose of travel**

It shall be surrendered to an authorised person

Currency notes and Coins- within ninety days from the date of return of the traveller to India

Travellers cheques- Within one hundred eighty days from the date of return of the traveller to India

- 3) **Surrender of realised foreign exchange**

- Foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift- Within 7 days
- In all other cases-Within 90 days

EXEMPTION FROM REALISATION AND REPATRIATION IN CERTAIN CASES-SECTION 9

Foreign exchange can be possessed and retained subject to the following limits:-

1. A person can possess foreign coins without any limit
2. A person resident in India can retain foreign exchange up to US \$ 2000 or its equivalent.
3. Foreign Currency account held or operated by person or class of person up to the limit specified by RBI (RFC A/c or EEFC A/C)
4. Forex acquired or received before the 8th day of July, 1947 or any income arising or accruing there on which is held outside India by any person in pursuance of a general or special permission granted by the RBI
5. Authorised person can retain or possess foreign currency and coins within the scope of his authority without the limit.

REMITTANCE OF ASSETS

1) Meaning

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.

2) Regulation dealing with remittance

Foreign Exchange Management (Remittance of Assets) Regulations, 2016

REMITTANCE BY FOREIGN NATIONAL

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

- The person has retired from employment in India;
- The person has inherited from a person referred to in section 6(5) of the Act;
- 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 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

REMITTANCE 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

1) Liabilities are fully paid

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

2) Winding up accordance to law

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

3) No Pendency of case in court

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

1) Copy of RBI permission

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

2) Auditor's certificate:

- **Manner of remittable amount arrived**

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;

- **Liabilities towards employees have been met**

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

- **Compliance of regulatory requirement**

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;

3) No Legal Proceedings

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

4) Report from ROC

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 REQUIRED RBI APPROVAL

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

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

REMITTANCES BY NRIS/ PIOS

- 1) 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 (relative means as defined under Companies Act,2013)
 - 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;

INCOME TAX CLEARANCE

The remittances are subject to payment of applicable taxes in India. Reserve Bank of India does not issue any instructions under FEMA clarifying tax issues. It is mandatory on the part of Authorised Dealers to comply with the requirement of tax laws, as applicable.

AUTHORISED PERSON (AP) (SEC.10)

1. RBI may, on an application made to it, authorise any person to be known as AP
2. Authorisation granted may be revoked by the RBI at any time if the RBI is satisfied that:
 - a) it is in public interest so to do; or
 - b) the AP has failed to comply with the condition or has contravened any of the provisions of the Act
3. Authorisation shall be revoked only after giving a reasonable opportunity of being heard (OBH).
4. An AP shall require the person acquiring forex to make declaration
5. Any person, other than an AP, who has acquired or purchased forex for any purpose does not use it for such purpose or does not surrender it to AP within the specified period or uses the forex so acquired or purchased for any other purpose for which purchase or acquisition of forex is not permissible shall be deemed to have committed contravention.

RBI'S POWERS TO ISSUE DIRECTIONS TO AP (SEC. 11)

1. Directions in regard to making of payment or the doing or desist from doing any act relating to forex or foreign security.
2. Directions in regard to furnishing of information
3. RBI may, after giving reasonable OBH, impose on the AP a penalty which may extend to Rs.10,000 and in the case of continuing contraventions with an additional penalty which may extend to Rs.2000 for every day during which such contravention continues.
4. RBI may, at any time, make an inspection of the business of any AP for the purpose of:
 - a) verifying the correctness of any statement, information or particulars furnished to the RBI ;
 - b) obtaining any information or particulars which such AP has failed to furnish;
 - c) securing compliance with the provisions
5. It shall be the duty of every AP, to furnish such books, accounts and other documents or statement or information as the said officer may require

APPINMENT OF

APPOINTMENT OF ADJUDICATING AUTHORITY (AA)(SECTION 16)

- 1) The CG may appoint the AA for holding an inquiry against whom a complaint has been made after OBH is given.
- 2) No AA shall hold an enquiry except upon a complaint in writing made by the CG.
- 3) The said person may appear either in person or take the assistance of a legal practitioner or a CA.
- 4) AA shall have the same powers of a civil court
- 5) Shall dispose-off the complaint within 1 year from the date of receipt of the complaint where the complaint cannot be disposed off the AA shall record periodically the reason in writing for not disposing off the complaint

APPEAL TO SPECIAL DIRECTOR APPEALS -SECTION 17

- 1) The CG shall, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the AA.
- 2) Every appeal shall be filed within 45 days from the date on which the order made by the AA is received by the Aggrieved person.(extension may be entertained is sufficient cause is showed)
- 3) After giving OBH, shall pass such order, as he thinks fit confirming, modifying or setting aside the order appealed.
- 4) Shall send a copy of every order made by him to the parties to appeal.
- 5) Shall have the same powers of a civil court

ESTABLISHMENT OF APPELLATE TRIBUNAL-SECTION 18

- 1) The CG shall establish to hear appeals against the orders of the AA and the Special Director (Appeals)
- 2) Person appealing shall while filing the appeal, deposit the amt of penalty notified by the CG.The AT may dispense with such deposit if it causes undue hardship to the party appealing
- 3) Appeal shall be filed within a period of 45 days from the date on which order made by the AA or the Special Director (Appeals) is received by the aggrieved person.(extension may be entertained is sufficient cause is showed)
- 4) After giving OBH, shall pass such order, as he thinks fit confirming, modifying or setting aside the order appealed.
- 5) Shall send a copy of every order made by him to the parties to appeal.
- 6) Shall have the same powers of a civil court.
- 7) Shall dispose-off the complaint within 180 days from the date of receipt of the appeal where the complaint cannot be disposed off the Adjudicating Authority shall record periodically the reason in writing for not disposing off the complaint

APPEAL TO HIGH COURT-SECTION 35

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision/order (extension of further 60 days may be granted)

DIRECTORATE OF ENFORCEMENT-SECTION 36

1) Establish by Central Government

Central Government to establish a Directorate of Enforcement with a Director and other officers or class of Officers

2) CG empowered to authorise

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.

INVESTIGATION-SECTION 37

- 1) 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
- 2) 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

COMPOUNDING OF CONTRAVENTION

1) Meaning

It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention

2) Benefit of compounding

It provides comfort to any person who contravenes any provisions of FEMA, 1999 by minimizing transaction costs

3) No compounding possible

Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank

4) Application

Any person who contravenes any provision of the FEMA, 1999 or contravenes any rule, regulation, notification, direction or order can apply for compounding to the Reserve Bank

5) Legal provision

The Reserve Bank is empowered to compound any contraventions as defined under section 13 of FEMA, 1999 except the contravention under section 3(a)

APPLICATION FOR COMPOUNDING

1) Application for compounding

- All applications for compounding may be submitted together with the prescribed fee by way of a demand draft drawn in favour of “Reserve Bank of India” and payable at the concerned Regional Office
- Application is submitted to the Compounding Authority, [Cell for Effective implementation of FEMA (CEFA)], Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai

2) Details to be furnished

Along with application following details need to be furnished relating to

- Foreign Direct Investment
- External Commercial Borrowings
- Overseas Direct Investment and
- Branch Office / Liaison Office
- Copy of Memorandum of Association
- Latest Audited Balance Sheet
- Undertaking that no investigation of any agency

3) Refund if approval not obtained

The application fees received along with the application will be returned by crediting the same to the applicant's account through NEFT as per the ECS mandate

4) Update about changes

The applicants are also advised to bring to the notice of the compounding authority change, if any, in the address/ contact details of the applicant during the pendency of the compounding application

PRE-REQUISITE FOR COMPOUNDING PROCESS

1) Second or Subsequent Compounding

- In respect of a contravention committed by any person within a period of three years from the date on which a similar contraventions would not be compounded
- 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

2) Proper approval or permission from Government or any statutory body concerned

Approval or Permission have not been obtained such contraventions would not be compounded unless the required approvals are obtained from the concerned authorities

3) Serious Contravention

Cases of contravention such as those having serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation or where the contravener fails to pay the sum for which contravention was compounded within the specified period in terms of the compounding order, shall be referred to the Directorate of Enforcement for further investigation and necessary action

SCOPE AND PROCEDURE FOR COMPOUNDING

1) Quantifiable and Amount

- The Reserve Bank shall examine the application based on the documents and submissions made in the application
- Assess whether contravention is quantifiable and, if so, the amount of contravention

2) Call for information

- The Compounding Authority may call for any information, record 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 will be liable for rejection

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.

Consideration for transfers should be out of funds received in India through banking channels by way of inward remittance from any place outside India or by debit to non-resident account of the person concerned maintained in accordance with the Act or the rules framed thereunder. Payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned in this para.

The marriage should have been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property.

The non-resident spouse should not otherwise be prohibited from such acquisition.

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).

Sale of the immovable property so acquired is permissible only after such person has acquired Indian citizenship. However, transfer of such immovable property before acquiring Indian citizenship requires the prior approval of the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned.

EXPORT OF GOODS & SERVICES

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

- (a) furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India.
- (b) furnish to the Reserve Bank such other information as may be required by the Reserve Bank for the purpose of ensuring the realisation of the export proceeds by such exporter.

The Reserve Bank may, for the purpose of ensuring that the full export value of the goods or such reduced value of the goods as the Reserve Bank determines, having regard to the prevailing market conditions, is received without any delay, direct any exporter to comply with such requirements as it deems fit.

Every exporter of services shall furnish to the Reserve Bank or to such other authorities a declaration in such form and in such manner as may be specified, containing the true and correct material particulars in relation to payment for such services.

Further, in exercise of the powers conferred by clause (a) of sub-section (1), sub-section (3) of Section 7 and sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) the Reserve Bank of India issued the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 for Export of Goods and Services from India.

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 –

- (i) the full export value of the goods or software; or
- (ii) 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.

Declarations shall be executed in sets of such number as specified.

For the removal of doubt, it is clarified that, in respect of export of services to which none of the Forms specified in these Regulations apply, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due or accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the Act and rules and regulations made thereunder.

Realization of export proceeds in respect of export of goods / software from third party should be duly declared by the exporter in the appropriate declaration form.

MANNER OF PAYMENT OF EXPORT VALUE OF GOODS

Unless otherwise authorised by the Reserve Bank, the amount representing the full export value of the goods exported shall be paid through an authorised dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000 as amended from time to time.

The amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time, from the date of export.

PROJECT EXPORTS

Where an export of goods or services is proposed to be made on deferred payment terms or in execution of a turnkey project or a civil construction contract, the exporter shall, before entering into any such export arrangement, submit the proposal for prior approval of the approving authority, which shall consider the proposal in accordance with the guidelines issued by the Reserve Bank of India from time to time.

In case a guarantee is required to be given prior to post award approval, the same may be issued by an authorized dealer bank/ a person resident in India being an exporting company, for performance of a project outside India, or for availing of credit facilities, whether fund-based or non-fund based, from a bank or a financial institution outside India in connection with the execution of such project, provided that the contract / Letter of Award stipulates such requirements.

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.

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 and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

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.

Section 19(4) provides that the Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Special Director (Appeals), as the case may be.

Section 19(5) states that the appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing off the appeal within the said period.

As per Section 19(6) the Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the Adjudicating Authority under section 16 in relation to any

proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.



CHAPTER 3
OVERSEAS DIRECT INVESTMENT

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OVERSEAS DIRECT INVESTMENT

INTRODUCTION

- Overseas investments (or financial commitment) in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognised as important avenues for promoting global reach of Indian entrepreneurs
- Indian Companies have set up their business outside India via their Wholly owned Subsidiary and Joint venture
- The object of this chapter is to cover all aspects relating to regulatory and procedural aspects of investment in Joint Venture and Wholly Owned Subsidiary abroad.

Note:- FDI denotes investment in India from a country outside India, ODI refers to investment made from India to a country outside India.

OVERSEAS PORTFOLIO INVESTMENT (OPI)

means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC:

Provided that OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity.

Debt instruments are :

- (i) Government bonds;
- (ii) corporate bonds;
- (iii) all tranches of securitisation structure which are not equity tranche;
- (iv) borrowings by firms through loans; and
- (v) depository receipts whose underlying securities are debt securities.

IMPORTANT TERMS

1) Financial Commitment:-

"Financial Commitment" means the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary

The total financial commitment of the Indian Party in all the Joint Ventures / Wholly Owned Subsidiaries shall comprise of the following:

- 100% of the amount of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS);
- 100% of the amount of other preference shares
- 100% of the amount of loan;
- 100% of the amount of guarantee (other than performance guarantee) issued by the Indian Party;
- 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian Party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian Party.
- 50% of the amount of performance guarantee issued by the Indian Party provided that if the outflow on account of invocation of performance guarantee results in the breach of the limit of the financial commitment in force, prior permission of the Reserve Bank is to be obtained before executing remittance beyond the limit prescribed for the financial commitment

2) Joint Venture/ Wholly Owned Subsidiary:-

"Joint Venture (JV)" / "Wholly Owned Subsidiary (WOS)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian party makes a direct investment

METHODS OF INVESTMENT

The Government has adopted two-way approach to the approval of direct investment, i.e.

- 1) Automatic Route and
- 2) Approval Route

- **Automatic Route:-**

- An Indian Party **does not require any prior approval from the Reserve Bank** for making direct investments in a JV/WOS abroad.
- The Indian Party should **approach an Authorized Dealer Category – I bank** with an application in Form ODI and the prescribed enclosures / documents for effecting the remittances towards such investments

- **Approval Route**

Under this route, every proposal is required to be prior approval by RBI

MANNER OF MAKING OVERSEAS DIRECT INVESTMENT BY INDIAN ENTITY

Manner of making ODI

An Indian entity may make ODI by way of investment in equity capital for the purpose of undertaking bonafide business activity in the manner and subject to the limits and prescribed conditions.

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.

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.

It is further provided that:

- (i) Overseas investment by way of cash is not permitted.
- (ii) An Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office. Accordingly, no remittance shall be made by any Indian entity to its branch/office outside India for making any overseas investment.
- (iii) A person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.
- (iv) Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale/winding up proceeds are required to be repatriated to India in freely convertible currencies only.

PRICING GUIDELINES

The AD bank, before facilitating an overseas investment related transaction, shall ensure compliance with the provisions of Overseas Investment Rules. With respect to the documents to be taken by the AD bank, they shall be guided by their board approved policy, which may, inter alia, provide for taking into consideration the valuation as per any internationally accepted pricing methodology for valuation. 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:

- (i) 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
- (ii) price is readily available on a recognised stock exchange, etc.

The policy shall also clearly provide for additional documents such as the audited financial statements of the foreign entity, etc. that may be taken by the AD banks for ascertaining the bona fides in cases involving write-off of the investment.

ELIGIBILITY CRITERIA FOR PROPRIETORSHIP/ UNREGISTERED PARTNERSHIP

1) Status Holder

Is classified as '**Status Holder**' as per the Foreign Trade Policy

2) Past track record

has a proven track record, i.e., the **export outstanding does not exceed 10% of the average export realisation** of preceding three years and a consistently high export performance;

3) KYC complaint

Authorised Dealer bank is satisfied that the proprietorship concern / unregistered partnership firm in India is **KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated**

4) No adverse notice

Proprietorship concern / unregistered partnership firm in India **has not come under the adverse notice of any Government agency** like

- a) Directorate of Enforcement,
- b) Central Bureau of Investigation,
- c) Income Tax Department, etc

5) Exporter;s caution list

It **does not appear in the exporters' caution list of the Reserve Bank** or in the list of defaulters to the banking system in India

6) Amount of investment

The amount of proposed investment (or financial commitment) outside India does not exceed 10 per cent of the average of last three years' export realisation or 200 per cent of the net owned funds of the proprietorship concern/ unregistered partnership firm in India, whichever is lower

ELIGIBILIT CRITERIA FOR TRUST

1) Registration

Trust should be registered under the Indian Trust Act, 1882

2) Authority by deed

Trust deed permits the proposed investment oversea

3) Approval

Proposed investment should be approved by the trustee/s

4) Existence

Trust has been in existence at least for a period of three years

5) KYC compliant

AD Category – I bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity

6) No adverse notice

Trust has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, Central Bureau of Investigation (CBI), etc.

ELIGIBILITY CRITERIA FOR SOCIETY :-

1) Registration

Registered under the Societies Registration Act, 1860.

2) Authorised by MOA and rules

The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body/council or a managing/ executive committee.

3) KYC complaint

The AD Category - I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bonafide activity.

4) Existence

The Society has been in existence **at least for a period of three years;**

5) No adverse notice

The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.

PROCEDURE FOR MAKING OVERSEAS INVESTMENT

- 1 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.
- 2 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.
- 3 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.

4 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.

5. 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.

6. 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).

7. Valuation certificate for the foreign entity (if applicable).

8. Other relevant documents properly numbered, indexed and flagged.

9. The proposal shall be submitted to the Reserve Bank of India.

APPROVAL FROM THE CENTRAL GOVERNMENT

The applications for overseas investment/financial commitment in Pakistan/other jurisdiction as may be advised by the Central Government from time to time or in strategic sectors/specific geographies shall be forwarded by the AD banks from their constituents to the Reserve Bank as per the laid down procedure for onward submission to the Central Government.

It may be noted that strategic sector shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-sector as deemed fit by the Central Government. The restriction of limited liability structure of foreign entity shall not be mandatory for entities with core activity in any strategic sector. Accordingly, Overseas Direct Investment (ODI) can be made in such sectors in unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis. AD banks may allow remittances for ODI in strategic sector after ensuring that Indian entity has obtained necessary permission from the competent authority, wherever applicable.

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.

Where an Indian entity has already issued a guarantee in accordance with the FEMA provisions before an investigation has begun or account is classified as NPA/wilful defaulter and subsequently is required to honour such contractual obligation, such remittance due to the invocation will not constitute fresh financial commitment and hence NOC shall not be required.

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.

JURISDICTION

The certificate dated not more than six months before the date of the transaction shall be submitted to the designated AD bank. The certificate shall mention the amount of accumulated losses as per the audited balance sheet of the foreign entity, the proportionate amount of accumulated losses based upon the share of the Indian entity/investor, the amount of diminution in the value of the outstanding dues towards the Indian entity/investor post restructuring and that such diminution does not exceed the proportionate amount of accumulated losses.

The above stated provisions shall not be used where the assets are simply revalued in the books of the Indian entity without any restructuring of the balance sheet of the foreign entity.

What is Financial Commitment?

Financial Commitment means the amount of direct investment outside India by the Indian party

Indian Companies extend financial commitment in the following ways:-

- 1) By way of contribution to equity shares or Compulsory Convertible Preference Shares (CCPS) of the JV/OVS abroad Contribution to JV/WOS as preference shares (reporting purpose treated as loan)
- 2) As loans to its JV/WOS abroad
- 3) 100% of the amount of corporate guarantee issued on behalf of its overseas JV/WOS and
- 4) 50 % of the amount of performance guarantee issued on behalf of its JV/ WOS
- 5) Bank guarantee/ standby letter of credit issued by a resident bank on behalf of an overseas JV/WOS of the Indian party, which is counter guarantee/ collateral by the Indian Party.

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.

The total financial commitment shall not include capitalisation of retained earnings for reckoning such limit but shall include–

(i) utilisation of the amount raised by the issue of American Depository Receipts or Global Depository Receipts and stock-swap of such receipts; and

(ii) 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.

It may be noted that the financial commitment made by Maharatna or Navratna or Miniratna or subsidiaries of such public sector undertakings in foreign entities outside India engaged in strategic sectors shall not be subject to the limits laid down above.

AUTOMATIC ROUTE:- ELIGIBILITY

Indian Parties which are not required to get approval from RBI are eligible to make ODI under Automatic Route.

The following person can invest under automatic route of ODI:-

- a) A company incorporated in India or a body corporate created under an Act of Parliament
- b) Partnership Firm registered under Indian Partnership Act,1932
- c) Limited Liability Partnership (LLP) incorporated under the Limited Liability Partnership Act 2008
- d) Any other entity notified by RBI

OPENING OF FOREIGN CURRENCY ACCOUNT ABROAD BY AN INDIAN ENTITY

An Indian entity may open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of making ODI in accordance with the provisions contained in Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015.

PERMISSIBLE SOURCES OF FUNDING OVERSEAS DIRECT INVESTMENT

- 1) Drawal of foreign exchange from an AD bank in India
- 2) Swap of Shares
- 3) Capitalization of exports and other dues and investment

- 4) Proceeds of ECB/ FCCB's
- 5) In exchange of ADRs/GDRs issued in accordance with the scheme and also guidelines issued by Government of India
[Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993]
- 6) Balances held in Exchange Earner Foreign Currency A/C (EEFC A/C) of the Indian Party with authorized dealer
- 7) Proceeds of foreign currency funds raised through ADR/GDR issues

INDIAN COMPANY MAKING INVESTMENT IN A JV/WOS IN THE FINANCIAL SERVICES SECTOR

Indian company engaged in financial services sector activities can make investment in a JV/WOS abroad in the financial services sector, provided it fulfills the following additional conditions:-

1) Profitable position

It has earned **net profit during the preceding three financial years** from the financial services activities;

2) Registration

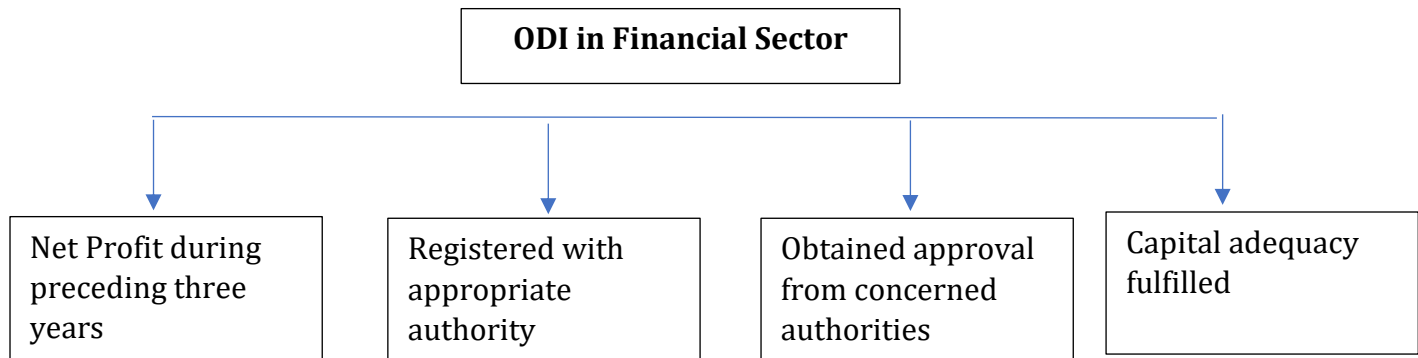
Is **registered with the appropriate regulatory authority** in India for conducting financial services activities;

3) Approval from concerned authority

Has **obtained approval for undertaking such activities from the concerned regulatory authorities both in India and abroad** before venturing into such financial activity;

4) Fulfilled norms

Has **fulfilled the prudential norms relating to capital adequacy** as prescribed by the concerned regulatory authority in India



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 –

- (i) 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;
- (ii) 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;
- (iii) a person resident in India may make contribution to an investment fund or vehicle set up in an IFSC as OPI;
- (iv) 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.

A recognised stock exchange in the IFSC shall be treated as a recognised stock exchange outside India for the purpose of these rules.

OBLIGATIONS 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.

TRANSFER OR LIQUIDATION

A person resident in India holding equity capital in accordance with OI Rules may transfer such investment, in compliance with the limits and subject to the conditions for such investment or disinvestment, pricing guidelines or documentation and reporting requirements, in the manner provided in these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

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.

It is clarified that where the transferor is required to repatriate all the dues before disinvestment, such requirement shall not apply to the dues that do not arise on account of investment in equity or debt like export receivables, etc.

REPORTING

All reporting with respect to overseas investment by a person resident in India shall be made through the designated AD bank in the prescribed manner and in the format provided by the Reserve Bank.

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:–

- (a) 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;
- (b) disinvestment within thirty days of receipt of disinvestment proceeds;
- (c) 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.

Provided that in case of OPI by way of acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme, the reporting shall be done by the office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or the Indian entity in which the overseas entity has direct or indirect equity holding where the resident individual is an employee or director.

Any acquisition of foreign securities through conversion of Indian Depository Receipts (IDRs) shall be duly reported as ODI or OPI, as applicable.

The Annual Performance Report (APR) shall be certified by a chartered accountant where the statutory audit is not applicable, including in case of resident individuals. It is also clarified that where APR is required to be filed jointly, either one investor may be authorised by other investors for filing APR, or such persons may jointly file the APR.

DELAY IN REPORTING

In case a person resident in India has made a delay in filing/submitting the requisite form/return/document, such person may file/submit the requisite form/return/ document, etc. and pay the Late Submission Fee (LSF) through the designated AD bank in accordance with OI Regulations.

RESTRICTION ON FURTHER FINANCIAL COMMITMENT OR TRANSFER

A person resident in India who has made a financial commitment in a foreign entity in accordance with the Act or rules or regulations made thereunder, shall not make any further financial commitment, whether fund-based or non-fund-based, directly or indirectly, towards such foreign entity or transfer such investment till any delay in reporting is regularised.

AD bank shall not facilitate any outward remittance/further financial commitment by a person resident in India towards a foreign entity until any delay in reporting is regularised.

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 –

- (a) real estate activity;
- (b) gambling in any form; and
- (c) dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

Explanation– the expression “real estate activity” means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

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 person resident in India shall make financial commitment in a foreign entity that has invested or invests into India, at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two 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) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;
- (b) 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;
- (c) 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
- (d) 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.



CHAPTER 4:
EXTERNAL COMMERCIAL BORROWINGS

CHAPTER 4

EXTERNAL COMMERCIAL BORROWINGS

INTRODUCTION

1) Meaning of External Commercial Borrowings

External Commercial Borrowings are **commercial loans** raised by **eligible resident entities** from **recognised non-resident entities** and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

2) Governing Act

Governed by Section 6(3) (d) of the Foreign Exchange Management Act, 1999 (FEMA).

3) Governing Regulations

- Foreign Exchange Management (Guarantees) Regulations, 2000
- Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2018

OPTIONS OF EXTERNAL COMMERCIAL BORROWINGS

- 1) Foreign Currency Denominated ECB
- 2) Indian Rupee Denominated ECB

CURRENCY OF BORROWING

1) Foreign Currency Denominated ECB

Any freely convertible Foreign Currency

2) Indian Rupee Denominated ECB

Indian Rupee (INR)

FORMS OF ECB

1) Foreign Currency Denominated ECB

- Loan from Bank (Fixed or Floating Rate)
- Bonds/ Debentures (Other than fully convertible instruments)
- Trade Credit (beyond 3 years)

- Foreign Currency Convertible Bond
- Foreign Currency Exchangeable Bond (FCEB)
- Financial Lease

2) Indian Rupee Denominated ECB

- Loan from Bank (Fixed or Floating Rate)
- Bonds/ Debentures/Preference Shares (Other than fully convertible instruments)
- Trade Credit (beyond 3 years)
- Plain Vanilla Bond (Rupee Denominated)
- Financial Lease

ELIGIBLE BORROWER

1) Foreign Currency Denominated ECB

- All eligible to receive Foreign Direct Investment(FDI)
- Port Trust
- Units in SEZ
- SIDBI
- EXIM bank of India

2) Indian Rupee Denominated ECB

- All eligible to receive Foreign Currency ECB
- Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non- Government Organisations

RECOGNISED LENDERS

- 1) Resident of
 - a) Financial Action Task Force(FATF)
 - b) International Organisation of Securities Commission (IOSCO)
- 2) Multilateral and Regional Financial Institutions(where India is the member)
- 3) Foreign Equity Holders
- 4) Foreign branches / subsidiaries of Indian banks

MINIMUM AVERAGE MATURITY PERIOD(MAMP)

1) General Criteria

Minimum Average Maturity Period (MAMP) for ECB will be 3 years. It is subject to following exception

2) Specific Criteria

a) Manufacturing Sector

- Upto USD 50 million or its equivalent per Financial year- 1 year
- Beyond USD 50 million or its equivalent per Financial year- 3 years

b) ECB raised for working capital

- Raised from Foreign Equity Holder-5 Years
- On lending by NBFC- 10 years
- Others-10 years

c) ECB for repayment of Rupee Loan

- Raised from Foreign Equity Holder-5 years
- On lending by NBFC and Others
- ✓ Capital Expenditure Purpose loan- 7 years
- ✓ Other than capital expenditure Purpose Loan-10 years

ALL IN COST CEILING PER ANNUM

1) Includes

Rate of interest, other fees, expenses, charges, guarantee fees, ECA charges, whether paid in foreign currency or INR.

2) Excludes

Commitment fees and withholding tax payable in INR

3) All in Cost Ceiling

= Bench Mark rate + 450 bps spread

4) Meaning of Benchmark Rate

- **Foreign Currency ECB**
 - i. 6 months LIBOR rate or
 - ii. 6 months EURIBOR rate

- **Rupee Denominated ECB**
Prevailing Yield on Government of Securities

5) Issue Related Expenses

FCCB- Should not exceed 4 percent

Private Placement-Should not exceed 2 percent

OTHER COST

1) Meaning

- Prepayment Charges
- Penal Interest, if any, for default or breach of covenants

2) Ceiling on Other Cost

It should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount

3) All in Cost ceiling

Other cost in outside the all in cost ceiling

END USES (NEGATIVE LIST)

ECB proceeds cannot be utilised for the following purposes

1) Real estate activities

2) Investment in capital market

3) Equity investment

4) Working Capital Purpose

Exception

- ECB from Foreign Equity Holder- 5 years or More
- ECB from NBFC – 10 years or more

5) General Corporate Purpose

Exception

- a) ECB from Foreign Equity Holder- 5 years or More
- b) ECB from NBFC – 10 years or more

6) Repayment of Rupee Loan

Exception

- a) ECB from Foreign Equity Holder- 5 years or More
- b) ECB from NBFC and Other
 - i) Capital Expenses – 7 years or more
 - ii) Other than Capital Expenses- 10 years or more

7) On lending activities raised from NBFC

Exception

- i) Working Capital- 10 years or more
- ii) Repayment of Rupee Loan
 - Capital Expenses- 7 years or more
 - Other than capital Expenses- 10 years or more

EXCHANGE RATE

1) Change of Currency of Foreign Currency ECB into Indian Rupee ECB

- It can be at the exchange rate prevailing on the date of the agreement or
- At an exchange rate, which is less than the rate prevailing on the date of the agreement

2) Conversion to Rupee

The exchange rate shall be the rate prevailing on the date of settlement

HEDGING PROVISION

GUIDELINES FOR INFRASTRUCTURE SPACE COMPANIES

1) Risk Management Policy

Infrastructure space companies shall have a Board approved risk management policy

2) Hedge

- a) ECB less than 5 years
Hedging Mandatory
- b) ECB for more than 5 years
Hedging may or may not

3) Verification and reporting

- a) Verification of 70% hedge requirement is done by AD Category I bank
- b) A D Category I bank report the position to RBI through Form ECB-2

OPERATION ASPECTS WITH RESPECT TO HEDGING**1) COVERAGE**

The ECB borrower will be required to cover the principal as well as the coupon through financial hedges

2) TENOR OR ROLLOVER

- i) A minimum tenor of one year for the financial hedge would be required
- ii) ECB is not unhedged at any point
- iii) Hedging should be done with periodic rollover

3) NATURAL HEDGE

Natural Hedge will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows

CHANGE OF CURRENCY OF BORROWING**1) Change of Currency from Freely Convertible Foreign Currency**

- a) Change to Another Free Convertible Foreign Currency
Permitted
- b) Change to Indian Rupee
Permitted

2) Change of Currency from Indian Rupee

Change of currency from Indian Rupee to any freely convertible foreign currency is not permitted.

LIMITS AND LEVERAGE**1) Approval Route**

As per Approval

2) Automatic Route

- a) ECB can be raised freely upto USD 750 million or equivalent per Financial Year
- b) ECB raised from Foreign Equity Holder

- i) ECB liability : Equity ratio cannot exceed 7:1
- ii) This ratio is not applicable if outstanding amount of all ECB is upto USD 5 million

ISSUANCE OF GUARANTEE, ETC BY INDIAN BANKS AND FINANCIAL INSTITUTION

1) Guarantee not Permitted

Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted.

2) Investment into FCCB/FCEB

Financial intermediaries (viz., Indian banks, All India Financial Institutions, or NonBanking Financial Companies) shall not invest in Foreign Currency Convertible Bonds/ Foreign Currency Exchangeable Bonds in any manner whatsoever.

PARKING OF ECB PROCEEDS

1) Parking of ECB proceeds abroad

a) Which ECB Proceeds

ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation

b) Where can be Parked

The funds can be invested in the following liquid assets

- Deposits or Certificate of Deposit offered by Bank
- Treasury Bills and other monetary Instrument (One Year Maturity)
- Deposit with foreign branches/subsidiaries of Indian banks abroad.

Credit Rating of Deposits or Certificate of Deposit or Treasury Bills and other

- Standards and Poos (S & P)- AA(-)
- Fitch IBCA – AA (-)
- Moody's- Aa3

2) Parking of ECB proceeds domestically

a) Which ECB Proceeds

ECB proceeds meant for Rupee expenditure should be repatriated immediately into India

b) Where can be Parked

ECB proceeds can be parked to their Rupee accounts with AD Category I banks in India.

- i) Account
- ii) Term Deposit for maximum 12 months (unencumbered)

PROCEDURE OF RAISING ECB

1) Automatic Routes

The eligible borrower need to file application (Form ECB) with AD Category I bank

2) Approval Route

a) Step 1: Form filed with RBI through AD Category I Bank

Application is filled with A D Category I bank which in turn present the Proposal to RBI (Form ECB)

b) Step 2: Empowered Committee

- i) ECB proposals received in the Reserve Bank above certain threshold limit would be placed before the Empowered Committee set up by the Reserve Bank.
- ii) The Empowered Committee will have external as well as internal members

c) Step 3: Final Decision

Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee

REPORTING REQUIREMENTS

1) Loan Registration Number

- **Mandatory**

Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank

- **Application to AD Category I Bank**

Borrowers are required to submit duly certified Form ECB, in duplicate to the designated AD Category I bank

- **One Copy to RBI**

The AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management

- **Loan Agreement**

Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank

2) Changes in Terms and Conditions

- **Report Changes**

Changes in ECB parameters should be reported to the Department of Statistics and Information Management through revised Form ECB

- **Duration**

It should be reported in any case not later than 7 days from the changes effected

- **Mention the changes**

While submitting revised Form ECB the changes should be specifically mentioned in the communication.

3) Monthly Reporting of Actual Transaction

- **Form ECB 2**

The borrowers are required to report actual ECB transactions through Form ECB 2 Return

- **DSIM**

It is reported through the AD Category I bank on monthly basis so as to reach Department of Statistics and Information Management

- **Time Limit**

It should be reported within seven working days from the close of month to which it relates

4) Late Submission Fees(LSF) for delay in reporting

Any borrower 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.

5) Standard Operating Procedures for Untraceable Entities

A) Untraceable Entities

Any borrower who has raised ECB will be treated as 'untraceable entity', if

i) entity or

ii) auditor(s)

iii) director(s) or

iv) promoter(s) of entity

are not reachable/responsive/reply innegative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more

AND

It fulfils both of the following conditions

- i) Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;
- ii) Entities have not submitted Statutory Auditor's Certificate for last two years or more

B) Action on Untraceable Entities

- **File Revised Form ECB**
File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top.
- **No Fresh Application**
No fresh ECB application by the entity should be examined/processed by the AD bank
- **Intimate to Directorate of Enforcement**
Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'
- **Debt Servicing**
No inward remittance or debt servicing will be permitted under auto route

CONVERSION OF ECB INTO EQUITY

1) Activity of Borrowing Company

The activity of the borrowing company is covered under the automatic route for Foreign Direct Investment or Government approval

2) Equity Participation

Foreign Equity participation as per extant Foreign Direct Investment policy

3) Cost and Sectoral Cap

- The conversion, which should be with the lender's consent and without any additional cost
- It should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under Foreign Direct Investment policy

4) Price Guidelines

Applicable pricing guidelines for shares are complied with

5) Reporting to RBI

- **Partial Conversion**
 - Form FC-GPR and
 - ECB-2 with suitable remarks “ ECB partially converted into Equity
 -
- **Full Conversion**
 - Form FC-GPR and
 - ECB-2 with suitable remarks “ ECB fully converted into Equity
- **Conversion into Phases**
 - Form FC-GPR and
 - ECB-2 Return will also be in phases
- **Consent of Other Lender**

6) Exchange Rate and Fair Value of Equity

- a) The exchange rate should be that which is prevailing on the date of agreement
- b) Fair value of equity shares to be issue shall be worked out with reference to the date of conversion

SECURITY FOR RAISING ECB

1) The AD Category I bank may permit creation of charge on

- a) Immovable assets,
- b) Movable assets,
- c) Financial securities and
- d) Issue of corporate and/or personal guarantees

2) Creation of Charge on Immovable Assets

- a) Overseas lender/ Security Trustee have no permission to acquire immovable property in India
- b) In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India
- c) Sale proceeds shall be repatriated to liquidate the outstanding ECB
- d) Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2017, as amended from time to time

3) Creation of Charge on Movable Property

- a) Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic
- b) The lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB.

4) Creation of Charge on Financial Securities

- a) Pledge of
 - i) Shares
 - ii) Bonds
 - iii) Debentures
 - iv) Government Security
 - v) Government Saving Certificates
 - vi) Deposit Receipts of securities
 - vii) Units of Unit Trust of India or any mutual fund Is permitted
- b) Transfer of financial securities shall be in accordance with the extant FDI/FII policy

5) Issue of Corporate and Personal Guarantee

- a) Copy of Board Resolution for issue of Corporate Guarantee
- b) Specific requests from individuals to issue personal guarantee should be obtained
- c) Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time

ECB FACILITIES FOR OIL MARKETING COMPANIES**Public Sector Oil Marketing Companies****1) Minimum Average Maturity Period**

3 Years

2) Hedging

No Mandatory Hedging

3) Overall Ceiling

The overall ceiling for such ECB shall be USD 10 billion or equivalent

ECB FACILITY FOR STARTUPS**A) Approval Route**

As per Approval

B) Automatic Route**1) Eligibility**

An entity recognised as a Startup by the Central Government as on date of raising ECB

2) Maturity

Minimum average maturity period will be 3 years

3) Forms

- a) Loans
- b) Preference Shares(Non Convertible/Optionally Convertible/Partially Convertible)

4) Currency

Borrowing should be denominated in

- a) Freely Convertible Foreign Currency
- b) Indian Rupees (INR)

5) 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.

6) All in Cost

Shall be mutually agreed between the borrower and the lender.

7) End Use

For any expenditure in connection with the business of the borrower

8) Conversion into Equity

Conversion into equity is freely permitted

9) 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

10) 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.

BORROWING BY ENTITIES UNDER INVESTIGATION**1) Inform to AD Category I Bank**

The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Category-I bank / RBI

2) Raise ECB

All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms

3) Intimate to Law enforcing Agency

The AD Category I Banks / Reserve Bank while approving the proposal shall intimate the agencies concerned by endorsing a copy of the approval letter

ECB BY ENTITIES UNDER RESTRUCTURING/ECB FACILITY FOR REFINANCING ASSETS**1) Can ECB be Raised by those under Restructuring Scheme/ Corporate Insolvency resolution process**

ECB can be raised only if specifically permitted under the resolution plan

2) Compliance

External commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework

3) Ineligible

Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes

4) MAMP

The applicable MAMP will have to be strictly complied with under all circumstances



CHAPTER 6
SPECIAL ECONOMIC ZONE ACT, 2005

CHAPTER 6

SPECIAL ECONOMIC ZONE ACT, 2005

WHAT IS SEZ?

Special Economic Zone [SEZ] is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.

Example :

At present Special Economic Zones are located at Santa Cruz [Maharashtra], Cochin [Kerala], Kandla and Surat [Gujarat], Chennai [Tamil Nadu], Visakhapatnam [Andhra Pradesh], Falta [West Bengal] and Noida [Uttar Pradesh] in India.

WHO CAN SETUP SEZ?

- 1) Central Government has liberal policy for setting up SEZ.
- 2) SEZ can be set up public, private, joint sector or by Central Government or State Government, jointly or severally.
- 3) Even foreign companies can set up SEZ

MAIN FUNCTIONS OR OBJECTIVES OF SEZ

➤ The main objectives of the SEZ Are :

- 1) Generation of additional economic activity.
- 2) Promotion of exports of goods and services
- 3) Promotion of investment from domestic and foreign sources.
- 4) Creation of employment opportunities.
Development of infrastructure facilities.

SEC 3:- ESTABLISHMENT OF SPECIAL ECONOMIC ZONE:-

1. Identify the Area
2. Make a proposal to State Government
3. The State Government after receiving proposal forward the proposal to the Board of Approval
4. You can also direct proposal to the board of approval
5. Board of approval may give permission but you are also required to take permission of State Government

6. Board of Approval may accept or reject the proposal. If rejected the opportunity of being heard is given
7. State Government may itself identify the area and notify it to the Board of Approval
8. However the Central Govt may directly identify the area for SEZ and can set up SEZ without approval of State Government



TERMS AND CONDITIONS TO SET UP SEZ:-

- 1) Units approved under SEZ scheme are permitted to be located in SEZ.
- 2) The SEZ units shall abide by local laws, rules, regulations or by-laws in regard to area planning, sewage disposal, pollution control and the like. They shall also comply with industrial and labour laws as may be locally applicable.
- 3) SEZ shall make security arrangements to fulfill all the requirements of the laws, rules and procedures applicable to such SEZ.
- 4) The SEZ should have a minimum area of 1000 hectares and at least 25% of the area is to be earmarked for developing industrial area for setting up of units.

- 5) Minimum area of 1000 hectares will not be applicable to product specific and port or airport based SEZs.
- 6) Wherever the SEZs are landlocked, an Inland Container Depot [ICD] will be an integral of SEZs.

SECTION 4: ESTABLISHMENT OF SPECIAL ECONOMIC ZONE AND APPROVAL AND AUTHORISATION TO OPERATE IT TO DEVELOPER

1) Notify specific area as SEZ

- The Developer need to submit, after the grant of letter of approval, the exact particulars of the identified area to the Central Government
- Central Government after satisfying that the specified requirements are fulfilled, notify the specifically identified area in the State as a Special Economic Zone

2) Additional area

Central Government has been empowered to notify any additional area as a part of a Special Economic Zone

3) Authorisation

Central Government to authorise the Developer to undertake such operations in a Special Economic Zone, as it may prescribe.

SECTION 5: GUIDELINES FOR NOTIFYING SPECIAL ECONOMIC ZONE

Central Government while notifying any area as a Special Economic Zone or an area to be included in the SEZ shall considered the following guidelines

- Generation of additional economic activity
- Promotion of exports of goods and services
- Promotion of investment from domestic and foreign sources
- Creation of employment opportunities
- Development of infrastructure facilities and
- Maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign State

SECTION 6: THE PROCESSING OR NON-PROCESSING AREA:-

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

- 1) The processing area for setting up Units for activities, being the manufacture of goods, or rendering of services
- 2) The area exclusively for trading or warehousing purposes
- 3) The non-processing areas for activities other than those specified under (a) or (b) above

INCENTIVES TO SEZ

- 1) Income Tax benefits or under to developers for any block of 10 years in 15 years.
- 2) Duty free import or domestic procurement of goods for development operation and maintenance of SEZs.
- 3) Exemption from Service Tax or Central Sales Tax.
- 4) Income of infrastructure capital fund from investment in SEZ exempt from Income Tax.
- 5) Investment made by individuals etc. in a SEZ company is eligible for exemption under Income-tax Act.
- 6) Developer permitted to transfer infrastructure facility for operation and maintenance.
- 7) Generation, transmission and distribution of power in SEZs allowed.
- 8) Full freedom in allocation of space and built up area to approved SEZ units on commercial basis.
- 9) Authorised to provide and maintain service like water, electricity, security, restaurants and recreation centres on commercial lines.

OBLIGATION OF SEZ

- 1) SEZ units have to achieve positive net foreign exchange earnings.
- 2) For this purpose, a Legal Undertaking is required to be executed by the unit with the Development Commissioner.
- 3) The units have to provide periodic reports to the Development Commissioner and Zone Customs.

- 4) Any company set up with FDI has to be incorporated under the Indian Companies Act, with the Registrar of Companies for undertaking Indian operations

SECTION 7:- EXEMPTION FROM DUTIES, TAXES OR CESS

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 is exempt

ADMINISTRATIVE SET-UP

The functioning of the SEZs is governed by a three tier administrative set up.

- 1) The Board of Approval is the apex body.
- 2) The Approval Committee at the Zone level deals with approval of units in the SEZs and other related issues.
- 3) A Development Commissioner, who is ex-officio Chairperson of the Approval Committee, heads each Zone.

SECTION 8: 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.

SECTION 9: DUTIES, POWER AND FUNCTIONS OF BOARD OF APPROVAL

- 1) Granting approval of authorized operations to be carried out in the SEZs by the Developer.
- 2) 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 SEZ for its development, operation and maintenance.
- 3) Granting of approval or rejecting proposal for providing infrastructure facilities in a SEZ or modifying such proposals.
- 4) 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 SEZ.
- 5) Suspension of the letter of approval granted to a Developer and appointment of an Administrator.
- 6) Disposing of appeals preferred.
- 7) Performing such other functions as may be assigned to it by the Central Government.

- 8) The Board of Approval may delegate any of its powers and functions to one or more Development Commissioners for effective and proper discharge of the functions of the Board.
- 9) The Approval Board is bound by directions of the Central Government in respect of policy matter

SECTION 10: SUSPENSION OF LETTER OF APPROVAL

The suspension may be granted by Board in certain cases:-

- 1) The developer is unable to discharge the functions or perform the duties imposed on him
- 2) The developer has persistently defaulted in complying with the directions of the Board
- 3) The developer has violated the terms and conditions of the letter
- 4) The financial position of the developer is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him by the letter of approval

SECTION 11: DEVELOPMENT COMMISSIONER

- 1) 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
- 2) It also contains provisions for salary and allowances and other terms and conditions of service in respect of leave, pension, provident fund and other matters of the Development Commissioner, officers and other employees

SECTION 12: FUNCTIONS OF DEVELOPMENT COMMISSIONER

- 1) Guide the entrepreneurs for setting up of Units in SEZ.
- 2) Ensure and take suitable steps for effective promotion of exports from the SEZ.
- 3) Ensure proper co-ordination with the Central Government or State Government Departments concerned or agencies with respect to or for above purposes.
- 4) Monitor the performance of the Developer and the Units in a SEZ.
- 5) Discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force; and

- 6) Discharge such other functions as may be delegated to him by the Board of Approval.
- 7) Development Commissioner may call for such information from Developer or Unit, which is necessary to monitor the performance.

SECTION 13:- CONSTITUTION OF APPROVAL COMMITTEE:-

- 1) Section 13 empowers the Central Government to constitute by notification, a Committee for every Special Economic Zone, to be called the Approval Committee to exercise the powers and perform the functions as specified
- 2) In the case of **existing Special Economic Zones**, the Approval Committee is required to be constituted within six months from the date of commencement of the Act
- 3) in case of **other Special Economic Zones** established after the commencement of the Act within six months from the date of establishment of such Special Economic Zone

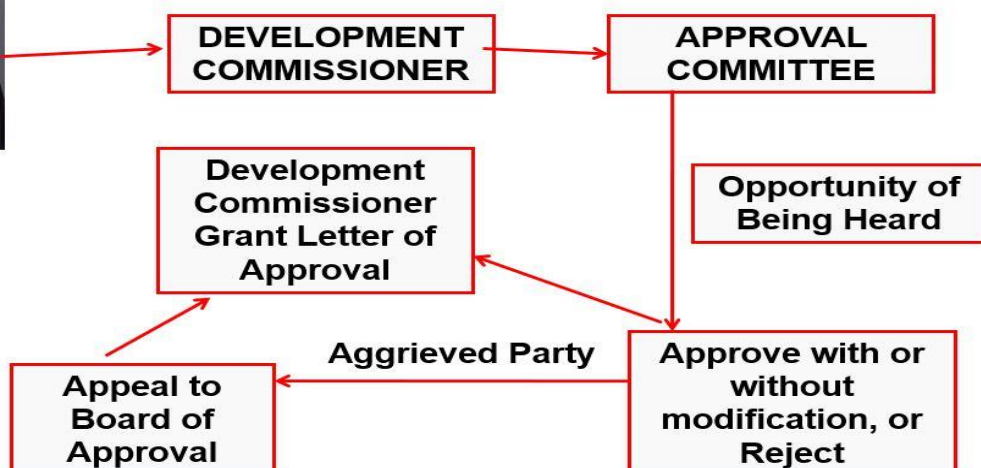
SECTION 14:POWERS AND FUNCTIONS OF APPROVAL COMMITTEE:-

- 1) Approve the import or procurement of goods from the Domestic Tariff Area, for carrying on the authorized operations by a Developer in the SEZ.
- 2) Approve providing of services by a service provider from outside India or from the Domestic Tariff Area for carrying on the authorized operations by the Developer, in the SEZ.
- 3) Monitor the utilization of goods or services or warehousing or trading in the SEZ.
- 4) 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. If the Approval Committee is, unable to decide whether a particular process constitutes manufacture or not it shall refer the same to the Board of Approval for decision.
- 5) Allow on receipt of approval foreign collaborations and foreign direct investments, including investments by a person outside India for setting up a Unit.
- 6) Monitor and supervise compliance of conditions subject to which the letter of approval or permission, if any, is granted to the Developer or entrepreneur.
- 7) Perform any other functions as may be entrusted to it by the Central Government or the State Government

SECTION 15:- SETTING UP UNITS IN SEZ

1. Any person, to submit a proposal to the Development Commissioner concerned.
2. The Development Commissioner in turn place the proposal before the Approval Committee for its approval.
3. The Approval Committee may, approve the proposal with or without modification, and subject to such terms and conditions as it may deem fit, or reject the same.
4. Before modification or rejection of a proposal, the Approval Committee should give reasonable opportunity of being heard to the applicant.
5. A person aggrieved by an order of the Approval Committee can make an appeal to the Board of Approvals.
6. The Central Government is empowered to 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.
7. The Development Commissioner may, after the approval of the proposal, grant a letter of approval to the person concerned to set up a Unit and undertake in the Unit such operations which the Development Commissioner may authorise and every such operation so authorised is mentioned in the letter of approval

SET UP of VARIOUS UNITS UNDER SEZ



SECTION:16: CANCELLATION OF LETTER OF APPROVAL GRANTED TO ENTREPRENEUR

- 1) The Approval Committee to cancel the letter of approval of an entrepreneur after reasonable opportunity of being heard
- 2) 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.
- 3) Any person aggrieved from an order of the Approval Committee to make an appeal to the Board of Approval within the prescribed time
- 4) It further provides that where the letter of approval has been cancelled, the Unit shall not, from the date of such cancellation, be entitled to any exemption, concession, benefit or deduction available to it

SECTION 17: SETTING UP OFF-SHORE BANKING UNIT

- An off-Shore Banking Unit can be set up in SEZ.
- “Off-Shore Banking Unit” means a branch of a bank located in a SEZ and which has obtained the permission under Section 23 of Banking Regulation Act, 1949.
- An application for setting up and operation of an Offshore Banking Unit in a SEZ is made to the RBI.
- The RBI may grant permission to set up offshore banking unit on being satisfied. RBI may impose conditions.
- RBI needs to specify the terms and conditions by notification

SECTION 18: SETTING UP INTERNATIONAL FINANCIAL SERVICES CENTRE

- 1) **Approval by Central Government**
Central Government will approve setting up of an International Financial Services Centre in a Special Economic Zone
- 2) **Only One Centre**
Central Government may approve only one international Financial Services Centre in a Special Economic Zone
- 3) **Guidelines framed by Authority**
The Central Government may subject to the guidelines as may be framed by the Reserve Bank, the Security and Exchange Board of India, the Insurance Regulatory and Development Authority and such other authority as it may deem fit, prescribe the requirement for setting up and terms and conditions of the operation of International Financial Services Center

SECTION 19:-SINGLE APPLICATION FORMS,RETURNS ETC

- 1) Central Government may prescribe single application form for obtaining any licence, permission or registration or approval by a Developer or an entrepreneur under one or more Central Acts
- 2) It empowers the Central Government to empowers prescribe single form for furnishing returns or information by a developer or an entrepreneur under one or more Central Acts.

SECTION 20:-AGENCY TO INSPECT

- 1) Central Government to appoint the officer or agency
- 2) Officer or agency to carry out surveys or inspection for securing compliance of the Central Act by developer and entrepreneur
- 3) Such officer or agency is required to submit verification or compliance report

SECTION 21:SINGLE ENFORCEMENT OFFICER OR AGENCY FOR NOTIFIED OFFENCES

1) Specify by notification

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

2) Authorize any officer or agency

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

3) Power of officer or agency

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

SECTION 22:INVESTIGATION,INSPECTION,SEARCH OR SEIZURE

1) Circumstances

Agency or officer has reason to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone

2) Prior intimation or approval of Development Commissioner needed

No investigation, inspection, search or seizure is allowed to be carried out in a SEZ by any agency or officer without prior intimation or approval of the concerned Development Commissioner

3) No Prior intimation of Approval needed-Exception

Officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner

SECTION 23: DESIGNATED COURT TO TRY SUIT AND NOTIFIED OFFENCE**1) Power to designate**

State Government shall designate one or more Courts to try all suits of a civil nature arising out of offences committed in the Special Economic Zone.

2) Trial of Offence

No court, other than the designated court shall try any suit or conduct the trial of any notified offence

SECTION 24: APPEAL TO HIGH COURT**1) Who can appeal**

Any person aggrieved by any decision or order of the designated Court to file an appeal to the High Court

2) Time Limit for appeal

Appeal shall be filed within 60 days from the date of communication of decision

3) Grounds of Appeal

Question of fact or law arising out of such orders

4) Exception

High Court 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

SECTION 25: OFFENCE BY COMPANY SET-UP**1) Company is offender**

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

2) No Liability

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

3) Director, Manager, Secretary or other officer

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 if it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part accordingly

SECTION 27: APPLICATION OF INCOME TAX ACT, 1961 WITH CERTAIN MODIFICATION IN RELATION TO DEVELOPERS AND ENTREPRENEUR

Section 27 provides for application of the provisions of the Income Tax Act, 1961 to the Developer and entrepreneur for carrying on the authorised operations in the Special Economic Zones or Unit subject to modifications specified in the second schedule.

SECTION 28: DURATION OF GOODS AND SERVICES IN SEZ

Central Government shall specify, the period during which any goods brought into, or services provided in, any Unit or Special Economic Zone without payment of taxes, duties, levies or cess, shall remain or continue to be provided in such Unit or Special Economic Zone

SECTION 29: TRANSFER OF OWNERSHIP AND REMOVAL OF GOODS

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.

SECTION 30: DOMESTIC CLEARANCE BY UNITS

1) Goods removed from Special Economic Zone to Domestic Tariff Area

It shall 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

2) Rate and Valuation

- **Date of removal ascertained**

It shall be at the rate and tariff valuation in force as on the date of such removal

- **Date of removal not ascertainable**

Where such date is not ascertainable the rate and valuation shall be on the date of payment of duty

SECTION 34: FUNCTIONS OF AUTHORITY

1) General duty of every Special Economic Zone Authority

It shall be duty every auhtority to undertake such measures as it thinks fit for

- Development
- Operation
- Management

of the respective Special Economic Zone

2) Specific duty of every authority

- Development of infrastructure in the Special Economic Zone
- Promoting exports from the Special Economic Zone
- Reviewing the functioning and performance of the Special Economic Zone
- Levy user or service charges or fees or rent for the use of properties belonging to the Authority
- Performing such other functions as may be prescribed.

SECTION 38: DIRECTIONS BY CENTRAL GOVERNMENT:-

Central Government is empowered to give directions to the authority and makes it binding for every Authority of the Special Economic Zone to carry out the directions issued from time to time in this regard

SECTION 39: RETURNS AND REPORTS BY AUTHORITY

1) Return and Report from time to time

Every Authority of the Special Economic Zone a duty to furnish to the Central Government such returns and statements and such particulars in regard to the promotion and development of exports and the operation and maintenance of the Special Economic Zone and Units as it may require from time to time.

2) Previous Financial Year

Every authority to submit to the Central Government after the end of each financial year a report in form and before specified date, giving a true and full account of its activities, policy and programmes during the previous financial year

3) House of Parliament

A copy of every such report to be laid before each House of Parliament, soon after its receipt

SECTION 40: POWER OF CENTRAL GOVERNMENT TO SUPERSEDE AUTHORITY

1) Circumstances where Central Government can supersede

- Unable to perform
- Persistently made default in the performance of the duty imposed on it
- Abused its powers
- Wilfully or without sufficient cause failed to comply with any direction issued

2) Time Limit

Central Government to supersede an Authority for a maximum period of six months

3) Opportunity of being heard

Central Government is required to give reasonable time to that Authority to make representation against the proposed suppression

4) Consequences of Supercede

- Chairperson and other Members of the Authority shall vacate their offices.
- All the powers, functions and duties shall be performed by such person or persons as the Central Government may direct.
- All property vested in the Authority shall vest in the Central Government.

5) Extention of supersession

Central Government may extend the period of supersession for such further period not exceeding six months.

SECTION 42: REFERENCE OF DISPUTE

1) Dispute among parties

Any dispute of civil nature among

- Two or more entrepreneur
- Two or more developers
- Entrepreneur and Developer

2) Court Is not designated

Dispute is to referred to arbitration provided, the court or the courts to try suits in respect of such dispute had not been designated.

3) Court is designated

No dispute should be referred to the arbitration on or after the date of the designation of court or courts

4) Appointment and provisions applicable to arbitrator

The dispute to 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

SECTION 43: LIMITATION

1) Applicability

Any dispute which is required to be referred to arbitration

2) Limitation

The period of limitation shall be regulated by the provisions of the Limitation Act, 1963

3) Exception

The arbitrator is empowered to admit, a dispute after the expiry of the period of limitation, if the arbitrator is satisfied that the applicant had sufficient cause for not referring the dispute within specified period.

SECTION 45: PERSON TO WHOM A COMMUNICATION IS TO BE SENT

Communication by any competent authority or person may be sent

1) No Specific person notified

Person who has the ultimate control over the affairs of the Special Economic Zone or Unit

2) Specific person assigned

Affairs are entrusted to a manager, director, chairperson, or managing director, or to any other officer, by whatever name called, such communication may be sent to such manager, director, chairperson, or managing director or any other officer

SEC 46: 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

SECTION 49: POWER OF THE CENTRAL GOVERNMENT TO MODIFY PROVISIONS OF THE ACT OR OTHER ENACTMENTS IN RELATION TO SPECIAL ECONOMIC ZONES

SECTION 50: POWER OF STATE GOVERNMENT TO GRANT EXEMPTION

State Government is empowered to notify policies for Developers and Units and to take suitable steps for enactment of any law -

1) Exemption under State Laws

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

2) Delegation of Power

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: SEZ ACT TO HAVE OVERRIDING EFFECT

Provisions of SEZ 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

SECTION 53: SPECIAL ECONOMIC ZONE TO BE PORT,AIRPORTS,INLAND CONTAINER DEPOTS,LAND STATIONS ETC IN CERTAIN CASES

1) Territory outside custom territory

Special Economic Zone, on and from the appointed day, be deemed to be a territory outside the customs territory of India

2) Assumption

Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations under section 7 of the Customs Act, 1962

SEC 55:SPECIAL ECONOMIC ZONES RULES, 2006:-

- 1) Section 55 empowers the Central Government to make rules in respect of specified matters
- 2) It requires that the same be published in the Official Gazette
- 3) Be laid before each House of Parliament
- 4) Central Government has notified the Special Economic Zones Rules, 2006 on February 10, 2006.

RULE 21: RIGHT OF APPELLANT TO APPEAR BEFORE THE BOARD

1) Who can appear in front of Board

The following can appear before the Board

- In Person
- One or more chartered accountants or company secretaries or cost accountants or legal practitioners
- Any of his or its officers

2) Meaning of Company Secretary

Company secretary means a company secretary as defined in Section 2(1)(c) of the Company Secretaries Act, 1980 and who has obtained a certificate of practice



CHAPTER 7

The FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

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The FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

INTRODUCTION

1) Repeal FCRA 1976

New legislation Foreign Contribution (Regulation) Act, 2010 was passed and it replaced the FCRA, 1976

2) Effective Date of Act

The Foreign Contribution (Regulation) Act, 2010 has come into effect from May 1, 2011.

3) Effective date of Rules

The Ministry of Home Affairs also issued a Gazette Notification vide dated the 29th April, 2011 notifying the Foreign Contribution (Regulation) Rules, 2011

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

In the case of Noel Harper & Ors vs. Union of India & Anr judgement dated April 08, 2022, the Hon'ble Supreme Court while upholding the constitutional validity of Amendment Act 2020 observed that "philosophically, foreign contribution (donation) is akin to gratifying intoxicant replete with medicinal properties and may work like a nectar. However, it serves as a medicine so long as it is consumed (utilised) moderately and discreetly, for serving the larger cause of humanity. Otherwise, this artifice has the capability of inflicting pain, suffering and turmoil as being caused by the toxic substance (potent tool) – across the nation. In that, free and uncontrolled flow of foreign contribution has the potentials of impacting the sovereignty and integrity of the nation, its public order and also working against the interests of the general public."

To eradicate misuse and abuse of foreign contribution in the past, despite the firm regime in place in terms of the 2010 Act, the Parliament in its wisdom has now (vide Amendment Act of 2020) adopted the path of moderation by making it mandatory for all to accept foreign contribution only through one channel and to utilise the same "itself" for the purposes for which permission has been accorded. Undeniably, the sovereignty and integrity of India ought to prevail and the rights enshrined in Part III of the Constitution must give way to the interests of general public much less public order and the sovereignty and integrity of the nation. It must be borne in mind that the legislation under consideration must be understood in the context of the underlying intent of insulating the democratic polity from the adverse influence of foreign contribution remitted by foreign sources

Further, in order to streamline the provisions of the Foreign Contribution (Regulation) Act, 2010 by strengthening the compliance mechanism, enhancing transparency and accountability in the receipt and utilisation of foreign contribution worth thousands of crores of rupees every year and facilitating genuine non-Governmental organisations or associations who are working for the welfare of the society, Parliament enacted the Foreign Contribution (Regulation) Amendment Act, 2020.

SCOPE AND OBJECTIVE OF ACT

- 1) 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
- 2) It prohibits acceptance and 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: –

- (a) 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;
- (b) Amended Section 7 of the Act to prohibit any transfer of foreign contribution to any association/ person;
- (c) Amended section 8(1) of the Act to reduce the limit for defraying administrative expenses from existing “fifty per cent.” to “twenty per cent.”;
- (d) Inserted of a new Section 12A empowering the Central Government to require Aadhaar number, etc., as identification document;
- (e) Inserted of a new Section 14A enabling the Central Government to permit any person to surrender the certificate granted under the Act;

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.

It maybe noted that –

“Person” includes –

- (i) an individual;
- (ii) a Hindu undivided family;

(iii) an association;

(iv) a company registered under section 25 of the Companies Act, 1956. [Section 2(m)]

SECTION 3: PROHIBITION TO ACCEPT FOREIGN CONTRIBUTION

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

- Candidate for election;
- Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- Public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- Member of any Legislature;
- Organisation of a political nature as may be specified under section 5(1) by the Central Government;
- 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;
- correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

Explanation.1—For the purpose of clause (c), "public servant" means a public servant as defined in section 21 of the Indian Penal Code

Explanation 2—"Corporation" means a corporation owned or controlled by the Government and includes a Government company as defined in clause (45) of section 2 of the Companies Act, 2013

Section 3(2)

Section 3(3) Restriction on Person

No person receiving any currency whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency

- 1) To any person other than a person for which it was received
- 2) To 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 person other than the person for which such currency was received

SECTION 4: PERSON 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,—

- **Salary, wages or remuneration**
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 transaction or business payment**
Business transacted in India by such foreign source; or payment in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or
- **Agent of foreign source**
Agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or
- **Gift or presentation as member of Indian delegation**
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
- **Relative**
from his relative; or
- **Official Channel under Foreign Exchange Management Act**
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
- **Scholarship, Stipend**
Any scholarship, stipend or any payment of like nature

SECTION 5: PROCEDURE TO NOTIFY AN ORGANISATION OF A POLITICAL NATURE

1) Factors deciding political nature

- The Central Government may by an order published in the Official Gazette, specify such organisation as an organisation of a political nature
- The Central Government may, by rules made by it, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature

2) Notice in writing

The Central Government shall give the organisation in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds

3) Representation to Central Government

The organisation within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation.

4) Forward representation

The Central Government may, if it considers it appropriate, forward the representation to any authority to report on such representation.

5) Decision of Central Government

Central Government may, after considering the representation and the report of the authority specify such organisation as an organisation of a political nature not being a political party and make an order accordingly.

6) Time limit for making order

Every order shall be made within a period of one hundred and twenty days from the date of issue of notice

7) Extension for reasons

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 within a period of sixty days from the expiry of the said period of one hundred and twenty days

WHAT IS FOREIGN CONTRIBUTION?

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

(i) 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;

(ii) of any currency, whether Indian or foreign;

(iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999.

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.

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.

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.

SECTION 6: RESTRICTION ON ACCEPTANCE OF FOREIGN HOSPITALITY-

1. Who all need to take prior permission for 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.

2. Not necessary to obtain Prior Permission

a) When no Prior Permission not needed for foreign hospitality

Emergent medical aide needed on account of sudden illness contracted during a visit outside India

b) Condition need to be fulfilled in case on exception

The person receiving hospitality in case of emergency shall give an intimation to the Central Government as to the receipt of such hospitality

c) Time Period to intimate

Must be intimated within one month from the date of receipt of such hospitality.

d) Details to be intimated

- Source of Hospitality
- Manner in which such hospitality was received.

SECTION 7 PROHIBITION TO TRANSFER FOREIGN CONTRIBUTION TO OTHER PERSON –

It provides that person who

(a) is registered and granted a certificate or has obtained prior permission under the Act; and

(b) receives any foreign contribution

SECTION 8: RESTRICTION TO UTILISE FOREIGN CONTRIBUTION FOR ADMINISTRATIVE PURPOSE

1) Applicability

- a) Every Person (Registered or given prior permission)
- b) Received foreign contribution shall not transfer such foreign contribution to any other person

2) Utilisation of Contribution

Shall be utilized for the purposes for which the contribution was received.

3) Restriction**a) Administrative Purpose**

Utilisation of foreign contribution shall not exceed 25% of such contribution

4) Speculative Business

- i. Foreign contribution or any income arising out of it shall not be used for speculative business
- ii. Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section

SECTION 9: POWER OF CENTRAL GOVERNMENT TO PROHIBIT RECEIPT OF FOREIGN CONTRIBUTION, ETC, IN CERTAIN CASES

1) The Central Government may:-**a) Prohibition on Foreign Contribution**

Prohibit any person or organisation from accepting any foreign contribution

b) Prior Permission for Foreign Hospitality

Require any person or class of persons to obtain prior permission of the Central Government before accepting any foreign hospitality

c) Furnish intimation of Foreign Contribution received

Require any person or class of persons details of foreign contribution like

- i. Amount of foreign contribution
- ii. Source of Foreign contribution
- iii. Manner in which foreign contribution received
- iv. Purpose
- v. Manner in which it is utilised.

d) Prior permission from Central Government

Require any person or class of persons specified in Section 11(1) to obtain prior permission of the Central Government before accepting any foreign contribution

e) Furnish intimation of Foreign Hospitality received.

Require any person or class of persons 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.

2) Reasons for Prohibition or requirement

Central Government is satisfied that the acceptance of foreign contribution is likely to affect

- 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

SECTION 10: POWER TO PROHIBIT PAYMENT OF CURRENCY RECEIVED IN CONTRAVENTION OF THE ACT

1) When this provision is applicable

Any person has in his custody or control any article or currency or security, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of Foreign Contribution Regulation Act, 2010

2) Consequences

- a) Central Government by order in writing prohibit such person from paying, delivering, transferring or otherwise dealing with, in any manner whatsoever, such article or currency or security
- b) Provisions of sub-sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 shall, so far as may be, apply to, or in relation to, such article or currency or security

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:

- i. 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;
- ii. 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
- iii. 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:
 - i. The Chief Functionary of the recipient Indian organization should not be a part of the donor organization.
 - ii. 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.
 - iii. 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.
 - iv. 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.

SECTION 12: GRANT OF CERTIFICATE OF REGISTRATION

1) Form, Manner, Fees

Application shall be made to Central Government in such form and manner along with fees as may be prescribed

2) Open FCRA Account

Every person shall require to open FCRA Account as specified in Section 17

3) Rejection based on prima-facie

Central Government shall by order reject the application for the following reasons

- a) Application not in prescribed form
- b) Does not contain any of the particulars specified in that form

4) Time Period

Central Government shall within 90 days on being satisfied register the person and grant him a certificate of registration, subject to terms and conditions

5) CG does not grant registration within time

CG does not grant registration within 90 days then it shall communicate reasons thereof

6) Rejection or refusal by CG

Central Government shall record reasons in writing and furnish copy thereof to the applicant

7) Validity of certificate

The certificate granted shall be valid for five years

SECTION 12A: POWER OF CENTRAL GOVERNMENT TO REQUIRE AADHAR NUMBER, ETC AS IDENTIFICATION DOCUMENTS:-

1) Identification Document:-

Aadhar number required for identification

2) When need to be provided:-

- a) Prior Permission or Prior approval for receive foreign contribution (Section 11)
- b) Application for grant of registration (Section 12)
- c) Application for renewal of certificate (Section 16)

3) Who need to provide it

- a) Office bearers
- b) Directors or
- c) Key Functionaries

4) Foreigner:-

Copy of passport or Overseas Citizen of India Card

SECTION 13: SUSPENSION OF CERTIFICATE

- 1) Reasons for Suspension:-** Central Government, for reasons in writing, is satisfied that pending consideration on question of cancelling the certificate on any grounds it is necessary to do so.
- 2) Time period of suspension:-** They may 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
- 3) Consequence of suspension**
 - a) Shall not receive foreign contribution
 - b) On application, central government may allow receipt of foreign contribution subject to terms and conditions
 - c) Foreign Contribution in his custody shall be utilized with the prior approval of Central Government

SECTION 14: CANCELLATION OF CERTIFICATE

1) Grounds for cancellation

Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if—

- Violation any of the terms and conditions of the certificate or renewal thereof;
- It is necessary in the public interest to cancel the certificate(in the opinion of Central Government)
- Violation any of the provisions of this Act or rules or order made thereunder;
- 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

2) Opportunity of Being Heard

The person concerned has been given a reasonable opportunity of being heard otherwise no order of cancellation shall be made

3) Consequences of Cancellation

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

SECTION 14A:- SURRENDER OF CERTIFICATE

1) Surrender accepted by CG

The Central Government may permit any person to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, it is satisfied that such person has not contravened any of the provision of this Act.

2) Management of foreign contribution and asset

Management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in section 15(1)

SECTION 15: MANAGEMENT OF FOREIGN CONTRIBUTION WHOSE CERTIFICATE HAS BEEN CANCELLED

1) Applicable to whom

- Certificate cancelled -Section 14
- Certificate surrendered-Section 14A

2) Provision

Foreign contribution or assets created out of foreign contribution shall vest in such authority as may be prescribed

3) Functions of authority

- Management the activities of entity

- Utilize the foreign contribution for running such activity
- Dispose of the assets if adequate funds are not there for running entity

4) Return foreign contribution and assets

If such person is subsequently registered then authority will return the foreign contribution and assets.

SECTION 16: RENEWAL OF CERTIFICATE

1) Time Period for renewal:-

Every person who has been granted a certificate shall have such certificate renewed within six months before the expiry of the period of the certificate

2) Inquiry:-

Central Government may, before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions

3) Form, Manner, Fees:-

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

4) Time Period for CG:-

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

5) Refusal to renew:-

It shall communicate the reasons therefor to the applicant.

SECTION 17: Foreign Contribution through Scheduled Bank

1) Specified Bank Account:-

- Applicable to every person who has been granted certificate or prior permission shall receive foreign contribution only in an account designated as "FCRA Account" by the bank,
- It 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, as the Central Government may, by notification, specify in this behalf.

2) **Another Account:-** 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

3) No other funds:- no funds other than foreign contribution shall be received or deposited in any such account

4) Disclosure by specified branch of SBI or branch of Scheduled Bank

They 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 25: SEIZURE OF ARTICLE, CURRENCY OR SECURITY RECEIVED IN CONTRAVENTION OF THE ACT

❖ 1) Applicability

Any gazetted officer, has any reason to believe that any person has in his possession or control

- Any article exceeding the value
- Currency (Indian or foreign)
- Security (Indian or foreign)

In relation to which any provision of this Act has been or is being, contravened

2) Consequences

Such officer may seize such article or currency or security.

SECTION 26: DISPOSAL OF SEIZED ARTICLE OR CURRENCY OR SECURITY

1) Subject to theft

- Article or currency or security which is subject matter of seizure
- Central Government, may, having regard to the value, their vulnerability to theft or any relevant consideration specify such article or currency or security to be disposed by such officer

2) Forwarded to officer

The article or currency or security seized shall be forwarded without unnecessary delay to such officer as may be specified.

3) Prepare inventory

Officer shall prepare an inventory of such article or currency or security containing such details relating to

- Description
- Value
- Such other identifying particulars

4) Application to Magistrate

He shall make an application to any Magistrate for the purposes of certifying the correctness of the inventory so prepared

5) Primary Evidence

Every court trying an offence shall treat the inventory, as certified by the Magistrate, as primary evidence in respect of such offence.

SECTION 27: SEIZURE TO BE MADE IN ACCORDANCE WITH ACT 2 OF 1974

The provisions of the Code of Criminal Procedure, 1973 shall apply in so far as they are not inconsistent with the provisions of this Act to all seizures made under this Act.

SECTION 28: CONFISCATION OF ARTICLE OR CURRENCY OR SECURITY OBTAINED IN CONTRAVENTION OF THE ACT

Any article or currency or security which is seized under section 25 shall be liable to confiscation if such article or currency or security has been adjudged under section 29 to have been received or obtained in contravention of this Act.

SECTION 30: PROCEDURE FOR CONFISCATION

Order of adjudication of confiscation shall not be made unless a reasonable opportunity of making a representation against such confiscation has been given to the person

SECTION 32: REVISION OF ORDER OF CENTRAL GOVERNMENT**1) Who can apply for revision**

- Central Government may either of its own motion
- On application for revision by the person registered

2) Order which cannot be revised by Central Government

If the order has been made more than one year previously Central Government shall not of its own motion revise any order

3) Time limit for application for revision

The application must be made within one year from the date on which the order in question was communicated

4) Delay in application

Central Government is satisfied that such person was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

5) Order which cannot be revised

The Central Government shall not revise any order

- Person has not waived his right of appeal
- Appeal against the order lies but has not been made and the time within which such appeal may be made has not expired
- Appeal has been filed

SECTION 33: MAKING OF FALSE STATEMENT, DECLARATION OR DELIVERING FALSE ACCOUNTS

Any person, subject to this Act, who knowingly,—

- gives false intimation
- seeks prior permission or registration by means of fraud, false representation or concealment of material fact shall, on conviction by a court, be liable to imprisonment for a term which may extend to six months or with fine or with both

SECTION 34: PENALTY FOR ARTICLE OR CURRENCY OR SECURITY OBTAINED IN CONTRAVENTION OF SECTION 10**1) Applicability**

Any person, on whom any prohibitory order has been served under section 10 delivers, transfers or otherwise deals with in contravention of such prohibitory order

2) Penalty

- Imprisonment-Upto three years or
- Fine or
- Both

3) Additional Fine

The court may also impose an additional fine equivalent to the market value of the article or the amount of the currency or security

SECTION 35: PUNISHMENT FOR CONTRAVENTION OF ANY PROVISION OF THE ACT

Whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency or security from a foreign source, in contravention of any provision of this Act or any rule or order made thereunder, shall be punished

- Imprisonment for a term which may extend to five years, or
- With fine, or
- With both

SECTION 36: POWER TO IMPOSE ADDITIONAL FINE WHERE ARTICLE OR CURRENCY OR SECURITY NOT AVAILABLE FOR CONFISCATION

- Article or currency or security is not available for confiscation
- Impose on such person a fine not exceeding five times the value of the article or currency or security or one thousand rupees, whichever is more

SECTION 37: PENALTY WHERE NO SEPARATE PUNISHMENT HAS BEEN PROVIDED

- Whoever fails to comply with any provision of the Act
- No separate penalty has been provided in the Act
- Punished with imprisonment for a term which may extend to one year, or with fine or with both

SECTION 38: PROHIBITION ON ACCEPTANCE OF FOREIGN CONTRIBUTION

Whoever, having been convicted of any offence, is again convicted of such offence shall not accept any foreign contribution for a period of five years from the date of the subsequent conviction

SECTION 39: OFFENCE BY COMPANY

1) Contravention by Company

Person committing a contravention of any of the provisions of the Act or of any rule, direction or order is a company

2) Who is liable

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.

3) Not liable for punishment

Person shall not be liable if he proves that the contravention took place without his knowledge

4) Director, manager, secretary or other officer

- It is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company
- Director, manager, secretary or other officer shall also be deemed to be guilty of the contravention

SECTION 40: BAR ON PROSECUTION UNDER THE ACT

No court shall take cognizance of any offence under this Act, except with the previous sanction of the Central Government or any officer authorised by that Government in this behalf

SECTION 41: COMPOSITION OF CERTAIN OFFENCES**1) Compounding by Whom**

Compounding shall be done by such officers or authorities and for such sums as the Central Government may, by notification in the Official Gazette, specify in this behalf

2) Which offence cannot be compounded

Following offence cannot be compounded

- Offence punishable with imprisonment only
- Similar offence was committed within 3 years for which compounding was done

3) Direction, supervision of Central Government

Every officer or authority shall exercise the powers to compound an offence, subject to the direction, control and supervision of the Central Government.

4) Form, manner, fees

Every application for the compounding of an offence shall be made in such form and manner along with such fee as may be prescribed

5) No Prosecution

Where any offence is compounded no prosecution shall be instituted in relation to such offence, against the offender



CHAPTER 8

PREVENTION OF MONEY LAUNDERING

CHAPTER 8: PREVENTION OF MONEY LAUNDERING

INTRODUCTION

The purpose and object of the Act is prevention of money laundering, which simply means conversion of tainted (black) money into untainted (white) money.

Black money is generated in large scale from various crimes and this black money is converted into white money so that it can be used. Thus, one way to prevent crime is to make difficult to convert black money into white money i.e., process of money laundering. Since money laundering is an international menace, United Nations adopted a political declaration in June 1998 and asked its member states to enact national legislations for the prevention of money laundering.

The present Act has been passed to implement the UN Resolution.

It is effective from 1st July 2005 applicable to whole of INDIA

OBJECTIVE

- To prevent money laundering
- To combat channelizing money into illegal activities and economic crime
- To provide for confiscation of property derived from or involved in money laundering
- To punish those who commit the offence of money laundering.

PROCESS OF MONEY LAUNDERING PROCESS OF MONEY LAUNDERING

Process of money laundering are classified into three stages

- Placement
- Layering
- Integration

1) Placement

- Launderer introduces his illegal profits into the financial system
- Breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account,
- Purchasing a series of monetary instruments

2) Layering

The launderer engages in a series of conversions or movements of the funds to distance them from their source

3) Integration

- Funds re-enter the legitimate economy
- Launderer might choose to invest the funds into real estate, luxury assets, or business ventures.

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, as a unit within the United Nations Office on Drugs and Crime (UNODC), is to strengthen the ability of UN Member States to implement measures in anti-money laundering and countering the financing of terrorism (AML/CFT) and to assist them in detecting, seizing and confiscating illicit proceeds.

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.

In response to countries or group of countries requesting more specialized and in –depth assistance, GPML continues to deploy professional expertise in the form of mentors in the field to train people and build institutions, delivering direct technical assistance in states and regions to improve AML/CFT capacity. The reaction to mentoring, from assisted states and donors alike, has been extremely positive. Mentors don't directly exercise sovereign national powers but they can advise, pass on the know-how and train those officials who are empowered to do so.

GPML has specifically been tasked by the United Nations General Assembly, most recently in resolutions 74/177 (2019), 73/186 (2018), 72/196 (2017), and 71/209 (2016) to:

“...continue providing technical assistance to Member States to combat money laundering and the financing of terrorism in accordance with United Nations related instruments and internationally accepted standards, including, where applicable, recommendations of relevant intergovernmental bodies, inter alia, the Financial Action Task Force on Money Laundering, and relevant initiatives of regional, interregional and multilateral organizations against money laundering.”

EGMONT GROUP

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:

- 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.

THE ASIA/PACIFIC GROUP ON MONEY LAUNDERING (APG)

The Asia/Pacific Group on Money Laundering (APG) was officially established as an autonomous regional antimoney 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).

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. It also includes the provision of guidance in setting up systems for reporting and investigating suspicious transactions and helping in the establishment of financial intelligence units. The APG undertakes studies of methods and trends of money laundering and the financing of terrorism in the Asia/Pacific region. 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.

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 organisation. However, it keeps itself informed of action taken or formal agreements made by relevant international and regional organisations or bodies in order to promote a consistent global response to money laundering and terrorist financing. The work to be done by the APG and its procedures is decided by consensus agreement among its members.

EURASIAN GROUP ON COMBATING MONEY LAUNDERING AND FINANCING OF TERRORISM (EAG)

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.

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).

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.

PREVENTION OF MONEY LAUNDERING-INDIAN INITIATIVES

- **4TH August,1998**
Prevention of Money Laundering Bill,1998 was introduced in Parliament
- **4TH March,1999**
Standing Committee presented its report to Lok Sabha
- **29th October,1999**
GOI introduced Prevention of Money Laundering Bill 1999 was introduced in the Parliament
- **17th January 2003**
Bill received assent of President
- **1st July 2005**
The Act came into force

INDIAN INITIATIVES TO FIGHT MONEY LAUNDERING

- 1) The Prevention of Money Laundering Act, 2002 (PMLA) forms the core of the legal framework put in place by India to combat money laundering.
- 2) PMLA defines Money laundering offence and provides for freezing, seizure and confiscation of the proceeds of crime.
- 3) The agency monitoring the Anti-Money laundering activities in India is the Financial Intelligence Unit(FIU-IND)
- 4) This unit is responsible for receiving, processing, analysing and disseminating information relating to suspect to financial transactions.
- 5) FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by Finance Minister.

PREVENTION OF MONEY LAUNDERING-GLOBAL INITIATIVES

1) Vienna Convention

- First major initiative in the prevention of money laundering
- December 1988
- Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- Obliging the member states to criminalize the laundering of money from drug trafficking and confiscation of proceeds derived from such offence

2) Council of European Convention

- September 1993
- Common policy on money laundering
- Common definition of money laundering and common measures for dealing with it.
- 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

3) European Money Laundering Directive

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
- To keep proper records for at least five years
- To report suspicious transactions

4) Basel Committee's Statement of Principles

a) Basle Committee on Banking Regulation Supervisory Practices (December 1988)

- It 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.

b) International Organization of Securities Commissions (IOSCO)-October 1992

A resolution encouraging its members to take necessary steps to combat money laundering in securities and futures markets

HARMFUL EFFECTS OF MONEY LAUNDERING

Money Laundering process may create the following harmful effects on the society:

- Widespread use of bribery in government offices leading to corruption.
- Control over vast sector of economy by handful persons through investment by unfair means.
- The reputation of country and its financial institutions can be tarnished.
- Increases criminal activities
- Criminal acquire control over market and its financial institutions by investment
- Reduces revenue in term of tax
- Infiltration of banking and financial institutions through organized crimes
- Dampen social fabric and ethical standards prevalent in the society.
- Weakens the democratic institutions from grass-root level itself.
- Loss of Control of Economic Policy as monetary and financial statistics gives misleading information to policymakers and leads to misallocation of resources.

SCHEME OF THE ACT

- 1) Chapter- 10
- 2) Sections-75
- 3) Schedule-1

Chapter I (Section 1 -2) :- Short title, extent and commencement and definitions

Chapter II (Section 3 -4):- Offences and Punishment for money laundering

Chapter III (Section 5-11):- Attachment, adjudication and confiscation

Chapter IV (Section 12-15):-Obligation of banks, financial institution and intermediaries

Chapter V (Section 16-24):-Summons, Search and Seizure

Chapter VI (Section 25-42):- Composition, Procedure, Power and Jurisdiction of Appellate tribunal

Chapter VII (Section 43-47):- Special Court

Chapter VIII (Section 48-54):- Establishment of various authorities

Chapter IX (Section 55-61):-Reciporcal arrangement for assistance, attachment and confiscation of property

Chapter X (Section 62-75):- Miscellaneous Provisions

DEFINITIONS

1) Attachment-Section 2(1)(d)

Attachment mean prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III

2) Proceeds of Crime-Section 2(1)(u)

Proceeds of Crime mean 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

3) Beneficial Owner-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

4) Reporting Entity-Section 2(wa)

“Reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession

5) Scheduled Offence-Section 2(1)(y)

Include

- Offences specified under Part A of the Schedule,
- Offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more;
- Offences specified under Part C of the Schedule

6) Special Court

Section 2(1) (z) defines Special Court to mean a Court of Session designated as Special Court under sub-section (1) of section 43.

7) Transfer

Section 2(1) (za) defines transfer to include sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

8) Value

Section 2(1) (zb) defines value to mean the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

AUTHORITIES UNDER PMLA

There shall be the following classes of authorities namely:

- (a) Director or Additional Director or Joint Director,
- (b) Deputy Director,
- (c) Assistant Director, and
- (d) such other class of officers as may be appointed for the purposes of this Act.

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:

- (a) territorial area;
- (b) classes of persons;
- (c) classes of cases; and
- (d) any other criterion specified by the Central Government in this behalf.

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. Financial Intelligence Unit – India (FIU-IND) was set by the Government of India vide O.M. dated 18th November 2004 as the central national agency responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and financing of terrorism. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

The main function of FIU-IND is to receive cash/suspicious transaction reports, analyse them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory authorities. The functions of FIU-IND are:

- Collection of Information: Act as the central reception point for receiving Cash Transaction reports (CTRs), Non-Profit Organisation Transaction Report (NTRs), Cross Border Wire Transfer Reports (CBWTRs), Reports on Purchase or Sale of Immovable Property (IPRs) and Suspicious Transaction Reports (STRs) from various reporting entities.
- 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. The origin of this Directorate goes back to 1st May, 1956, when an 'Enforcement Unit' was formed in the Department of Economic Affairs for handling Exchange Control Laws violations under Foreign Exchange Regulation Act, 1947 (FERA '47).

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.

In the year 1957, this Unit was renamed as 'Enforcement Directorate', and another branch was opened at Madras. In 1960, the administrative control of the Directorate was transferred from the Department of

Economic Affairs to the Department of Revenue. With the passage of time, FERA' 47 was repealed and replaced by FERA, 1973. For a short period of 04 years (1973 – 1977), the Directorate remained under the administrative jurisdiction of the Department of Personnel & Administrative Reforms. Presently, the Directorate is under the administrative control of Department of Revenue, Ministry of Finance, and Government of India.

With the onset of the process of economic liberalization, FERA, 1973, which was a regulatory law, was repealed and in its place, a new law viz. the Foreign Exchange Management Act, 1999 (FEMA) came into operation w.e.f. 1st June 2000. Further, in tune with the International Anti Money Laundering regime, the Prevention of Money Laundering Act, 2002 (PMLA) was enacted and ED was entrusted with its enforcement w.e.f. 1st July 2005. 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)

SECTION 3: OFFENCE OF MONEY LAUNDERING

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.

SECTION 4: PUNISHMENT FOR MONEY LAUNDERING

1) Any person who commits the offence of money laundering shall be punishable

- Rigorous Imprisonment – 3 year to 7 years and
- Fine

2) Proceeds of crime involved in money laundering relates to any offence specified under the Narcotic Drugs and Psychotropic Substances Act

- The punishment may extend to rigorous imprisonment for ten years.

SECTION 5: ATTACHMENT OF PROPERTY INVOLVED IN MONEY LAUNDERING

1) Reasons of Attachment

- Any person is in possession of any proceeds of money laundering
- Person has been charged of having committed a scheduled offence
- Proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings

2) Power of Director

Provisionally attach by order in writing such property for a period not exceeding 180 days from the date of the order

3) Consequences of Attachment

- Prohibits from creating any third party interest in the said property
- It does not debar the person who has the possession of the property from enjoying the same

4) Duty of Director

- Director is required to forward a copy of the order along with material in his possession to the Adjudicating Authority immediately
- He is required to file, within a period of thirty days from such attachment file a complaint, stating the facts of such attachment before the Adjudicating Authority

SECTION 6: ADJUDICATING AUTHORITY

- Central Government shall appoint adjudicating authority
- Adjudicating authority shall exercise the jurisdiction, powers and authority conferred on or under the Act
- Central Government shall appoint not below the prescribed rank or designation or having experience

SECTION 8: ADJUDICATION

1) Serve notice

Adjudicating Authority may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property

2) Power of Adjudicating authority

The Adjudicating Authority shall, after

- a) considering the reply, if any, to the notice issued under sub-section (1);

- b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf
- c) taking into account all relevant materials placed on record before him. Decide and pass relevant order.

3) Confirm the attachment

Any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property by adjudicating authority

4) Possession of property

Where the provisional order of attachment made has been confirmed the Director or any officer authorised shall take the possession of the property

5) Order of confiscation

The Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering shall stand confiscated to the Central Government.

6) Release of Property

The Special Court finds that the offence of money laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it

SECTION 9: VESTING OF PROPERTY IN CENTRAL GOVERNMENT

Consequences of Confiscation

1) Rights vest with Central Government

All the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances

2) Encumbrance or Lease hold interest created

Special Court or Adjudicating Authority 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, by order, declare such encumbrance or lease-hold interest to be void

3) No Discharge of liabilities

It shall not operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages

REPORTING ENTITY TO MAINTAIN RECORD

Reporting entity shall

1) Maintain Record

Maintain a record of all transactions

2) Furnish Information

Furnish to the Director within such time as may be prescribed, information relating to such transactions, the nature and value of which may be prescribed.

3) Record of Identity

Maintain record of documents evidencing identity of its clients and beneficial owners

4) Confidentiality

Every information maintained, furnished or verified shall be kept confidential.

5) Preservation of Record

Record shall be maintained for a period of five years from the date of transaction between a client and the reporting entity

6) Preservation of Record after accounts are closed

Record shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

SECTION 13: POWER OF DIRECTOR

1) Power to call and make enquiry

- Director may call for records of all transactions and make such inquiry or cause such inquiry to be made, as he thinks fit.
- Director may call on its own motion or on application made by any authority

2) Failed to maintain record

Director finds that a banking company, financial institution or an intermediary or any of its officers has failed to maintain or retain records he may, by an order, levy a fine on such banking company, financial institution or intermediary

SECTION 15: PROCEDURE AND MANNER OF FURNISHING INFORMATION BY REPORTING ENTITIES

- 1) Central Government to prescribe, the procedure and the manner of maintaining and furnishing information for the purpose of implementation of the provisions of the Act
- 2) Central Government shall prescribe after consultation with Reserve Bank of India

SECTION 16:- SUMMON,SEARCH,SEIZURE

Power of Authority

- Place marks of identification on the records inspected by him
- Make or cause to be made extracts or copies therefrom
- Make an inventory of any property checked or verified by him
- Record the statement of any person present in the place

SECTION 18: SEARCH OF PERSON

- Central Government
- General or special Order
- Reason to believe that any person has secreted about his person or in anything under his possession, ownership or control any record or proceeds of crime
- He may search that person and seize such record or property which may be useful for or relevant to any proceedings under the Act

SECTION 20: RETENTION OF PROPERTY

1) Term of retention

Where any property has been seized, reason to believe that such property is required to be retained for the purposes of adjudication, such property shall continue to be seized for a period not exceeding 180 days

2) Forward copy of order

The officer authorized by the Director shall, immediately after he has passed an order for retention, shall forward a copy of the order along with the material in his possession to the Adjudicating Authority in a sealed envelope

3) Property shall be returned

The property shall be returned to the person from whom such property was seized on the expiry of the period

4) Condition before authorization

Adjudicating Authority, before authorizing the retention or continuation of freezing of such property beyond the period specified shall satisfy himself that the property is prima facie involved in money-laundering

5) Order of confiscation and release

Special Court shall direct the release of all property other than the property involved in money-laundering

6) Withhold the release property

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

SECTION 21: RETENTION OF RECORD

1) Term of retention

Where any records has been seized, reason to believe that such property is required to be retained for the purposes of adjudication, such property shall continue to be seized for a period not exceeding 180 days

2) Obtain copies

The person, from whom records seized or frozen, shall be entitled to obtain copies of records

3) Return of records

- On the expiry of the period specified the records shall be returned to the person from whom such records were seized
- Adjudicating Authority may permit retention or continuation of freezing of such records beyond the said period
- Adjudicating Authority shall satisfy himself that the records are required for the purposes of adjudication

4) Release of record

After passing of an order of release, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized

5) Withhold the release

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.

SECTION 23: PRESUMPTION IN INTER-CONNECTED TRANSACTION

Money laundering involves two or more transactions and one or more such transactions is or are proved to be involved in money laundering then it shall be presumed that the remaining transactions form part of such interconnected transactions.

SECTION 43:- SPECIAL COURT

- Central Government to choose one or more Courts of Session as Special Court
- Special Court shall trial of offence punishable under Section 4
- Central Government shall choose in consultation with the Chief Justice of High Court

SECTION 44(1):OFFENCE TRIABLE BY SPECIAL COURTS

- Offence punishable under Prevention of Money Laundering shall be triable only by Special Court
- Compliant shall be made by authority authorized in this behalf
- Compliant shall be filed with the special court constituted for the area where offence has been committed

SECTION 45:- OFFENCE TO BE COGNIZABLE AND NON-BAILABLE

- **Cognizable**
 - 1) Cognizable offence means an offence in which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court
 - 2) Every offence punishable under the Prevention of Money Laundering Act to be cognizable
 - 3) Compliant must be made by
 - i) Director
 - ii) An officer of Central Government or State Government authorized
- **Non-Bailable**
 - 1) **Generally the offence is non-bailable**
 - 2) **It is Bailable subject to following conditions**
 - i) Public Prosecutor has been given an opportunity to oppose the application for such release;
 - ii) Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence
 - iii) He is not likely to commit any offence while in bail

3) Exception to Non-Bailable

- Person less than 16 years of age
- Women
- Sick
- Infirm
- Accused either on its own or along with other co-accused of money laundering of a sum of less than one crore rupees

SECTION 52: POWER OF CENTRAL GOVERNMENT TO ISSUE DIRECTIONS**1) Power of Central Government**

Central Government issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act

2) Obligation to observe

The authorities and all other persons employed in execution of the Act have been put under obligation to observe and follow such orders, instructions and directions of the Central Government

3) No Order in particular case

No such orders, instructions or directions shall be issued so as to require any authority to decide a particular case in a particular manner

SECTION 56: AGREEMENT WITH FOREIGN COUNTRIES

Central Government is empowered to enter into agreement with Government of other countries for following purpose

- **Enforcing the provision of the Act**
- **Exchange of information**
 - Prevention of any offence under the the Act
 - Investigation of cases relating to any offence under the Act.

SECTION 58: ASSISTANCE TO A CONTRACTING STATE IN CERTAIN CASES

- Letter of request is received by the Central Government
- Request is received from a court or authority in a contracting State

- Requesting for investigation into an offence or proceedings under the Act
- 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

KNOW YOUR CUSTOMER GUIDELINES

1) Background of KYC Guidelines

- Know Your Customer' guidelines has been issued based on Recommendations made by the Financial Action Task Force (FATF) on Anti Money Laundering (AML) standards
- These standards have become the international benchmark
- Banks have been advised to ensure that a proper policy framework on 'Know Your Customer'
- RBI (Reserve Bank of India) has issue the guidelines known as 'Know Your Customer' [KYC] on November 29, 2004.

2) Objectives of the guidelines

Safeguard banks from acting as a chain in money laundering activities
 Helps banks to know more about the clients and keep a check
 Helps to check on their financial dealing and transactions

3) Four Key elements

- Customer Acceptance Policy
- Customer Identification Procedures
- Monitoring transactions
- Management of risk

4) Customer as defined

Customer is defined as

- A person or entity that maintains an account and/or has a business relationship with the bank
- One on whose behalf the account is maintained (i.e. the beneficial owner)
- beneficiaries of transactions conducted by professional intermediaries, such as Stock Brokers, Chartered Accountants, Solicitors etc. as permitted under the law, and
- Any person or entity connected with a financial transaction which can pose significant reputational or other risks to the bank, say, a wire transfer or issue of a high value demand draft as a single transaction.

FREEZING OF ASSET-SECTION 51A-UNLAWFUL ACTIVITIES(PREVENTION) ACT,1967**1) Objective**

- More effective prevention of certain unlawful activities of individual and association
- Dealing with terrorist activities

2) Provision-Section 51A

The Central Government is empowered

- Freeze, seize or attach funds and other financial assets or economic resources held by, on behalf of or at the direction of the individuals or entities Listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorism
- Prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities Listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism.

CHAPTER 9 FUGITIVE ECONOMIC OFFENDERS

INTRODUCTION

There have been several instances of economic offenders fleeing the jurisdiction of Indian courts anticipating the commencement of criminal proceedings or sometimes during the pendency of such proceedings. The absence of such offenders from Indian courts has several deleterious consequences, such as, it obstructs investigation in criminal cases, it wastes precious time of courts and it undermines the rule of law in India. Further, most of such cases of economic offences involve non-repayment of bank loans thereby worsening the financial health of the banking sector in India. The existing civil and criminal provisions in law are inadequate to deal with the severity of the problem.

In order to address the said problem and lay down measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, Parliament enacted a legislation, namely, the Fugitive Economic Offenders Bill, 2018 to ensure that fugitive economic offenders return to India to face the action in accordance with law.

Fugitive Economic Offenders Act, 2018 provides for measures to deter 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.

Fugitive Economic Offender

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.

It may be noted that Scheduled Offence means an offence specified in the Schedule appended to the Fugitive Economic Offenders Act, 2018 if the total value involved in such offence or offences is one hundred crore rupees or more.

Procedure for Declaration of Fugitive Economic Offender

(1) 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.

(2) The application shall contain—

- (a) reasons for the belief that an individual is a fugitive economic offender;
- (b) any information available as to the whereabouts of the fugitive economic offender;
- (c) 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;
- (d) a list of properties or benami properties owned by the individual in India or abroad for which confiscation is sought; and
- (e) a list of persons who may have an interest in any of the properties listed under clauses (c) and (d) above.

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.

(3) 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.

(4) The notice shall also be issued to any other person who has any interest in the property mentioned in the application.

(5) A notice of Special Court shall—

- (a) 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
- (b) 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.

(6) 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.

Contracting State means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise.

(7) A notice may also be served to the individual alleged to be a fugitive economic offender by electronic means to—

(a) 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;

(b) his electronic mail address submitted in connection with an application for enrolment under section 3 of the Aadhaar ; or

(c) 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.

(8) 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.

(9) 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.

(10) 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—

(a) that service of notice has been effected on such party; or

(b) 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

Notwithstanding anything contained in any other law for the time being in force,

(a) 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

(b) 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.

It may be noted that:

“Key Managerial Personnel” shall have the same meaning as assigned to it under Section 2(51) of the Companies Act, 2013.

“Company” means any body corporate and includes a firm, or other association of persons;

“Limited Liability Partnership” shall have the same meaning as assigned to it under Section 2(1)(n) of the Limited Liability Partnership Act, 2008.

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.

The attachment of any property shall continue for a period of one hundred and eighty days from the date of order of attachment or such other period as may be extended by the Special Court before the expiry of such period.

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:

- (i) within the limits of the area assigned to him; or
- (ii) 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—

- (a) afford him the necessary facility to inspect such records as he may require and which may be available at such place;
- (b) 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
- (c) 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:

- (i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom;
- (ii) make an inventory of any property checked or verified by him; and
- (iii) 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:

- (i) may be declared as a fugitive economic offender;
- (ii) is in possession of any proceeds of crime;
- (iii) is in possession of any records which may relate to proceeds of crime; or
- (iv) 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—
 - (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—

- (a) if an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under the Act;
- (b) where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate; It may be noted that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or the Magistrate's Court;

(c) if the requisition under clause (b) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that clause: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer, superior in rank to him, or the Magistrate's Court;

(d) the Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made;

(e) before making the search, the authority shall call upon two or more persons to attend and witness the search and the search shall be made in the presence of such persons;

(f) 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;

(g) no female shall be searched by anyone except a female; and

(h) the authority shall record the statement of the person searched in respect of the records or proceeds of crime found or seized in the course of the search.

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.

BAR OF JURISDICTION

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Special Court is empowered by or under the Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.

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.



CHAPTER 10

THE BENAMI TRANSACTION (PROHIBITION) ACT, 1988

CHAPTER 10

THE BENAMI TRANSACTION (PROHIBITION) ACT, 1988

INTRODUCTION

- 1) The Benami Transactions (Prohibition) Act, 1988 was enacted to prohibit benami transactions and the right to recover property held benami.
- 2) During the administration of the Benami Transactions (Prohibition) Act, 1988, it was found that the provisions of the aforesaid Act are inadequate to deal with benami transactions
- 3) With a view to providing effective regime for prohibition of benami transactions, the Benami Transactions (Prohibition) Act, 1988 was amended through the Benami Transactions (Prohibition) Amended Act, 2016
- 4) The Benami Transactions (Prohibition) Amendment Act, 2016 received the assent of the President on the 10th August, 2016 and came into effect from 1st November, 2016.

INTRODUCTION SALIENT FEATURES OF BENAMI TRANSACTION (PROHIBITION) ACT, 1988

- It defines a benami transaction and benami property and also provides for exclusions and transactions which shall not be construed benami
- It provides the consequences of entering into a 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 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

IMPORTANT DEFINITIONS

1) Attachment-Section 2(5)

Attachment means the prohibition of transfer, conversion, disposition or movement of property, by an order issued under the Act

2) Benami Property-Section 2(8)

Benami Property

means any property which is the subject matter of a benami transaction and includes the proceeds from such property

3) Benami Transaction-Section 2(9)

As per Section 2 (9) of the benami transaction means- 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; 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;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious

4) Benamidar- Section 2(10)

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

5) Beneficial Owner-Section 2(12)

Beneficial Owner” means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar

6) Firm-Section 2(17)

Firm shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008.

7) Partnership-Section 2(23)

Partnership shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932, and shall include a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008

8) Person-Section 2(24)

Person shall include—

- (i) an individual;
- (ii) a Hindu undivided family;
- (iii) a company;
- (iv) a firm;
- (v) an association of persons or a body of individuals, whether incorporated or not;
- (vi) every artificial juridical person, not falling under sub-clauses (i) to (v).

9) Property-Section 2(26)

Property means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property

10) Transfer-Section 2(29)

Transfer includes sale, purchase or any other form of transfer of right, title, possession or lien.

SECTION 3:- PROHIBITION OF BENAMI TRANSACTION

1) Prohibition

No person shall enter into any benami transaction

2) Punishment under old provision

- Imprisonment -May extend upto 3 years or
- Fine
- Both

3) Punishment as per Benami Transaction(Prohibition)Amendment Act,2016

- Imprisonment- Not less than one year but may extend upto 7 years
- Fine-May extend upto 25% of value of property

SECTION 5: PROEPRTY HELD BENAMI SHALL BE LIABLE FOR CONFISCATION

Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government

SECTION 6: PROHIBITION ON RE-TRANSFER OF PROPERTY BY BENAMIDAR**1) No re-transfer**

Benamidar shall not re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.

2) Re-transfer in contravention

Any property is re-transferred in contravention of the above the transaction of such property shall be deemed to be null and void.

3) Exception

Transfer made in accordance with the provisions of section 190 of the Finance Act, 2016

SECTION 24: NOTICE AND ATTACHMENT OF PROPERTY INVOLVED IN BENAMI TRANSACTION**1) Notice in writing**

- Initiating Officer on the basis of material in his possession
- Reason to believe that any person is a benamidar in respect of a property
- Record 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) Notice to beneficial owner

A copy of the notice may also be served upon such other person who is a beneficial owner

3) Provisionally attach

- Person in possession of the property held benami
- Person may alienate such property during the period specified in the notice
- Previous approval of the Approving Authority
- Order in writing
- Attach provisionally such property in the manner as may be prescribed
- Period not exceeding ninety days from the date of issue of notice

4) Passing of order**a) Already provisional attachment**

- Pass an order continuing the provisional attachment of the property
- Revoke the provisional attachment of the property

b) Provisionally attachment not made

- Pass an order provisionally attaching the property
- Decide not to attach the property as specified in the notice

5) Refer to Adjudicating Authority

When order is passed to provisionally attach he shall within 15 days from the date of attachment draw up statement and refer it to Adjudicating authority

SECTION 25: MANNER OF NOTICE**1) Manner of giving notice**

- Post
- Summons issued by a Court under the Code of Civil Procedure, 1908

2) Notice to specific person

- In case of individual- Individual
- In case of firm-Managing Partner or manager of firm
- In case of Hindu Undivided family-Karta or any member of such family
- In case of a company-Principal officer
- In case of any other association or body of individuals-principal officer or any member
- In case of any other person-the person who manages or controls his affairs

SECTION 26: ADJUDICATION OF BENAMI PROPERTY**1) Notice by Adjudicating Authority**

The Adjudicating authority shall issue notice within a period of thirty days

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:

- Benamidar
- Beneficial owner
- Any Party interested, banking company
- Any person who has made a claim in respect of the property

2) Jointly held by more than one person

Adjudicating Authority shall make endeavours to serve notice to all persons holding such property

3) Order by Adjudicating Authority

It shall pass an order holding the property not to be a benami property and revoking the attachment order; or

Holding the property to be a benami property and confirming the attachment order in all other cases.

4) Add or remove the name

The Adjudicating Authority may strike out the name of any party improperly joined or add the name of any person

MANAGEMENT OF PROPERTY CONFISCATED**1) Power of administrator**

Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation

2) Appointment of Administrator

Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of Administrators.

3) Dispose of Property

Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government

SECTION 29: POSSESSION OF PROPERTY**1) Take possession**

The Administrator shall proceed to take the possession of such property where an order of confiscation in respect of a property is passed

2) Notice in writing

Administrator shall by notice in writing order within seven days o surrender or deliver possession thereof to the Administrator or any other person duly authorised in writing by him in this behalf

3) Non-compliance of order

In the event of non-compliance of the order he may take over the possession forcibly with requisition the service of any police officer to assist him

4) Meaning of Administrator

Administrator” means an Income-tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961

SECTION 30: ESTABLISHMENT OF APPELLATE TRIBUNAL

- Central Government shall, by notification, establish an Appellate Tribunal
- Appellate Tribunal hear appeals against the orders of the Adjudicating Authority and the authorities under the Act.
-

SECTION 40: PROCEDURE AND POWER OF APPELLATE TRIBUNAL**1) Code of Civil Procedure, 1908**

The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908

2) Opportunity of being heard

It be guided by the principles of natural justice

3) Own Procedures

The Appellate Tribunal shall have powers to regulate its own procedure.

SECTION 49: APPEAL TO HIGH COURT**1) Time Limit to file appeal**

Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days

2) Appeal after time limit

High Court may entertain any appeal after the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal

3) Grounds of Appeal

High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

4) Issues may be determined by High Court

High Court may determine any issue which —

- has not been determined by the Appellate Tribunal or
- has been wrongly determined by the Appellate Tribunal

5) Code of Civil Procedure,1908

The provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall apply in the case of appeals under the section

SECTION 50:SPECIAL COURT**1) Established by**

Central Government shall notify one or more Court of Session as Special Court
Central Government shall consult Chief Justice of High Court

2) Code of Criminal Procedure,1973

A Special Court shall also try an offence under the Code of Criminal Procedure, 1973

3) Cognizance of Offence

Special Court shall take cognizance of any offence only upon complaint is made in writing by

- The authority or
- Any officer of the Central Government or State Government authorized

4) Term to conclude

Special Court to conclude the trial within six months from the date of filing of the complaint

SECTION 53: PENALTY FOR BENAMI TRANSACTION

- **Imprisonment:** One year to seven year and
- **Fine:** 25% fair market value

SECTION 54: PENALTY FOR FALSE INFORMATION

Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document

- **Imprisonment:** 6 months to five year and
- **Fine:** 10% fair market value

SECTION 62:- OFFENCES BY COMPANIES

1) Contravention by Company

Person committing a contravention of any of the provisions of the Act or of any rule, direction or order is a company

2) Who is liable

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.

3) Not liable for punishment

Person shall not be liable if he proves that the contravention took place without his knowledge

4) Director, manager, secretary or other officer

- It is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company
- Director, manager, secretary or other officer shall also be deemed to be guilty of the contravention

THE FOLLOWING SHALL BE THE AUTHORITIES FOR THE PURPOSES OF BENAMI TRANSACTIONS PROHIBITION ACT

- (a) The Initiating Officer;
- (b) The Approving Authority;
- (c) The Administrator; and
- (d) 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.



CHAPTER 12
CONSUMER PROTECTION ACT, 2019

CHAPTER 12 CONSUMER PROTECTION ACT, 2019

DEFINITIONS

1) Advertisement- Section 2(1)

Advertisement

- Means
any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and
- Includes
any notice, circular, label, wrapper, invoice or such other documents.

2) Appropriate Laboratory-Section 2(2)

Appropriate Laboratory means a laboratory or an organisation—

- Recognised by the Central Government; or
- Recognised by a State Government, subject to such guidelines as may be issued by the Central Government in this behalf; or
- Established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect

3) Branch Office-Section 2(3)

Branch office means—

- Any office or place of work described as a branch by the establishment; or
- Any establishment carrying on either the same or substantially the same activity carried on by the head office of the establishment

4) Central Authority-Section 2(4)

Central Authority means the Central Consumer Protection Authority established under section 10.

5) Complainant- Section 2(5)

Complainant means—

- a consumer; or
- any voluntary consumer association registered under any law for the time being in force; or
- the Central Government or any State Government; or (iv) the Central Authority; or
- one or more consumers, where there are numerous consumers having the same interest; or
- in case of death of a consumer, his legal heir or legal representative; or
- in case of a consumer being a minor, his parent or legal guardian

6) Complaint- Section 2(6)

Complaint means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that—

- an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- the goods bought by him or agreed to be bought by him suffer from one or more defects;
- the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;
- 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;
- 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.

- 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;
- a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be

7) Consumer- Section 2(7)

Consumer means any person who—

- i. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- ii. 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.

Explanation.—

For the purposes of this clause,—

- a. the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- b. the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing

8) Consumer Rights- Section 2(9)

Consumer rights include

- the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- 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;
- the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;
- the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- the right to consumer awareness

9) Defect-Section 2(10)

Defect means -

- any fault,
- imperfection or -
- shortcoming

in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly

10) Deficiency- Section 2(11)

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

11) Design-Section 2(12)

Design in relation to a product, means the intended or known physical and material

characteristics of such product and includes any intended or known formulation or content of such product and the usual result of the intended manufacturing or other process used to produce such product

12) Direct Selling -Section 2(13)

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

13) Director General- Section 2(14)

Director-General means the Director-General appointed under section 15(2)

14) District Commission- Section 2(15)

District Commission means a District Consumer Disputes Redressal Commission established under section 28(1).

15) E-Commerce- Section 2(16)

E-Commerce means buying or selling of goods or services including digital products over digital or electronic network.

16) "Electronic Service Provider" - Section 2(17)

Electronic service provider means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites

17) Endorsement – Section 2(18)

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

18) Goods- Section 2(21)

Goods

- means every kind of movable property and
- includes "food" as defined in section 3(1)(j) of the Food Safety and Standards Act, 2006.

19) Injury- Section 2(23)

Injury means any harm whatever illegally caused to any person, in body, mind or property.

20) Mediation – Section 2(25)

Mediation means the process by which a mediator mediates the consumer disputes;

21) Mediator- Section 2(26)

Mediator means a mediator referred to in section 75.

22) Misleading Advertisement-Section 2(28)

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

23) National Commission- Section 2(29)

National Commission means the National Consumer Disputes Redressal Commission established under section 53(1)

24) Product-Section 2(33)

Product

- Means

Any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but

- does not include human tissues, blood, blood products and organs.

25) Product Liability Action-Section 2(35)

Product liability action means a complaint filed by a person before a District Commission or State Commission or National Commission, as the case may be, for claiming compensation for the harm caused to him

26) Product Service Provider- Section 2(38)

Product service provider in relation to a product, means a person who provides any service in respect of such product

27) Service- Section 2(42)

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

28) Spurious Goods-Section 2(43)

Spurious Goods means such goods which are falsely claimed to be genuine;

Central Consumer Protection Council- Section 3

1) Established By

Central Government

2) Short Name

Central Council

3) Full Name

Central Consumer Protection Council

4) Composition

a) **Chairperson**- The Minister-in-charge of the Department of Consumer Affairs in the Central Government

b) **Members**:- such number of other official or non-official members representing such interests as may be prescribed

MEETINGS-SECTION 4

1) Minimum Meetings

Atleast One meeting in a year

2) Maximum Meetings

- a) As and when Necessary
- b) No Limit

3) Time and Place

Meeting shall be at such time and place as the Chairperson may think fit

OBJECTS OF CENTRAL COUNCIL-SECTION 5

To render advice on promotion and protection of the consumers' rights under this Act.

STATE CONSUMER PROTECTION COUNCIL-SECTION 6

1) **Established by**

Every State Government by notification

2) **Full Name:-**

State Consumer Protection Council

3) **Short Name:-**

State Council

4) **Composition**

a) **Chairperson**-the Minister-in-charge of Consumer Affairs in the State Government

b) **Members**- Such number of other official or non-official members representing such interests as may be prescribed;

c) **Members of Central Government**- such number of other official or non-official members, not exceeding ten

5) **Meetings**

a) **Minimum** – At two meetings in a year

b) **Maximum**- As and when necessary

c) **Time and Place**- The State Council shall meet at such time and place as the Chairperson may think fit

OBJECT OF STATE COUNCIL-SECTION 7

The objects of every State Council shall be to render advice on promotion and protection of consumer rights under this Act within the State

DISTRICT CONSUMER PROTECTION COUNCIL- SECTION 8

1) **Established By**

State Government

2) **Full Name**

District Consumer Protection Council

3) Short Name

District Council

4) Composition

a) Chairperson:- Collector of District

b) Members-such number of other official and non-official members representing such interests as may be prescribed

5) Meetings**a) Minimum Meetings:-**

Not less than two meetings shall be held every year.

b) Time and Place:-

The District Council shall meet at such time and place within the district as the Chairperson may think fit

OBJECT OF DISTRICT COUNCIL-SECTION 9

The objects of every District Council shall be to render advice on promotion and protection of consumer rights under this Act within the district.

CENTRAL CONSUMER PROTECTION AUTHORITY-SECTION 10**1) Established By-**

Central Government

2) Full Name:-

Central Consumer Protection Authority

3) Short Name:-

Central Authority

4) Functions

a) Regulate matters relating to

- violation of rights of consumers,
- unfair trade practices and
- false or misleading advertisements

b) to promote, protect and enforce the rights of consumers as a class

5) Composition

- Chief Commissioner
- Such number of other Commissioners as may be prescribed
- Appointment by- Central Government

6) Headquarters and Branches

- a) The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi
- b) It shall have regional and other offices in any other place in India as the Central Government may decide

QUALIFICATION, APPOINTMENT, TERM, SALARY, ALLOWANCE, RESIGNATION, REMOVAL-SECTION 11

The Central Government may, by notification, make rules

VACANCY etc., NOT TO INVALIDATE THE PROCEEDINGS OF CENTRAL AUTHORITY-SECTION 12

No act or proceeding of the Central Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Central Authority; or
- (b) any defect in the appointment of a person acting as the Chief Commissioner or as a Commissioner; or
- (c) any irregularity in the procedure of the Central Authority not affecting the merits of the case

APPOINTMENT OF OFFICERS, EXPERTS, PROFESSIONAL AND OTHER EMPLOYEES OF CENTRAL

1) Appointment of Officers and other Employees

Central Government

2) Salary, Allowances, Terms and conditions of employment

It shall be as may be prescribed

3) Qualifications

Person integrity and ability, who have special knowledge and experience in the areas of consumer rights and welfare, consumer policy, law, medicine, food safety, health, engineering, product safety, commerce, economics, public affairs or administration

PROCEDURE OF CENTRAL AUTHORITY-SECTION 14

- 1) The Chief Commissioner shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Central Authority
- 2) Chief Commissioner may delegate such of his powers relating to administrative matters of the Central Authority, as he may think fit, to any Commissioner or any other officer of the Central Authority

INVESTIGATION WING OF CENTRAL AUTHORITY-SECTION 15

1) Head and Direction

Head- Director General
Direction- Central Authority

2) Appointment

- a) The Central Government may appoint a Director General and
- b) Central Government may also appoint such number of Additional Director General, Director, Joint Director, Deputy Director and Assistant Director
- c) They should have experience in investigation as possess such qualification as , may be prescribed

3) Supervision and direction of Director General

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

4) Delegation by 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.

5) Report to Central Authority

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.

POWER OF DISTRICT COLLECTION-SECTION 16

- 1) The District Collector enquire into or investigate complaints regarding violation of rights of consumers as a class, unfair trade practise, misleading advertisement and submit his report to Central authority or to the Commissioner
- 2) The District Collection undertake enquire on reference by Central Authority or Commissioner

COMPLAINTS TO AUTHORITITES-SECTION 17

1. Type of Compliant

- a) Violation of Consumer Rights
- b) Unfair Trade Practises
- c) False or /misleading Advertisement

2. Mode of Complaint

- a) Writing or
- b) Electronic
Mode

3. Authority with whom complaint is registered

- a) District Collector or
- b) Commissioner of Regional Office
- c) Central Authority

POWERS AND FUNCTIONS OF CENTRAL AUTHORITY-POWER OF CHIEF COMMISSIONER**OBJECTIVE OF CENTRAL AUTHORITY****1) Protect Rights of Consumer**

Protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;

2) Prevent Unfair Trade Practise

Prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;

3) No False or Misleading Advertisement

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

4) No Persons and Publication of Misleading advertisement

Ensure that no person takes part in the publication of any advertisement which is false or misleading

FUNCTIONS OF CENTRAL AUTHORITY-SECTION 18(2)**1) Enquire and Investigate**

Inquire or cause an inquiry or investigation either suo motu or on a complaint received or on the directions from the Central Government;

2) File Complaint

File complaints before the

- a) District Commission,
- b) State Commission or
- c) National Commission

3) Intervene in the Proceedings

Intervene in any proceedings before

- a) the District Commission or
- b) State Commission or
- c) National Commission, as the

case may be,

in respect of any allegation of violation of consumer rights or unfair trade practices

4) Review

Review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards

5) International Practises

Recommend adoption of best international practices on consumer rights

6) Research

Undertake and promote research in the field of consumer right

7) Awareness

Spread and promote awareness on consumer rights

8) NGO's and Other Institution

Encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies

9) Safety Notice

Issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services

10) Advise Government

Advise the Ministries and Departments of the Central and State Governments on consumer welfare measures

POWER OF CENTRAL AUTHORITY TO REFER MATTER FOR INVESTIGATION OR TO OTHER REGULATOR

A) Prima facie Enquiry and Investigation- Section 19(1)

Step 1: Application or Suo moto

Complaint or Direction received from Central government or of its own motion

Step 2: Preliminary Enquiry

Conduct a preliminary inquiry as to whether there exists a prima facie case of

- i. violation of consumer rights or
- ii. any unfair trade practice or
- iii. any false or misleading advertisement by any person

Step 3: Investigation

If it is satisfied that there exists a prima facie case, it shall cause investigation to be made by the Director General or by the District Collector

B) Matter under any other Regulator-Section 19(2)

The Central Authority is of the opinion that the matter is to be dealt with by a Regulator established under any other law for the time being in force, it may refer such matter to the concerned Regulator along with its report.

C) Power to Call any person and Documents-Section 19(3)

- i. The Central Authority, the Director General or the District Collector may call upon a person referred to in Section 19(1) and
- ii. The can also direct him to produce any document or record in his possession

POWER OF CENTRAL AUTHORITY TO RECALL GOODS-SECTION 20

On the basis of investigation there is sufficient evidence of violation, it may pass necessary orders as follows:-

- 1) Recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;
- 2) Reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and
- 3) Discontinuation of practices which are unfair and prejudicial to consumers' interest:

Provided that the Central Authority shall give the person an opportunity of being heard before passing an order under this section

SECTION 21-POWER OF CENTRAL AUTHORITY TO ISSUE DIRECTIONS AND PENALTIES AGAINST FALSE OR MISLEADING ADVERTISEMENT-**1) To Discontinue or Modify advertisement**

Issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same

2) To Impose Penalty

- Impose on manufacturer or endorser a penalty which may extend to ten lakh rupees.
- Every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees

3) Prohibit Endorsement

- i. Prohibit from making endorsement of any product or service for a period which may extend to one year
- ii. Subsequent Contravention-Prohibition may extend upto 3 years

4) Penalty for Publishing Misleading Advertisement

It may impose on such person a penalty which may extend to ten lakh rupees

5) Factors for determining Penalty

- a) Population and the area impacted or affected by such offence;
- b) Frequency and duration of such offence;
- c) Vulnerability of the class of persons likely to be adversely affected by such offence; and
- d) Gross revenue from the sales effected by virtue of such offence.

6) Opportunity of Being Heard

The Central Authority shall give the person an opportunity of being heard before an order under this section is passed

SEARCH AND SEIZURE

According to section 22 of the Act, for the purpose of conducting an investigation after preliminary inquiry under section 19(1), the Director General or any other officer authorised by him in this behalf, or the District Collector, as the case may be, 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.

The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, for search and seizure under this Act.

Every document, record or article seized or produced shall be returned to the person, from whom they were seized or who produced the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.

Where any article seized are subject to speedy or natural decay, the Director General or such other officer may dispose of the article in such manner as may be prescribed. In the case of articles other than the articles of speedy or natural decay, provisions contained in section 38(2) shall mutatis mutandis apply in relation to analysis or tests.

Section 38(2)(c) provides that if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint

or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it.

DESIGNATION OF ANY STATUTORY AUTHORITY OR BODY TO FUNCTION AS CENTRAL AUTHORITY - SECTION 23

Section 23 empowers the Central Government which may, if it considers necessary, by notification, designate any statutory authority or body to exercise the powers and perform the functions of the Central Authority referred to in section 10.

APPEAL-SECTION 24

A person aggrieved by any order passed by the Central Authority under sections 20 and 21 may file an appeal to the National Commission within a period of thirty days from the date of receipt of such order

DISTRICT CONSUMER REDRESSAL COMMISSION-SECTION 28

- 1) **Established By**- State Government
- 2) **Short Name**- District Commission
- 3) **Jurisdiction**
 - State Government established in each district
 - State Government may also, if it deems fit, establish more than one District Commission in a district
- 4) **Composition**
 - a) A President
 - b) Member
 - Minimum- 2 members
 - Maximum-not more than such number of members as may be prescribed, in consultation with the Central Government.

QUALIFICATION OF PRESIDENT AND MEMBERS OF DISTRICT COMMISSION-SECTION 29

The Central Government may, by notification, make rules to provide for the

- Qualifications,
- Method of recruitment,
- Procedure for appointment,
- Term of office,
- Resignation and removal of the President and members of the District Commission

JURISDICTION OF DISTRICT COMMISSION-SECTION 34

1) Pecuniary Limits

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

2) Jurisdiction

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
- the cause of action, wholly or in part, arises; or
- the complainant resides or personally works for gain

MANNER IN WHICH COMPLAINT MAY BE FILED-SECTION 35

1) Who will file complaint?

Complaint is filed by Complainant

2) Mode of Complaint

It may be noted that the complaint may be filed electronically in prescribed manner

3) Fees

Every complaint filed shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed

PROCEEDINGS BEFORE THE DISTRICT COMMISSION-SECTION 36

1) President and Member

Every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together

2) Member is absent

The President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member

3) Decision

The District Commission may, by order, admit the complaint for being proceeded with or reject the same

4) Opportunity of Being heard

A complaint shall not be rejected unless an opportunity of being heard has been given to the complainant.

5) Admissibility of Complaint

The admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was filed

REFERENCE TO MEDIATION-SECTION 37

- 1) There exist elements of a settlement which may be acceptable to the parties
- 2) District Commission may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation
- 3) District Commission within five days of receipt of such consent, refer the matter for mediation.

PROCEDURE ON ADMISSION OF COMPLAINT - SECTION 38

Section 38 deals with procedure on admission of complaint by the District Commission. Section 38 provides that:

- (1) The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint.
- (2) Where the complaint relates to any goods, the District Commission shall, –
 - a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by it;
 - b) if the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);
 - c) if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;
 - d) before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

- e) remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;
- f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;
- g) give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.

(3) The District Commission shall, if the complaint admitted by it under section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services, –

- (a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;
- (b) if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute –
 - i. on the basis of evidence brought to its notice by the complainant and the opposite party, if the opposite party denies or disputes the allegations contained in the complaint, or
 - ii. ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission.
- a) decide the complaint on merits if the complainant fails to appear on the date of hearing.

(4) For the purposes of sub-sections (2) and (3), the District Commission may, by order, require an electronic service provider to provide such information, documents or records, as may be specified in that order.

(5) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(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 and endeavour shall be made to decide the complaint 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. Provided that no adjournment shall ordinarily be granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Commission. Provided further that the District Commission shall make such orders as to the costs occasioned by the adjournment as may be specified by regulations. Provided also that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(8) Where during the pendency of any proceeding before the District Commission, if it appears necessary, 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 within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(11) Where the complainant is a consumer referred to in sub-clause (v) of clause (5) of section 2, the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Commission thereon.

(12) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure,

1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

FINDINGS OF DISTRICT COMMISSION- SECTION 39

- 1) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- 2) to replace the goods with new goods of similar description which shall be free from any defect;
- 3) 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;
- 4) 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: Provided that the District Commission shall have the power to grant punitive damages in such circumstances as it deems fit;
- 5) to pay such amount as may be awarded by it as compensation in a product liability action under Chapter VI;
- 6) 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;
- 7) not to offer the hazardous or unsafe goods for sale;
- 8) to withdraw the hazardous goods from being offered for sale;
- 9) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- 10) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently. (atleast 25 % of value of defectrive goods)
- 11) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement; (m) to provide for adequate costs to parties; and
- 12) to cease and desist from issuing any misleading advertisement

Section 39(2) provides that any amount obtained shall be credited to such fund and utilised in such manner as may be prescribed.

According to **Section 39(3)**, in any proceeding conducted by the President and a member and if they differ on any point or points, they shall state the point or points on which they differ and refer the same to another member for hearing on such point or points and the opinion of the majority shall be the order

of the District Commission. However, the other member shall give his opinion on such point or points referred to him within a period of one month from the date of such reference.

Every order made by the District Commission shall be signed by the President and the member who conducted the proceeding. Provided that where the order is made as per majority opinion under sub-section (3), such order shall also be signed by the other member. [Section 39(4)]

REVIEW BY DISTRICT COMMISSION IN CERTAIN CASE-SECTION 40

- 1) District Commission can review any of the order passed by it if there is any error apparent on the face of record
- 2) District Commission can review on its own motion or on application made by any of the parties within 30 days of such order

APPEAL AGAINST THE ORDER OF COMMISSION-SECTION 41

1) Appeal by Whom?

Any person who is aggrieved by the order made by the District Commission

2) Appeal with whom?

Appeal against such order to the State Commission

3) Time limit

Appeal should be filed within 45 days from the date of order

4) Delayed Appeal

The State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period

5) Amount of Deposit

Appellant has to deposited fifty per cent. of that amount in the manner as may be prescribed

6) Appeal after Settlement by Mediation

No appeal shall lie from any order passed by the District Commission pursuant to a settlement by mediation

STATE CONSUMER DISPUTES REDRESSAL COMMISSION-SECTION 42

1) Established By:-

State Government

2) Short Name:

State Commission

3) Place and Branches

Head Office- State Commission ordinarily functions at State capital

Branches- Such other places as the State Government may notify by official Gazette

4) Composition

- a) A President
- b) Members

Minimum - 4

Maximum - Not more than such number of members as may be prescribed in consultation with the Central Government

QUALIFICATION etc of PRESIDENT AND MEMBERS OF STATE COMMISSION-SECTION 43

The Central Government may, by notification, make rules to provide for the

- a) Qualification for appointment,
- b) Method of recruitment,
- c) Procedure of appointment,
- d) Term of office,
- e) Resignation and removal of the President and members of the State Commission.

JURISDICTION OF STATE COMMISSION-SECTION 47

State Commission shall entertain complaints of:-

a) Pecuniary Limit

The value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore

b) Unfair Contract

complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees

c) Appeals

Appeals against the orders of any District Commission within the State

REVIEW BY STATE COMMISSION IN CERTAIN CASES-SECTION 50CENTRAL AUTHORITY TO RECALL GOODS-SECTION 20

- 1) The State Commission to review any of the order passed by it if there is an error apparent on the face of the record
- 2) State Commission can review on its own motion or on application made by any of the parties within 30 days of such order

APPEAL TO NATIONAL COMMISSION - SECTION 51

Section 51(1) provides that any person aggrieved by an order made by the State Commission in exercise of its powers conferred by Section 47(1)(a)(i) or section 47(1)(a)(ii) may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed. National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within

that period. Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.

Section 51 (2) states that save as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law.

According to Section 51(3), in an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

Section 51(4) provides that where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question and hear the appeal on that question. Further, nothing in this sub-section shall be deemed to take away or abridge the power of the National Commission to hear, for reasons to be recorded in writing, the appeal on any other substantial question of law, if it is satisfied that the case involves such question of law.

HEARING OF APPEAL BY STATE COMMISSION OR NATIONAL COMMISSION - SECTION 52

According to Section 52 of the Act, an appeal filed before the State Commission or the National Commission, as the case may be, shall be heard as expeditiously as possible and every endeavour shall be made to dispose of the appeal within a period of ninety days from the date of its admission.

Adjournment shall not ordinarily be granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission.

State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment, as may be specified by regulations.

In the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION-SECTION 54

1) Established By-

Central Government

2) Short Name- National Commission

3) Places and Branches

Head Office- The National Commission shall ordinarily function at the National Capital Region

Branches- Such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette

4) Composition of National Commission

- a) A President
- b) Members
 - Minimum- 4
 - Maximum- Not more than such number of members as may be prescribed.

QUALIFICATION ETC OF PRESIDENT AND MEMBERS OF NATIONAL COMMISSION**1) Central Government to make rules**

The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission:

2) Term of Office

President and members shall hold office not exceeding 5 years
Eligible for re-appointment

3) Retirement Age

President-70 years
Members-67 years

JURISDICTION OF NATIONAL COMMISSION-SECTION 58

National Commission shall have jurisdiction to entertain complaints:-

1) Pecuniary Limits

Where the value of the goods or services paid as consideration exceeds rupees ten crore

2) Unfair Contract

Complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees

3) Appeal

Appeal is against State Commission or Central Authority

PROCEDURE APPLICABLE TO NATIONAL COMMISSION - SECTION 59

Section 59 provides that the provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be considered necessary, be applicable to the disposal of complaints by the National Commission.

National Commission may also declare any terms of contract, which is unfair to any consumer to be null and void.

REVIEW BY NATIONAL COMMISSION IN CERTAIN CASES - SECTION 60

Section 60 empowers the National Commission to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

REVIEW BY NATIONAL COMMISSION IN CERTAIN CASES-SECTION 60

- 1) The National Commission to review any of the order passed by it if there is an error apparent on the face of the record
- 2) State Commission can review on its own motion or on application made by any of the parties within 30 days of such order

POWER TO SET ASIDE EX-PARTE ORDER-SECTION 61

Where an order is passed by the National Commission ex parte, the aggrieved party may make an application to the Commission for setting aside such order

SERVICE OF NOTICE-SECTION 65

1) **Opposite Party-**

By Registered Post acknowledgement due

2) **Complainant-**

By Speed post, Courier Service or other modes including electronic means

3) **Electronic Service**

Electronic Service Provider shall designate a nodal officer to accept and process such notices

4) **Notice Duly Served**

- a) Acknowledgement is received by Commission
- b) Refused to accept the notice when tendered, Commission shall declare that notice has been duly served on the opposite party

5) **Acknowledgement is Lost**

- a) Notice was properly addressed, pre-paid and stamped
- b) Acknowledgement is lost or misplaced
- c) Within 30 days Acknowledgement has not been received
- d) Notice is deemed to be served

EXPERTS TO ASSIST NATIONAL COMMISSION OR STATE COMMISSION-SECTION 66

- 1) Application is made by complainant
- 2) It involves larger interest of consumer
- 3) National Commission or the State Commission, may direct individual or organisation or expert to assist them

APPEAL AGAINST THE ORDER OF NATIONAL COMMISSION- SECTION 67**1) Appeal With**

Aggrieved by an order made by the National Commission may prefer an appeal against such order to the Supreme Court

2) Appeal Term- Within thirty days from the date of the order**3) Appeal after 30 days-**

The Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period

4) Amount of Deposit- 50 % of the amount**FINALITY OF ORDER-SECTION 68**

if no appeal has been preferred against such order of District Commission, State Commission or National Commission then it shall be treated as Final

LIMITATION PERIOD - SECTION 69

Section 69 provides that the District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

A complaint may be entertained after the period specified above, if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period.

A complaint shall not be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

ENFORCEMENT OF ORDERS OF DISTRICT COMMISSION, STATE COMMISSION AND NATIONAL COMMISSION-SECTION 71

Every order made shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it

PENALTY FOR NON- COMPLIANCE OF ORDER-SECTION 72

Punishment

a) Imprisonment

1 month to 3 Years

Or

b) Fine

Rs 25000 to Rs 1,00,000

Or

c) Both

APPEAL AGAINST THE ORDER PASS U/S 72-SECTION 73

- 1) Where an order is passed under section 72(1), an appeal shall lie,
 - (a) the order made by the District Commission to the State Commission;
 - (b) the order made by the State Commission to the National Commission; and
 - (c) the order made by the National Commission to the Supreme Court.
- 2) Appeal should be filed within 30 days
- 3) Appeal may entertain after the expiry of the said period of thirty days, if it is satisfied that the appellants had sufficient cause for not preferring the appeal within the said period of thirty days

ESTABLISHMENT OF CONSUMER MEDIATION-SECTION 74

1) Mediation cell attached to District and State Commission

Established by the State Government

2) Mediation cell attached to National Commission

Established by the Central Government

3) Members

A consumer mediation cell shall consist of such persons as may be prescribed

4) Report

Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations

5) Record and List to be maintained

Every consumer mediation cell shall maintain—

- (a) a list of empanelled mediators;
- (b) a list of cases handled by the cell;
- (c) record of proceeding; and
- (d) any other information as may be specified by regulations.

NOMINATION OF MEDIATORS FROM PANEL-SECTION 76

While nominating any person from the panel of mediators , the Commission should consider his suitability for resolving the consumer dispute involved

DUTY TO DISCLOSE CERTAIN FACTS-SECTION 77

It shall be the duty of the mediator to disclose—

- (a) any personal, professional or financial interest in the outcome of the consumer dispute;
- (b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and
- (c) such other facts as may be specified by regulations.

REPLACEMENT OF MEDIATOR IN CERTAIN CASES-SECTION 78

Commission may replace such mediator by another mediator on the followings basis

- a) On information provided by Mediator
- b) On information provided by any other person and after hearing the mediator

PROCEDURE FOR MEDIATION - SECTION 79

Section 79 states that the mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be.

Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation.

The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.

SETTLEMENT THROUGH MEDIATION-SECTION 80

1) Agreement

Party should enter into agreement with respect to all the issues involved in consumer dispute

2) Writing

The term of agreement should be reduced to in writing

3) Signed

Agreement should be signed by the Parties

4) Settlement Report

Mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission

5) If no Agreement is Entered

He shall prepare his report accordingly and submit the same to the concerned Commission.

RECORDING SETTLEMENT AND PASSING OF ORDER-SECTION 81

1) Settlement in Full-Section 81(1)

Commission within 7 days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly

2) Settlement in Part -Section 81(2)

- a) Commission shall record settlement of the issues which have been so settled
- b) Continue to hear other issues involved in such consumer dispute

3) Dispute not Settled

The Commission shall continue to hear all the issues involved in such consumer dispute

PRODUCT LIABILITY

Chapter VI contains Section 82 to 87 deal with Product Liability. According to section 82 Chapter VI shall apply 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 –

- i. damage to any property, other than the product itself;
- ii. personal injury, illness or death;

- iii. mental agony or emotional distress attendant to personal injury or illness or damage to property; or
- iv. any loss of consortium or services or other loss resulting from a harm referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii);

but shall not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss, including any direct, incidental or consequential loss relating thereto. [Section 2(22)]

PRODUCT LIABILITY ACTION-SECTION 83

Product liability action can be brought against

- a) Product Manufacturer
- b) Product Service Provider
- c) Product Seller

Action is due to any harm cause to him on account of defective product

LIABILITY OF PRODUCT MANUFACTURER-SECTION 84

Product manufacturer shall be liable in a product liability action, if

a) Manufacturing Defect

The product contains a manufacturing defect

b) Defect in Design

The product is defective in design

c) Deviation from Specification

There is a deviation from manufacturing specification

d) Express Warranty

The product does not conform to the express warranty

e) No Adequate Information

The product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage

LIABILITY OF PRODUCT SERVICE PROVIDER-SECTION 85

A product service provider shall be liable in a product liability action, if—

1) Deficiency in Service

The service provided by him was deficiency in service

2) Withholding Information

There was an act of omission or commission or negligence or conscious withholding any information which caused harm

3) No Adequate Warning

The service provider did not issue adequate instructions or warnings to prevent any harm

4) Express Terms and Conditions

The service did not conform to express warranty or the terms and conditions of the contract.

LIABILITY OF PRODUCT SELLER-SECTION 86

1) Substantial Control

He has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm;

2) Altered or Modified

He has altered or modified the product and such alteration or modification was the substantial factor in causing the harm;

3) Express Warranty

- He has made an express warranty of a product independent of any express warranty made by a manufacturer
- Product failed to conform to the express warranty made by the product seller which caused the harm

4) Reasonable Care avoided

- Failed to exercise reasonable care in assembling, inspecting or maintaining such product
- He did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product

5) Identity of Manufacturer Missing

The product has been sold by him and the identity of product manufacturer of such product is not known

EXCEPTION TO PRODUCT LIABILITY ACTION-SECTION 87

1) Against Product Seller

A product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified

2) Against Product Manufacturer

a) Warning or Instruction

The product manufacturer had provided warnings or instructions to such employer

b) Product sold as component to other product

- Necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material
- The harm was caused to the complainant by use of the end product in which such component or material was used

c) Use of Alcohol or any Drug

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

d) Expert Supervision

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

PUNISHMENT FOR MANUFACTURING FOR SALE OR STORING, SELLING OR DISTRIBUTING OR IMPORTING PRODUCTS CONTAINING ADULTERANT - SECTION 90

Section 90(1) 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 –

- a) does not result in any injury to the consumer, with imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees;
- b) 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;
- c) 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; and
- d) results in the death of a consumer, with 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.

Section 90(2) states that the offences under clauses (c) and (d) of sub-section (1) shall be cognizable and non-bailable.

Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

Explanation– for the purposes of this section,–

- a) “Adulterant” means any material including extraneous matter which is employed or used for making a product unsafe;
- b) “Grievous hurt” shall have the same meaning as assigned to it in section 320 of the Indian Penal Code.

PUNISHMENT FOR MANUFACTURING FOR SALE OR FOR STORING OR SELLING OR DISTRIBUTING OR IMPORTING SPURIOUS GOODS - SECTION 91

Section 91(1) 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.

Section 91(2) states that the offences under clauses (b) and (c) of sub-section (1) shall be cognizable and non-bailable.

Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

OFFENCES AND PENALTIES

1) Penalty for Noncompliance of Direction of Central Authority- Section 88 Imprisonment-Upto 6 months or

Fine- Extend upto Rs 25 lakh or

Both

2) Punishment for False or Misleading Advertisement-Section 89

a) First Offence

Imprisonment- Upto 2 years **and**

Fine- upto Rs 10 lakh

b) Subsequent Offence

Imprisonment- Upto 5 years **and**

Fine- Rs 50 lakh

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: –

- (i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which –
- a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - b) falsely represents that the services are of a particular standard, quality or grade;
 - c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
 - f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - g) 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:
- Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;
- h) makes to the public a representation in a form that purports to be –
 - A. a warranty or guarantee of a product or of any goods or services; or
 - B. a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out.
 - i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, 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 or provided by suppliers generally in the relevant market unless it is

clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

j) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation. – For the purposes of this sub-clause, a statement that is, –
 (A) expressed on an article offered or displayed for sale, or on its wrapper or container; or;
 (B) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
 (C) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained.

(ii) permitting the publication of any advertisement, whether in any newspaper or otherwise, 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, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation. – For the purpose of this sub-clause, “bargain price” means, –
 (A) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or
 (B) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold.

(iii) Permitting –

- a) 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 when it is fully or partly covered by the amount charged, in the transaction as a whole;
- b) 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 such contest, lottery, game of chance or skill as may be prescribed;
- c) 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.

Explanation. – For the purpose of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised.

(iv) 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 relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(v) 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;

(vi) manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;

(vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;

(viii) 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 thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;

(ix) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force. [Section 2(47)]

MEASURES TO PREVENT UNFAIR TRADE PRACTISES IN E-COMMERCE AND DIRECT SELLING

Section 94 empowers the Central Government to take such measures in the prescribed manner for the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers.

COMPOUNDING OF OFFENCES - SECTION 96

According to Section 96(1) of the Act, any offence punishable under sections 88 and 89, may, either before or after the institution of the prosecution, be compounded, on payment of such amount as may be prescribed.

It may be noted that no compounding of such offence shall be made without the leave of the court before which a complaint has been filed under section 92.

Further, such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.

Section 96(2) provides that the Central Authority or any officer as may be specially authorised by him in this behalf, may compound offences under sub-section (1).

Section 96(3) states that nothing in sub-section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.

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.

Section 96(4) provides that where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.

Section 96(5) states that the acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Central Authority or an officer of the Central Authority empowered in this behalf shall be deemed to amount to an acquittal within the meaning of the Code of Criminal Procedure, 1973.

PROTECTION OF ACTION TAKEN IN GOOD FAITH-SECTION 98

No suit, prosecution or other legal proceeding shall lie against the Presidents and members t, for any act which is in good faith done or intended to be done in pursuance of this Act

ACT NOT IN DEROGATION OF ANY OTHER LAW-SECTION 100

The provisions of Consumer Protection Act, 2019 shall be in addition to and not in derogation of the provisions of any other law for the time being in force

E-COMMERCE

E-Commerce means buying or selling of goods or services including digital products over digital or electronic network.

In exercise of the powers conferred by section 101(1)(zg) of the Consumer Protection Act, 2019 Central Government notified the Consumer Protection (E-Commerce) Rules, 2020.

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.
- Consumer Protection (E-Commerce) Rules, 2020 shall not apply to any activity of a natural person carried out in a personal capacity not being part of any professional or commercial activity undertaken on a regular or systematic basis.

Consumer Protection (E-Commerce) Rules, 2020 shall not apply to any activity of a natural person carried out in a personal capacity not being part of any professional or commercial activity undertaken on a regular or systematic basis.

DUTIES OF E-COMMERCE ENTITIES

“E-Commerce Entity” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity

An e-commerce entity shall:

1. Where an e-commerce entity is a company incorporated under the Companies Act, 1956 (1 of 1956) or under the Companies Act, 2013 or a foreign company covered under clause (42) of section 2 of the Companies Act, 2013 or an office, branch or agency outside India owned or controlled by a person resident in India as provided in sub-clause (iv) of clause (v) of section 2 of the Foreign Exchange Management Act, 1999, 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.
2. Every e-commerce entity shall provide the following information in a clear and accessible manner on its platform, displayed prominently to its users, namely:--
 - i. legal name of the e-commerce entity;
 - ii. principal geographic address of its headquarters and all branches;
 - iii. name and details of its website; and
 - iv. contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer.
3. No e-commerce entity shall adopt any unfair trade practice, whether in the course of business on its platform or otherwise.
4. 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.
5. Every e-commerce entity shall ensure that the grievance officer referred to in sub-rule (4) 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.
6. 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.
7. 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.
8. 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.
9. 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, and no such entity shall record such consent automatically, including in the form of pre-ticked checkboxes.

10. Every e-commerce entity shall effect all payments towards accepted refund requests of the consumers as prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time, or as prescribed under applicable laws.

11. No e-commerce entity shall--

- a) 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;
- b) 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

Marketplace E-Commerce Entity means an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers.

(1) A marketplace e-commerce entity which seeks to avail the exemption from liability under sub-section (1) of section 79 of the Information Technology Act, 2000.

(2) 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.

(3) 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:

- a) 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.

Provided that a marketplace e-commerce entity shall, on a request in writing made by a consumer after the purchase of any goods or services on its platform by such consumer, provide him with information regarding the seller from which such consumer has made such purchase, including the principal geographic address of its headquarters and all branches, name and details of its website, its email address and any other information necessary for communication with the seller for effective dispute resolution;

- b) a ticket number for each complaint lodged through which the consumer can track the status of the complaint;
- c) 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;
- d) 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;
- e) all information provided to it by sellers under sub-rule (5) of rule 6; and
- f) an explanation of the main parameters which, individually or collectively, 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.

(4) Every marketplace e-commerce entity shall include in its terms and conditions generally governing its relationship with sellers on its platform, a description of any differentiated treatment which it gives or might give between goods or services or sellers of the same category.

(5) Every marketplace e-commerce entity shall take reasonable efforts to maintain a record of relevant information allowing for the identification of all sellers who have repeatedly offered goods or services that have previously been removed or access to which has previously been disabled under the Copyright Act, 1957 the Trade Marks Act, 1999 or the Information Technology Act, 2000.

Provided that no such e-commerce entity shall be required to terminate the access of such seller to its platform pursuant to this sub-rule but may do so on a voluntary basis.

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 multichannel single brand retailers.

(1) Every inventory e-commerce entity shall provide the following information in a clear and accessible manner, displayed prominently to its users:

- a) 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;
- b) all mandatory notices and information required by applicable laws;

- c) 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, if any, and the contact information of the relevant payment service provider;
- d) all contractual information required to be disclosed by law;
- e) 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
- f) 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 paid, 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.

Provided that in the case of late delivery, this sub rule shall not apply if such late delivery was 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.

In exercise of the powers conferred by Section 101(2)(zg) read with Section 94 of the Consumer Protection Act, 2019, the Central Government notified the Consumer Protection (Direct Selling) Rules, 2021.

APPLICABILITY

- (a) all goods and services bought or sold through direct selling;
- (b) all models of direct selling;
- (c) all direct selling entities offering goods and services to consumers in India;
- (d) all forms of unfair trade practices across all models of direct selling.

Consumer Protection (Direct Selling) Rules, 2021 shall also apply to a direct selling entity which is not established in India, but offers goods or services to consumers in India.

MANDATORY MAINTENANCE OF RECORDS

Every direct selling entity shall maintain at its registered office, either manually or electronically, all such documents as are required under any law for the time being in force, including the following documents or records, as may be applicable, 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 (34 of 2006) for the purposes of manufacture or sale of food items;
- (j) License and Registration Certificate issued under the Drugs and Cosmetics Act, 1940 (23 of 1940) for the purposes of manufacture or sale of drugs, including Ayurvedic, Siddha and Unani drugs and Homoeopathic 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, including the documents or records specified in rule 4, the self-declaration specified in clause (c), 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, but shall not give commissions, bonus or incentives on sale of goods or services of which it is not the owner, holder or licensee of trademark, service mark or other identification marks;
- 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. It may be noted that "Company Secretary" means a person as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980;
- 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, if any, 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 such information shall, 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 store sensitive personal data within the jurisdiction of India, in accordance with the applicable law for the time being in force and shall take appropriate steps to ensure protection of such data provided by a consumer and also ensure adequate safeguards to prevent access or misuse of such data by any unauthorized person.

(6) Every direct selling entity shall, having regard to the number of grievances ordinarily received by such entity from persons in India, 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.

(7) Every direct selling entity shall ensure that the grievance redressal officer referred to in sub-rule (6) acknowledges the receipt of any consumer complaint within forty-eight working hours of receipt of such

complaint and redresses the complaint normally within a period of one month from the date of receipt of the complaint and in case of delay of more than a month, reasons for the delay, and the actions taken on the complaint, are informed to the complainant in writing.

(8) Every direct selling entity shall appoint a nodal officer who shall be responsible for ensuring compliance with the provisions of the Act and the rules made thereunder, and to ensure compliance with any order, or requisition, made in accordance with the provisions of any other law for the time being in force or the rules made thereunder.

(9) 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.

(10) 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.

(11) Every direct selling entity shall, on the request in writing made by a consumer after the purchase of any goods or services, provide him with the information regarding any direct seller from whom such consumer has made a purchase, and such information shall include the name, address, e-mail, contact number and any other information which is necessary for making communication with such direct seller for effective dispute resolution.

(12) Every direct selling 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.

(13) No direct selling entity shall, directly or indirectly, falsely represent itself as a consumer and post reviews about its goods or services or misrepresent the quality or features of any of its goods or services.

(14) A direct selling entity which explicitly or implicitly vouches for the authenticity of the goods or services sold, or guarantees that such goods or services are authentic, shall bear the liability in any action related to the authenticity of such goods or services.

(15) Notwithstanding the distribution system adopted by it, a direct selling entity shall monitor the practices adopted by its direct sellers and ensure compliance with these rules by means of legally binding contract with such direct sellers.

(16) Every direct selling entity shall maintain a record of relevant information allowing for the identification of all direct sellers who have been delisted by the direct selling entity and such list shall be publicly shared on its website.

(17) Every direct selling entity shall become a partner in the convergence process of the National Consumer Helpline of the Central Government.

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 or prior to 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;
- g) take appropriate steps to ensure the protection of all sensitive personal information provided by the consumer in accordance with the applicable laws for the time being in force and ensure adequate safeguards to prevent access to, or misuse of, data by unauthorized persons.

(2) A direct seller shall not–

- a) visit a consumer's premises without identity card and prior appointment or approval;
- b) provide any literature to a prospect, which has not been approved by the direct selling entity;
- c) require a prospect to purchase any literature or sales demonstration equipment;
- d) in pursuance of a sale, make any claim that is not consistent with claims authorized by the direct selling entity.

It may be noted that the direct sellers as well as the direct selling entities using e-commerce platforms for sale shall comply with the requirements of the Consumer Protection (e-Commerce) Rules, 2020.

DUTIES OF DIRECT SELLING ENTITY AND DIRECT SELLER

Subject to the provisions of Chapter VI of the Consumer Protection Act, relating to Product Liability, the following shall be the duties of direct selling entity and direct seller, as may be applicable, namely:–

- i. Every direct selling entity and every direct seller shall ensure that–
 - a) 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;
 - b) the presentations and other representations used in direct selling shall not contain any product description, claim, illustration or other element which, directly or by implication, is likely to mislead the consumer;
 - c) the explanation and demonstration of the goods or services offered are accurate and complete, particularly with regard to price and, if applicable, to credit conditions, terms of payment, cooling-off periods or right to return, terms of guarantee, after-sales service and delivery;
 - d) the descriptions, claims, illustrations or other elements relating to verifiable facts are capable of substantiation;
 - e) any misleading, deceptive or unfair trade practices are not used;
 - f) direct selling is not represented to the consumer as being a form of market research;
 - g) 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;
 - h) direct selling shall not state or imply that a guarantee, warranty or other expression having substantially the same meaning, offers to the consumer any rights in addition to those provided by law, when it does not;
 - i) 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;
 - j) 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;
 - k) the presentation of the offer does not contain or refer to any testimonial, endorsement or supportive documentation unless it is genuine, verifiable and relevant;

- l) 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;
- m) 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;
- n) unless otherwise stipulated in the offer, 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 as soon as it becomes apparent or comes within the knowledge of the direct selling entity or the concerned direct seller;
- o) in cases of delay under clause (n), any request for cancellation of the order by the consumer shall be granted, irrespective of whether the consumer has been informed of the delay, and the deposit, if any, shall be refunded as per the cancellation terms proposed to the consumer at the time of purchase, and if it is not possible to prevent delivery, the consumer shall be informed of the right to return the product at the direct selling company's or the direct seller's cost as per the procedure for return of the goods proposed to the consumer at the time of purchase;
- p) right of return offered by that entity shall be in writing;
- q) whether payment for the offer is on an immediate sale or installment basis, the price and terms of payment shall be clearly stated in the offer together with the nature of any additional charges such as postage, handling and taxes and, whenever possible, the amounts of such charges;
- r) 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, if any, shall be clearly shown in the offer;
- s) any information needed by the consumer to understand the cost, interest and terms of any other form of credit is provided either in the offer or when the credit is offered;
- t) unless the duration of the offer and the price are clearly stated in the offer, prices shall be maintained for a reasonable period of time;
- u) the procedure for payment and debt collection shall be determined in writing before any contract is signed and it shall be such as to avoid undue inconvenience to the consumer, making due allowance for delays outside the consumer's control;
- v) the provisions of the Legal Metrology Act, 2009 and the rules framed thereunder shall be followed.

- ii. A direct selling entity or direct seller shall not–
 - a) 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;
 - b) engage in, or cause or permit, any conduct 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;
 - c) indulge in mis-selling of products or services to consumers;
 - d) 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;
 - e) refuse to take back spurious goods or deficient services and refund the consideration paid for goods and services provided;
 - f) charge any entry fee or subscription fee.
- iii. A direct selling entity and a direct seller shall comply with the requirements of all relevant laws, including payment of taxes and deductions thereunder.
- iv. A direct selling entity and a direct seller shall not induce consumers to make a purchase based upon the representation that they can reduce or recover the price by referring prospective customers to the direct sellers for similar purchases.

It may be noted that “Miss-Selling” means selling a product or service by misrepresenting in order to successfully complete a sale and includes providing consumers with misleading information about a product or service or omitting key information about a product or providing information that makes the product appear to be something it is not.

PROHIBITION OF PYRAMID SCHEME AND MONEY CIRCULATION SCHEME

Direct Selling Entity or Direct Seller shall not–

- a) promote a Pyramid Scheme or enroll any person to such scheme or participate in such arrangement in any manner whatsoever in the garb of doing direct selling business;
- b) participate in money circulation scheme in the garb of doing direct selling business.



CHAPTER 13
LEGAL METROLOGY ACT, 2009

CHAPTER 13

Legal Metrology Act, 2009

MEANING OF LEGAL METROLOGY

- 1) Legal metrology can be defined as that part of metrology which deals with units of measurement, methods of measurement and measuring instruments
- 2) It has 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)

1) Type of Organisation

Intergovernmental treaty organisation

2) Established

Established in 1955

3) Objective

Objective is to promote global harmonization of legal metrology procedures

4) Development by OIML

OIML has developed a worldwide technical structure that provides its Members with metrological guidelines for the elaboration of national and regional requirements concerning the manufacture and use of measuring instruments for legal metrology applications

5) Importance of OIML guidelines

Increasing national implementation of OIML guidelines, more and more manufacturers are referring to OIML International Recommendations to ensure that their products meet international specifications

OIML CERTIFICATE SYSTEM FOR MEASURING INSTRUMENTS

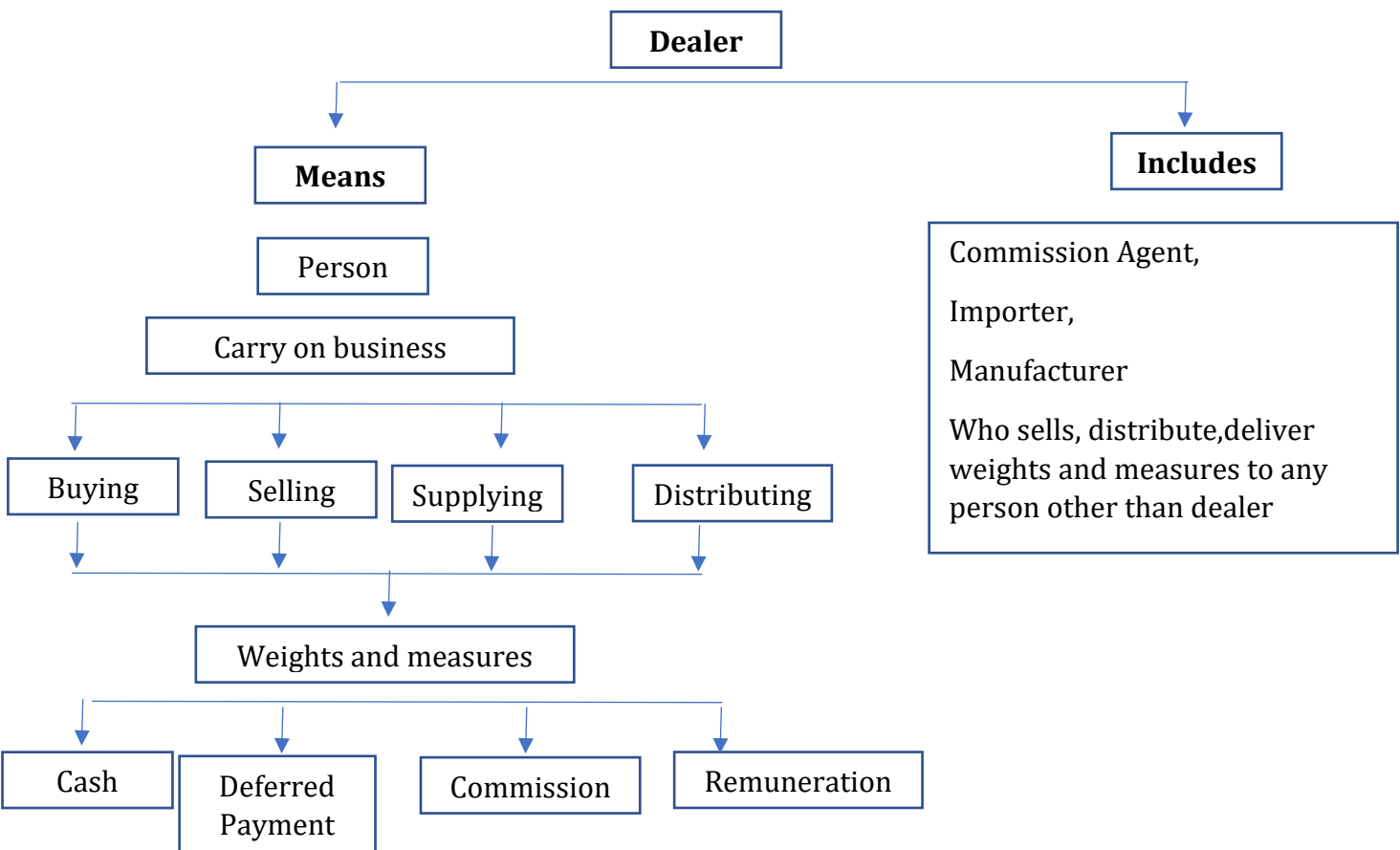
- 1) Introduced in 1991
- 2) Manufacturer can obtain an OIML Certificate and a Test Report indicating that a given instrument type (pattern) complies with the requirements of the relevant OIML International Recommendations.
- 3) Certificates are delivered by OIML member states
- 4) OIML member states have established Issuing Authority responsible for processing application by manufacturers wishing to have their instrument certified

- 5) Certificates issued by OIML are accepted by national metrology services on a voluntary basis
- 6) If accepted by national metrology then following are benefits
 - Simplifying approval process
 - Eliminating costly duplication of application
 - Eliminating costly duplication of test procedures

Sec 2: Definitions

1) Dealer [Sec 2(b)]

- person who, carries on, directly or otherwise, the business of buying, selling, supplying or distributing any such weight or measure,
- whether for cash or for deferred payment or for commission, remuneration or other valuable consideration; and
- includes a commission agent, an importer, a manufacturer, who sells, supplies, distributes or otherwise delivers any weight or measure manufactured by him to any person other than a dealer



2) Export [Sec 2(d)]

'export' with its grammatical variations and cognate expressions, means taking out of India to a place 'outside India

3) Import [Sec 2(e)]

"Import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India

4) Label [Sec 2(j)]

"Label" means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon any pre-packaged commodity

5) Pre-Packed Commodity [Sec 2(l)]

"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**

6) Repairer [Sec 2(p)]

Repairer as to mean

- a person who **repairs a weight or measure** and
- includes a person who **adjusts, cleans, lubricates or paints** any weight or measure or renders any other service
- to such weight or measure to ensure that such weight or measure **conforms to the standards** established by or under this Act

7) Seal [Sec 2(s)]

"seal" means

- a device or process by which a stamp is made, and
- includes any wire or other accessory which is used for **ensuring the integrity of any stamp**

8) Stamp [Sec 2(t)]

"stamp" as to mean a mark, made by impressing, casting, engraving, etching, branding, affixing pre-stressed paper seal or any other process in relation to, any weight or measure with a view to-

(i) certifying that such weight or measure conforms to the standard specified by or under this Act,
or

(ii) indicating that any mark which was previously made thereon certifying that such weight or measure conforms to the standards specified by or under this Act, has been obliterated

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 is being implemented by the State Governments/UT Administrations by availing of the delegated powers under the Act. The State Governments/ UT Administrations have issued various Control Orders for regulation, production and distribution of Essential Commodities such as food grains, edible oils, pulses kerosene, sugar etc. The Central Government regularly monitors the action taken by State Governments/UT Administrations to implement the provisions of the Essential Commodities Act, 1955. The items declared as essential commodities under the Essential Commodities Act, 1955 are reviewed from time to time in the light of liberalized economic policies in consultation with the Ministries/ Departments administering the essential commodities and particularly with regard to their production, demand, and supply.

The Central Government having been vested with power under Section 3 can issue order in the following circumstances providing for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein: (i) when it is necessary or expedient for maintaining or increasing supplies of any essential commodity; (ii) for securing the equitable distribution and availability of essential commodities at fair price; or (iii) for securing any essential commodity for the defence of India or the efficient conduct of military operations.

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. Confiscation of essential commodities is a sharp weapon which the Act has provided to the Central Government under of the Act. Any person aggrieved by an order of confiscation may appeal to the State Government.

The Act declares that notwithstanding anything contained in the Criminal Procedure Code, 1971, every offence punishable under the Act shall be cognizable. A cognizable offence is one, where, under the Criminal Procedure Code or any other law in force, a police officer may arrest a person without a warrant. Court can take cognizance of any offence punishable under the Act, the following three conditions must be satisfied, viz. (i) there must be a report in writing, (ii) the report must be made by a public servant, as defined in Section 21 of Indian Penal Code, or any aggrieved person or any recognised consumer association.

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 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 shall be liable to be punished accordingly. In such cases, the company itself is also liable to be proceeded against. Any such person, can, however, escape liability if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it. It may be noted that the term 'company' as used above, refers to anybody corporate, and even includes a firm or other association or individuals. In the case of a firm, the term 'Director' would mean a partner in the firm.

CHAPTER II : STANDARD WEIGHTS AND MEASURE

SECTION 4: WEIGHTS AND MEASURE SHOULD BE BASED ON METRIC SYSTEM

Every unit of weight and measure shall be in accordance with the **metric system based on the international system of units**

SECTION 5:-BASE UNIT OF WEIGHTS AND MEASURE

- 1) Length- meter
- 2) Mass- kilogram
- 3) Time-Seconds
- 4) Electric current-ampere
- 5) Thermodynamic temperature- Kelvin
- 6) Luminous Intensity-Candela
- 7) Substance-Mole

SECTION 6: BASE UNIT OF MEASUREMENT

1) Base unit

The base unit of numeration shall be the unit of the international form of Indian numerals

2) System

Every numeration shall be made in accordance with the decimal system.

3) Denominations

The decimal multiples and submultiples of the numerals shall be of such denominations and be written in such manner as may be prescribed

SECTION 7: STANDARD UNITS OF WEIGHTS AND MEASURE**1) Standard units of weights and measure**

Base units of weights and measures specified in section 5 shall be the standard units of weights and measures.

2) Standard units of numeration

The base unit of numeration specified in section 6 shall be the standard unit of numeration

3) Objects and Equipment's

Central Government shall prepare or cause to be prepared objects or equipments in such manner as may be prescribed For the purpose of deriving the value of base, derived and other units mentioned in section 5

4) Other details

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: STANDARD WEIGHTS, MEASURE, NUMERICALS**1) Weights and Measure**

- Conforms to the standard unit of such weight or measure
- Also conforms to such of the provisions of section 7

2) Numerical

Numerals should conform to section 6 shall be considered standard numerals

3) Other than standard weights, measure and numeral

No weight, measure or numeral, other than the standard weight, measure or numeral, shall be used as a standard weight, measure or numeral.

4) Manufacture or Import

No weight or measure, shall be manufactured or imported unless it conforms to the standards of weight or measure specified under section 8.

5) Exception

The aforesaid provisions shall not apply for manufacture done exclusively for

- Export or

- Any scientific investigation or
- Research.

SECTION 11: PROHIBITION OF QUOTATION, ETC OTHERWISE THAN IN TERMS OF STANDARD UNITS

- 1) Every person should use only standard unit of weight, measure or numeration in relation to goods, service or things
 - Quote
 - Make announcement (words of mouth or otherwise)
 - Exhibit any price list
 - Invoice
 - Cash memo
 - Other documents
 - Prepare or publish any advertisement, poster or other documents
 - Indicate net quantity of a pre-packed commodity
 - Express in relation to any transaction any quantity or dimension
- 2) The above provision shall not applicable to export of any goods, things or services

SECTION 12: ANY CUSTOM, USAGE, ETC.CONTRARY TO STANDARD WEIGHT, MEASURE OR

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

SECTION 13: APPOINTMENT OF DIRECTOR, LEGAL METROLOGY OFFICERS AND OTHER EMPLOYEES

1) Appointment

Central Government to appoint (by Notification) a Director of legal metrology, Additional Director, Joint Director, Deputy Director, Assistant Director and other employees for exercising the powers and discharging the duties

2) Direction and supervision

Every legal metrology officer shall exercise powers and discharge duties under the general superintendence, direction and control of the Director

3) Public Servant

The Director, the Controller and every legal metrology officer authorised to perform any duty by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code

4) No Suit or action while performing duty

No suit, prosecution or other legal proceeding shall lie against the Director, the Controller and legal metrology officer in respect of anything which is in good faith done or intended to be done under the Act or any rule or order

5) Delegation by Central Government

The Central Government may delegate such of the powers of the Director under the Act as it may think fit to the Controller of legal metrology in the State.

6) Delegation by Controller

Controller may delegate such of the powers delegated to him as he may think fit to any legal metrology officer

SECTION 14: APPOINTMENT OF CONTROLLER, LEGAL METROLOGY OFFICERS AND EMPLOYEES

1) Appointment

State Government may, by notification, appoint a Controller of legal metrology, Additional Controller, Joint Controller, Deputy Controller, Assistant Controller, Inspector and other employees for the State

2) Powers and Functions

The Controller and every legal metrology officer so appointed shall exercise such powers and discharge such functions in respect of such local limits as the State Government may, by notification, specify

3) General Direction and control

Every legal metrology officer shall exercise and discharge the duties under the general superintendence, direction and control of the Controller.

SECTION 15: POWER OF INSPECTION, SEIZURE

1) Power of Inspection

Director, Controller or any legal metrology officer may exercise powers of inspection because of the following grounds where offence of punishable has taken place

- Any weight or measure or other goods in relation to which any trade and commerce has taken place
- Trade and commerce intend to have taken place

- Weights, measure or goods kept or concealed in any premises or are in the course of transportation

2) Power of Entry

The powers include entry at any reasonable time into any such premises and search for and inspect any weight, measure or other goods

3) Power of Seizure

The power also include seizure of any weight, measure or other goods and any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under the Ac

4) Goods subject to natural decay

The Director, Controller or legal metrology officer may dispose of such goods in such manner as may be prescribed.

SECTION 16: FORFEITURE

- 1) 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.
- 2) If the person from whom such weight or measure was seized gets the same verified and stamped within such time as may be prescribed then it will not be forfeited

SECTION 17: MANUFACTURERS TO MAINTAIN RECORD

1) Who need to maintain record

- Manufacturer
- Repairer
- Dealer

2) Manner of record

Records and register shall be maintained in the format as prescribed

3) Produced at time of inspection

The records and registers maintained shall be produced at the time of inspection to the persons authorised for the purpose of Inspection

SECTION 18: DECLARATION ON PRE-PACKED COMMODITIES

- 1) Person who manufacture, sell, import, distribute, deliver, offer, possess for sale any pre-packaged commodity should comply with standard quantity, number and bear upon such declaration particulars as may be prescribed
- 2) Any advertisement mentioning the retail sale price of a pre- packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

SECTION 19: REGISTRATION FOR IMPORTER OF WEIGHT AND MEASURE

1) Registration

Import of weights and measures can be done only after registration with Director

2) Manner and Fees of registration

It shall be done in such manner and on payment of such fees, as may be prescribed.

SECTION 20: NON-STANDARD WEIGHTS AND MEASURE NOT TO BE IMPORTED

- 1) No weights and measure shall be imported unless it conforms to the standard weights and measure
- 2) It is applicable even when it is imported singly or in parts or in components or as machine

SECTION 22: APPROVAL OF MODEL

1) Approval

Every person, before manufacturing or importing any weight or measure shall seek the approval of model of such weight or measure

2) Application

Application shall be made in such manner, on payment of such fee and from such authority as may be prescribed

3) Exception

Approval of model may not be required

- 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 for measuring textiles or timber
- Capacity measures, not exceeding twenty litre in capacity, which are ordinarily used in retail trade for measuring kerosene, milk or potable liquors

SECTION 23: PROHIBITION MANUFACTURE, REPAIR OR SALE OF WEIGHT OR MEASURE WITHOUT

1) License Mandatory

No person shall manufacture, repair or sell any weight or measure unless he holds a licence issued by the Controller

2) Exception

If person is repairing his own weights and measures in the State other than the State of manufacturing then no license is required

3) Form, manner and fees

The Controller shall issue a licence in such form and manner, on such conditions, for such period and such area of jurisdiction and on payment of such fee as may be prescribed

SECTION 24: VERIFICATION OF STAMPING OF WEIGHTS AND MEASURE

1) Verification of weights and measure

Every person before putting such weight or measure into such use, have such weight or measure verified

2) Place and hours of verification

Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed, place and hours of verification

3) Verification at specified centre

Central Government may prescribe the kinds of weights and measures for which the verification is to be done through the Government approved Test Centre

SECTION 25: PENALTY FOR USE OF NON-STANDARD WIEGHTS AND MEASURES

Whoever uses or keeps for use any weight or measure or makes use of any numeration otherwise than in accordance with the standards of weight or measure or the standard of numeration shall be punished

- **First time contravention-**
Fine which may extend upto Rs 25,000
- **Second or Subsequent Contravention-**
Imprisonment for a term which may extend to six months and also with fine

SECTION 26: PENALTY FOR ALTERATION OF WEIGHTS AND MEASURES

1) Applicability

- Whoever tampers with, or alters in any way, any reference standard, secondary standard or working standard
- Increases or decreases or alters any weight or measure with a view to deceiving any person

2) Penalty

- **First time contravention-**
Fine which may extend upto Rs 50,000
- **Second or Subsequent Contravention-**
Imprisonment for a term which may shall not be less than six months but extend upto one year
Fine or
Both

SECTION 27: PENALTY FOR MANUFACTURE OR SALE OF NON-STANDARD WEIGHTS AND

1) Applicability

- Every person who manufactures or causes to be manufactured or sells or offers, exposes or possesses for sale, any weight or measure which does not conform to the standards of weight or measure
- Bears thereon any inscription of weight, measure or number which does not conform to the standards of weight, measure or numeration

2) Penalty

- **First time contravention-**
Fine which may extend upto Rs 25,000
- **Second or Subsequent Contravention-**
Imprisonment for a term which may extend upto three years or
Fine or
Both

SECTION 30: PENALTY FOR TRANSACTION IN CONTRAVENTION OF STANDARD WEIGHT OR

1) Applicability

- Selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for
- Rendering any service by weight, measure or number, renders that service less than the service contracted for or paid for
- Buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for
- Obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for or paid for

2) Penalty

- **First time contravention-**
Fine which may extend upto Rs 10,000
- **Second or Subsequent Contravention-**
Imprisonment for a term which may extend upto one year or
Fine or
Both

SECTION 31: PENALTY FOR NON-PRODUCTION OF DOCUMENTS, ETC**1) APPLICABILITY**

Whosoever

- Submit returns,
- Maintain any record or register
- Produce before Director for inspection any weight or measure or any document, register or other record
omits or fails without any reasonable excuse

2) PENALTY

- **First time contravention-**
Fine – Rs 5000
- **Second or Subsequent Contravention-**
Imprisonment -Extend upto 1 year
Fine or
Both

SECTION 35: PENALTY FOR RENDERING SERVICES BY NON-STANDARD WEIGHT, MEASURE OR

1) Applicability

Rendering any service in terms of other than standard weights, measure

2) Penalty

- **First time contravention-**
Fine – Rs 1000-Rs 5000

- **Second or Subsequent Contravention-**
Imprisonment – 3months to 1 year
Fine or
Both

SECTION 36: PENALTY FOR SELLING NON-STANDARD PACKAGES**1) Applicability**

Whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in the Act

3) Penalty

- **First time contravention-**
Fine – Rs 10000-Rs 50000

- **Second or Subsequent Contravention-**
Imprisonment – Extend upto 1 year
Fine -extend upto Rs 1,00,00
Both

SECTION 42: VEXATIOUS SEARCH**1) Applicability**

The Director, the Controller or any legal metrology officer, exercising powers under this Act or any rule made thereunder, who knows that there are no reasonable grounds for so doing, and yet-

- Searches, or causes to be searched, any house, conveyance or place; or
- Searches any person; or
- Seizes any weight, measure or other movable property;
shall, for every such offence, be punished

2) Penalty

- Imprisonment – Extend upto 1 year
- Fine -extend upto Rs 10,000
- Both

SECTION 49: OFFENCE BY COMPANY

1) Person committing a contravention of any of the provisions of the Act or of any rule, direction or order is a company

2) Who is liable

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.

3) Not liable for punishment

Person shall not be liable if he proves that the contravention took place without his knowledge

4) Director, manager, secretary or other officer

- It is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company
- Director, manager, secretary or other officer shall also be deemed to be guilty of the contravention

5) Different branches and units

Different persons may be nominated in relation to different establishments or branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

6) Publication of Contravention

Contravention to be published at the expense of the company in such newspaper or in such other manner as the court may direct the following details

- Name and place of business of the company,
- Nature of the contravention,
- Fact that the company has been so convicted and
- Other particulars as the court may consider to be appropriate

SECTION 52: POWER OF CENTRAL GOVERNMENT TO MAKE RULES

1) Power of Central Government

Central Government is empowered to make rules, by notification, for carrying out the provisions of the Act.

2) Fine for breach of rules

The Central Government may provide that a breach thereof shall be punishable with fine which may extend to five thousand rupees

3) Laid before Parliament

Every rule made by the Central Government under the Act shall be laid, as soon as may be after it is made, before each House of Parliament.

SECTION 53: POWER OF STATE GOVERNMENT TO MAKE RULES**1) Power of State Government**

State Government is empowered to make rules, by notification, and after consultation with the Central Government, to carry out the provisions of the Act

2) Fine for breach of rules

The State Government may provide that a breach thereof shall be punishable with fine which may extend to five thousand rupees

3) Laid before State Legislature

Every rule made shall, as soon as may be after it is made, be laid before each House of State Legislature, where there are two Houses and where there is one House of State Legislature, before that House



CHAPTER 14

REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

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REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

INTRODUCTION

- 1) Real estate sector is an important pillar of the economy.
- 2) This sector has grown significantly in recent years, it has been largely unregulated
- 3) It has no sectoral regulator like there are for other specific sectors like insurance, telecom, stock markets etc.
- 4) History is witness to the fact that whenever sectoral regulators like SEBI, IRDAI, TRAI etc have been formed, they have helped in deepening the market.
- 5) The lack of standardisation has been a constraint to the healthy and orderly growth of industry.
- 6) Since more than a decade the need for regulating the sector was being emphasised in various forums.
- 7) In view of the above, Parliament enacted the Real Estate (Regulation and Development) Act, 2016 which aims at protecting the rights and interests of consumers and promotion of uniformity and standardization of business practices and transactions in the real estate sector.

OBJECTS AND REASON OF THE ACT

- 1) Ensure accountability towards allottees and protect their interest
- 2) Infuse transparency, ensure a fair-play and reduce frauds and delays
- 3) Introduce professionalism and pan India standardization
- 4) Establish symmetry of information between the promoter and allottee
- 5) Imposing certain responsibilities on both promoter and allottees
- 6) Establish regulatory oversight mechanism to enforce contracts
- 7) Establish fast-track dispute resolution mechanism
- 8) Promote good governance in the sector which in turn would create investor confidence

ADVANTAGES OF RERA (REAL ESTATE DEVELOPMENT AND REGULATION ACT)

- 1) Increased FDI
- 2) Customer Management
- 3) Timely completion of the project
- 4) Project planning
- 5) Transparency
- 6) Reduction in litigation

IMPORTANT DEFINITIONS

1) Allottee

Allottee” in relation to a real estate project,

Means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and

Includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.

2) Agreement to Sale

Agreement for sale” means an agreement entered into between the promoter and the allottee

3) Carpet Area

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

4) Completion Certificate

“Competent authority” means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property.

5) Commencement Certificate

Commencement certificate” means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan

6) Local Authority

Local authority means

- Municipal Corporation or
- Municipality or
- Panchayats or
- any other Local Body

constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

7) Occupancy Certificate

Occupancy certificate means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity

8) Sanctioned Plan

Sanctioned plan means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project

9) Appropriate Government-Section 2(g)

Appropriate Government' to mean as follows:

for the Union territory without Legislature, the Central Government;

for the Union territory of Puducherry, the Union territory Government;

for the Union territory of Delhi, the Central Ministry of Urban Development;

for the State, the State Government.

10) "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. {Section 2(b)}

11) "Apartment"

whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified. {Section 2(e)}

12) "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. {Section 2(j)}

13) “Common areas”

mean–

- (i) 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;
- (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
- (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;
- (iv) 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;
- (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
- (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- (vii) all community and commercial facilities as provided in the real estate project;
- (viii) (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use. {Section 2(n)}

14) “Company”

means a company incorporated and registered under the Companies Act, 2013 and includes,–

- (i) a corporation established by or under any Central Act or State Act;
- (ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force. {Section 2(o)}

15) “Competent authority”

means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its

jurisdiction, and has powers to give permission for development of such immovable property.
{Section 2(p)}

PRIOR REGISTRATION OF REAL ESTATE PROJECT

1) Type of Property

Plot, apartment or building

2) Prohibition

A promoter shall not advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner

3) Prior to commencement of Act

- Completion certificate has not been issued
- Promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act

PROJECTS EXEMPT FROM THE AMBIT OF THE ACT

1) The following projects do not require to be registered under the Act:

- Area of land does not exceed 500 Sq. Meters
- No. of apartments does not exceed 8

2) Renovation/Repair/Re-development

- Area of land proposed does not exceed five hundred square meters or
- The number of apartments proposed to be developed does not exceed eight, inclusive of all phases
- Promoter has received completion certificate for a real estate project prior to commencement of this Act

APPLICATION FOR REGISTRATION OF REAL ESTATE PROJECTS

1) Form, Manner, Time and Fees

Every promoter shall make application to the Authority in such form, manner, time and fees as may be prescribed

2) Steps for registration

• Step 1: Application

Applicant has to file an application for registration with RERA in prescribed form along with prescribed fees and documents

- **Step 2: Approval or Rejection**

Application for registration must be either approved or rejected within a period of 30 days from the date of application by the RERA

- **Step 3: Registration Number**

On successful registration, the promoter of the project will be provided with a registration number, a login id and password for the applicant

DOCUMENTS FOR REGISTRATION

1) Brief details of enterprise

Name, registered address, type of enterprise and the particulars of registration, and the names and photographs of the promoter

2) Brief details of projects launched

- Last five years
- Project already completed or being developed
- Current status of the projects
- Delay in its completion
- Details of cases pending

3) Approvals and Commencement certificate

Authenticated copy of the approvals and commencement certificate from the competent authority

4) Location and demarcation of land

Location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project

5) Proforma

Proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees

6) Details of apartment

- Number, type and the carpet area of apartments for sale
- Area of the exclusive balcony or verandah areas
- Exclusive open terrace areas apartment with the apartment

7) Garages

Number and areas of garage for sale in the project

8) Real Estate Agent

Names and addresses of his real estate agents, if any, for the proposed project

9) Details of other professionals involved

Names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project

10) Declaration

Declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:–

- He has a legal title to the land on which the development is proposed along with legally valid documents
- Land is free from all encumbrances, or as the case may be details of the encumbrances on such land
- Time period within which he undertakes to complete the project or phase thereof

GRANTING OF REGISTRATION BY THE AUTHORITY**A) The Authority shall within a period of thirty days-****1) Grant registration**

- Subject to the provisions of the Act and the rules and regulations
- Registration number, including a Login Id and password will be provided for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project

2) Reject the application

- Reasons to be recorded in writing
- Applicant has been given an opportunity of being heard

B) Authority fails to grant or reject

If the Authority fails to grant the registration or reject the application, as the case may be, the project shall be deemed to have been registered

EXTENTION OF REGISTRATION**1) Time Limit**

At the time of registration, a developer has to specify a time line during which he will complete and handover the project to the buyer

2) Delay in handing over

If promotor fails to do so within the stated time, then there are rigorous provisions in the Act

- Registration would be revoked
- Project would be taken by the Regulator

3) Extention of registration

Extention of registration may be granted

- Sole discretion of the regulator
- On an application made by the promoter

4) Reason for extention

- Force Majeure conditions
- Reasonable circumstances which merit extension

5) Application by promotor

Application should be in such form and on payment of such fee as may be specified by regulations made by the Authority.

6) Force majeure

Force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project

7) Term of extention

The Authority may in reasonable circumstances, 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

8) Extention rejected

Application for extension of registration shall not be rejected unless the applicant has been given an opportunity of being heard in the matter

REVOCAION OF REGISTRATION

1) Provision

The Authority may revoke the registration granted on

- Receipt of a complaint or
- Suomoto in this behalf or
- On the recommendation of the competent authority

2) Reasons for revocation

- Promoter makes default in doing anything required by or under this Act or the rules or the regulations
- Promoter violates any of the terms or conditions
- Promoter is involved in any kind of unfair practice or irregularities

3) Notice by authority

Authority has given to the promoter not less than thirty days' notice, in writing, stating the grounds on which it is proposed to revoke the registration

SECTION 8: OBLIGATION OF AUTHORITY CONSEQUENT UPON LAPSE OR ON REVOCATION OF REGISTRATION

1) Direction, decision or order of authority

Direction, decision or order shall be done by authority in consultation of appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner.

2) Right of association of allottees

The association of allottees shall have the first right of refusal for carrying out of the remaining development works

REGISTRATION OF REAL ESTATE AGENTS

1) No Sale or Purchase without registration

Real estate agent shall not facilitate the sale or purchase without obtaining registration

2) Application

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 as may be prescribed

3) Decision by authority

The Authority shall

- Grant a single registration to the real estate agent for the entire State of Union territory
- Reject the application for reasons to be recorded in writing

4) Opportunity of Being Heard

Application shall not be rejected unless the applicant has been given an opportunity of being heard in the matter

5) No communication received

Whereon the completion of the period prescribed under the act, applicant does not receive any communication he shall be deemed to have been registered

6) Registration Number

Every real estate agent shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him

7) Revocation or Suspension of Registration

- Breach of any of the conditions thereof of

- Breach of any other terms and conditions specified under this Act or any rules or regulations
- Registration has been secured by the real estate agent through misrepresentation or fraud

FUNCTIONS OF REAL ESTATE AGENTS

1) Register with authority

Real estate agent need require to register themselves with the authority.

2) Records

Real estate agent maintains and preserves such books of account, records and documents as may prescribed

3) No unfair trade practises

Real estate agent not to involve himself in any unfair trade practices

- 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.

OBLIGATION OF PROMOTER REGARDING VERACITY OF THE ADVERTISEMENT OR PROSPECTUS

1) Applicability

Information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building is y incorrect, false statement

2) Consequences

Any person makes an advance or a deposit on the basis of the false information shall be compensated by the promoter in the manner as provided under the Act.

3) Intends to withdraw from the proposed project

He shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under the Act.

NO DEPOSIT OR ADVANCE TO BE TAKEN BY PROMOTOR WITHOUT FIRST ENTERING INTO AGREEMENT FOR SALE

A promoter shall not accept a sum more than ten per cent 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

STRUCTURAL DEFECTS

1) Type of Complaint

Any structural defect or any other defect in

- workmanship,
- quality or
- provision of services or
- any other obligations of the promoter

2) Notice to promoter

It is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession

3) Duty of promoter

It shall be the duty of the promoter to rectify such defects without further charge, within thirty days

4) Failure on behalf of promoter

The aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act

OBLIGATION OF PROMOTER REGARDING INSURANCE OF REAL ESTATE PROJECT

1) Provision

The promoter shall obtain all such insurances as may be notified by the appropriate Government

2) Insurance coverage

Insurance should be including but not limited to insurance in respect of –

- (i) title of the land and building as a part of the real estate project; and
- (ii) construction of the real estate project

3) Premium and Charges

The promoter shall be liable to pay the premium and charges in respect of the insurance

4) Time Limit

Promoter shall pay the same before transferring the insurance to the association of the allottees.

5) Handover documents

On formation of the association of the allottees, all documents relating to the insurance shall be handed over to the association of the allottees

RIGHTS OF ALLOTTEE

1) Right to obtain information

The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority

2) Right to know schedule

Allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services

3) Right to claim possession

The allottee shall be entitled to claim the possession of apartment, plot or building,

4) Claim refund

The allottee shall be entitled to claim the refund of amount paid along with interest if the promoter fails to comply or is unable to give possession of the apartment, plot or building,

5) Entitled to necessary documents

Allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession

DUTIES OF ALLOTTEE

1) Timely payment

Every allottee shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place

2) Pay interest

The allottee shall be liable to pay interest or any delay in payment towards any amount or charges to be paid

3) Participate towards formation of association

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

4) Take physical possession

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

5) Participate towards conveyance deed

Every allottee shall participate towards registration of the conveyance deed of the apartment

REAL ESTATE REGULATORY AUTHORITY

COMPOSITION OF AUTHORITY

- 1) Chairperson
- 2) Member- Minimum 2 while time member

Appointment by appropriate government

QUALIFICATION OF CHAIRPERSON AND MEMBERS OF AUTHORITY

1) Term of experience

Chairperson- 20 years

Member-15 years

2) Field of experience

Urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration

3) Person in service of State Government

- **Chairperson-** Shall not be appointed unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government
- **Member-** Shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

TERM OF OFFICE OF CHAIRPERSON AND MEMBERS

1) Term

Term not exceeding five years

2) Maximum Age

Until they attain the age of sixty-five years

3) Re-appointment

Shall not be eligible for re-appointment

RESTRICTION OF CHAIRPERSON OR MEMBERS ON EMPLOYMENT AFTER CESSATION OF OFFICE

The Chairperson or a Member, ceasing to hold office as such, shall not–

1) Accept Employment

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

2) Give advise

Give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public

3) Appoint to a board of director or accept offer of employment

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

4) Confidentiality

The Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

5) Act in specific proceedings or transaction or negotiation

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

FILING OF COMPLAINTS WITH THE AUTHORITY OR THE ADJUDICATING OFFICER

1) Who can complaint

Any aggrieved person may file a complaint with the Authority or the adjudicating officer

2) Grounds of complaint

Violation or contravention of the provisions of the Act or the rules and regulations made thereunder against any promoter allottee or real estate agent

3) Meaning of Person

“Person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force

FUNCTIONS OF AUTHORITY FOR PROMOTION OF REAL ESTATE SECTOR

The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government of the competent authority, as the case may be, on,–

- 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 standardisation 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

1) Refer to authority for opinion

The appropriate Government may, while formulating a policy on real estate sector (including review of laws related to real estate sector) or any other matter, make a reference to the Authority for its opinion

2) Time Limit

The Authority shall within a period of sixty days of making such reference, give its opinion to the appropriate Government which may thereafter take further action as it deems fit.

3) Not binding on Appropriate Government

The opinion given by the Authority shall not be binding upon the appropriate Government in formulating such policy or laws

4) Functions

The Authority shall take suitable measures for the promotion of advocacy, creating awareness and imparting training about laws relating to real estate sector and policies

FUNCTIONS OF AUTHORITY

The functions of the Authority shall include–

1) Register and Regulate

To register and regulate real estate projects and real estate agents registered under the Act

2) Maintain records of real estate projects

To publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted

3) Maintain records of promoters

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

4) Maintain records of real estate agents

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, with such details as may be prescribed, including those whose registration has been rejected or revoked

5) Fix fees through regulations

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

6) Ensure compliance of obligation

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

7) Ensure compliance of regulations or orders

To ensure compliance of its regulations or orders or directions made in exercise of its powers under the Act

8) Perform such other functions

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.

POWER OF AUTHORITY

1) Power to call upon to furnish information or explanation

Authority by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs

2) Power to conduct inquiry

Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent

3) Powers as vested in a civil court

The 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:–

- 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

4) Power to issue interim order

During an inquiry, the Authority is satisfied that an act in contravention of the Act, or the rules and regulations

The Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry of until further orders

5) Power of authority to issue directions

The Authority may issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be.

6) Power of Authority to Impose Penalty

The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agent

RECTIFICATION OF ORDER**1) Application for rectification**

Application for rectification can be made by the parties

2) Time limit for application

Authority may, at any time within a period of two years from the date of the order all make such amendment

3) Order which cannot be rectified

Amendment shall not be made in respect of any order against which an appeal has been preferred under the Act

RECOVERY OF INTEREST OR PENALTY OR COMPENSATION AND ENFORCEMENT OF ORDER**1) Who fails to pay**

Promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him

2) Mode of recovery

It shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue

RESPONSIBILITIES OF REGULATORY AUTHORITY

- 1) Registration of real estate project and real estate agent
- 2) Extension of registration of real estate project and its revocation
- 3) Renewal of registration of real estate agent and its revocation
- 4) To maintain a website of records for public reviewing
- 5) To appoint one or more adjudicating officer
- 6) Notify regulations
- 7) Recommendations for the growth and promotion of a healthy, transparent

ESTABLISHMENT OF CENTRAL ADVISORY COUNCIL

1) Established

The Central Government may, by notification, establish a Council to be known as the Central Advisory Council

2) Chairperson

Minister in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council.

3) Government representative

Central Advisory Council shall consist of

- Representatives of the 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 representatives of State Governments to be selected by rotation
- Five representatives of the Real Estate Regulatory Authorities to be selected by rotation
- Any other Central Government department as notified.

4) Other representative

Consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

FUNCTIONS OF CENTRAL ADVISORY COUNCIL

1) Advise

The Central Advisory Council is required to advise the Central Government

2) Advise related to which matters

Matters relating to

- Implementation of the Act
- Questions of policy,
- Protection of consumer interest,
- Foster growth and development of the real estate sector, and
- Other matters as may be assigned to it by the Central Government.

REAL ESTATE APPELLATE TRIBUNAL

FUNCTIONS OF ESTABLISHMENT OF REAL ESTATE APPELLATE TRIBUNAL

1) Established by

Appropriate Government

2) One or more benches

Appropriate Government may establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory

3) Composition of each bench

At least one Judicial Member and one Administrative or Technical Member

4) Single Appellate Tribunal

The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal.

5) Appeal with Appellate tribunal

Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer

APPLICATION FOR SETTLEMENT OF DISPUTES AND APPEALS TO APPELLATE TRIBUNAL

1) Who can prefer appeal

- Appropriate Government
- Competent authority
- Any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer

2) Time period

Within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer

3) Appeal after expiry of time limit

The Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period

4) Pass order

The Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, as it thinks fit.

5) Send copy of order

Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be

COMPOSITION OF APPELLATE TRIBUNAL

- 1) Chairperson
- 2) Member (Not less than 2)
 - One should be Judicial Member
 - One should be Technical or Administrative Member

QUALIFICATIONS FOR APPOINTMENT OF CHAIRPERSON AND MEMBER**1) Appointment**

- **Chairperson**-Appropriate Government in consultation with the Chief Justice of High Court or his nominee
- **Judicial Members and Technical or Administrative Members** -Appropriate Government on the recommendations of a Selection Committee

2) Qualification

- **Chairperson**- Is or has been a Judge of a High Court
- **Judicial member**

TERM OF OFFICE OF CHAIRPERSON AND MEMBERS**1) Term**

Term not exceeding five years from the date on which he enters upon his office

2) Re-appointment

Shall not be eligible for re-appointment

3) Qualification

Chairperson- Who is or has been a Judge of a High Court

4) Maximum Age for holding office

Chairperson-Shall not hold office after he has attained the age of sixty-seven years
Member-Shall not hold office after he has attained the age of sixty-five years.

POWER OF TRIBUNAL**1) Code of Civil Procedure,1908**

The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908

2) Own procedure

Appellate Tribunal shall have power to regulate its own procedure

3) Indian Evidence Act,1872

The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

4) Powers as vested in a civil court

The Appellate Tribunal shall have the same powers as are vested in a civil court in respect of the following matters, namely:–

- Summoning and enforcing the attendance of any person and examining him on oath;
- Requiring the discovery and production of documents;
- Receiving evidence on affidavits;
- Issuing commissions for the examinations of witnesses or documents;
- Reviewing its decisions;
- Dismissing an application for default or directing it ex parte; and
- Any other matter which may be prescribe

RIGHT OF LEGAL REPRESENTATION

1) Represent where?

- Appellate Tribunal or
- Regulatory Authority or
- Adjudicating officer

2) Who can represent

- Appear in person
- 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

ORDER PASSED BY APPELLATE TRIBUNAL TO BE EXECUTABLE AS A DECREE

1) Decree of civil court

Every order made by the Appellate Tribunal shall be executable by the Appellate Tribunal as a decree of civil court

2) Transmit order

The Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court

APPEAL TO HIGH COURT

1) Who can appeal

Any person aggrieved by any decision or order of the Appellate Tribunal

2) Time limit

Within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal

3) After time limit

If high court is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time

COMPANY SECRETARIES-ONE STOP PROFESSIONAL ADVISORY SERVICES FOR REAL ESTATE PROJECTS ADVISORY COUNCIL

Company Secretaries holding Certificate of Practice by becoming an expert in the act can indulge in providing advice in respect of

1. Financial Advisory Services
2. Various applicable provision particular on real estate project
3. Registration and extension procedure of real estate project with competent authority
4. Various obligation, functions and duties of promoter in a real estate project
5. Penal Provisions under the Act
6. Funding Options for Real Estate Project
7. Taxation aspects for Real Estate Project
8. Legal & Regulatory Compliances

SECTION 56: COMPANY SECRETARY-AS LEGAL REPRESENTATIVE

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

OFFENCE BY COMPANY

1) Offending Party

Offence under the Act has been committed by a company

2) Who shall be punished

- Company
- Every person who at time of offence was in charge of or was responsible to the company for the conduct

3) Committed without his knowledge

If person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence then he shall not be liable

4) Director, manager, secretary or other officer of the company

An offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or 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.

COMPOUNDING OF OFFENCE

1) Offence which is compoundable

Any person is punished with imprisonment under the Act

2) When offence punishable

The punishment may, either before or after the institution of the prosecution

3) Compounding

It may be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed

4) Amount of fine in compounding

The sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

BAR ON JURISDICTION

1) Civil court have no jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the Adjudicating officer or the Appellate Tribunal is empowered by or under the Act to determine

2) No injunction

No injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act

COGNIZANCE OF OFFENCES (SECTION 80)

No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

DELEGATION (SECTION 81)

The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85), as it may deem necessary.

SECTION 88: APPLICATION OF OTHER LAWS NOT BARRED

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

SECTION 89: ACT TO HAVE OVERRIDING EFFECT

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

SECTION 90: PROTECTION OF ACTION TAKEN IN GOOD FAITH

No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

OFFENCE AND PENALTY

1) Punishment prescribed for non-registration of a project under the Act

First time contravention

Penalty- 10% of the estimated cost of project

Consistent default

Penalty- 10% of the estimated cost of project or

Imprisonment -Upto 3 years or

Both

2) Penalty for False Information or contravention of Section 4

Penalty- 5% of the estimated project cost

3) Penalty for contravention of other provision of the Act (other than Section 3 and 4)

Penalty- 5% of the estimated project cost

4) Penalty for Non-registration and contravention under Section 9 and 10 (Real Estate Agent)

Penalty- Rs 10,000 / day for everyday default continues

Maximum cumulation- Can extend upto 5% of the cost of plot,apartment or building

5) Penalty for failure to comply with orders of Authority by promoter

Penalty- every day during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of the real estate project as determined by the Authority

6) Penalty for failure to comply with orders of Appellate Tribunal by promoter

Imprisonment- For a term which may extend up to three years

Fine- Fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project or

Both

7) Penalty for failure to comply with orders of Authority by real estate agent

Penalty- every day during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of the real estate project as determined by the Authority

8) Penalty for failure to comply with orders of Appellate Tribunal by real estate agent

Imprisonment- For a term which may extend up to one year

Fine- Fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project or

Both

9) Penalty for Failure to comply with orders of Authority by Allottee

Penalty- every day during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of the real estate project as determined by the Authority

10) Penalty for failure to comply with orders of Appellate Tribunal by allottee

Imprisonment- For a term which may extend up to one year

Fine- Fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of plot,apartment or building cost or

Both