



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

**SUPPLEMENT FOR
ECONOMIC, BUSINESS AND COMMERCIAL
LAWS
MODULE 2
PAPER 7**

APPLICABLE FOR JUNE 2020 EXAMINATION

FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) RULES, 2019

In exercise of the powers conferred under Section 46(2) (aa) and (ab) of the Foreign Exchange Management Act, 1999 and in supersession of the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, the Central Government issued Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

Important Definitions

“Asset Reconstruction Company” means a company registered with the Reserve Bank under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

‘Convertible Note’ means an instrument issued by a startup company acknowledging receipt of money initially as debt, repayable at the option of the holder, or which is convertible into such number of equity shares of that company, within a period not exceeding five years from the date of issue of the convertible note, upon occurrence of specified events as per other terms and conditions agreed and indicated in the instrument.

“Depository Receipt” means a foreign currency denominated instrument, whether listed on an international exchange or not, issued by a foreign depository in a permissible jurisdiction on the back of eligible securities issued or transferred to that foreign depository and deposited with a domestic custodian and includes ‘global depository receipt’ as defined in the Companies Act, 2013.

“Domestic Custodian” means a custodian of securities registered with the Securities and Exchange Board of India in accordance with the SEBI (Custodian of Securities) Regulations, 1996.

“Domestic Depository” means a custodian of securities registered with the Securities and Exchange Board of India and authorised by the issuing entity to issue Indian depository receipts.

“ESOP” means ‘Employees’ stock option’ as defined under the Companies Act, 2013 and issued under the regulations by the Securities and Exchange Board of India.

“Equity Instruments” means equity shares, convertible debentures, preference shares and share warrants issued by an Indian company;

Explanation:-

(i) Equity shares issued in accordance with the provisions of the Companies Act, 2013 shall include equity shares that have been partly paid. “Convertible debentures” means fully, compulsorily and mandatorily convertible debentures. “Preference shares” means fully, compulsorily and mandatorily convertible preference shares. Share Warrants are those issued by an Indian company in accordance with the regulations by the Securities and Exchange Board of India. Equity instruments can contain an optionality clause subject to a minimum lock-in period of one year or as prescribed for the specific sector, whichever is higher, but without any option or right to exit at an assured price.

(ii) Partly paid shares that have been issued to a person resident outside India shall be fully called-up within twelve months of such issue or as may be specified by the Reserve Bank from time to time. Twenty- five per cent of the total consideration amount (including share premium, if any) shall be received upfront.

(iii) In case of share warrants, at least twenty-five per cent of the consideration shall be received upfront and the balance amount within eighteen months of the issuance of share warrants.

“Escrow Account” means an escrow account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

“FVCI” means a Foreign Venture Capital Investor incorporated and established outside India and registered with the Securities and Exchange Board of India under the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000.

“Foreign Central Bank” means an institution or organisation or body corporate established in a country outside India and entrusted with the responsibility of carrying out central bank functions under the law for the time being in force in that country.

“FCNR (B) account” means a Foreign Currency Non-Resident (Bank) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016;

“FCCB” or “Foreign Currency Convertible Bond” means a bond issued under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

“FDI” or “Foreign Direct Investment” means investment through equity instruments by a person resident outside India in an unlisted Indian company; or in ten per cent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company.

Note:- In case an existing investment by a person resident outside India in equity instruments of a listed Indian company falls to a level below ten percent, of the post issue paid-up equity capital on a fully diluted basis, the investment shall continue to be treated as FDI;

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

“Foreign Investment” means any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of a LLP.

Explanation: - If a declaration is made by a person as per the provisions of the Companies Act, 2013 about a beneficial interest being held by a person resident outside India, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment;

Note:- A person resident outside India may hold foreign investment either as FDI or as FPI in any particular Indian company.

“Foreign Portfolio Investment” means any investment made by a person resident outside India through equity instruments where such investment is less than ten percent of the post issue paid-up share capital on a fully diluted basis of a listed Indian company or less than ten percent of the paid-up value of each series of equity instrument of a listed Indian company.

“FPI” or “Foreign Portfolio Investor” means a person registered in accordance with the provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014.

“Government approval” means the approval from the erstwhile Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India and/ or the erstwhile Foreign Investment Promotion Board (FIPB) and/ or any of the ministry/ department of the Government of India, as the case may be.

“Group Company” means two or more enterprises which, directly or indirectly, are in a position to (i) exercise twenty-six per cent, or more of voting rights in other enterprise; or (ii) appoint more than fifty per cent of members of Board of Directors in the other enterprise.

“Hybrid Securities” means hybrid instruments such as optionally or partially convertible preference shares or debentures and other such instruments as specified by the Central Government from time to time, which can be issued by an Indian company or trust to a person resident outside India.

“Indian company” means a company incorporated in India.

“IDR” or “Indian Depository Receipts (IDRs)” means any instrument in the form of a depository receipt created by a domestic depository in India and authorised by a company incorporated outside India making an issue of such depository receipts.

“Indian entity” shall mean an Indian company or a LLP.

“Investing Company” means an Indian company holding only investments in other Indian company/ies directly or indirectly, other than for trading of such holdings or securities.

“Investment” means to subscribe, acquire, hold or transfer any security or unit issued by a person resident in India.

Explanation:-

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

(ii) for the purpose of LLP, investment shall mean capital contribution or acquisition or transfer of profit shares.

“Investment on Repatriation Basis” means an investment, sale or maturity proceeds of which are net of taxes, eligible to be repatriated out of India, and the expression “investment on non-repatriation basis”, shall be construed accordingly;

“Investment Vehicle” means an entity registered and regulated under the regulations framed by the Securities and Exchange Board of India or any other authority designated for that purpose and shall include, namely:- (i) Real Estate Investment Trusts (REITs) governed by the Securities and Exchange Board of India (REITs) Regulations, 2014;(ii) Infrastructure Investment Trusts (InvIts) governed by the Securities and Exchange Board of India (InvIts) Regulations, 2014 (iii) Alternative Investment Funds (AIFs) governed by the Securities and Exchange Board of India (AIFs) Regulations, 2012.

“Listed Indian Company” means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and the expression “unlisted Indian company” shall be construed accordingly.

“Manufacture”, with its grammatical variations, means a change in a non-living physical object or article or thing;- (i) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (ii) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

“Non-Debt Instruments” means the following instruments; namely:-

- (i) all investments in equity instruments in incorporated entities: public, private, listed and unlisted;

- (ii) capital participation in LLP;
- (iii) all instruments of investment recognised in the FDI policy notified from time to time;
- (iv) investment in units of Alternative Investment Funds (AIFs), Real Estate Investment Trust (REITs) and Infrastructure Investment Trusts (InvIts);
- (v) investment in units of mutual funds or Exchange-Traded Fund (ETFs) which invest more than fifty per cent in equity;
- (vi) junior-most layer (i.e. equity tranche) of securitisation structure;
- (vii) acquisition, sale or dealing directly in immovable property;
- (viii) contribution to trusts; and
- (ix) depository receipts issued against equity instruments.

“NRI” or “Non-Resident Indian” means an individual resident outside India who is a citizen of India.

“OCI” or “Overseas Citizen of India” means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under section 7A of the Citizenship Act, 1955.

“Resident Indian Citizen” means an individual who is a person resident in India and is a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955.

“Sectoral Cap” means the maximum investment including both foreign investment on a repatriation basis by persons resident outside India in equity instruments of a company or the capital of a LLP, as the case may be, and indirect foreign investment, unless provided otherwise. This shall be the composite limit for the Indian investee entity.

Explanation:

(i) FCCBs and DRs having underlying of instruments being in the nature of debt shall not be included in the sectoral cap;

(ii) any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned under the sectoral cap;

“Start-up Company” means a private company incorporated under the Companies Act, 2013 and identified under G.S.R. 180(E), dated the 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry;

“Venture Capital Fund” means a fund established in the form of a trust, a company including a body corporate and registered under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

GENERAL CONDITIONS APPLICABLE TO ALL INVESTORS

Restriction on investment in India by a person resident outside India

Rule 3 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that save as otherwise provided in the Foreign Exchange Management Act, 1999 or rules or regulations made thereunder, no person resident outside India shall make any investment in India:

An investment made in accordance with the Foreign Exchange Management Act, 1999 or the rules or the regulations made thereunder and held on the date of commencement of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 shall be deemed to have been made under Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and shall accordingly be governed by Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

Reserve Bank of India may, on an application made to it and for sufficient reasons and in consultation with the Central Government, permit a person resident outside India to make any investment in India subject to such conditions as may be considered necessary.

Restriction on receiving investment

Rule 4 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that save as otherwise provided in the Foreign Exchange Management Act, 1999 or rules or regulations made thereunder, an Indian entity or an investment vehicle, or a venture capital fund or a firm or an association of persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books:

Reserve Bank of India may, on an application made to it and for sufficient reasons and in consultation with the Central Government, permit an Indian entity or an investment vehicle, or a venture capital fund or a firm or an association of persons or a proprietary concern to receive any investment in India from a person resident outside India or to record such investment subject to such conditions as may be considered necessary.

Permission for making investment by a person resident outside India

According to Rule 5 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, unless otherwise specified in Foreign Exchange Management (Non-debt Instruments) Rules, 2019 or the Schedules, any investment made by a person resident outside India shall be subject to the entry routes, sectoral caps or the investment limits, as the case may be, and the attendant conditionalities for such investment as laid down in the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

INVESTMENT BY PERSON RESIDENT OUTSIDE INDIA

Investments by person resident outside India

According to Rule 6(a) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a person resident outside India may subscribe, purchase or sell equity instruments of an Indian company in the manner and subject to the specified terms and conditions.

A person who is a citizen of Bangladesh or Pakistan or is an entity incorporated in Bangladesh or Pakistan cannot purchase equity instruments without the prior government approval.

A citizen of Pakistan or an entity incorporated in Pakistan cannot invest in defence, space, atomic energy and sectors or activities prohibited for foreign investment even through the government route.

It may be noted that issue or transfer of “participating interest or right” in oil fields by Indian companies to a person resident outside India would be treated as foreign investment and shall comply with the specified conditions.

Purchase or sale of equity instruments of an Indian company by a person resident outside India

An Indian company may issue equity instruments to a person resident outside India subject to entry routes, sectoral caps and attendant conditionalities as prescribed in the Schedule of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

A person resident outside India may purchase equity instruments of a listed Indian company on a stock exchange in India. Provided that -

- (i) the person resident outside India making the investment has already acquired control of such company in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and continues to hold such control;
- (ii) the amount of consideration may be paid as per the mode of payment specified by the Reserve Bank or out of the dividend payable by Indian investee company in which the person resident outside India has acquired and continues to hold the control in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 provided the right to receive dividend is established and the dividend amount has been credited to a specially designated noninterest bearing rupee account for acquisition of shares on the recognised stock exchange.

A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100 percent foreign investment is allowed in the automatic route and there are no

FDI linked performance conditions, may issue equity instruments to the said non-resident entity against pre- incorporation or pre-operative expenses incurred by the said non-resident entity up to a limit of five percent of its authorised capital or USD 500,000 whichever is less, subject to the condition that within thirty days from the date of issue of equity instruments but not later than one year from the date of incorporation or such time as the Reserve Bank permits, the Indian company shall report the transaction to the Reserve Bank as per the reporting requirements as specified by the Reserve Bank.

An Indian company may issue, subject to compliance with the conditions prescribed by the Central Government and/or the Reserve Bank from time to time, equity instruments to a person resident outside India, if the Indian investee company is engaged in an automatic route sector, against,-

- (i) swap of equity instruments; or
- (ii) import of capital goods or machinery or equipment (excluding second-hand machinery); or
- (iii) pre-operative or pre-incorporation expenses (including payments of rent etc.) :

Provided that the Government approval shall be obtained if the Indian investee company is engaged in a sector under Government route and the applications for approval shall be made in the manner prescribed by the Central Government from time to time.

An Indian company may issue equity shares against any funds payable by it to a person resident outside India, the remittance of which is permitted under the Act or the rules and regulations framed or directions issued thereunder or does not require prior permission of the Central Government or the Reserve Bank under the Act or the rules and regulations framed or directions issued thereunder or has been permitted by the Reserve Bank under the Act or the rules and regulations framed or directions issued thereunder:

Provided that in case where permission has been granted by the Reserve Bank for making remittance, the Indian company may issue equity shares against such remittance provided all regulatory actions with respect to the delay or contravention under the Act or the rules or the regulations framed thereunder have been completed.

The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

Sectors prohibited for FDI.-

1. Lottery business including Government or private lottery, online lotteries, etc.
2. Gambling and betting including casinos, etc.
3. Chit funds
4. Nidhi company

5. Trading in Transferable Development Rights
6. Real estate business or construction of farm houses
Explanation: For the purpose of this rule, 'real estate business shall not include development of townships, construction of residential or commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.
7. Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
8. Activities or sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations (other than permitted activities)
9. Foreign technology collaborations in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

Permitted sectors, entry routes and sectoral caps for total foreign investment

Unless otherwise specified in the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 or the Schedules, the entry routes and sectoral caps for the total foreign investment in an Indian entity shall be as follows, namely :-

(a) Entry routes

(i) "Automatic route" means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank or the Central Government;

(ii) "government route" means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.

(iii) Aggregate foreign portfolio investment up to forty-nine percent of the paid-up capital on a fully diluted basis or the sectoral or statutory cap, whichever is lower, shall not require Government approval or compliance of sectoral conditions as the case may be, if such investment does not result in transfer of ownership and control of the resident Indian company from resident Indian citizens or transfer of ownership or control to persons resident outside India and other investments by a person resident outside India shall be subject to the conditions of Government approval and compliance of sectoral conditions as laid down in these rules.

(b) Sectoral caps

(i) Sectoral cap for the sectors or activities specified in the table is the limit indicated against each sector. The total foreign investment shall not exceed the sectoral or statutory cap.

(ii) Foreign investment in the following sectors or activities is subject to applicable laws or regulations, security and other conditionalities.

(iii) In sectors or activities not listed below or not prohibited under Foreign Exchange Management (Non-debt Instruments) Rules, 2019, foreign investment is permitted up to one hundred percent on the automatic route, subject to applicable laws or regulations, security and other conditionalities.

(iv) Wherever there is a requirement of minimum capitalisation, it shall include premium received along with the face value of the equity instrument, only when it is received by the company upon issue of such instruments to the person resident outside India and the amount paid by the transferee during post-issue transfer beyond the issue price of the capital instrument, shall not be taken into account while calculating minimum capitalization requirement.

(v) (A) Foreign Investment in investing companies not registered as Non-Banking Financial Companies with the Reserve Bank and in core investment companies (CICs), both engaged in the activity of investing in the capital of other Indian entities, shall require prior approval of the Government.

Note: Compliance to these rules by the core investment companies is in addition to the compliance of the regulatory framework prescribed to such companies as NBFCs under the Reserve Bank of India Act, 1934 and regulations framed thereunder.

(v) (B) Foreign investment in investing companies registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank, shall be under 100% automatic route.

(vi) For undertaking activities which are under automatic route and without FDI linked performance conditions, an Indian company which does not have any operations and also has not made any downstream investment that is treated as indirect foreign investment for the investee entity, may receive investment in its equity instruments from persons resident outside India under automatic route, however, approval of the Government shall be required for such companies for undertaking activities which are under Government route and as and when such a company commences business or makes downstream investment that is treated as indirect foreign investment for the investee entity, it shall have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

(vii) The onus of compliance with the sectoral or statutory caps on such foreign investment and attendant conditions, if any, shall be on the company receiving foreign investment.

(viii) Wherever the person resident outside India who has made foreign investment specifies a particular auditor or audit firm having international network for the audit of the Indian investee company, then audit of such investee company shall be carried out as joint audit wherein one of the auditors is not part of the same network.

PERMITTED SECTOR

Sl. No	Sector/ Activity	Sectoral Cap	Entry Route
1.	Agriculture and Animal Husbandry (a) Floriculture, Horticulture and Cultivation of vegetables and mushrooms under controlled conditions; (b) Development and production of seeds and planting material; (c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture and Apiculture; and (d) Services related to agro and allied sectors. <i>Note: Other than the above, foreign investment is not allowed in any other agricultural sector or activity.</i>	100%	Automatic
2.	Plantation (a) Tea sector including tea plantations (b) Coffee plantations (c) Rubber plantations (d) Cardamom plantations (e) Palm oil tree plantations (f) Olive oil tree plantation <i>Note: Foreign investment is not allowed in any plantation sector/ activity other than those listed above.</i>	100%	Automatic
3	Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; subject to the Mines and Minerals (Development and Regulation) Act, 1957.	100%	Automatic
4	(a) Coal and Lignite mining for captive consumption by power projects, iron and steel and cement units and other eligible activities permitted under and subject to the provisions of Coal Mines (Nationalization) Act, 1973.	100%	Automatic

	(b) Setting up coal processing plants like washeries, subject to the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.		
5	Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation) Act, 1957.	100%	Government
6	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/ pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, subject to the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies.	100%	Automatic
7	Petroleum refining by the Public Sector Undertakings (PSUs), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
8.	Manufacturing	100%	Automatic
9	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951; and Manufacturing of small arms and ammunition under the Arms Act, 1959	100%	Automatic route up to 49% Government route beyond 49% wherever it is likely to result in access to modern

			technology or for other reasons to be recorded.
10	Broadcasting Carriage Services (a) Teleports (setting up of up-linking HUBs/ Teleports); (b) Direct to Home (DTH); (c) Cable Networks (Multi System Operators (MSOs) operating at National or State or District level and undertaking up-gradation of networks towards digitalization and addressability); (d) Mobile TV; (e) Head-end-in-the Sky Broadcasting Service (HITS)	100%	Automatic
11	Broadcasting Carriage Services Cable Networks (Other MSOs not undertaking up-gradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)).	100%	Automatic
12	Broadcasting Content Services Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information and Broadcasting, for grant of permission for setting up of FM Radio stations.	49%	Government
13	Broadcasting Content Services Up-Linking of 'News & Current Affairs' TV Channels	49%	Government
14	Broadcasting Content Services Up-linking of Non-'News & Current Affairs' TV Channels/ Downlinking of TV Channels	100%	Automatic
15	Print Media Publishing of newspaper and periodicals dealing with news and current affairs	26%	Government
16	Print Media	26%	Government

	Publication of Indian editions of foreign magazines dealing with news and current affairs		
17	Print Media Publishing or printing of Scientific and Technical Magazine or specialty journals or periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government
18	Print Media Publication of facsimile edition of foreign newspapers	100%	Government
19	Airports(Greenfield projects 100% Automatic)	100%	Automatic
20	Airports(Existing projects 100% Automatic)	100%	Automatic
21	Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline (ii) Regional Air Transport Service	100%	Automatic up to 49% Government route beyond 49%(Automatic up to 100% for NRI's and OCI's)
22	Non-Scheduled Air Transport Service	100%	Automatic
23	Helicopter service or seaplane services requiring Directorate General of Civil Aviation approval	100%	Automatic
24	Civil Aviation sector Ground Handling Services subject to sectoral regulations and security clearance	100%	Automatic
25	Civil Aviation sector Maintenance and Repair organizations; flying training institutes and technical training institutions	100%	Automatic
26	Construction-development projects (which shall include development of townships,	100%	Automatic

	construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure, townships)		
27	Industrial Parks	100%	Automatic
28	Satellites - Establishment and operation		
29	Satellites Establishment and operation, subject to the sectoral guidelines of Department of Space/ ISRO	100%	Government
30	Private Security Agencies	49%	Government
31	All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United Access Services, Unified license (Access services), Unified License, National/ International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), all types of ISP licenses, Voice Mail/ Audiotex/ UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.	100%	Automatic up to 49%; Government route beyond 49%
32	Cash and Carry Wholesale Trading/ Wholesale Trading (including sourcing from MSEs)	100%	Automatic
33	B2B E-commerce activities	100%	Automatic
34	Market place model of e-commerce	100 %	Automatic
35	Sale of services through e-commerce shall be under automatic route subject to the sector specific conditions, applicable laws/ regulations, security and other conditionalities.		
36	Single Brand Product Retail Trading	100%	Automatic up to 49%; Government route beyond 49%
37	Multi Brand Retail Trading (MBRT)	51%	Government
38	Duty Free Shops	100%	Automatic

39	Pharmaceuticals(Greenfield)	100%	Automatic
40	Pharmaceuticals (Brownfield)	100%	Automatic up to 74%; Government route beyond 74%
41	Railway Infrastructure Construction, operation and maintenance of the following: (i) Suburban corridor projects through PPP, (ii) high-speed train projects, (iii) Dedicated freight lines, (iv) Rolling stock including train sets, and locomotives/ coaches manufacturing and maintenance facilities, (v) Railway Electrification, (vi) Signalling systems, (vii) Freight terminals, (viii) Passenger terminals, (ix) Infrastructure in industrial park pertaining to railway line/ sidings including electrified railway lines and connectivity to main railway line and (x) Mass Rapid Transport Systems	100%	Automatic
42	Banking - Private sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%
43	Banking - Public Sector subject to Banking Companies (Acquisition & Transfer of Undertakings) Acts, 1970/80. This ceiling is also applicable to the State Bank of India.	20%	Government
44	Infrastructure companies in Securities Markets, namely, stock exchanges, commodity derivative exchanges, depositories and clearing corporations, in compliance with Securities and Exchange Board of India Regulations	49%	Automatic
45	Power Exchanges under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010	49%	Automatic
46	Credit Information Companies	100%	Automatic

47	(a) Insurance Company (b) Insurance Brokers (c) Third Party Administrators (d) Surveyors and Loss Assessors (e) Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development Authority Act, 1999.	49%	Automatic
48	Pension Sector	49%	Automatic
49	Other Financial Services	100%	Automatic

Investment by a person resident outside India in a Limited Liability Partnership (LLP)

According to Rule 6(b) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a person resident outside India, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest either by way of capital contribution or by way of acquisition or transfer of profit shares of an LLP, in the manner and subject to the following terms and conditions:

(a) A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh), not being a Foreign Portfolio Investor (FPI) or a Foreign Venture Capital Investor (FVCI), may contribute to the capital of an LLP operating in sectors or activities where foreign investment up to 100 per cent is permitted under automatic route and there are no FDI linked performance conditions.

(b) Investment by way of “profit share” shall fall under the category of reinvestment of earnings.

(c) Investment in a LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008.

(d) A company having foreign investment, engaged in a sector where foreign investment up to 100 percent is permitted under the automatic route and there are no FDI linked performance conditions, may be converted into a LLP under the automatic route.

(e) A LLP having foreign investment, engaged in a sector where foreign investment up to 100 per cent is permitted under the automatic route and there are no FDI linked performance conditions, may be converted into a company under the automatic route.

(f) Investment in a LLP either by way of capital contribution or by way of acquisition or transfer of profit shares, should not be less than the fair price worked out as per any valuation norm which is internationally accepted or adopted as per market practice (hereinafter referred to as “fair price of capital contribution or profit share of a LLP”) and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practising Cost Accountant or by an approved valuer from the panel maintained by the Central Government.

(g) In case of transfer of capital contribution or profit share from a person resident in India to a person resident outside India, the transfer shall be for a consideration not less than the fair price of capital contribution or profit share of a LLP. Further, in case of transfer of capital contribution or profit share from a person resident outside India to a person resident in India, the transfer shall be for a consideration which is not more than the fair price of the capital contribution or profit share of an LLP.

(h) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

Investment by a person resident outside India in an Investment Vehicle

According to Rule 6 (c) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a person resident outside India, other than a citizen of Bangladesh or Pakistan or an entity incorporated in Bangladesh or Pakistan, may invest in units of an investment vehicle, in the manner and subject to the following terms and conditions:

(1) A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh) may invest in units of Investment Vehicles.

(2) A person resident outside India who has acquired or purchased units in accordance with this Schedule may sell or transfer in any manner or redeem the units as per regulations framed by the Securities and Exchange Board of India or directions issued by the Reserve Bank.

(3) An Investment vehicle may issue its units to a person resident outside India against swap of equity instruments of a Special Purpose Vehicle (SPV) proposed to be acquired by such Investment Vehicle.

(4) Investment made by an Investment Vehicle into an Indian entity shall be reckoned as indirect foreign investment for the investee Indian entity if the Sponsor or the Manager or the Investment Manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India.

Provided that for sponsors or managers or investment managers organised in a form other than companies or LLPs, Securities and Exchange Board of India shall determine whether the sponsor or manager or investment manager is foreign owned and controlled.

Explanation: "Control" of the AIF should be in the hands of "sponsors" and "managers or investment managers", with the general exclusion to others. In case the "sponsors" and "managers or investment managers" of the AIF are individuals, for the treatment of downstream investment by such AIF as domestic, "sponsors" and "manager or investment managers" should be resident Indian citizens.

(5) An Alternative Investment Fund Category III which has received any foreign investment shall make portfolio investment in only those securities or instruments in which a FPI is allowed to invest under the Act or rules or regulations made thereunder.

(6) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

Investment in Depository Receipts by a person resident outside India

According to Rule 6 (d) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a person resident outside India may invest in the depository receipts (DRs) issued by foreign depositories against eligible securities in the manner and subject to the following terms and conditions :

(a) Any security or unit in which a person resident outside India is allowed to invest under these rules shall be eligible instruments for issue of Depository Receipts in terms of Depository Receipts Scheme, 2014 (DR Scheme, 2014).

(b) A person shall be eligible to issue or transfer eligible instruments to a foreign depository for the purpose of issuance of depository receipts in accordance with the DR Scheme, 2014 and guidelines issued by the Central Government in this regard.

(c) A domestic custodian may purchase eligible instruments on behalf of a person resident outside India, for the purpose of converting the instruments so purchased into depository receipts in terms of DR Scheme, 2014.

(d) The aggregate of eligible instruments which may be issued or transferred to foreign depositories, along with eligible instruments already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible instruments under the Act, rules or regulations framed thereunder.

(e) The eligible instruments shall not be issued or transferred to a foreign depository for the purpose of issuing depository receipts at a price less than the price applicable to a

corresponding mode of issue or transfer of such instruments to domestic investors under the applicable laws.

Depository Receipts issued under the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 shall be deemed to have been issued under the corresponding provisions of DR Scheme 2014 and have to comply with the provisions specified in this Schedule.

Acquisition through rights issue or bonus issue

Rule 7 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that a person resident outside India and having investment in an Indian company may make investment in equity instruments (other than share warrants) issued by such company as a rights issue or a bonus issue, provided that,-

(a) the offer made by the Indian company is in compliance with the provisions of the Companies Act, 2013;

(b) such issue shall not result in a breach of the sectoral cap applicable to the company;

(c) the shareholding on the basis of which the rights issue or the bonus issue has been made must have been acquired and held as per the provisions of FEM(Non-debt Instruments) Rules, 2019;

(d) in case of a listed Indian company, the rights issue to persons resident outside India shall be at a price determined by the company;

(e) in case of an unlisted Indian company, the rights issue to persons resident outside India shall not be at a price less than the price offered to persons resident in India;

(f) such investment made through rights issue or bonus issue shall be subject to the conditions as are applicable at the time of such issue;

(g) the mode of payment and attendant conditions for such transactions shall be specified by the Reserve Bank.

(h) an individual who is a person resident outside India exercising a right which was issued when he or she was a person resident in India shall hold the equity instruments (other than share warrants) so acquired on exercising the option on a non-repatriation basis.

It may be noted that the above conditions shall also be applicable in case a person resident outside India makes investment in equity instruments (other than share warrants) issued by an Indian company as a rights issue that are renounced by the person to whom it was offered.

Issue of Employees Stock Options and sweat equity shares to persons resident outside India

Rule 8 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that an Indian company may issue “employees’ stock option” and/ or “sweat equity shares” to its employees or directors or employees or directors of its holding company or joint venture or wholly owned overseas subsidiary or subsidiaries who are resident outside India:

Provided that. -

(a) the scheme has been drawn either in terms of regulations issued under the Securities and Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014, as the case may be;

(b) the “employee’s stock option” or “sweat equity shares” so issued under the rules or regulations are in compliance with the sectoral cap applicable to the said company;

(c) the issue of “employee’s stock option” or “sweat equity shares” in a company where investment by a person resident outside India is under the approval route shall require prior government approval and issue of “employee’s stock option” or “sweat equity shares” to a citizen of Bangladesh or Pakistan shall require prior government approval :

Provided further that an individual who is a person resident outside India exercising an option which was issued when he or she was a person resident in India shall hold the shares so acquired on exercising the option on a non-repatriation basis.

Transfer of equity instruments of an Indian company by or to a person resident outside India

As per Rule 9 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a person resident outside India holding equity instruments of an Indian company or units in accordance with the FEM (Non-debt Instruments) Rules, 2019 or a person resident in India, may transfer such equity instruments or units so held by him in compliance with the conditions, if any, specified in the Schedules of the FEM (Non-debt Instruments) Rules, 2019 and subject to the prescribed terms and conditions.

Rule 9(1) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that a person resident outside India, not being a non-resident Indian or an overseas citizen of India or an erstwhile overseas corporate body may transfer by way of sale or gift the equity instruments of an Indian company or units held by him to any person resident outside India;

Explanation: It shall also include transfer of equity instruments of an Indian company pursuant to liquidation, merger, de-merger and amalgamation of entities or companies incorporated or registered outside India.

Provided that.-

(i) prior government approval shall be obtained for any transfer in case the company is engaged in a sector which requires government approval;

(ii) where the equity instruments are held by the person resident outside India on a non-repatriable basis, the transfer by way of sale where the transferee intends to hold the equity instruments on a repatriable basis, shall be in compliance with and subject to the adherence to entry routes, sectoral caps or investment limits, as specified in these rules and attendant conditionalities for such investment, pricing guidelines, documentation and reporting requirements for such transfers, as may be specified by the Reserve Bank from time to time.

Rule 9(2) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that a person resident outside India, holding equity instruments of an Indian company or units in accordance with these rules may transfer the same to a person resident in India by way of sale or gift or may sell the same on a recognised stockexchange in India in the manner specified by the Securities and Exchange Board of India.

Provided that. -

(i) the transfer by way of sale shall be in compliance with and subject to the adherence to pricing guidelines, documentation and reporting requirements for such transfers as may be specified by the Reserve Bank in consultation with the Central Government from time to time;

(ii) where the equity instruments are held by the person resident outside India on a non-repatriable basis, conditions at item (i) of the proviso shall not apply.

According to Rule 9(3) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 a person resident in India holding equity instruments of an Indian company or units, may transfer the same to a person resident outside India by way of sale, subject to the adherence to entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India and documentation and reporting requirements for such transfers as may be specified by the Reserve Bank in consultation with the Central Government from time to time;

Rule 9(4) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that a person resident in India holding equity instruments or units of an Indian company on a non- repatriation basis may transfer the same to a person resident outside India by way of gift with the prior approval of the Reserve Bank, in the manner prescribed, and subject to the following conditions, namely:-

(i) the donee is eligible to hold such a security under the Schedules of these Rules;

(ii) the gift does not exceed five percent of the paid up capital of the Indian company or each series of debentures or each mutual fund scheme;

Explanation: The five percent of the paid up capital of the Indian company or each series of debentures or each mutual fund scheme will be on cumulative basis by a single person to another single person.

(iii) the applicable sectoral cap in the Indian company is not breached;

(iv) the donor and the donee shall be “relatives” within the meaning in clause (77) of section 2 of the Companies Act, 2013;

(v) the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of fifty-thousand US Dollars;

(vi) such other conditions as considered necessary in public interest by the Central Government.

Rule 9(5) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that a person resident outside India holding equity instruments of an Indian company containing an optionality clause in accordance with these rules and exercising the option or right, may exit without any assured return, subject to the pricing guidelines prescribed in these rules and a minimum lock-in period of one year or minimum lock-in period as prescribed in these rules, whichever is higher.

Rule 9(6) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that in case of transfer of equity instruments between a person resident in India and a person resident outside India, an amount not exceeding twenty five percent of the total consideration,-

(i) may be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement; or

(ii) may be settled through an escrow arrangement between the buyer and the seller for a period not exceeding eighteen months from the date of the transfer agreement; or

(iii) may be indemnified by the seller for a period not exceeding eighteen months from the date of the payment of the full consideration, if the total consideration has been paid by the buyer to the seller:

Provided that the total consideration finally paid for the shares shall be compliant with the applicable pricing guidelines.

Rule 9(7) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that in case of transfer of equity instruments between a person resident in India and a person

resident outside India, a person resident outside India may open an escrow account in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016 and such escrow account may be funded by way of inward remittance through banking channels and/or by way of guarantee issued by an authorised dealer bank, subject to the terms and conditions as specified in the Foreign Exchange Management (Guarantees) Regulations, 2000.

According to Rule 9(8) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 the transfer of equity instruments of an Indian company or units of an investment vehicle by way of pledge is subject to the following terms and conditions, namely :-

(i) any person being a promoter of a company registered in India (borrowing company), which has raised external commercial borrowing in compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000 may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the external commercial borrowing raised by the borrowing company subject to the following further conditions, namely:-

(A) the period of such pledge shall be co-terminus with the maturity of the underlying external commercial borrowing;

(B) in case of invocation of pledge, transfer shall be made in accordance with these rules and directions issued by the Reserve Bank;

(C) the statutory auditor has certified that the borrowing company shall utilise or has utilised the proceeds of the external commercial borrowing for the permitted end-use only;

(D) no person shall pledge any such share unless a no-objection has been obtained from an authorised dealer bank that the above conditions have been complied with;

(ii) any person resident outside India holding equity instruments in an Indian company or units of an investment vehicle may pledge the equity instruments or units, as the case may be,-

(A) in favour of a bank in India to secure the credit facilities being extended to such Indian company for bona fide purposes,

(B) in favour of an overseas bank to secure the credit facilities being extended to such person or a person resident outside India who is the promoter of such Indian company or the overseas group company of such Indian company,

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

(D) subject to the authorised dealer bank satisfying itself of the compliance of the conditions stipulated by the Reserve Bank in this regard;

(iii) in case of invocation of pledge, transfer of equity instruments of an Indian company or units shall be in accordance with entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions at the time of creation of pledge.

INVESTMENT BY FOREIGN PORTFOLIO INVESTOR (FPI)

Rule 10 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that a FPI may purchase or sell equity instruments of an Indian company which is listed or to be listed on a recognised stock exchange in India, and/or may purchase or sell securities other than equity instruments, in the manner and subject to the specified terms and conditions.

Purchase or sale of equity instruments by Foreign Portfolio Investors

(a) Purchase and sale of equity instruments.-

A FPI may purchase or sell equity instruments of an Indian company listed or to be listed on a recognised stock exchange in India subject to the following conditions, namely:-

(i) The total holding by each FPI or an investor group, shall be less than 10 percent of the total paid-up equity capital on a fully diluted basis or less than 10 percent of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company and the total holdings of all FPIs put together, including any other direct and indirect foreign investments in the Indian company permitted under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, shall not exceed 24 per cent of paid-up equity capital on a fully diluted basis or paid up value of each series of debentures or preference shares or share warrants. The said limit of 10 percent and 24 percent shall be called the individual and aggregate limit, respectively.

(ii) With effect from the 1st April, 2020, the aggregate limit shall be the sectoral caps applicable to the Indian company as laid out in Schedule I of Foreign Exchange Management (Non-debt Instruments) Rules, 2019, with respect to its paid-up equity capital on a fully diluted basis or such same sectoral cap percentage of paid up value of each series of debentures or preference shares or share warrants:

Provided that the aggregate limit as provided above may be decreased by the Indian company concerned to a lower threshold limit of 24% or 49% or 74% as deemed fit, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively before 31st March, 2020:

Provided further, that the Indian company which has decreased its aggregate limit to 24% or 49% or 74%, may increase such aggregate limit to 49% or 74% or the sectoral cap or statutory ceiling respectively as deemed fit, with the approval of its Board of Directors and its General Body through a resolution and a special resolution, respectively:

Provided also that once the aggregate limit has been increased to a higher threshold, the Indian company cannot reduce the same to a lower threshold:

Provided also that the aggregate limit with respect to an Indian company in a sector where FDI is prohibited shall be 24 per cent.

Explanation: In case, two or more FPI's including foreign Governments/their related entities are having common ownership, directly or indirectly, of more than fifty percent or common control, all such FPI's shall be treated as forming part of an investor group. Control includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

(iii) The FPIs investing in breach of the prescribed limit shall have the option of divesting their holdings within 5 trading days from the date of settlement of the trades causing the breach. In case the FPI chooses not to divest, then the entire investment in the company by such FPI and its investor group shall be considered as investment under Foreign Direct Investment (FDI) and the FPI and its investor group shall not make further portfolio investment in the company concerned. The FPI, through its designated custodian, shall bring the same to the notice of the depositories as well as the concerned company for effecting necessary changes in their records, within 7 trading days from the date of settlement of the trades causing the breach. The breach of the said aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale or conversion to FDI within the prescribed time, shall not be reckoned as a contravention under these Rules.

(iv) The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government or its related entities for the purpose of calculation of 10 percent limit for FPI investments in a single company, if they form part of an investor group. However, certain foreign Government agencies and its related entities may be exempt from such clubbing requirements and other investment conditions either by way of an agreement or treaty with other sovereign governments or by an order of the Central Government.

(v) A FPI may purchase equity instruments of an Indian company through public offer or private placement, subject to the individual and aggregate limits specified under the Schedule II of Foreign Exchange Management (Non-debt Instruments) Rules, 2019:

Provided that -

(A) in case of public offer, the price of the shares to be issued is not less than the price at which shares are issued to residents, and

(B) in case of issue by private placement, the price is not less than - (a) the price arrived in terms of guidelines issued by the Securities and Exchange Board of India, or (b) the fair price worked out as per any internationally accepted pricing methodology for valuation of shares on arm's length basis, duly certified by a Merchant Banker or Chartered Accountant or a practicing Cost Accountant, as applicable registered with the Securities and Exchange Board of India

(vi) A FPI may, undertake short selling as well as lending and borrowing of securities subject to such conditions as may be stipulated by the Reserve Bank and the Securities and Exchange Board of India from time to time.

(vii) Investments made under this Schedule shall be subject to the limits and margin requirements specified by the Reserve Bank or the Securities and Exchange Board of India as well as the stipulations regarding collateral securities as specified by the Reserve Bank from time to time.

(b) Purchase or sale of securities other than equity instruments by FPIs. -

(i) A FPI may purchase units of domestic mutual funds or Category III Alternative Investment Fund or offshore fund for which no objection is issued in accordance with the SEBI (Mutual Fund) Regulations, 1996, which in turn invest more than 50 percent in equity instruments on repatriation basis subject to the terms and conditions specified by the Securities and Exchange Board of India and the Reserve Bank.

(ii) An FPI may purchase units of REITs and InVITs on repatriation basis subject to the terms and conditions specified by the Securities and Exchange Board of India.

A FPI may purchase, hold, or sell Indian Depository Receipts (IDRs) of companies resident outside India and issued in the Indian capital market, in the manner and subject to the terms and conditions as prescribed in Schedule X of Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

Transfer of equity instruments of an Indian company by FPI

According to Rule 11 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a FPI holding equity instruments of an Indian company or units in accordance with these rules, may transfer such equity instruments or units so held by him in compliance with the conditions, if any, prescribed in the respective Schedules of the Foreign Exchange

Management (Non-debt Instruments) Rules, 2019 and subject to the terms and conditions prescribed hereunder and as specified by the Securities and Exchange Board of India;

A FPI may transfer by way of sale or gift the equity instruments of an Indian company or units held by him to any person resident outside India;

Transfer shall also include transfer of equity instruments of an Indian company pursuant to liquidation, merger, de-merger and amalgamation of entities or companies incorporated or registered outside India.

Provided that:-

(i) prior Government approval shall be obtained for any transfer in case the company is engaged in a sector which requires the Government approval.

(ii) where the acquisition of equity instruments by FPI made under Schedule II of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 has resulted in a breach of the applicable aggregate FPI limits or sectoral limits, the provisions of sub-paragraph **a(iii)** stated above shall apply.

INVESTMENT BY NON-RESIDENT INDIAN OR AN OVERSEAS CITIZEN OF INDIA

Investment by NRI or OCI - A NRI or an OCI may make investments as under:-

Rule 12(1) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that a NRI or an OCI may, on repatriation basis, purchase or sell equity instruments of a listed Indian company and other securities in the manner and subject to the terms and conditions prescribed in Schedule III of Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

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

(1) Purchase or sale of equity instruments of a listed Indian company

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may purchase or sell equity instruments of a listed Indian company on repatriation basis, on a recognized stock exchange in India, subject to the following conditions, namely :-

(a) NRIs or OCIs may purchase and sell equity instruments through a branch designated by an Authorized Dealer for the purpose;

(b) The total holding by any individual NRI or OCI shall not exceed 5 percent of the total paid-up equity capital on a fully diluted basis or shall not exceed 5 percent of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company and the total holdings of all NRIs and OCIs put together shall not exceed ten percent

of the total paid-up equity capital on a fully diluted basis or shall not exceed ten percent of the paid-up value of each series of debentures or preference shares or share warrants:

Provided that the aggregate ceiling of 10 percent may be raised to 24 percent if a special resolution to that effect is passed by the General Body of the Indian company.

(2) Purchase or sale of units of domestic mutual funds

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may without limit purchase or sell units of domestic mutual funds which invest more than 50 percent in equity.

(3) Purchase or sale of shares in public sector enterprises

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may, without limit purchase or sell shares in public sector enterprises being disinvested by the Central Government, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

(4) Subscription to National Pension System.-

A NRI or an OCI may subscribe to the National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the Pension Fund Regulatory and Development Authority Act. The annuity/ accumulated saving will be repatriable:

Provided that NRIs or OCIs may offer such instruments as permitted by the Reserve Bank from time to time as collateral to the recognised Stock Exchanges in India for their transactions in exchange traded derivative contracts as prescribed in Clause 12(2) of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 .

(5) The mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

Investment by NRI or OCI on non-repatriation basis

Rule 12(2) of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that a NRI or an OCI may, on non-repatriation basis, purchase or sell equity instruments of an Indian company or other securities or contribute to the capital of a LLP or a firm or proprietary concern, in the manner and subject to the terms and conditions specified in Schedule IV of Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

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

(1) Purchase or sale of equity instruments or convertible notes or units or contribution to the capital of a LLP.

(a) A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI), including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, may purchase or contribute, as the case may be, on non-repatriation basis the following, namely:-

(i) a equity instrument issued by a company without any limit either on the stock exchange or outside it;

(ii) units issued by an investment vehicle without any limit, either on the stock exchange or outside it;

(iii) The capital of a Limited Liability Partnership without any limit;

(iv) convertible notes issued by a startup company in accordance with these rules.

(b) The investment detailed at sub-paragraph (a) of paragraph (1) above shall be deemed to be domestic investment at par with the investment made by residents.

(2) Purchase or sale of units of domestic mutual funds

A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may without limit purchase or sell units of domestic mutual funds on non-repatriation basis which invest more than 50% in equity.

(3) Prohibition on purchase of equity instruments of certain companies.

Notwithstanding anything contained in paragraph 1, a NRI or an OCI including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, shall not make any investment, under this Schedule, in equity instruments or units of a Nidhi company or a company engaged in agricultural or plantation activities or real estate business or construction of farm houses or dealing in transfer of development rights.

Explanation: Real estate business shall have the same meaning as specified in sub-paragraph (b) of paragraph (3) of Schedule 1 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

(4) The mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

B. Investment in a firm or a proprietary concern.

(1) Contribution to capital of a firm or a proprietary concern.

ANRI or an OCI may invest on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India provided such firm or proprietary concern is not engaged in any agricultural or plantation activity or print media or real estate business.

Explanation: Real estate business shall have the same meaning as specified in sub paragraph (b) of paragraph (3) of Schedule I.

(2) The mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

Note: A NRI or an OCI may trade or invest in all exchange traded derivative contracts approved by the Securities and Exchange Board of India from time to time subject to the limits specified by Securities and Exchange Board of India and conditions prescribed in Schedule III of Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

A NRI or an OCI may purchase, hold, or sell Indian Depository Receipts (IDRs) of companies resident outside India and issued in the Indian capital market, in the manner and subject to the terms and conditions specified in Schedule X of Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

Transfer of equity instruments by NRI or OCI

Rule 13(1) of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that a NRI or an OCI holding equity instruments of an Indian company or units in accordance with these rules may transfer such equity instruments or units so held by him in compliance with the conditions, if any, prescribed in the Schedules of these rules and subject to the terms and conditions prescribed hereunder:

(1) A NRI or an OCI holding equity instruments of an Indian company or units on repatriation basis may transfer the same by way of sale or gift to any person resident outside India :

Provided that,-

(i) prior Government approval shall be obtained for any transfer in case the company is engaged in a sector which requires Government approval;

(ii) where the acquisition of equity instruments by an NRI or an OCI under the provisions of Schedule III of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 has resulted in a breach of the applicable aggregate NRI or OCI limit or sectoral limits, the NRI or the OCI shall sell such equity instruments to a person resident in India eligible to hold such instruments within the time stipulated by the Reserve Bank of India in consultation with the Central Government and the breach of the said aggregate or sectoral limit on account of such

acquisition for the period between the acquisition and sale, provided the sale is within the prescribed time, shall not be reckoned as a contravention under these rules.

Rule 13(2) of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that a NRI or an OCI or an eligible investor holding equity instruments of an Indian company or units on a non-repatriation basis, may transfer the same to a person resident outside India by way of sale, subject to the adherence to entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions as applicable for investment by a person resident outside India and documentation and reporting requirements for such transfers as may be specified by the Reserve Bank in consultation with the Central Government from time to time;

Provided that the entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions shall not apply in case the transfer is to an NRI or an OCI or an eligible investor under Schedule IV of these rules acquiring such investment.

As per Rule 13(3) of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 a NRI or an OCI or an eligible investor holding equity instruments or units of an Indian company on a non-repatriation basis may transfer the same to a person resident outside India by way of gift with the prior approval of the Reserve Bank of India, in the manner prescribed, and subject to the following conditions, namely:-

- (i) the donee is eligible to hold such a security under relevant Schedules of these rules;
- (ii) the gift does not exceed five percent of the paid up capital of the Indian company or each mutual fund scheme;

Explanation: The five percent shall be on cumulative basis by a single person to another single person.

- (iii) the applicable sectoral cap in the Indian company is not breached;
- (iv) the donor and the donee shall be “relatives” within the meaning in clause (77) of section 2 of the Companies Act, 2013;
- (v) the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of USD 50000;
- (vi) such other conditions as may be considered necessary in public interest by the Central Government.

Rule 13(4) of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that a NRI or an OCI or an eligible investor holding equity instruments of an Indian company

or units on a non-repatriation basis, may transfer the same by way of gift to an NRI or an OCI or an eligible investor who shall hold it on a non-repatriable basis.

Rule 13(5) of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that an erstwhile OCB may transfer equity instruments subject to the directions issued by the Reserve Bank of India from time to time in this regard.

Explanation: “Overseas Corporate Body (OCB)” means an entity de-recognised through Foreign Exchange Management [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003.

INVESTMENT BY OTHER NON-RESIDENT INVESTORS

Investment in securities by other non-resident investors

According to Rule 14 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019, the other non-resident investors may make investments in securities in the manner and subject to the terms and conditions specified in Schedule V of Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

Permission to other non-resident investors for purchase of securities

(1) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds and Foreign Central Banks may purchase securities subject to such terms and conditions as may be specified by the Reserve Bank and the Securities and Exchange Board of India.

(2) “Eligible Foreign Entity (EEE)” as defined in SEBI circular dated the 9th October 2018 and having actual exposure to Indian physical commodity market may participate in domestic commodity derivative markets in accordance with framework specified by the Securities and Exchange Board of India.

(3) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

Transfer of securities by other non-resident investors

Rule 15 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that the other non-resident investors, holding securities in accordance with these rules, may transfer the securities subject to such terms and conditions prescribed in Schedule V of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and as specified by the Securities and Exchange Board of India and the Reserve Bank.

INVESTMENT BY FOREIGN VENTURE CAPITAL INVESTOR (FVCI)

According to Rule 16 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 a Foreign Venture Capital Investor (FVCI) may make investments in the manner and subject to the terms and conditions specified in Schedule VII of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 specified below:

(1) Subject to the terms and conditions as may be laid down by the Central Government, a Foreign Venture Capital Investor (FVCI) may purchase, - -

(i) securities, issued by an Indian company engaged in any sector mentioned in paragraph (4) of this Schedule and whose securities are not listed on a recognised stock exchange at the time of issue of the said securities;

(ii) units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund (Cat-I AIF) or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF.

(iii) equity or equity linked instrument or debt instrument issued by an Indian 'start-up' irrespective of the sector in which the start-up is engaged. The definition of 'start-up' shall be as per Department for Promotion of Industry and Internal Trade's Notification No. G.S.R. 364(E), dated the 11th April, 2018:

Provided that if the investment is in equity instruments, then the sectoral caps, entry routes and attendant conditions shall apply.

(2) A FVCI may purchase the securities or instruments mentioned above either from the issuer of these securities/ instruments or from any person holding these securities or instruments. The FVCI may invest in securities on a recognised stock exchange subject to the provisions of the Securities and Exchange Board of India (FVCI) Regulations, 2000.

(3) The FVCI may acquire, by purchase or otherwise, from, or transfer, by sale or otherwise, to, any person resident in or outside India, any security or instrument it is allowed to invest in, at a price that is mutually acceptable to the buyer and the seller/ issuer. The FVCI may also receive the proceeds of the liquidation of VCFs or of Cat-I AIFs or of schemes or funds set up by the VCFs or Cat-I AIFs.

(4) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank of India

(5) List of sectors in which a Foreign Venture Capital Investor is allowed to invest is as follows:-

(a) biotechnology;

(b) IT related to hardware and software development;

- (c) nanotechnology;
- (d) seed research and development;
- (e) research and development of new chemical entities in pharmaceutical sector.
- (f) dairy industry;
- (g) poultry industry;
- (h) production of bio-fuels;
- (i) hotel-cum-convention centres with seating capacity of more than three thousand;
- (j) Infrastructure sector. The term “Infrastructure Sector” has the same meaning as given in the Harmonised Master List of Infrastructure sub-sectors approved by Government of India vide notification F.No. 13/06/2009- INF, dated the March 27, 2012 as amended or updated.

Transfer of equity instruments of an Indian company by or to a FVCI

Rule 17 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that a FVCI holding equity instruments of an Indian company or units in accordance with these rules or a person resident in India, may transfer such equity instruments or units so held by him in compliance with the conditions, if any, prescribed in Schedule VII of these rules and as specified by the Securities and Exchange Board of India and the Reserve Bank.

ISSUE OF CONVERTIBLE NOTES BY AN INDIAN START-UP COMPANY

- (1) A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered or incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian start-up company for an amount of twenty five lakh rupees or more in a single tranche.
- (2) A start-up company, engaged in a sector where investment by a person resident outside India requires Government approval, may issue convertible notes to a person resident outside India only with such approval. Further, issue of equity shares against such convertible notes shall be in compliance with the entry route, sectoral caps, pricing guidelines and other attendant conditions for foreign investment.
- (3) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.
- (4) A NRI or an OCI may acquire convertible notes on non-repatriation basis in accordance with Schedule IV of these rules.
- (5) A person resident outside India may acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in

accordance with the entry routes and pricing guidelines as prescribed for capital instruments. [Rule 18]

MERGER OR DEMERGER OR AMALGAMATION OF INDIAN COMPANIES

(1) Where a scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company, has been approved by the National Company Law Tribunal (NCLT) or competent authority, the transferee company or the new company, as the case may be, may issue equity instruments to the existing holders of the transferor company resident outside India, subject to the following conditions, namely:-

(a) the transfer or issue is in compliance with the entry routes, sectoral caps or investment limits, as the case may be, and the attendant conditionalities of investment by a person resident outside India:

Provided that where the percentage is likely to breach the sectoral caps or the attendant conditionalities, the transferor company or the transferee or new company may obtain necessary approval from the Central Government.

(b) the transferor company or the transferee company or the new company shall not engage in any sector prohibited for investment by a person resident outside India.

(2) where a scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of demerger or otherwise of an Indian company where any of the companies involved is listed on a recognised stock exchange in India, then the scheme of arrangement shall be in compliance with the SEBI (Listing Obligation and Disclosure Requirement) Regulations, 2015. [Rule 19]

REPORTING REQUIREMENTS

The reporting requirements for any investment in India by a person resident in India shall be as specified by the Reserve Bank. [Rule 20]

PRICING GUIDELINES

(1) The pricing guidelines specified in the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 shall not be applicable for any transfer by way of sale done in accordance with Securities and Exchange Board of India regulations where the pricing is specified by Securities and Exchange Board of India.

(2) Unless otherwise prescribed in the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, the price of equity instruments of an Indian company,-

(a) issued by such company to a person resident outside India shall not be less than :

(i) the price worked out in accordance with the Securities and Exchange Board of India guidelines in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;

(ii) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant, in case of an unlisted Indian Company.

(b) transferred from a person resident in India to a person resident outside India shall not be less than,-

(i) the price worked out in accordance with the Securities and Exchange Board of India guidelines in case of a listed Indian company;

(ii) the price at which a preferential allotment of shares can be made under the Securities and Exchange Board of India Guidelines, as applicable, in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009;

(iii) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant, in case of an unlisted Indian company.

(c) transferred by a person resident outside India to a person resident in India shall not exceed :

(i) the price worked out in accordance with the relevant Securities and Exchange Board of India guidelines in case of a listed Indian company;

(ii) the price at which a preferential allotment of shares can be made under the Securities and Exchange Board of India Guidelines, as applicable, in case of a listed Indian company or in case of a company going through a delisting process as per the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 :

Provided that the price is determined for such duration as specified in the Securities and Exchange Board of India Guidelines, preceding the relevant date, which shall be the date of purchase or sale of shares;

(iii) the valuation of equity instruments done as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a practising Cost Accountant, in case of an unlisted Indian company.

Explanation: The guiding principle shall be that the person resident outside India is not guaranteed any assured exit price at the time of making such investment or agreement and shall exit at the price prevailing at the time of exit.

(iv) in case of swap of equity instruments, subject to the condition that irrespective of the amount, valuation involved in the swap arrangement shall have to be made by a Merchant Banker registered with the Securities and Exchange Board of India or an investment banker outside India registered with the appropriate regulatory authority in the host country.

(v) where shares in an Indian company are issued to a person resident outside India in compliance with the provisions of the Companies Act, 2013, by way of subscription to Memorandum of Association, such investments shall be made at face value subject to entry route and sectoral caps.

(vi) in case of share warrants, their pricing and the price or conversion formula shall be determined upfront:

Provided that these pricing guidelines shall not be applicable for investment in equity instruments by a person resident outside India on a non-repatriation basis. [Rule 21]

TAXES AND REMITTANCES OF SALE PROCEEDS

(1) **Taxes** - All transaction under these rules shall be undertaken through banking channels in India and subject to the payment of applicable taxes and other duties or levies in India.

(2) ***Remittance of sale proceeds:***

(a) No remittance of sale proceeds of an Indian security held by a person resident outside India shall be made otherwise than in accordance with these rules, the conditions prescribed in the relevant Schedule and as specified by the Reserve Bank.

(b) An authorised dealer may allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India :

Provided that -

(i) the security was held by the seller on repatriation basis; and

(ii) either the security has been sold in compliance with the pricing guidelines or the Reserve Bank's approval has been obtained in other cases for sale of the security and remittance of the sale proceeds thereof. [Rule 22]

DOWNSTREAM INVESTMENT

(1) Indian entity which has received indirect foreign investment shall comply with the entry route, sectoral caps, pricing guidelines and other attendant conditions as applicable for foreign investment.

Explanation: Downstream investment by an LLP not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India is allowed in an Indian company operating in sectors where foreign investment up to one hundred percent is permitted under automatic route and there are no FDI linked performance conditions.

(2) With effect from the 31st day of July, 2012, downstream investment(s) made under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading book, or for acquisition of shares due to defaults in loans, by a banking company, as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) incorporated in India, which is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India, shall not count towards indirect foreign investment, however, their strategic downstream investment shall be counted towards indirect foreign investment for the company in which such investment is being made.

(3) Guidelines for calculating total foreign investment in Indian companies are as follows,-

(a) any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned for total foreign investment;

(b) FCCBs and DRs having underlying of instruments in the nature of debt shall not be reckoned for total foreign investment;

(c) the methodology for calculating total foreign investment shall apply at every stage of investment in Indian companies and thus in each and every Indian company;

(d) for the purpose of downstream investment, the portfolio investment held as on 31st March of the previous financial year in the Indian company making the downstream investment shall be considered for computing its total foreign investment;

(e) indirect foreign investment received by a wholly owned subsidiary of an Indian company shall be limited to the total foreign investment received by the company making the downstream investment.

(4) Downstream investment that is treated as indirect foreign investment for the investee entity shall be subject to the following conditions, namely:-

(a) downstream investment shall have the approval of the Board of Directors as also a shareholders' Agreement, if any;

(b) for the purpose of downstream investment, the Indian entity making the downstream investment shall bring in requisite funds from abroad and not use funds borrowed in the domestic markets and the downstream investments may be made through internal accruals and for this purpose, internal accruals shall mean profits transferred to reserve account after payment of taxes. Further raising of debt and its utilisation shall be in compliance with the Act, rules or regulations made thereunder.

(5) Equity instrument of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India may be transferred to -

(a) a person resident outside India, subject to the reporting requirements as specified by the Reserve Bank.

(b) a person resident in India subject to adherence to pricing guidelines;

(c) an Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or owned or controlled by persons resident outside India.

(6) The first level Indian company making downstream investment shall be responsible for ensuring compliance with the provisions of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 for the downstream investment made by it at second level and so on and so forth and such first level company shall obtain a certificate to this effect from its statutory auditor on an annual basis and such compliance of these rules shall be mentioned in the Director's report in the Annual Report of the Indian company. In case statutory auditor has given a qualified report, the same shall be immediately brought to the notice of the regional office of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the Registered Office.

(7) The provisions (5) and (6) of rule 23 shall apply mutatis mutandis to a LLP.

Note: Downstream investment that is treated as indirect foreign investment for the investee entity made in accordance with the guidelines in existence prior to the 13th February, 2009 shall not require any modification to conform to these rules and all such investments, after the said date, shall come under the ambit of these rules. Downstream investment that is treated as indirect foreign investment for the investee entity made between the 13th February, 2009 and 21st June 2013 which is not in conformity with these rules shall have to be intimated to the Reserve Bank by 3rd October, 2013 for treating such cases as compliant with these Rules.

Explanation.- For the purposes of this rule,-

(a) “ownership of an Indian company” shall mean beneficial holding of more than fifty percent of the equity instruments of such company and “ownership of an LLP” shall mean contribution of more than fifty percent in its capital and having majority profit share;

(b) “company owned by resident Indian citizens” shall mean an Indian company where ownership is vested in resident Indian citizens and/ or Indian companies, which are ultimately owned and controlled by resident Indian citizens and “LLP owned by resident Indian citizens” shall mean an LLP where ownership is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens;

(c) “company owned by persons resident outside India” shall mean an Indian company that is owned by persons resident outside India and “LLP owned by persons resident outside India” shall mean an LLP that is owned by persons resident outside India;

(d) “control” shall mean the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreement or voting agreement and for the purpose of LLP, “control” shall mean the right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP;

(e) “company controlled by resident Indian citizens” means an Indian company, the control of which is vested in resident Indian citizens and/ or Indian companies which are ultimately owned and controlled by resident Indian citizens and “LLP controlled by resident Indian citizens” shall mean an LLP, the control of which is vested in resident Indian citizens and/ or Indian entities, which are ultimately owned and controlled by resident Indian citizens;

(f) “company controlled by persons resident outside India” shall mean an Indian company that is controlled by persons resident outside India and “LLP controlled by persons resident outside India” shall mean an LLP that is controlled by persons resident outside India;

(g) “downstream investment” shall mean investment made by an Indian entity which has total foreign investment in it, or an Investment Vehicle in the capital instruments or the capital, as the case may be, of another Indian entity;

(h) “holding company” shall have the same meaning as assigned to it under Companies Act, 2013;

(i) “indirect foreign investment” means downstream investment received by an Indian entity from,-

(A) another Indian entity (IE) which has received foreign investment and (i) the IE is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India; or

(B) an investment vehicle whose sponsor or manager or investment manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India :

Provided that no person resident in India other than an Indian entity can receive Indirect Foreign Investment;

(j) “total foreign investment” means the total of foreign investment and indirect foreign investment and the same will be reckoned on a fully diluted basis;

(k) “strategic downstream investment” means investment by banking companies incorporated in India in their subsidiaries, joint ventures and associates.{Rule 23 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019}

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

Acquisition and transfer of property in India by a NRI or an OCI

Rule 24 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that a NRI or an OCI may -

(a) Acquire immovable property in India other than an agricultural land or farm house or plantation property:

Provided that the consideration, if any, for transfer, shall be made out of:

(i) funds received in India through banking channels by way of inward remittance from any place outside India ; or

(ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder:

Provided further that no payment for any transfer of immovable property shall be made either by traveller’s cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;

(b) Acquire any immovable property in India other than agricultural land or farm house or plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in clause (77) of section 2 of the Companies Act, 2013;

(c) Acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property:-

- (i) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
- (ii) from a person resident in India;
- (d) transfer any immovable property in India to a person resident in India;
- (e) transfer any immovable property other than agricultural land or farm house or plantation property to an NRI or an OCI.

Joint acquisition by the spouse of a NRI or an OCI

Rule 25 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019 states that a person resident outside India, not being an NRI or an OCI, who is a spouse of an NRI or an OCI may acquire one immovable property (other than agricultural land or farm house or plantation property), jointly with his or her NRI or OCI spouse :

Provided that -

- (a) consideration for transfer, shall be made out of -
 - (i) funds received in India through banking channels by way of inward remittance from any place outside India; or
 - (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;
- (b) no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause :

Provided that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property:

Provided further that the non-resident spouse is not otherwise prohibited from such acquisition.

Acquisition of immovable property for carrying on a permitted activity

According to Rule 26 of Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of a Branch office or a liaison office or a project office or any other place of business) Regulations, 2016, as amended from time to time, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may -

(a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity:

Provided that,-

(i) all applicable laws, rules, regulations, for the time being in force are duly complied with; and

(ii) the person files with the Reserve Bank a declaration in the Form IPI as specified by the Reserve Bank from time to time, not later than ninety days from the date of such acquisition;

(b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a) stated above.

Provided that no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea (DPRK) shall acquire immovable property, other than on lease not exceeding five years, without prior approval of the Reserve Bank.

Purchase or sale of immovable property by Foreign Embassies or Diplomats or Consulate Generals

Rule 27 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 provides that a Foreign Embassy or Diplomat or Consulate General may purchase or sell immovable property in India other than agricultural land or plantation property or farm house provided:

(i) Clearance from Government of India, Ministry of External Affairs is obtained for such purchase or sale; and

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

Acquisition by a long-term visa holder

As per Rule 28 of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, a person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, 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 carrying out self-employment subject to the following conditions, namely :-

(a) the property shall not be located in and around restricted or protected areas so notified by the Central Government and cantonment areas;

(b) the person submits a declaration to the Revenue Authority of the district where the property is located, specifying the source of funds and that he or she is residing in India on LTV;

(c) the registration documents of the property shall mention the nationality and the fact that such person is on LTV;

(d) the property of such person may be attached or confiscated in the event of his or her indulgence in anti-India activities;

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

(f) such person shall be eligible to sell the property only after acquiring Indian citizenship, however, transfer of the property before acquiring Indian citizenship shall require prior approval of DCP or FRO or FRRO concerned.

Repatriation of sale proceeds

(1) A person resident outside India or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property.

(2) In the event of sale of immovable property other than agricultural land or farm house or plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:-

(a) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition or the provisions of the Foreign Exchange Management(No debt Instrument) Rules, 2019

(b) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External Account;

(c) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

(3) In the event of failure in repayment of external commercial borrowing availed by a person resident in India under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time, a bank which is an authorised dealer may permit the overseas lender or the security

trustee (in whose favour the charge on immovable property has been created to secure the ECB) to sell the immovable property on which the said loan has been secured only to a (by the) person resident in India and to repatriate the sale proceeds towards outstanding dues in respect of the said loan and not any other loan. [Rule 29]

Prohibition on transfer of immovable property in India

(1) Save as otherwise provided in the FEMA or rules, no person resident outside India shall transfer any immovable property in India:

Provided that:-

(a) the Reserve Bank may, for sufficient reasons, permit the transfer subject to such conditions as may be considered necessary;

(b) a bank which is an authorised dealer may, subject to the directions issued by the Reserve Bank in this behalf, permit a person resident in India or on behalf of such person to create charge on his immovable property in India in favour of an overseas lender or security trustee, to secure an external commercial borrowing availed under the provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000;

(c) an authorised dealer in India being the Indian correspondent of an overseas lender may, subject to the directions issued by the Reserve Bank in this regard, create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the company from the said overseas lender:

Provided further that:-

(i) the funds shall be used by the borrowing company only for its core business purposes overseas;

(ii) in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.

(2) A person resident outside India who has acquired any immovable property in India in accordance with foreign exchange laws in force at the time of such acquisition or with the general or specific permission of the Reserve Bank may transfer such property to a person resident in India provided the transaction takes place through banking channels in India and provided further that the resident is not otherwise prohibited from such acquisition. [Rule 30]

Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease not exceeding five years:

Provided that this prohibition shall not apply to an OCI.

Explanation: For the purpose of this rule, the term "citizen" shall include natural persons and legal entities. [Rule 31]

Miscellaneous

Any transaction involving acquisition or transfer of immovable property under these rules shall be undertaken:-

- (a) through banking channels in India;
- (b) subject to payment of applicable taxes and other duties or levies in India. [Rule 32]

Savings

Any existing holding of immovable property in India by a person resident outside India made in accordance with the policy in existence at the time of such acquisition would not require any modifications to conform to these rules. [Rule 33]

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

INTRODUCTION

In exercise of the powers conferred by section 47 of the Foreign Exchange Management Act, 1999 and consequent to the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019, the Reserve Bank of India issued the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 relating to mode of payment and reporting requirements for investment in India by a person resident outside India.

MODE OF PAYMENT AND REMITTANCE OF SALE PROCEEDS

Purchase or Sale of Equity Instruments of an Indian Company by a Person Resident outside India

Mode of payment:

(1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/Escrow account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Explanation: The amount of consideration shall include:

(i) Issue of equity shares by an Indian company against any funds payable by it to the investor

(ii) Swap of equity instruments.

(2) Equity instruments shall be issued to the person resident outside India making such investment within sixty days from the date of receipt of the consideration.

Explanation: In case of partly paid equity shares, the period of 60 days shall be reckoned from the date of receipt of each call payment

(3) Where such equity instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR (B) accounts, as the case may be within fifteen days from the date of completion of sixty days.

(4) An Indian company issuing equity instruments under this Schedule may open a foreign currency account with an Authorised Dealer in India in accordance with Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2016.

Remittance of sale proceeds

The sale proceeds (net of taxes) of the equity instruments may be remitted outside India or may be credited to the NRE/ FCNR (B) of the person concerned.

Investments by Foreign Portfolio Investors***Mode of payment:***

(1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or a Special Non-Resident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Provided balances in SNRR account shall not be used for making investment in units of Investment Vehicles other than the units of domestic mutual fund.

(2) The foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule.

Remittance of sale proceeds:

The sale proceeds (net of taxes) of equity instruments and units of domestic mutual fund may be remitted outside India or credited to the foreign currency account or a SNRR account of the FPI.

The sale proceeds (net of taxes) of units of investment vehicles other than domestic mutual fund may be remitted outside India.

Investments by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis***Mode of payment:***

(1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a Non-Resident External (NRE) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

(2) The NRE account will be designated as an NRE (PIS) Account and the designated account shall be used exclusively for putting through transactions permitted under this Schedule.

(3) Investment in units of domestic mutual fund shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B) account.

(4) Subscription to National Pension System shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account.

Remittance of sale proceeds:

The sale proceeds (net of taxes) of equity instruments may be remitted outside India or may be credited to NRE (PIS) account of the person concerned.

The sale proceeds (net of taxes) of units of mutual funds and subscription to National Pension System may be remitted outside India or may be credited to NRE (PIS)/FCNR(B)/NRO account of the person concerned at the option of the NRI/OCI investor.

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

Mode of Payment:

The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Sale/maturity proceeds:

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

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

Investment in a firm or a proprietary concern.

Mode of payment:

The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Sale/maturity proceeds:

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

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

Investment by other non-resident investors

Mode of Payment:

The amount of consideration shall be paid out of inward remittances from abroad through banking channels.

Remittance/credit of sale/ maturity proceeds:

The sale/ maturity proceeds (net of taxes) may be remitted abroad.

Investment in a Limited Liability Partnership

Mode of payment:

Payment by an investor towards capital contribution of an LLP shall be made by way of an inward remittance through banking channels or out of funds held in NRE or FCNR (B) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Remittance of disinvestment proceeds:

The disinvestment proceeds may be remitted outside India or may be credited to NRE or FCNR (B) account of the person concerned.

Investment by a Foreign Venture Capital Investor

Mode of payment:

(1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/or a Special Non-Resident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

(2) The foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule.

Remittance of sale/maturity proceeds:

The sale/maturity proceeds (net of taxes) of the securities may be remitted outside India or may be credited to the foreign currency account or a Special Non-resident Rupee Account of the FVCI.

Investment by a person resident outside India in an Investment Vehicle

Mode of payment:

(1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/or a Special Non-Resident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

(2) The foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule.

Remittance of sale/maturity proceeds:

The sale/maturity proceeds (net of taxes) of the securities may be remitted outside India or may be credited to the foreign currency account or a Special Non-resident Rupee Account of the FVCI.

Issue of Indian Depository Receipts***Mode of Payment:***

NRIs or OCIs may invest in the IDRs out of funds held in their NRE/FCNR (B) account, maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Remittance of sale/maturity proceeds:

Redemption/conversion of IDRs into underlying equity shares of the issuing company shall be a compliance the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.

Issue of Convertible Notes by an Indian start-up company:

A start-up company issuing convertible notes to a person resident outside India shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE/FCNR(B)/Escrow account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Repayment or sale proceeds may be remitted outside India or credited to NRE/FCNR(B) account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

REPORTING REQUIREMENTS

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

(1) Form Foreign Currency-Gross Provisional Return (FC-GPR): An Indian Company issuing equity instruments to a person resident outside India and where such issue is reckoned as Foreign Direct Investment, defined under the rules, shall report such issue in Form FC-GPR, not later than thirty days from the date of issue of equity instruments. Issue of 'participating interest/rights' in oil fields shall be reported in Form FC-GPR.

(2) Annual Return on Foreign Liabilities and Assets (FLA): An Indian Company which has received FDI or an LLP which has received investment by way of capital contribution in the previous year including the current year, shall submit form FLA to the Reserve Bank on or before the 15th day of July of each year.

Explanation: Year for this purpose shall be reckoned as April to March.

(3) Form Foreign Currency-Transfer of Shares (FC-TRS):

(a) Form FCTRS shall be filed for transfer of equity instruments in accordance with the rules, between:

- i. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and person resident outside India holding equity instruments on a non-repatriable basis; and
- ii. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India,

The onus of reporting shall be on the resident transferor/transferee or the person resident outside India holding equity instruments on a non-repatriable basis, as the case may be.

Note: Transfer of equity instruments in accordance with the rules by way of sale between a person resident outside India holding equity instruments on a non-repatriable basis and person resident in India is not required to be reported in Form FC-TRS.

(b) Transfer of equity instruments on a recognised stock exchange by a person resident outside India shall be reported by such person in Form FC-TRS.

(c) Transfer of equity instruments prescribed in Rule 9(6) of the Rules, shall be reported in Form FC-TRS on receipt of every tranche of payment. The onus of reporting shall be on the resident transferor/transferee.

(d) Transfer of 'participating interest/rights' in oil fields shall be reported Form FC-TRS.

The form FCTRS shall be filed within sixty days of transfer of equity instruments or receipt/remittance of funds whichever is earlier.

(4) Form Employees' Stock Option (ESOP): An Indian company issuing employees' stock option to persons resident outside India who are its employees/directors or employees/directors of its holding company/joint venture / wholly owned overseas subsidiary/subsidiaries shall file Form-ESOP, within 30 days from the date of issue of employees' stock option.

(5) Form Depository Receipt Return (DRR): The Domestic Custodian shall report in Form DRR, the issue / transfer of depository receipts issued in accordance with the Depository Receipt Scheme, 2014 within 30 days of close of the issue.

(6) Form LLP (I): A Limited Liability Partnerships (LLP) receiving amount of consideration for capital contribution and acquisition of profit shares shall file Form LLP (I), within 30 days from the date of receipt of the amount of consideration.

(7) Form LLP (II): The disinvestment/transfer of capital contribution or profit share between a resident and a non-resident (or vice versa) shall be filed in Form LLP(II) within

60 days from the date of receipt of funds. The onus of reporting shall be on the resident transferor/transferee.

(8) LEC(FII): The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (FII) the purchase/transfer of equity instruments by FPIs on the stock exchanges in India.

(9) LEC(NRI): The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (NRI) the purchase/transfer of equity instruments by Non-Resident Indians or Overseas Citizens of India on stock exchanges in India.

(10) Form InVI: An Investment vehicle which has issued its units to a person resident outside India shall file Form InVI within 30 days from the date of issue of units.

(11) Downstream Investment

- a. An Indian entity or an investment vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the investee Indian entity in terms of the Rules, shall notify the Secretariat for Industrial Assistance, DPIIT within 30 days of such investment, even if equity instruments have not been allotted, along with the modality of investment in new/existing ventures (with/without expansion programme).
- b. Form DI: An Indian entity or an investment Vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the investee Indian entity in terms of Rule 22 of the Rules shall file Form DI with the Reserve Bank within 30 days from the date of allotment of equity instruments.

(12) Form Convertible Notes (CN):

- a. The Indian Start-up Company issuing Convertible Notes to a person resident outside India shall file Form CN within 30 days of such issue.
- b. A person resident in India, who may be a transferor or transferee of Convertible Notes issued by an Indian start-up company shall report such transfers to or from a person resident outside India, as the case may be, in Form CN within 30 days of such transfer.

Provided, the format, periodicity and manner of submission of such reporting shall be as prescribed by Reserve Bank in this regard.

Provided further that unless otherwise specifically stated in Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 all reporting shall be made through or by an Authorised Dealer bank, as the case may be.

Delays in reporting

The person/entity responsible for filing the reports shall be liable for payment of late submission fee, as may be decided by the Reserve Bank, in consultation with the Central Government, for any delays in reporting.

FOREIGN EXCHANGE MANAGEMENT (DEBT INSTRUMENTS) REGULATIONS, 2019

INTRODUCTION

In exercise of the powers conferred by section 6(2) (a) and section 47 of the Foreign Exchange Management Act, 1999, and in supersession of the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017, the Reserve Bank of India issued the Foreign Exchange Management (Debt Instruments) Regulations, 2019 to regulate investment in India by a Person Resident Outside India.

RESTRICTION ON INVESTMENT BY A PERSON RESIDENT OUTSIDE INDIA

Regulations 3 of the Foreign Exchange Management (Debt Instruments) Regulations, 2019 states that save as otherwise provided in the Foreign Exchange Management Act, or rules or regulations made thereunder, no person resident outside India shall make any investment in India.

It may be noted that here investment means to subscribe, acquire, hold or transfer any debt instrument or unit issued by a person resident in India.

Provided that an investment made in accordance with the Foreign Exchange Management Act or the rules or the regulations framed thereunder and held on the date of commencement of Foreign Exchange Management (Debt Instruments) Regulations, 2019, shall be deemed to have been made under the Regulations and shall accordingly be governed by the Regulations.

Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons, permit a person resident outside India to make any investment in India subject to such conditions as may be considered necessary.

RESTRICTION ON RECEIVING INVESTMENT

Regulations 4 of the Foreign Exchange Management (Debt Instruments) Regulations, 2019 provides that save as otherwise provided in the Foreign Exchange Management Act or rules or regulations made thereunder, an Indian entity or a mutual fund, or a venture capital fund or a firm or an association of persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books.

Provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an Indian entity or a mutual fund, or a venture capital fund or a Firm or an Association of Persons or a proprietary concern to receive any investment in India from a person

resident outside India or to record such investment subject to such conditions as may be considered necessary.

PERMISSION FOR MAKING INVESTMENT BY A PERSON RESIDENT OUTSIDE INDIA

Unless otherwise specified in Foreign Exchange Management (Debt Instruments) Regulations, 2019 or the relevant Schedules, any investment made by a person resident outside India shall be subject to the entry routes, the investment limits and the attendant conditionalities for such investment as laid down.

A person resident outside India, permitted for the purpose by the Reserve Bank in consultation with Central Government, may purchase or sell debt instruments in the manner and subject to the terms and conditions specified in Schedule 1 of Foreign Exchange Management (Debt Instruments) Regulations, 2019.

A person resident outside India may trade in all exchange traded derivative contracts approved by Securities and Exchange Board of India from time to time subject to the limits prescribed by Securities and Exchange Board of India and conditions specified in Schedule 1 of Foreign Exchange Management (Debt Instruments) Regulations, 2019.

A person resident outside India may enter into contract in any derivative transaction subject to conditions laid down by the Reserve Bank from time to time.

PURCHASE AND SALE OF DEBT INSTRUMENTS BY A PERSON RESIDENT OUTSIDE INDIA

Permission to person's resident outside India

A. Permission to Foreign Portfolio Investors (FPIs)

An FPI may purchase the following debt instruments on repatriation basis subject to the terms and conditions specified by the Securities and Exchange Board of India and the Reserve Bank:

- a) dated Government securities/ treasury bills;
- b) non-convertible debentures/ bonds issued by an Indian company;
- c) commercial papers issued by an Indian company;
- d) units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity;
- e) Security Receipts (SRs) issued by Asset Reconstruction Companies;
- f) debt instruments issued by banks, eligible for inclusion in regulatory capital;
- g) Credit enhanced bonds;
- h) Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations;
- i) Securitised debt instruments, including (i) any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of asset/s with banks, Financial Institutions or NBFCs as originators;

j) Rupee denominated bonds/ units issued by Infrastructure Debt Funds;

Provided this will include such instruments issued on or after November 22, 2011 and held by deemed FPIs.

k) Municipal Bonds:

Provided that FPIs may offer such instruments as permitted by the Reserve Bank from time to time as collateral to the recognized Stock Exchanges in India for their transactions in exchange traded derivative contracts as specified in sub -Regulation 2 of Regulation 5.

B. Permission to Non-resident Indians (NRIs) or Overseas Citizens of India (OCIs) – Repatriation basis

(1) A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may, without limit, purchase the following instruments on repatriation basis,

- a. Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity;
- b. Bonds issued by a Public Sector Undertaking (PSU) in India;
- c. Bonds issued by Infrastructure Debt Funds;
- d. Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations;

(2) An NRI or an OCI may purchase on repatriation basis debt instruments issued by banks, eligible for inclusion in regulatory capital.

(3) An NRI may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable:

Provided that NRI/ OCIs may offer such instruments as permitted by the Reserve Bank from time to time as collateral to the recognized Stock Exchanges in India for their transactions in exchange traded derivative contracts as specified in subregulation 2 of regulation 5.

C. Permission to Non-resident Indians (NRIs) or Overseas Citizens of India (OCIs) – Non-Repatriation basis

(1) An NRI or an OCI may, without limit, purchase on non-repatriation basis, dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity, or National Plan/ Savings Certificates.

(2) An NRI or an OCI may, without limit, purchase on non-repatriation basis, listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations.

(3) An NRI or an OCI may, without limit, on non-repatriation basis subscribe to the chit funds authorised by the Registrar of Chits or an officer authorised by the State Government in this behalf.

D. Permission to Foreign Central Banks or a Multilateral Development Bank for purchase of Government Securities

(1) Foreign Central Banks, Multilateral Development Banks or any other entity permitted by the Reserve Bank, may purchase or sell dated Government Securities/treasury bills, as per terms and conditions specified by the Reserve Bank.

Mode of Payment

(1) The amount of consideration for purchase of instruments by FPIs shall be paid out of inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or Special Non-Resident Rupee

(SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. The foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule.

(2) The amount of consideration for purchase of instruments by NRIs or OCIs on repatriation basis shall be paid out of inward remittances from abroad through banking channels or out of funds held in NRE/ FCNR (B) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

(3) The amount of consideration for (a) purchase of instruments by NRIs or OCIs on non-repatriation basis and (b) subscriptions to the National Pension System by NRIs shall be paid out of inward remittances from abroad through banking channels or out of funds held in NRE/ FCNR (B)/ NRO account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

(4) The amount of consideration for purchase of Government dated securities by a Foreign Central Bank or a Multilateral Development Bank shall be paid out of inward remittances from abroad through banking channels or out of funds held in an account opened with the specific approval of the RBI.

(5) The amount of consideration for purchase of instruments by other non-resident investors shall be paid out of inward remittances from abroad through banking channels.

Permission for Sale of instruments

A person resident outside India who has purchased instruments in accordance with the Schedule of Foreign Exchange Management (Debt Instruments) Regulations, 2019 may sell/ redeem the instruments subject to such terms and conditions as may be specified by the Reserve Bank and the Securities Exchange Board of India.

Remittance/ credit of sale/ maturity proceeds

(1) The sale/ maturity proceeds (net of taxes) of instruments held by Foreign Portfolio Investors (FPIs) may be remitted outside India or may be credited to the foreign currency account or SNRR account of the FPI.

(2) The net sale/ maturity proceeds (net of taxes) of instruments held by NRIs or OCIs, may be:

- a) Credited to the NRO account person concerned where the instruments were held on non-repatriation basis
- b) Credited to the NRO account person concerned where the payment for the purchase of the instruments sold was made out of funds held in NRO account, or
- c) Remitted abroad or at the NRI/ OCI investor's option, credited to his NRE/ FCNR (B)/ NRO account, where the instruments were purchased on repatriation basis.

(3) In all other cases, the sale/ maturity proceeds (net of taxes) may be remitted abroad or credited to an account opened with the prior permission of the Reserve Bank.

MERGER OR DEMERGER OR AMALGAMATION OF INDIAN COMPANIES

Regulation 6 of the Foreign Exchange Management (Debt Instruments) Regulations, 2019 provides that where a Scheme of Arrangement for an Indian company has been approved by National Company Law Tribunal (NCLT)/ Competent Authority, the Indian company may issue non-convertible redeemable preference shares or nonconvertible redeemable debentures out of its general reserves by way of distribution as bonus to the shareholders resident outside India, subject to the following conditions, namely:

- a. the original investment made in the Indian company by a person resident outside India is in accordance with Foreign Exchange Management (Debt Instruments) Regulations, 2019 and the conditions specified in the relevant Schedule;
- b. the said issue is in accordance with the provisions of the Companies Act, 2013 and the terms and conditions, if any, stipulated in the scheme approved by National Company Law Tribunal (NCLT)/ Competent Authority have been complied with;
- c. the Indian company shall not engage in any activity/ sector in which investment by a person resident outside India is prohibited.

TAXES AND REMITTANCE OF SALE PROCEEDS

Taxes

All transaction under the Foreign Exchange Management (Debt Instruments) Regulations, 2019 shall be undertaken through banking channels in India and subject to payment of applicable taxes and other duties/ levies in India.

Remittance of sale proceeds

(1) No remittance of sale proceeds of a debt instrument held by a person resident outside India shall be made otherwise than in accordance with the Foreign Exchange Management (Debt Instruments) Regulations, 2019 and the conditions specified in the relevant Schedule.

(2) An authorised dealer may allow the remittance of sale proceeds of a debt instrument (net of applicable taxes) to the seller of such instrument resident outside India -

Provided -

(i) the instrument was held by the seller on repatriation basis; and

(ii) Reserve Bank's approval has been obtained in other cases for sale of the instrument and remittance of the sale proceeds thereof;

(3) An authorised dealer may allow remittances – both inward and outward – related for permitted derivatives transactions.

EXTERNAL COMMERCIAL BORROWINGS (ECB)

Introduction

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. Transactions on account of External Commercial Borrowings (ECB) are governed by Section 6(3) (d) of the Foreign Exchange Management Act, 1999 (FEMA). Various provisions in respect of borrowings from overseas are included in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2018 and the Foreign Exchange Management (Guarantees) Regulations, 2000 as amended from time to time framed under FEMA. Within the contours of the Regulations, Reserve Bank of India also issues directions to Authorised Persons.

ECB Framework

The framework for raising loans through ECB comprises the following two options:

Parameters	Foreign Currency denominated ECB	Indian Rupee denominated ECB
Currency of Borrowing	Any freely convertible Foreign Currency	Indian Rupee (INR)
Forms of ECB	<p>Loans including bank loans; floating/ fixed rate notes/ bonds/ debentures (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; Foreign Currency Convertible Bonds; Foreign Currency Exchangeable Bonds and Financial Lease.</p> <p>It may be noted that Foreign Currency Convertible Bonds (FCCBs) refers to foreign currency denominated instruments which are issued in</p>	<p>Loans including bank loans; floating/ fixed rate notes/bonds/ debentures/ preference shares (other than fully and compulsorily convertible instruments); Trade credits beyond 3 years; and Financial Lease. Also, plain vanilla Rupee denominated bonds issued overseas, which can be either placed privately or listed on exchanges as per</p>

	<p>accordance with the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993, as amended from time to time. Issuance of FCCBs shall also conform to other applicable regulations. Further, FCCBs should be without any warrants attached.</p> <p>Further, Foreign Currency Exchangeable Bonds (FCEBs) refers to foreign currency denominated instruments which are issued in accordance with the Issue of Foreign Currency Exchangeable Bonds Scheme, 2008, as amended from time to time. FCEBs are exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. Issuance of FCEBs shall also conform to other applicable regulations.</p>	host country regulations.
Eligible Borrowers	<p>All entities eligible to receive Foreign Direct Investment (FDI). Further, the following entities are also eligible to raise ECB:</p> <ul style="list-style-type: none"> i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India. 	<ul style="list-style-type: none"> a) All entities eligible to raise Foreign Currency ECB; and b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations.

Recognised Lenders

The lender should be resident of Financial Action Task Force (FATF) or International Organisation of Securities Commission's IOSCO compliant country, including on transfer of ECB. However,

(a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders;

(b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and

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

It may be noted that FATF Compliant Country means a country that is a member of the Financial Action Task Force (FATF) or a member of a FATF-Style Regional Body; and should not be a country identified in the public statement of the FATF as (i) A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or (ii) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

Further, IOSCO Compliant Country means a country whose securities market regulator is a signatory to the International Organisation of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding or a signatory to bilateral Memorandum of Understanding with the SEBI for information sharing arrangements.

Minimum Average Maturity Period (MAMP)

Minimum Average Maturity Period (MAMP) for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity.

However, for the specific categories mentioned below, the Minimum Average Maturity Period (MAMP) are as under:

Category	Minimum Average Maturity Period (MAMP)
ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year	1 year
<p>ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans.</p> <p>It may be noted that:</p> <p>(i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks</p> <p>(ii) the prescribed MAMP will have to be strictly complied with under all circumstances.</p>	5 year
<p>ECB raised for</p> <p>(i) Working capital purposes or general corporate purposes</p> <p>(ii) on-lending by NBFCs for working capital purposes or general corporate purposes.</p> <p>It may be noted that:</p> <p>(i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks</p> <p>(ii) the prescribed MAMP will have to be strictly complied with under all circumstances.</p>	10 year
ECB raised for	7 year

<p>(i) repayment of Rupee loans availed domestically for capital expenditure</p> <p>(ii) on-lending by NBFCs for the same purpose.</p> <p>It may be noted that:</p> <p>(i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks</p> <p>(ii) the prescribed MAMP will have to be strictly complied with under all circumstances.</p>	
<p>ECB raised for</p> <p>(i) repayment of Rupee loans availed domestically for purposes other than capital expenditure</p> <p>(ii) on-lending by NBFCs for the same purpose.</p> <p>It may be noted that:</p> <p>(i) ECB cannot be raised from foreign branches / subsidiaries of Indian banks</p> <p>(ii) the prescribed MAMP will have to be strictly complied with under all circumstances.</p>	10 years

All-In-Cost Ceiling per Annum

All-in-cost ceiling per annum is the Benchmark rate plus 450 bps spread.

It may be noted that All-in-Cost includes rate of interest, other fees, expenses, charges, guarantee fees, ECA charges, whether paid in foreign currency or INR but will not include commitment fees and withholding tax payable in INR. In the case of fixed rate loans, the swap cost plus spread should not be more than the floating rate plus the applicable spread. Additionally, for FCCBs, the issue related expenses should not exceed 4 per cent of the issue size and in case of private placement, these expenses should not exceed 2 per cent of the issue size, etc. Under Trade Credit (TC) Framework, all-in-cost shall include rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or INR. Withholding tax payable in INR shall not be a part of all-in-cost. Various components of all-

in-cost have to be paid by the borrower without taking recourse to the drawdown of ECB/TC, i.e., ECB/TC proceeds cannot be used for payment of interest/charges.

Further, Benchmark rate in case of Foreign Currency ECB refers to 6-months LIBOR rate of different currencies or any other 6-month interbank interest rate applicable to the currency of borrowing, for eg., EURIBOR. Benchmark rate in case of Rupee denominated ECB/TC will be prevailing yield of the Government of India securities of corresponding maturity.

Other Costs

Prepayment charge/ Penal interest, if any, for default or breach of covenants, should not be more than 2 per cent over and above the contracted rate of interest on the outstanding principal amount and will be outside the all-in-cost ceiling.

End-uses (Negative list)

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

- Real estate activities.
- Investment in capital market.
- Equity investment.
- Working capital purposes, **except** ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans **and except** ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by Non-Banking Financial Companies (NBFCs) for working capital purposes or general corporate purposes.
- General corporate purposes, **except** in case of ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans **and except** ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes.
- Repayment of Rupee loans, **except** in case of ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose **and except** ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose.
- On-lending to entities for the above activities, **except** in case of ECB raised by NBFCs for (i) working capital purposes or general corporate purposes (ii) on-lending by

NBFCs for working capital purposes or general corporate purposes *and* (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose *and except* ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose.

Exchange rate

Change of currency of Foreign Currency ECB into Indian Rupee ECB can be at the exchange rate prevailing on the date of the agreement for such change between the parties concerned or at an exchange rate, which is less than the rate prevailing on the date of the agreement, if consented to by the ECB lender.

For conversion to Rupee, the exchange rate shall be the rate prevailing on the date of settlement.

Hedging Provision

The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Infrastructure space companies shall have a Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is less than 5 years. The designated AD Category-I bank shall verify that 70 per cent hedging requirement is complied with during the currency of the ECB and report the position to RBI through Form ECB 2.

The following operational aspects with respect to hedging should be ensured:

- *Coverage:* The ECB borrower will be required to cover the principal as well as the coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower).
- *Tenor and rollover:* A minimum tenor of one year for the financial hedge would be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB.
- *Natural Hedge:* Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same

accounting year. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as a natural hedge

Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India. The investors can also access the domestic market through branches / subsidiaries of Indian banks abroad or branches of foreign banks with Indian presence on a back to back basis.

Change of Currency of Borrowing

Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to Indian Rupee is freely permitted.

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

It may be noted that the ECB framework is not applicable in respect of investments in Non-Convertible Debentures in India made by Registered Foreign Portfolio Investors. Lending and borrowing under the ECB framework by Indian banks and their branches/subsidiaries outside India will be subject to prudential guidelines issued by the Department of Banking Regulation of the Reserve Bank. Further, other entities raising ECB are required to follow the guidelines issued, if any, by the concerned sectoral or prudential regulator.

Limit and Leverage

All eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route. Further, in case of Foreign Currency denominated ECB raised from direct foreign equity holder, ECB liability-equity ratio for ECB raised under the automatic route cannot exceed 7:1.

However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent. Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

Issuance of Guarantee, etc. by Indian banks and Financial Institutions

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

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

Parking of ECB proceeds

ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

Parking of ECB proceeds abroad: ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

Parking of ECB proceeds domestically: ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

Procedure of raising ECB

All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework. For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals. ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank. The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee. Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.

Reporting Requirements

Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

Loan Registration Number (LRN): Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051. Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

Changes in terms and conditions of ECB: Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the Department of Statistics and Information Management through revised Form ECB at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form ECB the changes should be specifically mentioned in the communication.

Monthly Reporting of actual transactions: The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach Department of Statistics and Information Management within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.

Late Submission Fee (LSF) for delay in reporting: Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of prescribed late submission fees.

Standard Operating Procedure (SOP) for Untraceable Entities: The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:

- 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;
- Entities have not submitted Statutory Auditor's Certificate for last two years or more;

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

- File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;
- No fresh ECB application by the entity should be examined/processed by the AD bank;
- Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and
- No inward remittance or debt servicing will be permitted under auto route.

Conversion of ECB into equity

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

- i. The activity of the borrowing company is covered under the automatic route for Foreign Direct Investment or Government approval is received, wherever applicable, for foreign equity participation as per extant Foreign Direct Investment policy.
- ii. The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under Foreign Direct Investment policy;
- iii. Applicable pricing guidelines for shares are complied with;
- iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:
 - For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".
 - For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.
 - For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.
- v. If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential

guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;

vi. Consent of other lenders, if any, to the same borrower is available or atleast information regarding conversions is exchanged with other lenders of the borrower.

vii. For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

Security for raising ECB

AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:

- the underlying ECB is in compliance with the extant ECB guidelines,
- there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and
- No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

Once the aforesaid stipulations are met, the AD Category I bank may permit creation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees, during the currency of the ECB with security co-terminating with underlying ECB, subject to the following:

Creation of Charge on Immovable Assets: The arrangement shall be subject to the following:

- 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.
- The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.
- 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 and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

Creation of Charge on Movable Assets: In the event of enforcement/ invocation of the charge, the claim of the lender, whether the lender takes over the movable asset or otherwise, will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country subject to getting 'No Objection Certificate' from domestic

Creation of Charge over Financial Securities: The arrangements may be permitted subject to the following:

- Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted.
- In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with ADs in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account.
- In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable read with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time.

Issue of Corporate or Personal Guarantee: The arrangement shall be subject to the following:

- A copy of Board Resolution for the issue of corporate guarantee for the company issuing such guarantee, specifying name of the officials authorised to execute such guarantees on behalf of the company or in individual capacity should be obtained.
- Specific requests from individuals to issue personal guarantee indicating details of the ECB should be obtained.
- Such security shall be subject to provisions contained in the Foreign Exchange Management (Guarantees) Regulations, 2000, as amended from time to time.
- ECB can be credit enhanced / guaranteed / insured by overseas party/ parties only if it/ they fulfil/s the criteria of recognised lender under extant ECB guidelines.

ECB facility for Oil Marketing Companies

Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognised lenders under the automatic route without mandatory hedging and individual limit requirements. The overall ceiling for such ECB shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECB. All other provisions under the ECB framework will be applicable to such ECB.

ECB facility for Startups

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

- *Eligibility:* An entity recognised as a Startup by the Central Government as on date of raising ECB.
- *Maturity:* Minimum average maturity period will be 3 years.
- *Recognised lender:* Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.
- *Forms:* The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.
- *Currency:* The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non-resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-I bank in India.
- *Amount:* The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.
- *All-in-cost:* Shall be mutually agreed between the borrower and the lender.
- *End uses:* For any expenditure in connection with the business of the borrower.
- *Conversion into equity:* Conversion into equity is freely permitted subject to Regulations applicable for foreign investment in Startups.
- *Security:* The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities. Further, issuance of corporate or personal guarantee is allowed. Guarantee issued by a non-resident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.
- *Hedging:* The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category – I banks in India. The lender can also access the domestic market through branches/subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis. Startups raising ECB in foreign currency, whether having

natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.

- *Conversion rate:* In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.
- *Other Provisions:* Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework.

Borrowing by Entities under Investigation

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, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. The borrowing entity shall inform about pendency of such investigation / adjudication / appeal to the AD Category-I bank / RBI as the case may be. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, 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 stressed assets

An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan. Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders. Lender banks are also permitted to sell, through assignment, such loans to eligible ECB lenders, provided, the resultant external commercial borrowing complies with all-in-cost, minimum average maturity period and other relevant norms of the ECB framework. Foreign branches/ overseas subsidiaries of Indian banks are not eligible to lend for the above purposes. The applicable MAMP will have to be strictly complied with under all circumstances.

Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company.

NON-BANKING FINANCIAL COMPANIES (NBFCs)

INTRODUCTION

Non-banking financial institutions (NBFIs) comprise a heterogeneous group of financial intermediaries. Those under the regulatory purview of the Reserve Bank consist of all-India financial institutions (AIFIs), nonbanking financial companies (NBFCs) and primary dealers (PDs). AIFIs are apex institutions established during the development planning era to provide long-term financing/refinancing to specific sectors such as (i) agriculture and rural development; (ii) trade; (iii) small industries; and (iv) housing. NBFCs are dominated by joint stock companies, catering to niche areas ranging from personal loans to infrastructure financing. PDs play an important role as market makers for government securities.

Although housing finance companies, merchant banking companies, stock exchanges, companies engaged in the business of stockbroking/sub-broking, venture capital fund companies, Nidhi companies, insurance companies and chit fund companies are also NBFCs, they have been exempted from the requirement of registration with the Reserve Bank under Section 45-IA of the RBI Act, 1934.

Non-Banking Finance Companies (NBFCs) have played an important role in the Indian financial system by complementing and competing with banks, and by bringing in efficiency and diversity into financial intermediation. NBFCs have evolved considerably in terms of operations, heterogeneity, asset quality and profitability, and regulatory architecture. Going forward, the growing systemic importance and interconnectedness of this sector calls for regulatory vigil.

The world over, non-banking financial entities complement the mainstream banking system in the process of financial intermediation. In emerging economies, they often play an important role because of their ability to (a) reach out to inaccessible areas; and (b) act as not just complements but also substitutes to banks when the banks are confronted with stricter regulatory constraints. Customers tend to find the non-banking entities convenient due to their quicker decision-making ability, prompt provision of services and expertise in niche segments. Apart from widening the ambit of and access to financial services, they also enhance the resilience of the financial system by acting as backup institutions when banks come under stress.

REGULATORY ENVIRONMENT FOR NBFCs

NBFCs were brought under the regulation of the Reserve Bank in 1964 by inserting Chapter III B in the Reserve Bank of India Act, 1934. In more recent years, regulatory measures have been motivated by the objectives of financial stability, financial inclusion and harnessing of

specialised domain expertise. NBFCs suggests that they are emerging as an important source of credit to micro and small enterprises and infrastructure.

Chapter III B of Reserve Bank of India Act, 1934 (Section 45-I TO 45QB) deals with provisions relating to non-banking institutions receiving deposits and financial institutions.

Definition of NBFC under RBI Act

According to Section 45-I(f) of the Reserve Bank of India Act, 1934, “**Non-Banking Financial Company**” means—

- (i) a financial institution which is a company;
- (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;
- (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

It may be noted that as per Section 45-I (c) of the Reserve Bank of India Act, 1934, “**Financial Institution**” means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:—

- (i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;
- (ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature;
- (iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972;
- (iv) the carrying on of any class of insurance business;
- (v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;
- (vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person,

but does not include any institution, which carries on as its principal business,—

- (a) agricultural operations; or
- (aa) industrial activity; or
- (b) the purchase, or sale of any goods (other than securities) or the providing of any services; or
- (c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

According to Section 45-I (e) of the Reserve Bank of India Act, 1934, ***“Non-banking institution”*** means a company, corporation or co-operative society;

Further as per Section 45-I (bb) of the Reserve Bank of India Act, 1934, ***“Deposit”*** includes and shall be deemed always to have include any receipt of money by way of deposit or loan or in any other form, *but does not include,—*

- (i) amounts raised by way of share capital;
- (ii) amounts contributed as capital by partners of a firm;
- (iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of section 5 of a Banking Regulation Act, 1949;
- (iv) any amount received from,—
 - (b) a State Financial Corporation,
 - (c) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964 , or
 - (d) any other institution that may be specified by the Bank in this behalf;
- (v) amounts received in the ordinary course of business, by way of—
 - (a) security deposit,
 - (b) dealership deposit,
 - (c) earnest money, or
 - (d) advance against orders for goods, properties or services;
- (vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in any State; and
- (vii) any amount received by way of subscriptions in respect of a chit.

Explanation I.—“Chit” has the meaning assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982.

Explanation II.—Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause.

Registration and Net Owned Fund

Section 45-IA of the Reserve Bank of India Act, 1934 deals with requirement of registration and net owned Fund. Section 45-IA provides that notwithstanding anything contained in Chapter IIIB of the RBI Act or in any other law for the time being in force, no non-banking financial company shall commence or carry on the business of a non-banking financial institution without—

(a) obtaining a certificate of registration issued under Chapter IIIB; and

(b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding hundred crore rupees, as the Bank may, by notification in the Official Gazette, specify:

Provided that the Reserve Bank of India may notify different amounts of net owned fund for different categories of non-banking financial companies.

Every non-banking financial company shall make an application for registration to the Bank in such form as the Reserve Bank of India may specify.

The Reserve Bank of India, for the purpose of considering the application for registration, may require to be satisfied by an inspection of the books of the non-banking financial company or otherwise that the following conditions are fulfilled: —

(a) that the non-banking financial company is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;

(b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;

(c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interests of its depositors;

(d) that the non-banking financial company has adequate capital structure and earning prospects;

(e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business of India;

(f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, and economic growth considering such other relevant factors which the Reserve Bank of India may, by notification in the Official Gazette, specify; and

(g) any other condition, fulfilment of which in the opinion of the Reserve Bank of India, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interests of the depositors.

The Reserve Bank of India may, after being satisfied that the specified conditions are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

Cancellation of a Certificate of Registration

The Reserve Bank of India may cancel a certificate of registration granted to a non-banking financial company under Section 45-IA of the Reserve Bank of India Act, 1934, if such company—

(i) ceases to carry on the business of a non-banking financial institution in India; or

(ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or

(iii) at any time fails to fulfil any of the conditions such as adequate capital structure and earning prospects; public interest, monetary stability, and economic growth etc. or

(iv) fails to comply with any direction issued by the Reserve Bank of India under the provisions of Chapter III B of RBI Act ; or fails to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank of India under the provisions of Chapter III B of RBI Act ; or fails to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Reserve Bank of India ; or has been prohibited from accepting deposit by an order made by the Reserve Bank of India under the provisions of Chapter III B of RBI Act and such order has been in force for a period of not less than three months.

A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an Appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final.

Maintenance of Percentage of Assets

According to Section 45-IB of the Reserve Bank of India Act, 1934, every non-banking financial company shall invest and continue to invest in India in unencumbered approved securities, valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than five per cent. or such higher percentage not exceeding twenty-five per cent. as the Reserve Bank of India may, from time to time and by notification in the Official Gazette, specify, of

the deposits outstanding at the close of business on the last working day of the second preceding quarter.

It may be noted that:

(i) “approved securities” means securities of any State Government or of the Central Government and such bonds, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government;

(ii) “unencumbered approved securities” includes the approved securities lodged by the nonbanking financial company with another institution for an advance or any other arrangement to the extent to which such securities have not been drawn against or availed of or encumbered in any manner;

Further, the Reserve Bank of India may specify different percentages of investment in respect of different classes of non-banking financial companies.

For the purpose of ensuring compliance, the Reserve Bank of India may require every non-banking financial company to furnish a return to it in such form, in such manner and for such period as may be specified by the Reserve Bank of India.

If the amount invested by a non-banking financial company at the close of business on any day falls below the specified rate, such company shall be liable to pay to the Reserve Bank of India, in respect of such shortfall, a penal interest at a rate of three per cent. per annum above the bank rate on such amount by which the amount actually invested falls short of the specified percentage, and where the shortfall continues in the subsequent quarters, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent quarter.

The penal interest payable by a non-banking financial company shall be payable within a period of fourteen days from the date on which a notice issued by the Reserve Bank of India demanding payment of the same is served on the non-banking financial company and, in the event of a failure of the non-banking financial company to pay the same within such period, penalty may be levied by a direction of the principal civil court having jurisdiction in the area where an office of the defaulting non-banking financial company is situated and such direction shall be made only upon an application made in this behalf to the court by the non-banking financial company; and When the court makes a direction, it shall issue a certificate specifying the sum payable by the non-banking financial company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a suit.

Reserve Fund

Section 45-IC of the Reserve Bank of India Act, 1934 provides that every non-banking financial company shall create a reserve fund the transfer therein a sum not less than twenty per cent. of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

Appropriation of any sum from the reserve fund shall not be made by the non-banking financial company except for the purpose as may be specified by the Reserve Bank of India from time to time and every such appropriation shall be reported to the Reserve Bank of India within twenty-one days from the date of such withdrawal:

It may be noted that that the Reserve Bank of India may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.

The Central Government may, on the recommendation of the Reserve Bank of India and having regard to the adequacy of the paid-up capital and reserves of a non-banking financial company in relation to its deposit liabilities, declare by order in writing that the provisions of reserve fund shall not be applicable to the non-banking financial company for such period as may be specified in the order:

Power of Reserve Bank of India to Remove Directors from Office

As per Section 45-ID of the Reserve Bank of India Act, 1934, where the Reserve Bank is satisfied that in the public interest or to prevent the affairs of a non-banking financial company being conducted in a manner detrimental to the interest of the depositors or creditors, or financial stability or for securing the proper management of such company, it is necessary so to do, the Reserve Bank may, by order and for reasons to be recorded in writing, remove from office, a director (by whatever name called) of such company, other than Government owned non-banking financial company with effect from such date as may be specified in the said order.

No order removal shall be made unless the director concerned has been given a reasonable opportunity of making a representation to the Bank against the proposed order.

It may be noted that if, in the opinion of the Reserve Bank, any delay will be detrimental to the interest of the said company or its depositors, the Reserve Bank may, at the time of giving the aforesaid opportunity or at any time thereafter, by order direct that, pending the consideration of the representation, if any, the director, shall not, with effect from the date of such order

(a) act as such director of that company;

(b) in any way, whether directly or indirectly, be concerned with or take part in the management of that company.

Where any order of removal is made in respect of a director of a company, he shall cease to be a director of that non-banking financial company and shall not, in any way, whether directly or indirectly, be concerned with, or take part in the management of any non-banking financial company for such period not exceeding five years at a time as may be specified in the order.

Where an order of removal has been made, the Reserve Bank may, by order in writing, appoint a suitable person in place of the director, who has been so removed from his office, with effect from such date as may be specified in such order. Any person appointed Reserve Bank shall,—

(a) hold office during the pleasure of the Reserve Bank and subject thereto for a period not exceeding three years or such further periods not exceeding three years at a time;

(b) not incur any obligation or liability by reason only of his being a director for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

Notwithstanding anything contained in any other law for the time being in force or in any contract, memorandum or articles of association, on the removal of a director from office under section 45-ID, such director shall not be entitled to claim any compensation for the loss or termination from office.

Supersession Of Board Of Directors Of Non-Banking Financial Company

Section 45-IE of the Reserve Bank of India Act, 1934 provides that where the Reserve Bank is satisfied that in the public interest or to prevent the affairs of a non-banking financial company being conducted in a manner detrimental to the interest of the depositors or creditors, or of the non-banking financial company (other than Government Company), or for securing the proper management of such company or for financial stability, it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, supersede the Board of Directors of such company for a period not exceeding five years as may be specified in the order, which may be extended from time to time, so, however, that the total period shall not exceed five years.

The Reserve Bank may, on supersession of the Board of Directors of the non-banking financial company, appoint a suitable person as the Administrator for such period as it may determine.

The Reserve Bank may issue such directions to the Administrator as it may deem appropriate and the Administrator shall be bound to follow such directions.

Upon making the order of supersession of the Board of Directors of a non-banking financial company,—

(a) the chairman, managing director and other directors shall from the date of super session of the Board of Directors vacate their offices;

(b) all the powers, functions and duties, which may, by or under the provisions of RBI Act or any other law for the time being in force, be exercised and discharged by or on behalf of the Board of Directors of such non-banking financial company or by a resolution passed in

general meeting of such non-banking financial company, shall, until the Board of Directors of such company is reconstituted, be exercised and discharged by the Administrator.

Reserve Bank to Regulate or Prohibit Issue Of Prospectus or Advertisement Soliciting Deposits of Money

Section 45J of the Reserve Bank of India Act, 1934 empowers the Reserve Bank, if it considers necessary in the public interest so to do, by general or special order,—

(a) regulate or prohibit the issue by any non-banking institution of any prospectus or advertisement soliciting deposits of money from the public, and

(b) specify the conditions subject to which any such prospectus or advertisement, if not prohibited, may be issued.

Power of Bank to Determine Policy and Issue Directions

According to Section 45JA of the Reserve Bank of India Act, 1934, If the Bank is satisfied that, in the public interest or to regulate the financial system of the country to its advantage or to prevent the affairs of any non-banking financial company being conducted in manner detrimental to the interest of the depositors or in a manner prejudicial to the interest of the non-banking financial company, it is necessary or expedient so to do, it may determine the policy and give directions to all or any of the non-banking financial companies relating to income recognition, accounting standards, making of proper provision for bad and doubtful debts, capital adequacy based on risk weights for assets and credit conversion factors for off balance-sheet items and also relating to deployment of funds by a non-banking financial company or a class of non-banking financial companies or non-banking financial companies generally, as the case may be, and such non-banking financial companies shall be bound to follow the policy so determined and the direction so issued.

Reserve Bank of India may give directions to non-banking financial companies generally or to a class of non-banking financial companies or to any non-banking financial company in particular as to—

(a) the purpose for which advances or other fund based or non-fund based accommodation may not be made; and

(b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the nonbanking financial company and other relevant considerations, may be made by that non-banking financial company to any person or a company or to a group of companies.

Power of Bank to Collect Information from Non-Banking Institutions as to Deposits and to Give Directions

Section 45K of the Reserve Bank of India Act, 1934 provides that the Reserve Bank may at any time direct that every non-banking institution shall furnish to the Reserve Bank, in such form, at such intervals and within such time, such statements information or particulars relating to or connected with deposits received by the non-banking institution, as may be specified by the Reserve Bank by general or special order.

The statements, information or particulars to be furnished to the Reserve Bank may relate to all or any of the matters, namely, the amount of the deposits, the purposes and periods for which, and the rates of interest and other terms and conditions on which, they are received.

The Reserve Bank may, if it considers necessary in the public interest so to do, give directions to nonbanking institutions either generally or to any non-banking institution or group of non-banking institutions in particular, in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received.

If any non-banking institution fails to comply with any direction given by the Reserve Bank, the Reserve Bank may prohibit the acceptance of deposits by that non-banking institution.

Every non-banking institution receiving deposits shall, if so required by the Reserve Bank and within such time as the Reserve Bank may specify, cause to be sent at the cost of the non-banking institution a copy of its annual balance-sheet and profit and loss account or other annual accounts to every person from whom the non-banking institution holds, as on the last day of the year to which the accounts relate, deposits higher than such sum as may be specified by the Reserve Bank.

Power of Bank to Call for Information from Financial Institutions and to Give Directions

Section 45L of the Reserve Bank of India Act, 1934 states that if the Reserve Bank is satisfied for the purpose of enabling it to regulate the credit system of the country to its advantage it is necessary so to do, it may—

(a) require financial institutions either generally or any group of financial institutions or financial institution in particular, to furnish to the Reserve Bank in such form, at such intervals and within such time, such statements, information or particulars relating to the business of such financial institutions or institution, as may be specified by the Reserve Bank by general or special order;

(b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as financial institutions or institution.

The statements, information or particulars to be furnished by a financial institution to the Reserve Bank may relate to all or any of the following matters, namely, the paid-up capital, reserves or other liabilities, the investments whether in Government securities or otherwise, the persons to whom, and the purposes and periods for which, finance is provided and the terms and conditions, including the rates of interest, on which it is provided.

In issuing directions to any financial institution the Reserve Bank shall have due regard to the conditions in which, and the objects for which, the institution has been established, its statutory responsibilities, if any, and the effect the business of such financial institution is likely to have on trends in the money and capital markets.

Duty of Non-Banking Institutions to Furnish Statements Required By Reserve Bank

Section 45M of the Reserve Bank of India Act, 1934 provides that it shall be the duty of every non-banking institution to furnish the statements, information or particulars called for, and to comply with any direction given to it, under the provisions of this Chapter.

Powers and Duties of Auditors

Section 45MA(1) of the Reserve Bank of India Act, 1934 provides that it shall be the duty of an auditor of a non-banking institution to inquire whether or not the non-banking institution has furnished to the Bank such statements, information or particulars relating to or connected with deposits received by it, as are required to be furnished under this Chapter, and the auditor shall, except where he is satisfied on such inquiry that the non-banking institution has furnished such statements, information or particulars, make a report to the Bank giving the aggregate amount of such deposits held by the non-banking institution.

The Reserve Bank may, on being satisfied that it is necessary so to do, in the public interest or in the interest of the depositors or for the purpose of proper assessment of the books of accounts, issue directions to any non-banking financial company or any class of non-banking financial companies or non-banking financial companies generally or to the auditors of such non-banking financial company or companies relating to balance-sheet, profit and loss account, disclosure of liabilities in the books of accounts or any matter relating thereto.

Where, in the case of a non-banking financial company, the auditor has made, or intends to make, a report to the Reserve Bank under Section 45MA(1) above, he shall include in his report under the Companies Act, the contents of the report which he has made or intends to make, to the Reserve Bank.

Where the Reserve Bank is of the opinion that it is necessary so to do in the public interest or in the interest of the non-banking financial company or in the interest of

depositors of such company it may at any time by order direct that a special audit of the accounts of the non-banking financial company in relation to any such transaction or class of transactions or for such period or periods, as may be specified in the order, shall be conducted and the Reserve Bank may appoint an auditor or auditors to conduct such special audit and direct the auditor or the auditors to submit the report to it.

The remuneration of the auditors as may be fixed by the Reserve Bank, having regard to the nature and volume of work involved in the audit and the expenses of or incidental to the audit, shall be borne by the non-banking financial company so audited.

Power to Take Action against Auditors

According to Section 45MA of the Reserve Bank of India Act, 1934, where any auditor fails to comply with any direction given or order made by the Reserve Bank under section 45MA, the Reserve Bank, may, if satisfied, remove or debar the auditor from exercising the duties as auditor of any of the Reserve Bank regulated entities for a maximum period of three years, at a time.

Power of Bank to Prohibit Acceptance of Deposit and Alienation of Assets

Section 45MAB of the Reserve Bank of India Act, 1934 provides that if any non-banking financial company violates the provisions of any section or fails to comply with any direction or order given by the Bank under any of the provisions of this Chapter IIIB, the Reserve Bank may prohibit the non-banking financial company from accepting any deposit.

Notwithstanding anything to the contrary contained in any agreement or instruments or any law for the time being in force, the Reserve Bank, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the non-banking financial company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the Reserve Bank for such period not exceeding six months from the date of the order.

Resolution of Non-Banking Financial Company

Section 45MABA(1) of the Reserve Bank of India Act, 1934 provides that without prejudice to any other provision of the RBI Act or any other law for the time being in force, the Reserve Bank may, if it is satisfied, upon an inspection of the Books of a non-banking financial company that it is in the public interest or in the interest of financial stability so to do for enabling the continuance of the activities critical to the functioning of the financial system, frame schemes which may provide for any one or more of the following, namely:—

- (a) amalgamation with any other non-banking institution;
- (b) reconstruction of the non-banking financial company;

(c) splitting the non-banking financial company into different units or institutions and vesting viable and non-viable businesses in separate units or institutions to preserve the continuity of the activities of that non-banking financial company that are critical to the functioning of the financial system and for such purpose establish institutions called “Bridge Institutions”.

Explanation.—For the purposes of this sub-section, “Bridge Institutions” mean temporary institutional arrangement made under the scheme referred to in this sub-section, to preserve the continuity of the activities of a non-banking financial company that are critical to the functioning of the financial system.

Section 45MABA(2) of the Reserve Bank of India Act, 1934 states that without prejudice to the generality of the foregoing provisions, the scheme referred to in Section 45MABA (1) may provide for—

- (a) reduction of the pay and allowances of the chief executive officer, managing director, chairman or any officer in the senior management of the non-banking financial company;
- (b) cancellation of all or some of the shares of the non-banking financial company held by the chief executive officer, managing director, chairman or any officer in the senior management of the non-banking financial company or their relatives;
- (c) sale of any of the assets of the non-banking financial company.

Power of Reserve Bank to File Winding Up Petition

According to Section 45MC of the Reserve Bank of India Act, 1934, the Reserve Bank, on being satisfied that a non-banking financial company—

- (a) is unable to pay its debt; or
- (b) has by virtue of the provisions of section 45-IA become disqualified to carry on the business of a non-banking financial institution; or
- (c) has been prohibited by the Reserve Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or
- (d) the continuance of the non-banking financial company is detrimental to the public interest or to the interest of depositors of the company,

may file an application for winding up of such non-banking financial company under the Companies Act.

A non-banking financial company shall be deemed to be unable to pay its debt if it has refused or has failed to meet within five working days any lawful demand made at any of its offices or branches and the Bank certifies in writing that such company is unable to pay its debt.

A copy of every application made by the Reserve Bank shall be sent to the Registrar of Companies. All the provisions of the Companies Act, relating to winding up of a company

shall apply to a winding up proceeding initiated on the application made by the Bank under this provision.

Power in Respect of Group Companies

Section 45NAA of the Reserve Bank of India Act, 1934, provides that the Reserve Bank may, at any time, direct a non-banking financial company to annex to its financial statements or furnish separately, within such time and at such intervals as may be specified by the Bank, such statements and information relating to the business or affairs of any group company of the non-banking financial company as the Bank may consider necessary or expedient to obtain for the purposes of RBI Act.

Notwithstanding anything to the contrary contained in the Companies Act, 2013, the Reserve Bank may, at any time, cause an inspection or audit to be made of any group company of a non-banking financial company and its books of account.

Disclosure of Information

According to Section 45NB (1) of the Reserve Bank of India Act, 1934, any information relating to a non-banking financial company,—

- (i) Contained in any statement or return submitted by such company under the provisions of Chapter IIIB; or
- (ii) Obtained through audit or inspection or otherwise by the Bank, shall be treated as confidential and shall not, except otherwise provided in Section 45NB, be disclosed.

Section 45NB (2) provides that nothing in section 45NB shall apply to—

- (a) the disclosure by any non-banking financial company, with the previous permission of the Reserve Bank, of any information furnished to the Reserve Bank under sub-section (1);
- (b) the publication by the Reserve Bank, if it considers necessary in the public interest so to do, of any information collected by it under sub-section (1) in such consolidated form as it may think fit without disclosing the name of any non-banking financial company or its borrowers;
- (c) the disclosure or publication by the non-banking financial company or by the Reserve Bank of any such information to any other non-banking financial company or in accordance with the practice and usage customary amongst such companies or as permitted or required under any other law:

Provided that any such information received by a non-banking financial company under this clause shall not be published except in accordance with the practice and usage customary amongst companies or as permitted or required under any other law.

Notwithstanding anything contained in RBI Act or in any other law for the time being in force, the Reserve Bank, if it is satisfied that, in the public interest or in the interest of the depositors or the non-banking financial company or to prevent the affairs of any non-banking financial company being conducted in a manner detrimental to the interest of the depositors, it is expedient so to do, may, either on its own motion or on being requested, furnish or communicate any information relating to the conduct of business by any non-banking financial company to any authority constituted under any law.

Notwithstanding anything contained in any law for the time being in force, no court or tribunal or other authority shall compel the Reserve Bank to produce or to give inspection of any statement or other material obtained by the Reserve Bank under any provisions of Chapter IIIB.

Power of Reserve Bank to Exempt

Section 45NC of the Reserve Bank of India Act, 1934 states that the Reserve Bank, on being satisfied that it is necessary so to do, may declare by notification in the Official Gazette that any or all of the provisions of Chapter IIIB of the RBI Act shall not apply to a non-banking institution or a class of non-banking institutions or a non-banking financial company or to any class or non-banking financial companies either generally or for such period as may be specified, subject to such conditions, limitations or restrictions as it may think fit to impose.

Chapter IIIB OF RBI Act to Override Other Laws

According to Section 45Q of the Reserve Bank of India Act, 1934, the provisions of this Chapter IIIB of RBI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

DIRECTIONS PERTAINING TO NBFCs ISSUED BY RESERVE BANK OF INDIA

The Reserve Bank of India in the public interest and to regulate the financial system to the advantage of the country and to prevent the affairs of any Non-Banking Financial Companies (NBFCs) from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such NBFCs issues Directions from time to time.

Following are the major Directions issued by Reserve Bank of India are as under:

- Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016
- Non-Banking Financial Company –Non-Systemically Important Non-Deposit taking (Reserve Bank) Directions, 2016
- Core Investment Companies (Reserve Bank) Directions, 2016
- Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016
- Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016

- Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2016
- Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016
- Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016
- Miscellaneous Non-Banking Companies (Reserve Bank) Directions, 2016
- Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017

CLASSIFICATION OF NBFCs by ACTIVITY

NBFCs are classified on the basis of: (a) their liability structures; (b) the type of activities they undertake; and (c) their systemic importance. In the first category, NBFCs are further subdivided into NBFCs-D—which are authorized to accept and hold public deposits—and non-deposit taking NBFCs (NBFCs-ND)—which do not accept public deposits but raise debt from market and banks. NBFCs can also be categorised on the basis of activities undertaken as they typically focus on niche segments and fulfil sector-specific requirements.

TYPE OF NBFC	ACTIVITY
Asset Finance Company (AFC) (NBFC-Investment and Credit Companies)	Financing of physical assets including automobiles, tractors and generators.
Loan Company (NBFC-Investment and Credit Companies)	Provision of loan finance
Investment Company (NBFC-Investment and Credit Companies)	Acquisition of securities for purpose of selling
NBFC-Infrastructure Finance Company (NBFC-IFC)	Provision of infrastructure loans
NBFC-Systemically Important Core Investment Company (CIC-ND-SI)	Makes investments and loans to group companies
Infrastructure Debt Fund-NBFC (IDF-NBFC)	Facilitation of flow of long-term debt into infrastructure projects
NBFC-Micro Finance Institution (NBFC-MFI)	Credit to economically dis-advantaged groups
NBFC-Factor	Acquisition of receivables of an assignor or extending loans against the security interest of the receivables at a discount
NBFC-Non-Operative Financial Holding Company (NOFHC)	Facilitation of promoters/ promoter groups in setting up new banks
Mortgage Guarantee Company (MGC)	Undertaking of mortgage guarantee business
NBFC-Account Aggregator (NBFC-AA)	Collecting and providing information about a customer's financial assets in a consolidated, organised and retrievable manner to the customer or others as specified by the customer.

NBFC-Peer to Peer Lending Platform (NBFC-P2P)	Providing an online platform to bring lenders and borrowers together to help mobilise funds
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DEFINITIONS OF NBFCs UNDER VARIOUS DIRECTIONS ISSUED BY RESERVE BANK

“Systemically important non-deposit taking non-banking financial company”, means a non-banking financial company not accepting / holding public deposits and having total assets of ₹ 500 crore and above as shown in the last audited balance sheet;

“Infrastructure Finance Company” means a non-deposit taking NBFC that fulfills the following criteria:

- (a) a minimum of 75 per cent of its total assets deployed in “infrastructure loans”;
- (b) Net owned funds of ₹ 300 crore or above;
- (c) minimum credit rating 'A' or equivalent of CRISIL, FITCH, CARE, ICRA, Brickwork Rating India Pvt. Ltd. (Brickwork) or equivalent rating by any other credit rating agency accredited by the Bank;
- (d) CRAR of 15 percent (with a minimum Tier I capital of 10 percent).

“Investment and Credit Company - (NBFC-ICC)” means any company which is a financial institution carrying on as its principal business - asset finance, the providing of finance whether by making loans or advances or otherwise for any activity other than its own and the acquisition of securities; and is not any other category of NBFC as defined by the Bank in any of its Master Directions

“Non-Banking Financial Company - Factor (NBFC-Factor)” means a nonbanking financial company as defined in clause (f) of section 45-I of the RBI Act, 1934 which has its principal business as defined in paragraph 40 of these directions and has been granted a certificate of registration under sub-section (1) of section 3 of the Factoring Regulation Act, 2011.

Principal Business: An NBFC-Factor shall ensure that its financial assets in the factoring business constitute at least 50 per cent of its total assets and its income derived from factoring business is not less than 50 per cent of its gross income.

“Non-Banking Financial Company – Micro Finance Institution (NBFC-MFI)” means a non-deposit taking NBFC (other than a company formed and registered under section 25 of the Companies Act, 1956) that fulfils the following conditions: (a) Minimum Net Owned Funds of ₹ 5 crore. (For NBFC-MFIs registered in the North Eastern Region of the country, the minimum NOF requirement shall stand at ₹ 2 crore). (b) Not less than 85% of its net assets are in the nature of “qualifying assets.” (Only the assets originated on or after January 1, 2012 shall have to comply with the Qualifying Assets criteria. As a special dispensation, the existing assets as on January 1, 2012 shall be reckoned towards meeting both the

Qualifying Assets criteria as well as the Total Net Assets criteria. These assets shall be allowed to run off on maturity and shall not be renewed).

“Infrastructure Debt Fund-Non-Banking Financial Company” or “IDF-NBFC” means a non-deposit taking NBFC that has Net Owned Fund of ₹ 300 crore or more and which invests only in Public Private Partnerships (PPP) and post commencement operations date (COD) infrastructure projects which have completed at least one year of satisfactory commercial operation and becomes a party to a Tripartite Agreement.

Core Investment Company (CIC), that is to say, a non-banking financial company carrying on the business of acquisition of shares and securities and which satisfies the following conditions as on the date of the last audited balance sheet:-

i. it holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies;

ii. its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies and units of Infrastructure Investment Trust only as sponsor constitute not less than 60% of its net assets as mentioned in clause (i) above;

Provided; that the exposure of such CICs towards InvITs shall be limited to their holdings as sponsors and shall not, at any point in time, exceed the minimum holding of units and tenor prescribed in this regard by SEBI (Infrastructure Investment Trusts) Regulations, 2014, as amended from time to time.

iii. it does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;

iv. it does not carry on any other financial activity referred to in Section 45I(c) and 45I (f) of the Reserve Bank of India Act, 1934 except

(a) investment in

(i) bank deposits,

(ii) money market instruments, including money market mutual funds and liquid mutual funds

(iii) government securities, and

(iv) bonds or debentures issued by group companies,

(b) granting of loans to group companies and

(c) issuing guarantees on behalf of group companies.

“Systemically important Core Investment Company (CIC-ND-SI)” means a core investment company having total assets of not less than ₹100 crore either individually or in aggregate along with other CICs in the Group and which raises or holds public funds.

Residuary Non-Banking Company is a class of NBFC which is a company and has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner and not being Investment, Asset Financing, Loan Company. These companies are required to maintain investments as per directions of RBI, in addition to liquid assets. The functioning of these companies is different from those of NBFCs in terms of method of mobilization of deposits and requirement of deployment of depositors' funds as per Directions. Besides, Prudential Norms Directions are applicable to these companies also.

DIFFERENCE BETWEEN BANKS & NBFCs

NBFCs lend and make investments and hence their activities are akin to that of banks; however there are a few differences as given below:

- i. NBFC cannot accept demand deposits;
- ii. NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself;
- iii. deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

RETURNS TO BE SUBMITTED BY DEPOSIT TAKING NBFCs

- **NBS-1** Quarterly Returns on deposits in First Schedule.
- **NBS-2** Quarterly return on Prudential Norms is required to be submitted by NBFC accepting public deposits.
- **NBS-3** Quarterly return on Liquid Assets by deposit taking NBFC.
- **NBS-4** Annual return of critical parameters by a rejected company holding public deposits. (NBS-5 stands withdrawn as submission of NBS 1 has been made quarterly.)
- **NBS-6** Monthly return on exposure to capital market by deposit taking NBFC with total assets of ₹ 100 crore and above.
- **Half-yearly ALM return** by NBFC holding public deposits of more than ₹ 20 crore or asset size of more than ₹ 100 crore
- Audited Balance sheet and Auditor's Report by NBFC accepting public deposits.
- Branch Info Return.

RETURNS TO BE SUBMITTED BY NBFCs-ND-SI

- **NBS-7** A Quarterly statement of capital funds, risk weighted assets, risk asset ratio etc., for NBFC-ND-SI.
- Monthly Return on Important Financial Parameters of NBFCs-ND-SI.
- ALM returns:
- Statement of short term dynamic liquidity in format ALM [NBS-ALM1] -Monthly,
(ii) Statement of structural liquidity in format ALM [NBS-ALM2] Half yearly,
(iii) Statement of Interest Rate Sensitivity in format ALM -[NBS-ALM3], Half yearly
- Branch Info return.

THE CONSUMER PROTECTION ACT, 2019

INTRODUCTION

A consumer is a user of goods and services, therefore, every producer is also a consumer. However, conflicting interests have categorised them, inevitably, into two different groups. The industrial revolution brought in the concept of standardisation and mass production and over the years, the type of goods and the nature of services available grew manifold. The doctrine of 'Caveat Emptor' or 'let the buyer beware' which came into existence in the middle ages had been replaced by the principle of 'Consumer Sovereignty' or 'Consumer is the King'. But, with tremendous increase in the world population, the growing markets were unable to meet the rising demand which created a gap between the general 'demand' and 'supply' levels in the markets. This to some extent watered down the concept of 'Consumer Sovereignty', what with consumers being forced to accept whatever was offered to them. On the other hand, the expanding markets necessitated the introduction of various intermediaries between the producer and the ultimate consumer. 'Advertising', though ostensibly directed at informing potential consumers about the availability and uses of a product began to be resorted to as a medium for exaggerating the uses of one's products or disparaging others' products so as to have an edge over competitors. Unfair and deceptive practices such as selling of defective or sub-standard goods, charging exorbitant prices, misrepresenting the efficacy or usefulness of goods, negligence as to safety standards, etc. became rampant. It, therefore, became necessary to evolve statutory measures, even in developed countries, to make producers/traders more accountable to consumers. It also became inevitable for consumers to unite on a common platform to deal with issues of common concern and having their grievances redressed satisfactorily.

Consumer justice is a part of social and economic justice enshrined in the Constitution. India has been a pioneer in consumer advocacy with the Consumer Protection Act, 1986, enacted in 1986, a path breaking socio economic legislation and most important milestones in the area of consumer movement in India. The Act provides the legislative framework to promote and protect the rights of consumers and a three-tier quasi-judicial consumer disputes redressal machinery at the District, State and National levels, popularly known as Consumer Courts aimed at providing simple, speedy and affordable redress to consumers. The consumer courts adjudicate complaints relating to defects in goods and deficiencies in services and are meant to provide simple, inexpensive and speedy redressal of consumers' grievances. The Consumer Protection Act, 1986 also provides for establishment of Consumer Protection Councils at the Central, State and District levels to function as Advisory Bodies on consumer advocacy. Based on the experience gained from implementation on the

ground, the Act has been amended thrice in the years 1991, 1993 and 2002. Although, the working of the consumer dispute redressal agencies has served the purpose to a considerable extent, the disposal of cases has not been fast due to various constraints. Several shortcomings have been noticed while administering the various provisions of the Consumer Protection Act, 1986.

Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1986. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment and to counter unfair trade practices. Therefore, it has become inevitable to modernise the Consumer Protection Act in 1986 to address the myriad and constantly emerging vulnerabilities of the consumer in the market economy extant.

In this backdrop, the Consumer Protection Bill, 2019 was passed by the Lok Sabha on 30th July, 2019 and by Rajya Sabha on 06th August, 2019 respectively. The Consumer Protection Act, 2019 received the assent of the President on the 9th August, 2019. The Consumer Protection Act, 2019 replaced the more than three decades old Consumer Protection Act, 1986.

Preamble of the Consumer Protection Act, 2019 provides for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto.

In the case of *Om Prakash ... vs Reliance General Insurance and Anr.* Civil Appeal No. 15611 OF 2017, (Arising out of SLP (C) No.742 of 2015) Judgement dated October 4, 2017 Civil Appellate Jurisdiction of the Hon'ble Supreme Court of India inter-alia observed that it needs no emphasis that the Consumer Protection Act aims at providing better protection of the interest of consumers. It is a beneficial legislation that deserves liberal construction. This laudable object should not be forgotten while considering the claims made under the Act.

In the case of *M/S Emaar Mgf Land Limited vs Aftab Singh* Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017 Civil Appellate Jurisdiction, Judgement dated 10 December, 2018 the Hon'ble Supreme Court of India held that the Consumer Protection Act, 1986 has been enacted to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matter connected therewith. This Court had occasion to consider the object and purpose of the Act in *Lucknow Development*

Act vs. M.K. Gupta, (1994) 1 SCC 243, this Court elaborately noticed the object and purpose of the Act in the following words:

'To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, to provide for the protection of the interest of consumers. Use of the word protection furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, a network of rackets or a society in which, producers have secured power to rob the rest and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot".

DEFINITIONS

"Advertisement"

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. [Section 2(1)]

"Appropriate Laboratory"

Appropriate Laboratory means a laboratory or an organisation —

- (i) Recognised by the Central Government; or
- (ii) recognised by a State Government, subject to such guidelines as may be issued by the Central Government in this behalf; or

- (iii) 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. [Section 2(2)]

"Branch Office"

Branch office means—

- (i) any office or place of work described as a branch by the establishment; or
- (ii) any establishment carrying on either the same or substantially the same activity carried on by the head office of the establishment. [Section 2(3)]

"Central Authority"

Central Authority means the Central Consumer Protection Authority established under section 10. [Section 2(4)]

"Complainant"

Complainant means—

- (i) a consumer; or
- (ii) any voluntary consumer association registered under any law for the time being in force; or
- (iii) the Central Government or any State Government; or
- (iv) the Central Authority; or
- (v) one or more consumers, where there are numerous consumers having the same interest; or
- (vi) in case of death of a consumer, his legal heir or legal representative; or
- (vii) in case of a consumer being a minor, his parent or legal guardian. [Section 2(5)]

"Complaint"

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

- (i) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (iii) (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;
- (iv) a trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price —
 - (a) fixed by or under any law for the time being in force; or
 - (b) displayed on the goods or any package containing such goods; or

(c) displayed on the price list exhibited by him by or under any law for the time being in force; or (d) agreed between the parties;

(v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public—

(a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(b) where the trader knows that the goods so offered are unsafe to the public;

(vi) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;

(vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be. [Section 2(6)]

"Consumer"

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. [Section 2(7)]

A purchase of goods can be said to be for a 'commercial purpose only if the goods have been purchased for being used in some profit making activity on a large-scale, and there is close and direct nexus between the purchase of goods and the profit-making activity.

In Laxmi Engineering Works v. P.S.G. Industrial Institute, Supreme Court held that the explanation to Section 2(1)(d) is clarificatory in nature. It observed that whether the purpose for which a person has bought goods is a 'commercial purpose' is always a question of facts and to be decided in the facts and circumstances of each case. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment such purchaser of goods would yet be a consumer. The Supreme Court further observed that if a person purchased a machine to operate it himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer. But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.

In Bhupendra Jang Bahadur Guna v. Regional Manager and Others (II 1995 CPJ 139), the National Commission held that a tractor purchased primarily to till the land of the purchaser and let out on hire during the idle time to till the lands of others would not amount to commercial use.

The question as to whether the widow of the deceased policy holder was a 'consumer' under the Act was decided in the affirmative by the State Commission in Andhra Pradesh in the case of *A Narasamma v. LIC of India*. The State Commission held that as the term 'consumer' includes any beneficiary of service other than the person who hires the services for consideration, the widow being the beneficiary of services is a 'consumer' under the Act entitled to be compensated for the loss suffered by her due to negligence of the LIC.

In Laxmiben Laxmichand Shah v. Sakerben Kanji Chandan and others 2001 CTJ 401 (Supreme Court) (CP), the Supreme Court held that the tenant entering into lease agreement with the landlord cannot be considered as consumer under Section 2(1)(d) of the Act. Where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service.

Goods, in terms of Section 2(1)(i) has been defined to mean goods as defined in the Sale of Goods Act, 1930. As per Section 2(7) of the Sale of Goods Act, 1930 Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. Therefore, most consumer products come under the purview of this definition.

In Morgan Stanley Mutual Fund v. Kartik Das (1994) 3 CLJ 27, the Supreme Court held that an application for allotment of shares cannot constitute goods. It is after allotment, rights may arise as per the articles of association of the company. At the stage of application

there is no purchase of goods for consideration and again the purchaser cannot be called the hirer of services for consideration.

"Consumer dispute"

Consumer dispute means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint. [Section 2(8)]

"Consumer rights"

Consumer rights include—

- (i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;
- (iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- (iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;
- (v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- (vi) the right to consumer awareness. [Section 2(9)]

"Defect"

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. [Section 2(10)]

"Deficiency"

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (ii) deliberate withholding of relevant information by such person to the consumer.[Section 2(11)]

"Design"

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. [Section 2(12)]

"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. [Section 2(13)]

"Director-General"

Director-General means the Director-General appointed under section 15(2). [Section 2(14)]

"District Commission"

District Commission means a District Consumer Disputes Redressal Commission established under section 28(1). [Section 2(15)]

"E-Commerce"

E-Commerce means buying or selling of goods or services including digital products over digital or electronic network. [Section 2(16)]

"Electronic Service Provider"

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. [Section 2(17)]

"Endorsement"

Endorsement in relation to an advertisement, means—

- (i) any message, verbal statement, demonstration; or
- (ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or
- (iii) depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement. [Section 2(18)]

"Establishment"

Establishment includes an advertising agency, commission agent, manufacturing, trading or any other commercial agency which carries on any business, trade or profession or any work

in connection with or incidental or ancillary to any commercial activity, trade or profession, or such other class or classes of persons including public utility entities in the manner as may be prescribed. [Section 2(19)]

"Express Warranty"

Express warranty means any material statement, affirmation of fact, promise or description relating to a product or service warranting that it conforms to such material statement, affirmation, promise or description and includes any sample or model of a product warranting that the whole of such product conforms to such sample or model. [Section 2(20)]

"Goods"

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.[Section 2(21)]

"Harm"

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)]

"Injury"

Injury means any harm whatever illegally caused to any person, in body, mind or property. [Section 2(23)]

"Manufacturer"

Manufacturer means a person who —

- (i) makes any goods or parts thereof; or
 - (ii) assembles any goods or parts thereof made by others; or
 - (iii) puts or causes to be put his own mark on any goods made by any other person.
- [Section 2(24)]

"Mediation"

Mediation means the process by which a mediator mediates the consumer disputes; [Section 2(25)]

"Mediator"

Mediator means a mediator referred to in section 75. [Section 2(26)]

"Member"

Member includes the President and a member of the National Commission or a State Commission or a District Commission, as the case may be. [Section 2(27)]

"Misleading Advertisement"

Misleading Advertisement in relation to any product or service, means an advertisement, which—

- (i) falsely describes such product or service; or
- (ii) 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
- (iii) 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
- (iv) deliberately conceals important information. [Section 2(28)]

"National Commission"

National Commission means the National Consumer Disputes Redressal Commission established under section 53(1). [Section 2(29)]

"Notification"

Notification means a notification published in the Official Gazette and the term "notify" shall be construed accordingly. [Section 2(30)]

"Person"

Person includes—

- (i) an individual;
- (ii) a firm whether registered or not;
- (iii) a Hindu undivided family;
- (iv) a co-operative society;

- (v) an association of persons whether registered under the Societies Registration Act, 1860 or not;
- (vi) any corporation, company or a body of individuals whether incorporated or not;
- (vii) any artificial juridical person, not falling within any of the preceding sub-clauses. [Section 2(31)]

"Prescribed"

Prescribed means prescribed by rules made by the Central Government, or, as the case may be, the State Government. [Section 2(32)]

"Product"

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. Section 2(33)]

"Product Liability"

Product liability means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto. [Section 2(34)]

"Product liability action"

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. [Section 2(35)]

"Product manufacturer"

Product manufacturer means a person who—

- (i) makes any product or parts thereof; or
- (ii) assembles parts thereof made by others; or
- (iii) puts or causes to be put his own mark on any products made by any other person; or
- (iv) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or
- (v) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or
- (vi) being a product seller of a product, is also a manufacturer of such product; [Section 2(36)]

"Product Seller"

Product seller in relation to a product, means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose and includes—

- (i) a manufacturer who is also a product seller; or
- (ii) a service provider, but does not include—
 - c. a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;
 - d. a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;
 - e. a person who—
 - (I) acts only in a financial capacity with respect to the sale of the product;
 - (II) is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;
 - (III) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor. [Section 2(37)]

"Product Service provider"

Product service provider in relation to a product, means a person who provides any service in respect of such product. [Section 2(38)]

"Regulations"

Regulations means the regulations made by the National Commission, or as the case may be, the Central Authority. [Section 2(39)]

"Regulator"

Regulator means a body or any authority established under any other law for the time being in force. [Section 2(40)]

"Restrictive Trade Practice"

Restrictive trade practice means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods

or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

- (i) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;
- (ii) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent for buying, hiring or availing of other goods or services.[Section 2(41)]

"Service"

Service means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. [Section 2(42)]

The Supreme Court in the case of Indian Merchants Association v. V P Shantha, (CA No. 688 of 1993 decided on 13th November 1995) observed that a contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. The Parliamentary draftsman was well aware of this well-accepted distinction between 'contract of service' and 'contract for services' and had deliberately chosen the expression 'contract of service' instead of the expression 'contract for service' in the exclusionary part of the definition of 'service', this being the reason being that an employer could not be regarded as a consumer in respect of the services rendered by his employee in pursuance of contract of employment. By affixing the adjective 'personal' to the word 'service' the nature of the contracts which were excluded were not altered. The adjective only emphasised that what was sought to be excluded was personal service only. The expression contract of personal service in the exclusionary part of Section 2(1)(o) must, therefore, be construed as excluding the services rendered by an employee to his employer under the contract of personal service free from the ambit of the expression service.

"Spurious Goods"

Spurious Goods means such goods which are falsely claimed to be genuine; [Section 2(43)]

"State Commission"

State Commission means a State Consumer Disputes Redressal Commission established under section 42(1). [Section 2(44)]

"Trader"

Trader in relation to any goods, means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof. [Section 2(45)]

"Unfair Contract"

Unfair contract means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:—

- (i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- (ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- (iii) refusing to accept early repayment of debts on payment of applicable penalty; or
- (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- (v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- (vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage; [Section 2(46)]

"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)]

CONSUMER PROTECTION COUNCIL

Central Consumer Protection Council

The Central Government empowers to establish the Central Consumer Protection Council to be known as the Central Council. The Central Council shall be an advisory council and consist of the Minister-in-charge of the Department of Consumer Affairs in the Central Government, who shall be the Chairperson; and such number of other official or non-official members representing such interests as may be prescribed.

The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year. The Central Council shall meet at such time and place as the Chairperson may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

The objects of the Central Council shall be to render advice on promotion and protection of the consumers' rights under the Act.

State Consumer Protection Councils

Every State Government empowers to establish a State Consumer Protection Council for such State to be known as the State Council. The State Council shall be an advisory council and consist of the Minister-in-charge of Consumer Affairs in the State Government who shall be the Chairperson; such number of other official or non-official members representing such interests as may be prescribed and such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

The State Council shall meet as and when necessary but not less than two meetings shall be held every year. The State Council shall meet at such time and place as the Chairperson may think fit and shall observe such procedure in regard to the transaction of its business, as may be prescribed.

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

District Consumer Protection Council

The State Government empowers to establish for every District with effect from such date as it may specify in such notification, a District Consumer Protection Council to be known as the District Council. The District Council shall be an advisory council and consist the Collector of the district (by whatever name called), who shall be the Chairperson; and such number of other official and non-official members representing such interests as may be prescribed.

The District Council shall meet as and when necessary but not less than two meetings shall be held every year. The District Council shall meet at such time and place within the district as the Chairperson may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

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

CENTRAL CONSUMER PROTECTION AUTHORITY (CCPA)

Establishment of Central Consumer Protection Authority

Section 10 empowers the Central Government to establish a Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government to exercise the powers and discharge the functions under the Act.

The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi, and it shall have regional and other offices in any other place in India as the Central Government may decide.

Qualifications, method of recruitment, etc., of Chief Commissioner and Commissioners

The Central Government may, by notification, make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority.

Vacancy, etc., not to invalidate proceedings of Central Authority

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, professionals and other employees of Central Authority

Section 13 of the Act deals with Appointment of officers, experts, professionals and other employees of Central Authority. It states that:

- (1) The Central Government shall provide the Central Authority such number of officers and other employees as it considers necessary for the efficient performance of its functions under this Act.
- (2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Central Authority appointed under this Act shall be such as may be prescribed.
- (3) The Central Authority may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of 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, as it deems necessary to assist it in the discharge of its functions under this Act.

Procedure of Central Authority

The Central Authority shall regulate the procedure for transaction of its business and allocation of its business amongst the Chief Commissioner and Commissioners as may be specified by regulations. The Chief Commissioner shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Central Authority:

Chief Commissioner may delegate such of his powers relating to administrative matters of the Central Authority, as he may think fit, to any Commissioner (including Commissioner of a regional office) or any other officer of the Central Authority.

Investigation Wing of Central Authority

- (1) The Central Authority shall have an Investigation Wing headed by a Director General for the purpose of conducting inquiry or investigation under this Act as may be directed by the Central Authority.
- (2) The Central Government may appoint a Director General and such number of Additional Director General, Director, Joint Director, Deputy Director and Assistant Director, from

amongst persons who have experience in investigation and possess such qualifications, in such manner, as may be prescribed.

(3) 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) 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) 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 Collector

Section 16 of the Act provides that the District Collector (by whatever name called) may, on a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, inquire into or investigate complaints regarding violation of rights of consumers as a class, on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction and submit his report to the Central Authority or to the Commissioner of a regional office, as the case may be.

Complaints to Authorities

A complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode, to any one of the authorities, namely, the District Collector or the Commissioner of regional office or the Central Authority.

Powers and functions of Central Authority

According to section 18(1) the Central Authority empowers to:

- (a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;
- (b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
- (c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;
- (d) ensure that no person takes part in the publication of any advertisement which is false or misleading.

Section 18(2) states that without prejudice to the generality of the provisions contained in Section 18 (1), the Central Authority may, for any of the purposes aforesaid,—

- (a) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government;
- (b) file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;
- (c) intervene in any proceedings before the District Commission or State Commission or National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;
- (d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;
- (e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
- (f) undertake and promote research in the field of consumer rights;
- (g) spread and promote awareness on consumer rights;
- (h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;
- (i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;
- (j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
- (k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;
- (l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

Power of Central Authority to refer matter for investigation or to other Regulator

Section 19(1) of the Act provides that the Central Authority may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a prima facie case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers and 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.

According to Section 19(2) where, after preliminary inquiry, 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.

Section 19 (3) states that for the purposes of investigation, the Central Authority, the Director General or the District Collector may call upon a person referred to in Section 19(1) and also direct him to produce any document or record in his possession.

Power of Central Authority to recall goods

As per section 20 of the Act where the Central Authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or unfair trade practice by a person, it may pass such order as may be necessary, including —

- (a) recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;
- (b) reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and
- (c) 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.

Power of Central Authority to issue directions and penalties against false or misleading advertisements

Section 21 provides that where the Central Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may, by order, 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 in such manner and within such time as may be specified in that order.

If the Central Authority is of the opinion that it is necessary to impose a penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser, it may, by order, impose on manufacturer or endorser a penalty which may extend to ten lakh rupees. The Central Authority may, for every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees.

Where the Central Authority deems it necessary, it may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year. Central Authority may, for every subsequent contravention, prohibit such endorser from making endorsement in respect of any product or service for a period which may extend to three years.

Where the Central Authority is satisfied after investigation that any person is found to publish, or is a party to the publication of, a misleading advertisement, it may impose on such person a penalty which may extend to ten lakh rupees.

No endorser shall be liable to a penalty, if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed by him.

No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business: Provided that no such defence shall be available to such person if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement.

While determining the penalty, regard shall be had to the following, namely: —

- (a) the population and the area impacted or affected by such offence;
- (b) the frequency and duration of such offence;
- (c) the vulnerability of the class of persons likely to be adversely affected by such offence; and
- (d) the gross revenue from the sales effected by virtue of such offence.

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) (c) 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.

Vexatious Search

The Director General or any other officer, exercising powers under section 22, who knows that there are no reasonable grounds for so doing, and yet—

(a) searches, or causes to be searched any premises; or

(b) seizes any record, register or other document or article, shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

Designation of any statutory authority or body to function as Central Authority

Section 23 empowers the Central Government 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 provides that 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 Disputes Redressal Commission

Section 28 of the Act, empowers the State Government to establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State. State Government may also, if it deems fit, establish more than one District Commission in a district.

Each District Commission shall consist of— (a) a President; and (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

Qualifications of President and members of District Commission

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

According to section 34 the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees.

A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain.

The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.

Manner in which complaint shall be made

Section 35 provides that a complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by—

(a) the consumer,—

(i) to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or

(ii) who alleges unfair trade practice in respect of such goods or service;

(b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or

(d) The Central Government, the Central Authority or the State Government, as the case may be.

It may be noted that the *complaint may be filed electronically* in prescribed manner.

"Recognised Consumer Association" means any voluntary consumer association registered under any law for the time being in force.

(2) Every complaint filed shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.

Proceedings before District Commission

According to Section 36 every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together.

It may be noted that that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

On receipt of a complaint made under section 35, the District Commission may, by order, admit the complaint for being proceeded with or reject the same.

A complaint shall not be rejected unless ***an opportunity of being heard*** has been given to the complainant.

The admissibility of the complaint shall ordinarily be decided within ***twenty-one days*** from the date on which the complaint was filed.

Where the District Commission does not decide the issue of admissibility of the complaint within the period so specified, it shall be deemed to have been admitted.

Reference to mediation

According to Section 37 at the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V.

Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, ***within five days of receipt*** of such consent, refer the matter for mediation, and in such case, the provisions of Chapter V, relating to mediation, shall apply.

Procedure on admission of complaint

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;

(c) 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) of the Act states that where the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices, or claims for compensation under product liability are proved, it shall issue an order to the opposite party directing him to do one or more of the following, namely:—

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant along with such interest on such price or charges as may be decided;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party: Provided that the District Commission shall have the power to grant punitive damages in such circumstances as it deems fit;
- (e) to pay such amount as may be awarded by it as compensation in a product liability action under Chapter VI;
- (f) to remove the defects in goods or deficiencies in the services in question;
- (g) to discontinue the unfair trade practice or restrictive trade practice and not to repeat them;
- (h) not to offer the hazardous or unsafe goods for sale;

- (i) to withdraw the hazardous goods from being offered for sale;
- (j) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- (k) to pay such sum 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. it may be noted that the minimum amount of sum so payable shall not be less than **twenty-five per cent.** of the value of such defective goods sold or service provided, as the case may be, to such consumers;
- (l) 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
- (n) 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 empowers the District 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.

Appeal against order of District Commission

According to Section 41 of the Act any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of **forty-five days** from the date of the order, in such form and manner, as may be prescribed. It may be noted that 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.

There are certain restriction on appeal, unless the person fulfil the following conditions namely-

- No appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the

appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.

- No appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.

State Consumer Disputes Redressal Commission

Section 42 empowers the State Government to establish a State Consumer Disputes Redressal Commission, to be known as the State Commission, in the State. The State Commission shall ordinarily function at the State capital and perform its functions at such other places as the State Government may in consultation with the State Commission notify in the Official Gazette. State Government also empowers to establish regional benches of the State Commission, at such places, as it deems fit.

Each State Commission shall consist of—

(a) a President; and

(b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

Qualifications, etc., of President and members of State Commission

The Central Government may, by notification, make rules to provide for the qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission.

Jurisdiction of State Commission

According to Section 47(1) of the Act, State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration ***does not exceed ten crore rupees***;

(iii) appeals against the orders of any District Commission within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

Section 47(2) provides that the jurisdiction, powers and authority of the State Commission may be exercised by ***Benches*** thereof, and a Bench may be constituted by the President with

one or more members as the President may deem fit. It may be noted that the senior-most member shall preside over the Bench.

Section 47(3) states that where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it. The President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of one month from the date of such reference.

According to Section 47(4), a complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided in such case, the permission of the State Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain.

Procedure applicable to State Commission

Section 49 states that the provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be necessary, be applicable to the disposal of complaints by the State Commission.

The State Commission may also declare any terms of contract, which is unfair to any consumer, to be null and void.

Review by State Commission in Certain Case

Section 50 empowers the State 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.

Appeal to National Commission

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.

An appeal may lie to the National Commission from an order passed ex parte by the State Commission.

Hearing of appeal by State Commission or National Commission

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 53 empowers the Central Government to establish a National Consumer Disputes Redressal Commission, to be known as the National Commission. The National Commission shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette. Central Government may also establish regional Benches of the National Commission, at such places, as it deems fit.

Composition of National Commission

Section 54 provides that the National Commission shall consist of—

- (a) a President; and
- (b) not less than four and not more than such number of members as may be prescribed.

Qualifications, etc., of President and members of National Commission

Section 55 states that 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.

President and members of the National Commission shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment.

It may be noted that no President or members shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed, —

- (a) in the case of the President, the age of seventy years;
- (b) in the case of any other member, the age of sixty-seven years.

Jurisdiction of National Commission

Section 58(1) of the Act provides that subject to the other provisions of this Act, the National Commission shall have jurisdiction—

- (a) To entertain—
 - (i) Complaints where the value of the goods or services paid as consideration ***exceeds rupees ten crore***. Further, where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit.
 - (ii) Complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;
 - (iii) Appeals against the orders of any State Commission;
 - (iv) Appeals against the orders of the Central Authority; and
- (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

According to Section 58(2), the jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof and a Bench may be constituted by the President with one or more members as he may deem fit. The senior-most member of the Bench shall preside over the Bench.

Section 58(3) states that where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it. The President or the other member, as the case may be, shall give opinion on the point or points so referred within a period of two months from the date of such reference.

Procedure Applicable to National Commission

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 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.

Power to set aside *ex parte* Orders

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.

Procedures for Service of Notice

Section 65(1) states that all notices, required by this Act to be served, shall be served by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by ***speed post or by such courier service***, approved by the District Commission, the State Commission or the National Commission, as the case may be, or by any other mode of transmission of documents including electronic means.

Section 65 (2) provides that without prejudice to the provisions contained in sub-section (1), the notice required by this Act may be served on an electronic service provider at the address provided by it on the ***electronic platform*** from where it provides its services as such and for this purpose, the electronic service provider shall designate a nodal officer to accept and process such notices.

According to Section 65 (3), when an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or, as the case may be, by the complainant is received by the District Commission, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Commission, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (1) when tendered or transmitted to him, the District Commission or the State Commission or the National Commission, as the case may be, shall declare that the notice has been duly served on the opposite party or to the complainant, as the case may be:

Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or misplaced, or for any other reason, has not been received by the District Commission, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.

Section 65 (4) states that all notices required to be served on an opposite party or to complainant, as the case may be, shall be deemed to be sufficiently served, if addressed in the case of the opposite party, to the place where business or profession is carried on, and in case of the complainant, the place where such person actually and voluntarily resides.

Experts to Assist National Commission or State Commission

Section 66 of the Act provides that where the National Commission or the State Commission, as the case may be, on an application by a complainant or otherwise, is of the opinion that it involves the larger interest of consumers, it may direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be.

Appeal against Order of National Commission

According to Section 67 of the Act, any person, aggrieved by an order made by the National Commission may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order.

Provided that 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.

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent. of that amount in the manner as may be prescribed.

Finality of Orders

Section 68 states that every order of a District Commission or the State Commission or the National Commission, as the case may be, shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

Limitation Period

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

According to the Section 71 of the Act, every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under the Act.

Penalty for Noncompliance of Order

Section 72(1) provides that whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.

According to Section 72(2) of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of First Class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of First Class for the purposes of the Code of Criminal Procedure, 1973.

Section 72(3) states that save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.

Appeal against Order Passed under Section 72

Section 73 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, where an order is passed under section 72(1), an appeal shall lie, both on facts and on law from—

- (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.

Every appeal shall be preferred within a period of thirty days from the date of order of a District Commission or a State Commission or the National Commission, as the case may be.

It may be noted that the State Commission or the National Commission or the Supreme Court, as the case may be, 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 said period of thirty days.

Appeal shall not lie before any court, from any order of a District Commission or a State Commission or the National Commission, as the case may be.

MEDIATION

Establishment of Consumer Mediation Cell

Section 74 empowers the State Government to establish a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.

Further the Central Government also empowers to establish a consumer mediation cell to be attached to the National Commission and each of the regional Benches.

A consumer mediation cell shall consist of such persons as may be prescribed. 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.

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.

Empanelment of Mediators

Section 75(1) of the Act provides that for the purpose of mediation, the National Commission or the State Commission or the District Commission, as the case may be, shall prepare a panel of the mediators to be maintained by the consumer mediation cell attached to it, on the recommendation of a selection committee consisting of the President and a member of that Commission.

The qualifications and experience required for empanelment as mediator, the procedure for empanelment, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed or empanelment shall be cancelled and other matters relating thereto, shall be such as may be specified by regulations.

The panel of mediators prepared under sub-section (1) shall be valid for a period of five years, and the empanelled mediators shall be eligible to be considered for re-empanelment for another term, subject to such conditions as may be specified by regulations.

Nomination of Mediators from Panel

Section 76 states that the District Commission, the State Commission or the National Commission shall, while nominating any person from the panel of mediators referred to in section 75, consider his suitability for resolving the consumer dispute involved

Duty of Mediator to Disclose Certain Fact

According to the Section 77 of the Act, 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 of the Act provides that where the District Commission or the State Commission or the National Commission, as the case may be, is satisfied, on the information furnished by the mediator or on the information received from any other person including parties to the complaint and after hearing the mediator, it shall replace such mediator by another mediator.

Procedure for Mediation

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) provides that pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to

only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

Section 80(2) states that the mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission

Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

Recording Settlement and Passing of Order

According to Section 81(1) the District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

Section 81(2) provides that where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, 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.

Product Liability Action

According to Section 83 of the Act, a product liability action may be brought by a complainant against a ***product manufacturer or a product service provider or a product seller***, as the case may be, for any harm caused to him on account of a defective product.

Liability of Product Manufacturer

Section 84 states that a product manufacturer shall be liable in a product liability action, if—

- (a) the product contains a manufacturing defect; or
- (b) the product is defective in design; or
- (c) there is a deviation from manufacturing specifications; or
- (d) the product does not conform to the express warranty; or

(e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

A product manufacturer shall be liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

Liability of Product Service Provider

Section 85 provides that a product service provider shall be liable in a product liability action, if—

(a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or

(b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or

(c) the service provider did not issue adequate instructions or warnings to prevent any harm; or

(d) the service did not conform to express warranty or the terms and conditions of the contract.

Liability of Product Sellers

Section 86 states that a product seller who is not a product manufacturer shall be liable in a product liability action, if—

(a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or

(b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or

(c) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or

(d) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or

(e) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

Exceptions to Product Liability Action

According to Section 87 of the Act a product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.

In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer shall not be liable, if—

(a) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;

(b) the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;

(c) the product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or

(d) the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.

A product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product.

OFFENCES AND PENALTIES

Penalty for Noncompliance of Direction of Central Authority

Section 88 provides that whoever, fails to comply with any direction of the Central Authority under sections 20 and 21, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty lakh rupees, or with both.

It may be noted that Sections 20 deals with power of Central Authority to recall goods, etc. and Sections 21 deals with power of Central Authority to issue directions and penalties against false or misleading advertisements.

Punishment for False or Misleading Advertisement

Section 89 states that any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

Cognizance of Offence by Court

Section 92 provides that no cognizance shall be taken by a competent court of any offence under sections 88 and 89 except on a complaint filed by the Central Authority or any officer authorised by it in this behalf.

Compounding of Offences

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.

Punishment for Manufacturing for Sale or Storing, Selling or Distributing or Importing Products Containing *Adulterant*

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(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.

Measures to Prevent Unfair Trade Practices in E-Commerce, 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.

Protection of Action Taken in Good Faith

According to Section 98 of the Act, no suit, prosecution or other legal proceeding shall lie against the Presidents and members of the District Commission, the State Commission and the National Commission, the Chief Commissioner, the Commissioner, any officer or employee and other person performing any duty under this Act, for any act which is in good faith done or intended to be done in pursuance of this Act or under any rule or order made thereunder.

Act not in derogation of any other law

Section 100 states that 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.
