

# Sahasri Singar Academy

CA | CMA | CS

*CMA Final Group 3 - Paper 13*

*Corporate Laws and Compliances*

*Sec B - Other Corporate Laws*



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## 2. SEBI Laws and Reg

### Part A – The Securities and Exchange Board of India, 1992 [SEBI]

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#### 2.1.1. Introduction

Constituted as the regulator of capital markets | GoI | 12th April 1988

Initial Status:

A non-statutory body | No statutory power

3 Principal Acts that governed the securities markets in India

The Capital Issues (Control) Act, 1947	Restricted issuer's access Controlled the pricing of issues
The Companies Act, 1956 (now 2013)	Sets out the code of conduct for the corporate sector: Issues Allotment & transfer of securities Disclosures - Public issues
The Securities Contracts (Regulation) Act, 1956	Regulation of transactions in securities through control over stock exchanges

More about The Capital Issues (Control) Act, 1947

Origin – War in 1943

Objective - To channel resources to support the war effort

Retaining of the Act

Controls the raising of capital by companies

To ensure that national resources were channeled in to proper lines, i.e., for desirable purposes to serve goals and priorities of the government

To protect the interests of investors.

Firm – Get approval from CG to issue securities [determines - Amount, type and price of the issue.

Repealing the Act – A liberalization Process, in 1992

Government's control Ceased – Issue | Pricing | Fix the premia & % interest on debentures

Abolition of administrative office - To allow the market to allocate resources to competing uses

#### SEBI Act, 1992

For effective regulation of the market

To empower with statutory powers for:

(1) Protect - The interests of investors in securities

(2) Promote - The development of the securities market

(3) Regulate - The securities market.

Regulatory Jurisdiction –

Issuance of capital and transfer of securities

To all intermediaries and persons associated with the securities market in the interest of investors or of orderly development for securities market

Can conduct enquiries, audit and inspection of all concerned and adjudicate offences

In short: Autonomy and Authority - To regulate | Develop an orderly securities market

Legal framework:

Governs all the SEs & STs in India

7 Chapters | 35 Sections

<b>Chapters</b>	<b>Description</b>
I	Preliminary
II	Establishment of SEBI
III	Transfer of A/Ls, etc of the existing to the Board
IV	Powers & Functions of board
V	Registration Certificate
VA	Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control
VI	Finance, Accounts and Audit
VIA	Penalties & Adjudication
VIB	Establishment, Jurisdiction, Authority & Procedure of Appellate Tribunal
VII	Misc

The Securities Laws (Amendment) Act, 2014

Passed by Parliament – 1st week of August, 2014 | President's assent - 22 August 2014

Amendment thro: Finance Act | International Financial Services Centres Authority Act, 2019 (w.e.f Oct 2020)

Aim - To amend and plug the existing loopholes in 3 cardinal legislations

3 cardinal legislations – Controls Securities market transactions in India

SEBI Act, 1992 | SCRA, 1996 | Depositories Act, 1996

More Teeth to SEBI:

(a) Widened and Sharpened Powers - Calling for information | Records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act.

(b) Deemed CIS:

Pooling of funds (scheme / arrangement)

Not registered / covered with SEBI

Corpus amount of ₹ 1000 million or more

(c) Credit to IEPF: [IEPF established by SEBI]

Disgorged Amount [u/s - Sec 11B, SEBI Act / Sec 12A, SCRA, 1956/ Sec 19, The Depositories Act, 1996] utilised by the SEBI

(d) Power to issue directions u/s 11B –

Includes (& deemed to) the power to direct any person, who made profit or averted loss

by indulging in any transaction or activity in contravention of to the Act / Reg to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention

(e) In the cases of failure:

Cases of failure	Modes followed by Recovery Officer
<ul style="list-style-type: none"><li>• Pay the penalty imposed by the adjudicating officer</li><li>• Pay any fees due to the Board</li><li>• Comply with any direction of SEBI for refund of monies</li><li>• Comply with a direction of disgorgement order issued u/s 11B</li></ul>	<ul style="list-style-type: none"><li>• Attachment and Sale of the person's movable / Immovable property / Bank A/Cs</li><li>• Attachment of person's Bank A/Cs</li><li>• Arrest of the person and his detention in prison</li><li>• Appointing a receiver for the management of the person's movable / immovable property</li></ul>

### 2.1.2. SEBI - The watchdog of the Indian Markets

Similar in function to SEC, USA

Regulates the working of the financial markets in India - Investor protection and laying down of ethical standards

Additional Statutory Authority, in 1995, by GoI – An amendment to 1992 Act

Preamble - Describes the basic functions:

“..... to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto.”

Responsive to 3 groups - The issuers of securities | The investors | The market intermediaries

3 functions rolled into 1 body:

Quasi-legislative : Drafts Reg [Legislative capacity]

Quasi-judicial : Conducts investigation and enforcement action [Executive function]

Quasi-executive : Passes rulings and orders [judicial capacity]

Appealing process:

To create accountability

1<sup>st</sup> Appeal to SAT [A 3 - member tribunal] | 2nd appeal directly to The Supreme Court

Validity of the Board:

Establishment - Chapter II, Sec 3 (1), SEBI,1992

Nature:

Body corporate –

Perpetual succession	Common Seal	To enter into contract	Can sue or be sued
Power to acquire, hold and dispose of movable / immovable property			

The head office - Bombay [Other Offices at other places in India]

Management of the Board – Sec 4

Members

(a) A Chairman

(b) Two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act, 2013

(c) One member from amongst the officials of the Reserve Bank

(d) The remaining five other members shall be appointed by the Central Government of whom at least three shall be the whole-time members

BoM's Vesting Power:

The General superintendence | Direction & Management of the affairs of the Board

Exercise all powers and do all acts and things which may be exercised or done by the Board.

Other Points:

Chairman's Power: [Same as above]

The Chairman and members –

Appointed by the Central Government

Shall be the persons of ability, integrity and standing who have the capacity in dealing with problems relating to securities market

Have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

Terms & Conditions of service [Chairman & members] - Section 5 | Prescribed by the board

CG's Right

- To terminate the services of the Chairman / Member

- B/f expiry period | notice, not less than 3 months in writing | 3 months salary and allowances in lieu thereof

The Chairman's / Member's, Right - To relinquish his office at any time before the expiry | Notice to CG, not less than 3 months in writing

Removal of the office – Sec 6 | CG | an opportunity of being heard

(i) Adjudicated as insolvent

(ii) Unsound minded and stands so declared by the competent person

(iii) has been convicted of an offence which in the opinion of the CG involves moral turpitude.

(iv) in the opinion of the CG, the member has abused his position as to tender his continuation detrimental to the public interest.

Meetings:

Section 7

- Observe rules of procedure (transaction of business), including quorum

- Presided by Chairman (in the case of inability, chose one amongst them)

- Decision by majority

- Chairman's Second / Casting vote

Section 7A

- Disclosure of interest – By member | If Director of a company | Direct / Indirect pecuniary interest

- Disclosure recorded

- Such person shall not take part in the deliberation / disclosure

Section 8

- Validity of any Act / Proceeding of the Board



- By reason of any vacancy in or any defect in the constitution
- any defect in the appointment of a person acting as a member of the board
- any irregularity in the procedure of the Board not affecting the merits of the case

### **2.1.2.1 Transfer of A/Ls etc., of the existing Securities and Exchange Board to the Board:**

Chapter III | Section 10 | On & from the date of establishment of the Board,

- (a) Deemed Reference - Any reference | in any law | in any contract / instrument shall be deemed as a reference to the Board
- (b) All properties and assets - Movable / Immovable
- (c) All rights and liabilities
- (d) All debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done
- (e) All sums of money due
- (f) All suits and other legal proceedings instituted or which could have been instituted by or against
- (g) Every employee shall hold his office in the Board by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits (Continues / 6 months from opting out period)

### **2.1.2.2 Power and Functions of SEBI**

Chapter IV | Section 11 (1)

Duty of the Board

- (a) to protect the interest of investors in securities, and
- (b) to promote the development of and
- (c) to regulate the securities market by such measures as the Board thinks fit and
- (d) for matters connected therewith and incidental thereto.

Two main functions: Regulatory | Developmental

Regulatory functions: The Board is responsible for:-

Regulating the business

Registering | Regulating the working of intermediaries (from Sec – 12 and 12A) | VCF  
| CIS | MFs

Promoting | Regulating self-regulatory organizations

Prohibiting fraudulent and unfair trade practices

Promoting Investors' education and training of intermediaries

Prohibiting insider trading in securities

Regulating SAST | Take-over of companies

Other Functions and Powers – As per SCRA | delegated by CG

calling for information from undertaking inspection Conducting inquiries and audits of SEs   MFs   securities market intermediaries   Self- regulatory organisations	calling for information and record from bank   other Authority   Board   Corporation (Central / State / Provincial Act) under investigation or inquiry
--	--

Levying fees or other charges | Conducting research

Calling from / furnishing information - for the efficient discharge

Performing such other functions as may be prescribed.

Developmental Functions:

Promoting investors' education

Training of intermediaries

Conducting research and publishing information useful to all market participants

Promotion of fair practices

Promotion of self - regulatory organizations

Undertakes inspection

Any book / register / other document / record - Listed public company

Indulging in insider trading / Fraudulent / Unfair trade practices

Power of the Board - Power of a civil court, CPC, 1908 | Sec 11(3)

Discovery and production of books of account and other documents

Summoning and enforcing the attendance of persons and examining them on oath

Inspection of any books, registers and other documents of any person as in Sec 12 and 12A

Issuing commissions for the examination of witnesses or documents

Additional Powers:

Writing | Investors / Securities Market – Interest

Pending investigation w.r.t.

- suspend the trading
- Restrain persons from accessing the securities market
- Prohibit any person to buy, sell or deal in securities
- Suspend any office-bearer (SE / Self- regulatory organisation) from holding such position
- Impound | Retain the proceeds or securities – w.r.t. investigation
- Attach – Involved Bank A/ SEs | Members Cs | Any person | on violation | order – Judicial Magistrate of the first class | not exceeding one month
- Direct - Intermediary / Person | Not to dispose / alienate an asset under investigation | Opportunity of being heard

Other Powers:

To call periodical returns To call information or explanation	To compel listing of securities by public companies
To levy fees or other charges	To grant approval / make or amend to bye-laws of SEs
To control and regulate SEs	To direct enquiries to be made in relation to affairs of stock exchanges or their members
To grant registration to market intermediaries	To grant licenses to dealers in securities – Sec 17, SCRA, 1956

Powers from its primary objective to protect the investors: [Sec 11A]

To Regulate / Prohibit

- The issue of prospectus
- Offer document
- Advertisement soliciting money for issue of securities

Specify by Regulation - The matters:

- Issue of capital
- Transfer of securities and other incidental matter

And its disclosure – By General / Special order:

Prohibit / Specify (Also the requirements for listing and transfer of securities)

Investigating Power: [Sec 11C (1)]

Detrimental Transactions | Order in writing | Direct any person

Duty

To produce to investigating Officer by

Manager | MD | Officer | Other employee of the company | Every intermediary

The books | Registers | Other documents | Record of (give certified copies)

Company / Intermediary

Require to furnish such information

Keep in its Custody for 6 months (Call for if needed again | not later than the conclusion of investigation)

Failure (without reasonable cause / refuses)

To produce | To furnish any information | To appear before the Investigating Authority personally | To answer any question | To sign the notes of any examination

Penalty: Imprisonment – Extend to 1 year | Fine - Extend to ₹ 1 Cr | Both

Continuity – ₹ 5Ls / day

### **2.1.2.3 Registration Certificate**

Chapter V | Section 12 | Register in accordance with the Reg

Persons [Sec 12] - Stock broker | Sub broker | Share agent | Banker to an issue | Trustee of trust deed | Registrar to an issue | Merchant banker, Underwriter, Portfolio manager, Investment advisor

Persons [Sec 12A] – Depository Participant, Custodians of securities, Foreign Institutional Investor, Credit Rating Agency | Others by notification

To deal with securities market | buy | sell | deal in securities

Existing Board: The person shall continue for 3 months, if made an application till its disposal

Payment determined by Reg

VCF | CIS | MFs [Sec 12B]: Prohibited unless Registered | Sponsor / Carry on (caused to be)

### **2.1.2.4 Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control (Section 12A)**

Insider trading

- Trading of securities by insiders
- Material non-public information
- Violation of a fiduciary or similar duty of trust and confidence
- To the issuing company / source information

The main benefit of the insider trading goes to the insider.

“The knowledge of unpublished price sensitive information in hands of persons connected to the companies which put them in an advantageous position over others who lack it, such information can be used to make gains by buying shares at a cheaper rate anticipating that it might rise and it can be used to insulate themselves against losses by selling shares before the prices fall down, such kind of transaction entered into by persons having access to any unpublished information”

Insider

- The directors | Officers | SHs (substantial number of shares)
- Persons (Non - Employees): Confidential information | Service Providers - Professional advisors, lawyers, investment bankers

Legal Prohibition:

- SEBI (Prohibition of Insider Trading) Regulation 1992
- SEBI (Prohibition of Insider Trading) Regulation 2015 (Notified -15<sup>th</sup> Jan, 2015, w.e.f. 15<sup>th</sup> May 2015)

Note: SEBI (Substantial Acquisition of Shares and Takeovers) Reg, 1997

Sec 12A - No person shall directly or indirectly:

- (a) Use / Employ – Manipulative / Deceptive device / Contravene
- (b) Employ - Device / Scheme / Artifice to defraud
- (c) Engage – Act / practice / course of business – Fraud / deceit
- (d) Insider Trading
- (e) Possession – Material / Non-public information | includes communication to other persons
- (f) Acquire - Control of any company / Securities > % of ESH

Applicability:

- for listed and proposed to be listed companies
- w.r.t. Issue / Purchase / Sale / Dealing

### 2.1.2.5 Penalties

Chapter VIA | Section 15A to 15HB

Section 15J – AOs “shall have due regard to” the factors

Repetitiveness | Amount of disproportionate gain or unfair advantage, the amount of loss caused to an investor or group of investors.

Sl.No	Section	Nature of Violation	Penalty
1	15A	(a) furnish information etc. (b) file return etc. (c) maintain books of accounts etc. (d) within time or false or incomplete return	Not less than ₹ 1 lakh Continuous Failure - ₹ 1Lakh / day sub. to a max- ₹ 1 Cr
2	15B	To enter into agreement with clients	
3	15C	To redress Investors' grievances on direction by the Board	
4	15D	Certain defaults in case of mutual funds	
5	15E	Observe rules and Reg by an asset management company	
6	15EA	Default in case of alternative investment fund, infrastructure investment trust and real estate trust	WEH: Not less than ₹ 1 lakh Continuous Failure - ₹ 1L / day Upto ₹ 1 Cr 3 * the amount of gains made out of the failure

7	15EB	Penalty for default in case of investment advisor and research analyst for failure to comply with Reg	Not less than ₹ 1 lakh Continuous Failure - ₹ 1Lakh / day upto ₹ 1 Cr
8	15F	Fails to issue contract notes	Not less than ₹ 1 lakh
		Fails to deliver any security or fails to make payment	Not less than ₹ 1 lakh Continuous Failure - ₹ 1Lakh / day sub. to a max- ₹ 1 Cr
		Charges in excess of the brokerage specified	Not less than ₹ 1 lakh and may extend five times of the brokerage
9	15G	Penalty for insider trading	WEH:
10	15H	Penalty for non-disclosure of acquisition of shares and takeovers	Not less than ₹ 10 lakh Upto ₹ 25 Crs 3 * the amount of profits made out of insider trading
11	15HA	Penalty for fraudulent and unfair trade practices	WEH: Not less than ₹ 5 lakh Upto ₹ 25 Crs 3 * the amount of profits made out of insider trading
12	15HB	Penalty for contravention where no separate penalty has been provided	Not less than ₹ 1 lakh and may extend ₹ 1 crore.

### 2.1.2.6 Adjudication

Power to adjudicate (Sec 15I)

AO – Appointment by Board | not below the rank of a Division Chief | To hold an inquiry | Reasonable opportunity of being heard | To impose penalty (as above)

Power of AO:

To summon & enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence

To produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and impose penalty if satisfied

Factors to adjudge quantum of penalty (Sec 15J)

- (1) the Amount of disproportionate gain / unfair advantage, wherever quantifiable, made as a result of the default.

- (2) the Amount of loss caused to an investor / group of investors as a result of the default.
- (3) the Repetitive nature of the default.

Sec 15JA - Credits the realized penalties to Consolidated Fund of India

### **2.1.2.7 SAT - Establishment, Jurisdiction, Authority & Procedure [Chapter VIB]**

Establishment: Sec 15K

CG - By notification | one or more ATs | Govt notification – matters / places to exercise jurisdiction

Composition: Sec 15L | Presiding Officer + Two Members (Appointment by CG Notification)

Note: B/f SEBI, 2002 – SAT to operate with one person till other two members are appointed

Qualifications: Sec 15M | A sitting / Retired Judge of the Supreme Court / High Court

Presiding Officer - Appointment by CG in consultation with the Chief Justice of India or his nominee

Other qualifications –

A person of ability, integrity and standing | Capacity in dealing with problems relating to securities market

Qualification and experience of corporate law, securities laws, finance, economics or accountancy

Disqualification:

A post at senior management level equivalent to Executive Director in SEBI

During his service / tenure | within two years from the date on which he ceases to hold office

Term of office – 5 years | Eligible for re-appointment

Till age – Presiding Officer: 68 years | Other members – 62 years

### **2.1.2.8 Appeal to SAT [sec 15T]**

Aggrieved Person - by

An order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act / Rules / Reg made there under

An order made by an adjudicating officer under this Act

By the Board on and after the commencement of the Securities Laws (Second Amendment) Act, 1999.

By an adjudicating officer, with the consent of the parties.

Period of Appeal: within 45 days from the date of the above (+ days on sufficient cause)

Fee: as prescribed

On receipt of an appeal: An opportunity of being heard | Order – confirm / Modify / Set aside

Copy of order to Board | parties to appeal | Concerned AO

Dispose within 6 months from the date of receipt of the appeal

### **2.1.2.9 Appeal to the Supreme Court (Section 15 Z)**

Appeal to Supreme Court | within 60 days (+ not exceeding 60 days on sufficient cause)

### **2.1.2.10 Procedure and Powers of the Securities Appellate Tribunal (Section 15U)**

Procedure:

Shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908)

Guided by the principles of natural justice and provisions and rules of this Act

Regulates their own procedure including the places at which they shall have their sittings. T

Powers:

The same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908):

- Summoning and enforcing the attendance of any person and examining him on oath
- Requiring the discovery and production of documents
- Receiving evidence on affidavit
- Issuing commissions for the examination of witnesses or documents
- Reviewing its decisions
- Dismissing an application for default or deciding it ex parte
- setting aside any order of dismissal of any application for default or any order passed by it ex parte
- Any other matter which may be prescribed

Misc:

Sec 193 and 228 | Sec 196, IPC (45 of 1860): Every proceeding of SAT – Deemed Judicial proceeding

Sec 195 and Ch XXVI, CrPC, 1973 (2 of 1974): SAT – Deemed civil court

Appellant – In person | Authorise CA / CMA / CS / Legal Practitioners / any officer

No power to civil court: To entertain any suit / proceeding | To grant injunction



### 2.1.2.11 Coordination with other Regulatory Authorities, etc

Available for Public Companies / Listed (Shares) Company

Rules and Reg - Connected with the issue and the trading at the primary and the secondary market.

SEBI Coordinates with Government, RBI, Other organs, Intermediaries, Financial Institutions, World Stock Exchanges Other stock exchanges in India.

### 2.1.2.12 Power to make rules and Reg.

Section 29 & 30: Power | CG – Rules & SEBI – Regulations

Rules / Reg / Guidelines - prescribed by the SEBI:

SEBI (LODR) Reg, 2015	SEBI (SAST) Reg, 1997	SEBI (PIT) Reg, 2015
SEBI (ICDR) (Amendment) Reg, 2009 SEBI (ICDR) (Amendment) Reg, 2015 – Amendments – 2 <sup>nd</sup>   3 <sup>rd</sup>   4 <sup>th</sup>   6 <sup>th</sup>	SEBI (ESOS and ESPS) Guidelines, 1999 SEBI (Issue of Sweat Equity) Reg, 2002 SEBI (Buy-Back of Securities) Reg, 1998	SEBI (MFs) Reg, 1996 SEBI (CIS) Reg, 1999 SEBI Guidelines for FII SEBI (FIIs) Reg, 1995 SEBI (VCF) Reg, 1996 SEBI (FVCF) Reg
SEBI (Central Listing Authority) Reg, 2003 SEBI (Delisting of Securities) Guidelines, 2003	SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Reg, 2003 & 1995	SEBI (Depositories and Participants) Reg, 1996 SEBI (Custodian of Securities) Reg, 1996 SEBI (Credit Rating Agencies) Reg, 1999
SEBI (Merchant Bankers) Rules, 1992 SEBI (Merchant Bankers) Reg, 1992/ SEBI (Registrars to an issue and Share Transfer Agents) Rules, 1993 and Regulation, 1993	SEBI (Underwriters) Rules, 1993 SEBI (Underwriters) Reg, 1993 SEBI (Debenture Trustees) Rules and Reg, 1993 SEBI (Bankers to an Issue) Rules, 1994 and Reg, 1994	SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 and Reg, 1992 SEBI (Portfolio Manager) Rules, 1993 and Reg, 1993 SEBI (Ombudsman) Reg, 2003

Note: Includes Circulars | Buy - back of securities - Public companies

## 2. SEBI Laws and Reg

### Part B – Revised Clause 49 of the Listing Agreement and the Guidelines issued under Clause 49

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**Omission:**

By SEBI (LODR) Reg, 2015

**A Short version of listing agreement:**

Signed between the company and the SE | Comply LODR

## 2. SEBI Laws and Reg

### Part C – SEBI Issue of Capital and Disclosure Requirements (ICDR) Regulations, 2018

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#### Introduction

SEBI Notification:

11<sup>th</sup> Sep, 2018 | w.e.f. 60<sup>th</sup> day of its publication in the official gazette

Amendments: 29<sup>th</sup> July, 2019 | 22<sup>nd</sup> June, 2020

Applicability:

Public issue | Rights issue (₹ 10 crores & above) | Preferential issue

Bonus issue - Listed Issuer | QIP

IDRs | IPO by SMEs | Listing without any public issue

#### Scheme of the Regulations:

12 Chapters | 20 schedules:

Chapter	Description	Chapter	Description
I	Preliminary	VII	IPO by IDRs
II	IPO on Main Board	VIII	Right Issue of IDRs
III	Right Issue	IX	IPO by SMEs
IV	FPO	X	Institutional Trading Platform
V	Preferential Issue	XI	Bonus Issue
VI	QIP	XII	Miscellaneous

#### 2.1.1 General conditions for public issues and rights issues - Eq Shares | Convertible securities

No issue, if

1. Debarred from accessing the capital market

By SEBI - Issuer | Promoters | Promoter Group | Directors | Selling SHs

By SEBI (Order / Directions) – Promoters | Director (was / is Promoter / other company)

Note: Fugitive Offender: Not – Applicable | Debarred in the past and the period is over

2. Not applied for In-Principal Approval:

To SEs | Choose One Designated SE | IPO – SE (nation - wide terminal)

3. Not entered in Agreement with Depository for Demat

4. Not converted existing partly paid-up equity to Fully paid up / forfeited

5. Not: Firm arrangements of finance | verifiable means | 75% of the stated means of finance | Excluding the amount to be raised - Proposed public / Rights issue / Existing identifiable internal accruals, have been made.

6. Promoter's holding – Demat form | prior to filing of offer document

7. Stated amount for general corporate purposes shall not exceed 25% of the amount raised
8. At least one year holding of Eq Shares by the sellers
9. Willful defaulter - Equity securities | Promoters or Directors
10. Not in Demat Form:

As per Sec 29, Companies Act, 2013 (amended, 2019) | Depositories Act, 1996 | Public / Specified issues

### **2.1.2 Appointment of Merchant banker and other intermediaries**

By Issuer | one or more | Atleast one LMB

Appoint - Other intermediaries (consultation - LMB) | To carry out the obligations relating to the issue | Registered with SEBI

Note:

In case of one or More Merchant Banker,

Predetermine & Disclose in the offer document, the Rights | Obligations and responsibilities w.r.t Disclosures | Allotment | Refund | Underwriting obligations

### **2.1.3 Conditions for IPO (Regulation 6)**

(a) Unlisted Issuer | Eq Shares and convertible debentures | Includes an offer for sale of specified securities

1. Net tangible assets:

Atleast ₹ 3 crore | Each preceding 3 years (12 months each) | not > 50% are held in monetary assets

If > 50% in monetary assets - Commit to utilize such excess monetary assets in its business / project

2. Min Average pre-tax operating profit – ₹ 15Cr | Calculation - Restated and consolidated basis, 3 most profitable years out of the immediately preceding 5 years

3. Net worth – Atleast ₹ 1Cr | Each of the preceding 3 full years (of 12 months each).

4. Name Change - within last one year | Atleast 50% revenue for the preceding 1year | Earned by the activity mentioned in the name

(b) Non – satisfaction of above conditions:

1. Book Building Process | Allot atleast 75% to QIBs | Failure - Refund full subscription monies

(c) Issue –

Convertible debt instruments | without making a prior public issue of its Eq Shares and listing

No default payment - P + I | 6 months

(d) No allotment – If Number of prospective allottees < 1000

(e) No issue – If O/S Convertible Securities / any Right | option for entitlement of Eq Shares | after IPO

#### **2.1.4 Conditions for FPO (Regulation 103)**

(a) Issue - Eq Shares and convertible securities

1. Name Change - within last one year | Atleast 50% revenue for the preceding 1year | Earned by the activity mentioned in the name

(b) Non – satisfaction of above conditions:

1. Book Building Process | Allot atleast 75% to QIBs | Failure - Refund full subscription monies

#### **2.1.5 Pricing in Public Issues –**

Eq Shares | Convertible Securities - Price

Debt instruments - Coupon rate and conversion price

In consultation with the LMB / Book building process

Mention in Offer Document– Price / Price band | Floor price in red running prospectus

#### **2.1.6 Differential Pricing - Issue at Different Prices**

(a) Retail Individual Investors / SHs / Employees (entitled for reservation)

Value not more than Rs 2 lakh

Offer at lower price than the net offer price for other categories of applicant

Provided – Difference not more than 10%

(b) Book Built Issue - Anchor investor | Not to lower price than other applicants

(c) Alternate to Book Building – To Employees | Difference not be more than 10% of the floor price

(d) FV- Issue Price: ₹ 500 or more – ₹ 1 to ₹ 10 | < ₹ 500 – ₹ 10

#### **2.1.7 Promoters' Contribution - Case to Case basis**

IPO	Min - not be less than 20% of the post issue capital.
FPO	To the extent of 20 % of the proposed issue size / the post-issue capital

Composite Issue	To the extent of 20 % of the proposed issue size / the post-issue capital (exclude - the right issue component)
-----------------	--

### 2.1.8 Lock-in of specified securities held by promoters

- (a) Minimum promoters' contribution - 3 years | WEL - Date of commencement of commercial production / Allotment in the public issue
- (b) In excess of minimum - 1 year | FPO – No lock-in period

### 2.1.9 Book Building – Schedule XI

Book Building - A process | To elicit demand | To assess the price, Quantum and Value | Specified Securities / IDRs | as per SEBI (ICDR) Regulations 2018

Allocate to Public Category

(a) thro Book Building Process

Investors	Other than Reg 6(2)	Reg 6 (2)
retail individual investors	Not less than 35 %	Not more than 10%
Non-Institutional investors	Not less than 15 % to Non-Institutional Investors (other than retail individual investors   QIBs)	Not more than 15%
QIBs   5 % of it to MFs (eligible for additional allocation)	Not more than 50%	Not less than 75%

Under Reg 6(2) – The issuer may allocate up to 60% of the portion available for allocation to QIBs to an anchor investor

(b) Other than the book building process

1. Retail Individual Investors - Min 30%

2. Remaining to individual applicants

- other than retail individual investors and other investors including corporate bodies or institutions

Irrespective of the number of Eq Shares and convertible securities applied for

3. The unsubscribed portion - To other Category

Allocation of higher percentage to Retail Institutional Investors if entitled to more than 50% on proportionate basis.

### **2.1.10 IDRs**

An instrument

Denominated in Indian Rupees

in the form of a DR

created by a Domestic Depository (custodian registered with SEBI)

against the underlying equity of issuing company

to enable foreign companies to raise funds from the Indian securities markets

#### **(Basic) Conditions to be satisfied for the issue:**

(a) Listed - Home country

(b) No prohibition – Issue | Regulatory body

(c) Track Record - Compliance with securities market regulations | Home country

### **2.1.11 Conditions for issue of IDR**

(a) Issue size - Not less than ₹ 50 Crs

(b) Mention the application procedure - Each class of applicant | Prospectus

(c) Min Application amount – ₹ 20,000

(d) Allotment of at least 50% - To QIBs | Proportionate basis

(e) Balance of 50% -

To non-institutional investors & retail individual investors including employees (Issuer's discretion) of the issuer and the manner of allocation has to be disclosed in the prospectus. Allotment to investors within a category will be on proportionate basis.

(Further) Atleast 30% to Retail individual investors

In case of Under-subscription - Spill over to other | to the extent

(f) Only one denomination of IDR at any time

### **2.1.12 Institutional Trading Platform**

Easier for startups companies to raise capital

Consequential changes in other regulations in SEBI

To list without going through IPO

Granting various exemptions aims at enabling entities to tap capital markets with ease and aims towards ease of doing business in India.

#### **Salient features of the changes:**

##### **(a) Fast Track Issue**

1. Average Market Capitalization – Public Issue – ₹ 10 billion | Right Issue – ₹ 2.5 billion

## 2. Additional Conditions:

- a. The issuer, promoter or promoter group or director of the issuer has not settled any alleged violation of securities laws through consent or settlement mechanism with SEBI during 3 years immediately preceding the reference date.
- b. Right Issue – Mandatory | Promoters | Renounce only within their group | To comply Min public shareholding
- c. Suspension of Eq SHs from Trading (disciplinary measures) during last 3 years immediately preceding the reference date
- d. Annualized delivery - based trading turnover of the Eq SHs during 6 calendar months immediately preceding the month of reference date should be at least 2% of the weighted average number of Eq Shares listed during such period.
- e. No conflict of interest between LMB and issuer or its group or associate in accordance with applicable regulations.
- f. Redressed 95% of the investor complaints

### **(b) Interim use of funds**

Disclosure: Prospectus / Letter of offer for public | Right issue

1. Deposit - Net issue proceeds pending utilization (for the stated objects) | Scheduled commercial banks | for issue made by Indian issuers
2. Restriction– Bank | Credit Rating (International Agency) – A or above Interim use of funds is restricted to deposit in a bank having credit rating of 'A' or above | for IDR issuers

**(c) Listing on ITP** - Existing guidelines - only for SME | Now available to wider class of issuers

### **(d) Eligibility**

#### 1. Eligible Entities

##### a) Entity

- Use in Technology / IT / Intellectual property / Data Analytics / Bio -Technology / Nano-technology to provide products, services or business platforms
- with substantial value addition and
- at least 25% of its pre-issue capital is held by QIB

b) Other Entity - atleast 50% of pre-issue capital is held by QIB as on the date of filing of draft information document or draft offer document with SEBI

- 1) No person, individually or collectively with PAC person acting in concert shall hold more than 25% of post-issue capital.
- 2) Eligibility norms have been substantially diluted to do away with requirements such as condition of no default by company/ promoter/ group company/ director, no reference to BIFR by company or group companies in preceding 5 years, not more than 10 years of



existence, paid-up share capital not exceeding ` 250 million and turnover not exceeding ` 1 billion in any financial year, at least one investment by AIF, VCF, angel investor, QIB etc.

## (2) Listing

a) SEBI has now permitted listing on ITP for eligible issuer through public issue without public issue under previous regime, public issue was not permitted. Issue of capital was permitted only through private placement or rights issue without renunciation subject to certain conditions.

b) Minimum trading lot shall be ` 1 million

## (3) Listing without public issue

a) File - Draft Offer Document | Prescribed Fees

b) Obtain In - Principle approval

Deemed waiver from Compliance - Rule 19(2)(b), SCRR, 1957

c) Non – Applicability of requirement of min public shareholding

d) Listing of securities to take place within 30 days from:

1) Date of issuance of observations by SEBI

2) If no observations issued, then after expiry of the period for issuance of observations by SEBI

e) Non – Applicability of other Provisions - Allotment | issue opening / closing | Advertisement | Underwriting | No IPO pending conversion of convertible securities | Pricing | Dispatch of issue material | others

## (4) Listing pursuant to public issue

a) File - Draft Offer Document | Prescribed Fees

b) Minimum application size – ₹ 1 million

c) Number of allottees > 200

d) Allocation of net public offer shall be made as under:

1) 75% - Institutional investors (without separate allocation to Anchor Investor)

2) 25% - non-institutional investors

3) If under subscribed by Non – Institutional Investors, then allocate to institutional investors

4) Allotment to non-institutional investors on proportionate basis

5) Allotment to institutional investors may be on discretionary basis in which case allotment to

each institutional investor to be capped at 10% of issue size

(5) Lock-in Period

a) Entire pre-issue capital – 1 year from the date of allotment

b) Non- Applicability to Eq Shares:

1) allotted to employees - Existing ESOP scheme

2) VCF / Category I Alternative Investment Fund / FVCF / FVCI provided Eq Shares were locked in for a period of 1 year from the date of purchase

3) Other than promoters continuously for a period of 1 year prior to the date of listing (in case of listing without public issue).

4) In case of Eq Shares held pursuant to conversion of convertible securities, holding period pre-conversion as well as post- conversion will be considered

c) Promoter's Locked in securities eligible for pledging commercial banks, financial institutions as collateral security

d) Specified securities allotted on discretionary basis shall be locked in as per lock-in requirements for Anchor Investor

e) Promoter shareholding - Post issue | Minimum 25% at the time of listing | 3 years done away with

(6) Exit / Migration to main Board: a) Exit from ITP - without public issue, if:

1) Approval from SHs - Special Resolution | Postal Ballot | 90% of total votes and majority of non-promoter votes have been cast in favour and

2) Approval from the SEs.

## 2. SEBI Laws and Reg

### PART - D: SEBI (Listing Obligation and Disclosure Requirement) Rules, 2015

#### 2.1 Applicability:

Listed entity | Designated securities | Listed on recognized SEs

<ul style="list-style-type: none"><li>• Specified securities   Listed - Main board   SME   ITP<ul style="list-style-type: none"><li>• Non-Convertible Redeemable Preference Shares</li><li>• Perpetual Non - Cumulative Preference Shares</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Non-Convertible Debt Securities<ul style="list-style-type: none"><li>• Perpetual Debt instrument</li><li>• Securitized debt instruments</li></ul></li></ul>
<ul style="list-style-type: none"><li>• Security Receipts   IDRs   Units of MFs</li></ul>	<ul style="list-style-type: none"><li>• Other as specified by the Board</li></ul>

#### 2.2 Compliance

Compliance Officer - Qualified Company Secretary | Responsible for

1. Ensuring conformity - The regulatory provisions
2. Co-ordinating | Reporting - The Board | SEs | Depositories | Rules, Regulations, others
3. Ensuring - Correct procedures | Filing, Monitoring Email address of grievance redressal division

#### 2.3 RTAs: Mandatory | Total number of security holders > 1 Lakh

- Otherwise - Register with the Board
- Ensures – Activities | Share transfer facility | Maintained - In house / Registrar / SHA
- File - Half yearly Compliance Certificate | within 1 month of end of half year

#### 2.4 Policy on Preservation of Documents [Reg 9]

- Approved by BoD
- 2 categories – Preserve – permanently | Minimum 8 years
- Board to specify categories

#### 2.5 Grievance Redressal Mechanism [Reg 13]

- SCORES | E - Platform | System of Board - Mandatory Registration
- File - Quarterly statement
  - Number of pending investors' complaints | Beginning and ending of the quarter
  - Complaints - Received | Disposed | Remained unresolved
  - within 21 days of the end of the quarter

#### 2.6 BoD

- Optimum combination of ED and NED
- Atleast one woman director
- ID – Women - Top 1000 listed companies

- Not less than 50% NED
- IDs – 1/3<sup>rd</sup> | If chairperson is related to promoter - 1/2
- Meet - atleast 4 times a year | Max time gap of 120 days between the 2 meetings
- A person shall not be director of more than 7 listed companies

## 2.7 Vigil Mechanism

1. For directors and employees
2. Adequate safeguards against victimization of Director(s) / Employee(s) / Other
3. Direct access to the chairperson of the AC

## 2.8 RPTs

1. Policy Formulation on “materiality” | Dealing with RPTs and review every 3 years
2. Material RPT: Previous & Proposed transaction | during FY | > 10% of annual consolidated turnover
3. Requirement of prior approval – All RPTs
  - Omnibus approval | Quarterly review | Validity of Resolution – 1 year
  - Approval of SHs - Material RPT | Ordinary Resolution
  - Abstinance – Voting | Related Parties

## 2.9 Obligations Pertaining to Material Subsidiaries

- Director to be the Director of unlisted Indian material subsidiary - Atleast 1 ID
- Review of FSs by AC
- Place before the Board of Holding Company – Minutes of BM | Statement of all significant transactions and arrangements entered into by the unlisted subsidiary
- Requirement of SR:
  - Disposal of shares resulting in reduction of its shareholding to less than 50% or cessation of control over the subsidiary
  - Selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year

## 2.10 Obligations Pertaining to Independent Directors

- Not to serve as ID in more than 7 listed entities
- At least 1 meeting in a year without the presence of non-independent director
- Duties
  - Review performance of non-independent directors
  - Review performance of chairperson
  - Assess quality and timeliness of information flowing to the Board
- In case of resignation / removal of ID - Replacement at the next Board meeting or 3 months

- Familiarization programmes for IDs
- Obligations applicable to directors
  - Member in not more than ten committees
  - Chairperson of not more than five committees across all listed entities in which he is a director
  - Disclosures to the Board relating to all material, financial and commercial transactions, where they have personal interest
  - NEDs to disclose their shareholding held directly or on behalf of others and the same shall be inserted in the notice of general meeting.

### **2.11 Board Obligation**

- Quarterly Compliance Certificate- Listed entity | Corporate Governance | within 15 days from close of the quarter | Disclose material RPTs
- Prior intimations to Stock Exchanges [Reg 29]
- Meeting of Board held for following matters
  - financial results viz. quarterly, half yearly, or annual
  - proposal for buyback of securities;
  - proposal for voluntary delisting
  - proposal for fund raising
  - declaration/recommendation of dividend,
  - proposal for issue of convertible securities

### **2.12 Miscellaneous**

Submission of Reports:

AR - within 21 days of adoption at AGM

BRR - Top 500 listed companies as on March 31 every financial year

Annual Information Memorandum - as specified by SEBI

Disclosures: Reg 36 | Appointment & re-appointment of Directors

Disclosures to the SHs:

- Brief resume of the director
- Nature of his expertise in specific functional areas
- Disclosure of relationships between directors inter-se
- Directorship | Membership in the Committees - Listed Entities

Procedures w.r.t. Transfer / Transmission / Transposition of securities and Timelines

- Board delegates the power to transfer
- Delegated Authority - Committee / Compliance Officer / Registrar to an issue / STA

- Delegated authority to place report on transfer of securities to the board of directors in each meeting
- Registration of transfer
- Transfer within 15 days, Otherwise, compensate the aggrieved party
- Transmission: Demat Securities within 7 days | Physical securities- within 21 days
- Shareholding of NEDs

### **2.13 Records to be Maintained**

Half yearly certificate from PCS | within 1 month of end of half year | To SEs

Results of Remote e-voting: All resolutions | within 48 hours of conclusion of the meeting

## 2. SEBI Laws and Reg

### Part E– The Securities Contracts (Regulation) Act,1956

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#### 2.1.1 Securities Laws in India

##### **Introduction:**

##### **Earlier:**

1965

- Earliest legislation on Stock Market
- Government of Bombay
- To deal with the situation arising out of the Share Mania of 1860-65

1923, September

- Appointment of Atlay Stock Exchange Enquiry Committee
- Stressed and Emphasised the need for the SE
- To frame and maintain systematic and settled rules and regulations in the interest of general investing public and the trade.

1925, July - Charter to BSE

- By The Government of Bombay and
- Assumed authority to control the rule making power of the exchange
- Granted BSE monopoly to organise trading in securities but the exchange turned down the offer

1926, Jan 1

- A Special Legislation - Bombay Securities Contracts Act, 1925

##### **Today:**

**Laws:** SCRA, 1956 | Depositories Act, 1996 | Regulations, Guidelines and Listing Agreement – SEBI

##### **Amendment of SEBI Act,1992: In 2002 | CG**

Empowerment of SEBI

To inspect listed companies - Insider trading | Fraudulent and unfair trade practices

To order suspension of trading of security

Restrain person from accessing securities market

Impound proceeds of securities

Attach property

To prohibit any company from issuing prospectus / Offer document / Advertisement

To issue, cease and desist orders

Enhancement of Penalty:

₹ 1Lakh / day – ₹ 1Cr

Heavy Penalty: Insider trading / fraudulent and unfair practices – up to 3 x profit / Rs 25 crores

SAT as 3 – member Tribunal:

Presided over by sitting / retired Supreme Court Judge /Chief Justice of High Court

Appeal to Supreme Court on question of law

### **Amendments to the SCRA, 1956:**

Under Corporatisation and demutualization:

- Defines | Specifies the procedure (including approval from SEBI)
- Specifies the time limit for disinvestment by stock brokers

Limits the organisational form of a stock exchange to a corporate entity

Brokers:

Restricts the voting rights as SHs

Participation on governing boards of SEs so as to plug the loopholes inherent in governance of stock exchanges whose organisational form is mutual

### **SCRA in Similarity with SEBI:**

- Conferring powers upon the SEBI to issue directions to SEs and the companies (Listed / proposed)
- Providing appeal from SAT to Supreme Court
- Enhancing the penalties under SCRA, 1956
- Adjudication by an adjudicating authority to impose monetary penalties
- Making provision for compounding of offences
- Crediting the penalties to the Consolidated Fund of India, etc.

### **Securities Laws (Amendment) Act, 2014:**

- New Powers to SEBI
- To effectively pursue fraudulent investment schemes, especially ponzi schemes

### **2.1.2 The Securities Contract (Regulation) Act, 1956**

Enacted by Parliament | Extends to the whole of India | w.e.f. 28th February, 1957

Necessity:



To prevent undesirable transactions in securities

By regulating the business of dealing therein

By providing for certain other matters connected therewith

Procedure: Provides for

SE - To get recognition from Government / SEBI

Listing of securities

Operation of the brokers in relation to purchase and sale of securities on behalf of investors

Defines various terms in relation to securities

Non – Applicability:

- (a) GoI | RBI | Local authority | Corporation (Special Law) | Person - effected any transaction with or through the agency of these
- (b) Convertible Bond | Share warrant | Any option or right in relation thereto – Issuing at the price agreed at the time of issue

Notification by CG:

Class of Contracts

In the interest Trade and Commerce / Economic development of the country

The conditions, limitations or restrictions

### **2.1.2.1 Scheme of the Act**

Section 3 to 22F: As amended by Finance Act 2015 | w.r.t 'R - SEs':

Application | Grant of recognition | Withdrawal

Illegal / Void Contracts

Restrictions on Members - To act as principals, Licensing of dealers, Spot Delivery

Conditions for listing and delisting of securities

Right of Appeal to CG / SAT / Supreme Court

Power of Central Government to direct rules to be made or to make rules etc

Section 23 to 26E: 'Penalties and Procedures'

Section 27-32: 'Miscellaneous' provisions

Section 30: By the Powers of CG | Notified SCRR, 1957 | Procedural matters

### **2.1.2.2 Definition of Securities, Derivatives and Contract**

(a) Securities include: Sec 2 (h) | Amended by Finance Act, 2015

1. Shares | Scrips | Stocks

Bonds | Debentures | Debenture stock

Other marketable securities of a like nature - Incorporated company | Body corporate

2. Derivative

3. Units / other instrument – CIS

4. Security Receipt - Defined – Sec 2(zg), SARFAESI Act, 2002

5. Units / Other instruments – MF Scheme

Explanation:

“Securities” - Shall not include

Unit linked insurance policy / Scrips / Instrument or unit

which provides a combined benefit risk on the life of the persons and investment by such persons

Issued by an insurer under Sec 2(9), The Insurance Act, 1938

6. Certificate of instrument:

Issuer - Special purpose distinct entity which possess any debt or receivable, including mortgage debt, assigned to such entity, and

Acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt

7. Govt Securities

8. Other instruments – Declared by CG

9. Rights / Interests in securities

(b) “Derivative” includes: Sec 2 (h) | Amended by Finance Act, 2015

1. Security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security.

2. Contract which derives its value from the prices, or index of prices, of underlying securities

3. Commodity derivatives, and

4. Other – Declared by CG

(c) ‘Contract’ – Sec 2 (a) | A contract for or relating to the purchase or sale of securities

(d) ‘Spot delivery contract’ – Sec 2 (i) | Amended by Finance Act, 2015

A Contract which provides for:

1. Actual delivery of securities

Payment of a price therefore either on the same day as the date of the contract or on the next day,

The actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality

2. Transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by depository

### 2.1.2.3 Meaning and Definition of Stock Exchange

#### Meaning:

SE - An essential pillar of the private sector corporate economy.

#### 3 Functions

- a. A market place for purchase and sale of securities.
  - Ensures the free transferability of securities, the essential basis for the joint stock enterprise system
- b. The linkage between the savings in the household sector and the investment in the corporate economy.
  - Mobilizes savings, channelises them as securities into these enterprises which are favoured by the investors on the basis of such criteria as future growth prospects, good returns and appreciation of capital
- c. A market quotation of the prices of securities
  - A sort of collective judgment simultaneously reached by many buyers and sellers in the market
  - The stock exchange serves the role of a barometer, not only of the state of health of individual companies, but also of the nation's economy as a whole.

Case Law: UoI vs. Allied International Products Ltd

The Supreme Court of India - Enunciated the role of the Stock Exchanges:

"A Stock Exchange fulfills a vital function in the economic development of a nation; its main function is to 'liquify' capital by enabling a person who has invested money in, say a factory or railway, to convert it into cash by disposing off his shares in the enterprise to someone else. Investment in Joint stock companies is attractive to the public, because the value of the shares is announced day after day in the stock exchanges, and shares quoted on the exchanges are capable of almost immediate conversion into money. In modern days a company stands little chance of inducing the public to subscribe to its capital, unless its shares are quoted in an approved stock exchange. All public companies are anxious to obtain permission from reputed exchanges for securing quotations of their shares and the management of a company is anxious to inform the investing public that the shares of the company will be quoted on the stock exchange".

Definition: Stock Exchange - Sec 2(j)

- a) Any Body of individuals (incorporated or not)
  - Constituted before corporatization and demutualization under Sections 4A and 4B
- b) A body corporate incorporated under the Companies Act, 2013
  - Under a scheme of corporatization or otherwise
  - Purpose - Assist / Regulate / Control
  - the business of buying, selling or dealing in securities

## **Other Definitions:**

Member, Sec 2 (c) - A member of R - SE

Government Security, Sec 2 (b):

- A security created and issued | A/f or A/f the commencement | CG / SG | To raise a public loan | Specified Forms – Sec 2(2) of the Public Debt Act,1944

Section 2A:

- Words and Expressions used herein and not defined in this Act

- But defined in the Companies Act, 1956 (now 2013) | SEBI, 1992 | The Depositories Act, 1996

- Shall have the same meanings respectively assigned to them in those Acts

### **2.1.2.4 R - SEs in India**

Definition: A stock exchange which is for the time being recognised by the CG

Permission: Organize / Assist in organizing / Be a member of any stock exchange (other than a R - SE) for the purpose of the same | Enter into or perform any contracts in securities.

Comes into force – State / Area | CG's Notification

#### **(a) Application for recognition of SEs**

Section 3 | Apply to CG | Prescribed particulars

Accompany – Copy of Bye-Laws | Control of Contracts | Copy of the Rules on General Constitution | In particular to:

- (1) The governing body - Constitution | Powers of management | Manner of business transaction
- (2) The office Bearers - Powers and Duties
- (3) Admission of members – Qualifications | Exclusion | Suspension | Expulsion | Re-admission of members
- (4) Procedure for Registration of the partnerships as members – the rules provide such | Nomination and appointment of authorised representatives and clerks

#### **(b) Grant of recognition to SEs**

Section 4 | CG is satisfied | after an inquiry and obtained information

- (1) Rules | Bye-laws – In conformity | To ensure fair dealing and to protect investors
- (2) Willingness to comply with any other conditions
  - Including conditions as to the number of members

- CG consults the governing body of SE | having regard to the area served by the stock exchange and its standing and nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act

(3) to grant recognition – in the interest of the trade and public interest

(4) Grants recognition – with imposed and prescribed Conditions

Union Budget 2016-17: July, 2016 | Increase of For Investment Limit in SEs | from 5% to 15% | FDI reforms Policy

Conditions: Sec 4(1)(a)

1. Membership qualifications

2. Entering and Enforcement of Contract bet members

3. Representatives from CG - number of persons | not > 3 | CG's Nomination

4. Maintenance of accounts of members | Audit by CAs | As required by CG

Publish the grant of recognition - Official Gazette | State - Principal office is | w.e.f. date of Publication

Refusal to Grant – Opportunity to be heard | Communicates the reasons in writing

Amendment of Rules under Sec 3 (2) – Approval from CG

### **2.1.2.5 Contracts and Options in Securities**

#### **Contracts in Securities**

1. Sec 13, Notification by CG

- In CG's satisfaction | w.r.t. Nature / Volume of transactions in securities | In State(s) / Area

- Declares the applicability of the Section

- Every contract in such State or States or area | Enter into after date of the notification

Illegal: Otherwise, than between the members of R – SE / R – SE

Contracts bet members of two or more R - SEs shall be subject to

a. Stipulated Terms and conditions | Prior Approval of SEBI

b. (Stipulated) Prior permission from SEs | Prior Approval of SEBI

Sec 13A – By SE | Establish | Additional trading floor | Prior approval of SEBI | Stipulated terms and Conditions

2. Sec 14, Void: Contract, Sec 13 | Contravenes – Bye – Laws, Sec 9(3)(a) | As follows:

a. Rights of any member of the R - SE

b. Rights of any other person (knowingly participated in the transaction)

No knowledge of Transaction

- Shall not affect other persons | But affects Member of R – SE
- To enforce such Contract / To recover any sum

Consent / Authority required:

- In writing | Member of R – SE | As Principal
- Disclosure – Note / Memorandum / Agreement of Sale / Purchase

If not in writing – Secure by written confirmation | within 3 days from the date of contract

Sec 15, Non – Requirement of Consent / Authority: Closing of O/S contracts if disclosure made

CG’s Opinion on Speculation: Opinion of CG | To prevent undesirable Speculation | By notification | Unless with permission | Enter Contract – Sale / Purchase | To the specified extent

Sec 16, Illegal Contracts – In contravention of Sec 13 (1)

### Options in securities

**Definition:**

- A contract | Right - Buy / Sell
- Specific security of commodity | specified price (Exercise Price / Striking Price) | within a specified period of time
- Comprises the types – Call / Put
- Described by the nature of underlying commodity
- [Stock option | Bond option | (Foreign) Currency option | Future option]
- Buy / Sell is to exercise the option

**Types of Option:**

Call Option	Put Option
The right to buy	The right to sell
Not obligated to purchase	Not necessary to sell

Other Points:

1. Exercise Price / Striking Price – Specified Price
2. Option premium / option price

- The amount of money paid by Option buyer to option seller / writer
  - The option buyer receives the privilege, but not the obligation, of buying (in the case of call) or selling (in the case of a put) the underlying commodity for the exercise price
3. An opportunity for the investors to hedge investments in the underlying shares and share portfolios and can thus reduce the overall risk related to the investments significantly

### In - the - money | Out - of - the - money

Option	In - the - money	Out- of-the-money
<b>Call Option</b>	Price > Exercise Price	Price < Exercise Price
Option Buyer - Exercises the option?	Yes	No
The Intrinsic Value / Exercise Value (Diff bet the Prices)	Earnings	0
<b>Put Option</b>	Price < Exercise Price	Price > Exercise Price
Option Buyer - Exercises the option?	Yes	No
The Intrinsic Value / Exercise Value (Diff bet the Prices)	Earnings	0

### Example: Exercising Option with Exercise Price (EP) and Intrinsic values (IV)

Commodity Prices (EP – ₹ 109)	₹ 108		₹ 109	₹ 110	
	Exercises?	IV	-	Exercises?	IV
Call Option	No	₹ 0	-	Yes	₹ 1
Put Option	Yes	₹ 1	-	No	₹ 0

#### 2.1.2.6 Listing of Securities

Liquidity: Importance to companies and investors

w.r.t. Price:

Media - Listed Securities | Newspapers & TV Channels (telecast actual price movements)

Unlisted Securities – Difficulty in trading | The price is known on one - one basis (bet Buyer and Seller)

Listing Agreement – Benefits | Apply as per conditions of listing agreement

Listing:

- Open for the companies | Listed | R - SEs | one or more other SEs
- Out of India - Follow the rules and regulations of those exchanges

Applicability of Companies: Public company – All securities | Private company – Debt Securities

## Section 17A:

- Public issue | Listing of securities (Sec 2(h)) | Fulfillment of eligible Criteria | Comply - Requirements

## Issuer intending to offer the Certificates / Instruments

- Make an application, b/f issuing the offer document to the public
- to one or more R - SEs for permission for listing

## On Non - Grant of permission | Refusal:

Repay the money collected from the applicants

If not repaid within 8 days, the issuer and every director or trustee thereof - jointly and severally liable to repay with interest @ 15%p.a. from 8<sup>th</sup> day

## Types of Listing: 5 Groups

- (1) Initial listing: First time listing
- (2) Listing for Public Issue: Public issue of securities
- (3) Listing for Rights Issue: Already Listed | Right basis
- (4) Listing of Bonus Shares: As a result of capitalization of profits - Bonus issue
- (5) Listing for merger or amalgamation: New shares issued by an amalgamated company to the SHs of the amalgamating Company

## Benefits of Listing:

- (a) Enhancement of Company's Public Image
- (b) Ensured Liquidity – Easy buy / Sell
- (c) Tax concessions - To the investors and the companies
- (d) Mandatory Disclosure: Company Management | Important information to the investors | To make Crucial decisions | To hold / Dispose the securities
- (e) Better Credibility - As security for loans from Banks and FIs

## Multiple Listing:

Eligibility: Paid up capital > ₹ 5 Crs

List its securities / Permitted for trading

Atleast one stock exchange having nationwide Trading Terminals.

Benefit: Arbitrage opportunities to the investors – To make Profit based on the difference in the prevailing prices in the exchanges

## Legal Provisions on listing:

Governed by:

The Companies Act, 2013 | SCRA, 1956 | SCRR, 1957



Rules, Bye – Laws, Regulations – SEs  
Circulars / Guidelines – CG and SEBI

Companies Act, 2013 – Sec 40

Permission (Apply) from SEs - Share / Debentures | Subscription to Public by Prospectus  
| B/f Issue

Prospectus to state the names of the SEs (applied for listing)

Void Allotment, if not granted permission by the SEs | b/f the expiry of 10 weeks from the  
closure of the issue

SCRA, 1956 – Sec 4

Powers to make Bye – Laws: R - SE

Inclusion of any security for the purpose of dealings and suspension or withdrawal of  
securities

The prohibition of trading in any specified security, subject to SEBI approval

Application for Listing:

Enclosures: Number of Documents | To satisfy the requirements of the concerned SE

Undertakings: A condition precedent b/f

Listing Agreement: A legal binding contract with SE

- Execute | SEs agrees to list

- 50 – 60 Clauses

- To ensure compliance of each and every terms and condition

- On failure – Action taken | Opportunity of being heard

### **2.1.2.7 Penalties and Procedure: Section 23 to 26 E**

#### **Failure by the person in the following cases - Section 23**

1. Any person who:

- a. Fails to comply – Sec 6(4) | Requisition | without reasonable excuse (the burden of proving which shall be on him)
- b. Enters into any contract – Contravention – Sec 13 or 16
- c. Contravenes – Sec 17 or 19
- d. Enters into any contract in derivative – Contravention – Sec 18A / Sec 30
- e. owns or keeps a place / permits such place to be used - other than that of a R - SE | Enters into or performing any contracts | Contravenes
- f. manages, controls, or assists (the above clause) | recorded or adjusted | R / L - Adjusted, regulated or enforced
- g. Willfully represents / Inducing to enter into a contract through him – Not a member | Not an authorised agent | Not a dealer, licensed under Sec 17
- h. Canvasses / Advertises / Touts - either for himself or on behalf of any other person for any business connected with contracts  
- Not a member | Not an authorised agent | Not a dealer, licensed under Sec 17
- i. joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a R - SE any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act.

without prejudice to any award of penalty by AO

Imprisonment: 10 years / Fine – Upto ₹ 25 Crs / Both

2. Any person

- Enters into any contract | Contravention - Sec 15

- fails to comply | Sec 21 / 21A / orders of SAT

without prejudice to any award of penalty by AO

Imprisonment: 10 years / Fine – Upto ₹ 25 Crs / Both

#### **Failure to Furnish information, return, etc. - Section 23 A**

within the time specified in Listing agreement / conditions / Bye-laws of the R - SE,  
Document | Books | Returns | Report to a Rec SE / Board | Books of accounts / Records  
- Not less than ₹ 1Lakh | ₹ 1 Lakh / day – ₹ 1 Cr max

#### **Failure by any person to enter into an agreement with clients- Section 23 B**

- Not less than ₹ 1Lakh | ₹ 1 Lakh / day – ₹ 1 Cr max

Note: Amendment by Finance Act, 2018 | AO – deemed to have been exercised under the provisions of this section

**Failure to redress investors' grievances [Section 23 C]**

Stock broker / Sub-broker / Company called to redress grievances

- Not less than ₹ 1Lakh | ₹ 1 Lakh / day – ₹ 1 Cr max

Note: Amendment by Finance Act, 2018 | AO – deemed to have been exercised under the provisions of this section

**Failure to segregate securities / moneys of client or clients [Section 23 D]**

Stock Broker / Sub - Broker– Registered under Sec 12 of SEBI (15 of 1992)

- Not less than ₹ 1 Lakh – ₹ 1 Cr

**Failure to comply with provision of listing conditions or delisting conditions or grounds or commits a breach [Sec 23 E]**

Company / Person – CIS / MF / Real estate investment trust / Infrastructure Investment Trust

- Not less than ₹ 5Lakhs – ₹ 25 Crs

**Excess dematerialisation or delivery of unlisted securities [Sec 23 F]**

Dematerialisation of securities more than the issued securities of a company

Delivers in the stock exchanges the securities which are not listed in the R - SE

Delivers securities where no trading permission has been given by the R - SE

- Not less than ₹ 5Lakhs – ₹ 25 Crs

**Failure to furnish periodical returns / false, incorrect or incomplete returns etc. [Sec 23G]**

Fails or neglects to make or amend its rules or bye-laws as directed

Fails to comply with directions

- Not less than ₹ 5Lakhs – ₹ 25 Crs

**No separate penalty [Sec 23H]**

- Not less than ₹ 1Lakh – ₹ 1Cr

**Power to adjudicate [Section 23-I]**

Adjudging under Sections 23A, 23B to 23H

Appointment of AO: SEBI appoints any officer not below the rank of a Division Chief of the SEBI

To hold an inquiry | prescribed manner | opportunity of being heard | to impose penalty

Power of AO:

To summon and enforce the attendance of any person

acquainted with the facts and circumstances of the case

to give evidence / to produce any document  
 which in the opinion of the adjudicating officer  
 may be useful for or relevant to the subject-matter of the inquiry and  
 if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of  
 any of the Sections specified in Sub-Section (1),  
 he may impose such penalty

Board's Power on AO:

To call for and examine the record of any proceedings under this Section

Erroneous Order

- To the extent it is not in the interests of the securities market
- after making or causing to be made such inquiry as it deems necessary
- pass an order enhancing the quantum of penalty, if the circumstances of the case so justify

#### 2.1.2.8 Appeal to SAT [Sec 23L]

Aggrieved – Order by SE / AO / SEBI – Sec129 / 23 – I (3)

Sec 22B, 22C, 22D and 22E applies to Appeal

Filing Period – 45 days | Date of Copy of order / decision is received | Prescribed fees |

Delay – Sufficient Cause

On receipt of an appeal - Opportunity of being heard | Confirm / Modify / Set aside the order

Copy to be sent – Parties to the appeal | AO

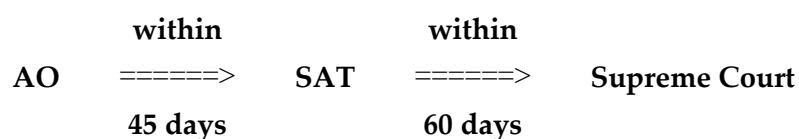
Disposal of appeal - within 6 months from the date of receipt of the appeal

#### 2.1.2.9 Appeal and Revision (Section 26 C)

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

#### 2.1.2.10 Appeal to Supreme Court (Section 22 F)

Within 60 days | Question of Law | + 60 days – Sufficient



#### 2.1.2.11 Power of SEBI to make Regulations [Sec 31]

(a) SEBI's Notification: To make Rules and Regulations | To carry out the purposes of this Act Without prejudice to Sec 30, SEBI Act, 1992

(b) For the following matters:

- (1) The manner | atleast 51% ESC | R - SE | held within twelve months from the date of publication of the order | Sec 4B (7) by the public other than the shareholders having trading rights under Sec 4B(8)
- (2) The eligibility criteria and other requirements under Section 17A.
- (3) Determined terms by the Board for settlement of proceedings, Sec 23JA (2)
- (4) any other matter

(c) To be laid b/f the Parliament:

- As soon as may be after it is made
- Both the Houses | Total Period of 30days (one or more sessions)
- Status: Modifies / annuls | takes effect accordingly
- Both houses agree in modification / not making
- without prejudice to the validity of anything previously done under that regulation

## 2. SEBI Laws and Reg

### Part F – SEBI (Prohibition of Insider Trading) Regulations, 2015

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#### 2.1 SEBI (PIT) Reg, 2015

1992 Regulation: SEBI (PIT) Reg, 1992 | Repealed

2015 Regulation: w.e.f. 15th May, 2015

Enjoined a role upon the “Compliance Officer” - To ensure compliance

#### Definitions

##### 2.1.1: Connected Person [Reg 2 (d)]

Any person who is or has during the 6 months (prior to the concerned act) been associated with a company, directly or indirectly, in any capacity

- having frequent communication with its officers
- In Relationship Contractual / Fiduciary / Employment
- A Director / Officer / Employee
- Holds any position – Professional / Business / Other - Temporary / Permanent

Directly or indirectly | Access / allowed to access | UPSI

#### Deemed to be connected:

- An immediate relative of connected persons
- A Holding / Associate / Subsidiary company
- An intermediary | Sec 12 of the SEBI Act | An Employee / Director
- An Investment Company / Trustee company / AMC | An Employee / Director
- An official – SE / Clearing House Corporation
- A member – BoT of MFs | BoD – AMC | Employee
- A member of BoD / Employee – PFI, Sec 2(72) The Companies Act, 2013
- An official / Employee - Self - Regulatory organization Recognised / Authorized by the Board
- A Banker of the company
- A Concern | Firm | Trust | HUF | Company | AOP - Director of a company / His immediate relative / Banker of the company | > 10% holding or interest

**2.1.2 “Insider” [Reg 2(g)]** - A Connected person / in possession of or having access to UPSI

### 2.1.3 “Unpublished price sensitive information” [Reg 2(n)]

Any information, relating to a company or its securities  
directly or indirectly

that is not generally available which upon becoming generally available  
is likely to materially affect the price of the securities and  
shall, ordinarily including but not restricted to, information relating to

- financial results | Dividends | Change in capital structure
- Mergers | De-mergers | Acquisitions | Delisting | Disposals and expansion of business | Other
- Changes in KMP
- Material events in accordance with the listing agreement

“**Generally available information**” - Information | Accessible to the public | Non-discriminatory basis

#### “**Compliance Officer**”:

Any senior officer - designated so and reporting to BoD

Financially literate | Capable of appreciating the legal provisions and compliance thereof

Normally the Company Secretary of the Company is designated as Compliance Officer

#### **Further Discussion:**

“Connected person” – Includes Relatives / Host of

Persons - in the know of things inside the company

Required to be quite careful about divulging of information which may turn price sensitive if it gets to a market intermediary

Reg 3(1) - No insider

Shall communicate / Provide / Allow access

To any UPSI relating to a Company / Securities (Listed or proposed)

To any person including other insiders

Except - Legitimate purposes / Performance of duties / Discharge of legal obligations, else illegal

Reg 3(2) - No person shall procure or cause the communication by any insider of UPSI

The BoD - Get executed agreements | To ensure confidentiality and non-disclosure obligations on the part of functionaries who handle price sensitive information and when in possession of such information.

Reg 4 – Persons In possession | Not to trade on SE | Except – Prove the Innocence  
Onus of proving – Connected person  
BoD - Specify the standards

### **Insider**

Formulates Trading Plan (in compliance with Reg 5 (2))  
Presents it to the compliance officer for approval and public disclosure to carry on the trade  
Then, Compliance officer notifies to the SE  
Nature – Irrevocable | Mandatory Implementation

Disclosure:

Initial – As prescribed in the Notification  
Continua Disclosures - within 2 trading days | Calendar Quarter | Value of the securities > ₹  
10 Lakhs or specified | In single or series of Transaction

Applicability – Promoter | Director | KMP | Takeover by New Director / KMP

BoD of Listed Companies - To formulate and publish a code of fair disclosure containing the practices and procedures in the company's official website

BoD of Market intermediary - Formulate a code of conduct | Employees | To regulate, monitor and report trading | Towards achieving compliance with the regulations.

Obligation for the market intermediaries - Comply | Even tough not listed companies



### 3. The Competition Act, 2002

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#### 3.1 Competition – Meaning, Objectives, Extent and Applicability

##### 3.1.1. Introduction

First Enactment: MRTP Act, 1969

- First Competition Law
- Based on the socio – economic philosophy enshrined in the Directive Principles of State Policy of CoI
- Amendments: 1974, 1980, 1982, 1984, 1986, 1988 and 1991

Inadequately Equipped MRTP and Heat of Competition

- Wake of liberalization and privatization | Triggered in India in early nineties
- Gathered Momentum | MRTP – Disability to tackle competition
- Heat of Competition from Domestic / Global Giants
- Called for level playing field and investor-friendly environment

Need for Competition Laws:

- To shift the focus from curbing monopolies
- To encourage companies to invest and grow
- To promote competition while preventing any abuse of market power

Competition Act, 2002

In line with the international trend | To cope up with the changing realities in India

Amendment: 2007 | 2009

##### 3.1.2 What Constitutes Competition Law and Policy?

Definition:

The Government measures | that affects the behaviour of enterprises and structure of the industry

A view to promote efficiency and maximize welfare

Two elements:

Competition Policy: Enhances competition in the markets

- Set of policies - Liberalized trade policy | Relaxed FDI policy | De-regulation, etc.

Competition Law: To prevent anti-competitive practices with minimal intervention

Scheme of the Act:

10 chapters:

Ch – I: Preliminary

Ch – II :

Sec 3 - Prohibition of certain agreements

Sec 4 - Abuse of dominant position (Sec 4)

Sec 5 & 6 - Regulation of combinations

Ch – III to VIII: CCI and related

Ch – VIIIA: Appellate Tribunal

Ch – IX: Misc

### **3.1.3 Competition – Meaning**

Definition: (Not defined in the Act)

A situation in a market | Firms / Sellers independently strike for the buyers' patronage

To achieve a particular business objective – Profit / Sales / Market share.

Trade and Competition:

Trade

- A pre-requisite for a good competition

- The unrestricted liberty of every man

- To buy, sell and barter

- When / Where / How - of whom and to whom he pleases

### **Income Distribution is the real Culprit, Not the competitive system!!!**

To be in existence of Free Market – Income Distribution | who can pay the highest price will be able to purchase the goods regardless their relative needs

Unregulated free market - Greater benefit to the owner to withhold goods from market in order to extract a higher price – An unsuccessful effort

Overcome

- Caution in a free market | Problems in an unregulated market
- Posturing competition - The “ultimate raison d’etre” - The interest of the consumer can be protected

### **3.1.4 Need for Competition**

Universally acknowledged competition

- The best means
- To Ensure that the consumers have access to the broadest range of services at the most competitive prices
- Producer’s Maximum incentive - To innovate / Reduce the costs / Meet consumer demand
- Competition promotes allocative and productive efficiency

Lead to the requirement of healthy market conditions

Governments across the globe are increasingly trying to remove market imperfections through appropriate regulations to promote competition

### **3.1.5 Unfair Competition**

Definition - Adoption of practices such as follows:

Collusive price fixing

Deliberate reduction in output in order to increase prices

Creation of barriers to entry

Allocation of markets

Tie-in sales

Predatory pricing | Discriminatory pricing

In fact, anything which not pro consumer or free trade is included in some way or other as unfair under the Act.

### **3.1.6 Objectives of the Competition Act, 2002: CCI as Instrumentality**

CCI - Established by CG | w.e.f. 14th October, 2003

Laid down to provide for an establishment of a Commission | To achieve the following objectives:

- (a) To prevent practices having adverse effect on competition
- (b) To promote and sustain competition in markets
- (c) To protect the interests of consumers
- (d) To ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

### **3.1.7 Extent and Applicability:**

The Act - A tool to implement and Enforce competition policy

To prevent and punish anti-competitive business practices by firms and unnecessary Government interference in the market

Extent: Whole of India | Earlier – Not applicable to J & K, does not feature under 37 central acts which have been made applicable to J & K.

Applicability - Written / Oral Agreement | Arrangements between the enterprises or persons

## **3.2 Competition Commission of India (CCI)**

### **3.2.1 Establishment of Commission [Sec 7]**

Body Corporate

- Perpetual Succession
- Common seal
- Power to acquire, hold and dispose of property
- To enter into contracts

- Capacity to sue and be sued

Office of CCI – Head Office – CG’s decision | Other places – CCI establishes

### 3.2.2 Composition of Commission (Section 8)

Chairperson | 2 to 6 members – Appointment

Qualification

- Person of ability, integrity and standing
- Has special knowledge
- Professional experience of not less than 15 years
- In international trade, economics, business, commerce, law, finance, accounting, management, industry, public affairs or competition matters, including competition law and policy
- In the opinion of the CG, may be useful to the Commission

The Chairperson and other members shall be whole time members.

### 3.2.3 Selection Committee for Chairperson and other Members of the Commission [Sec 9]

Appointed by CG | Panel of names recommended by a Selection Committee

(a)	The Chief Justice of India or his nominee	Chairperson
(b)	The Secretary in the Ministry of Corporate Affairs	Member
(c)	The Secretary in the Ministry of Law and Justice	Member
(d)	Two experts of repute who have special knowledge as discussed above	Members

Prescribed - Term of the Committee | Manner of selection of panel of names

### 3.2.4 Term of office of Chairperson and other Members [Sec 10]

Term of office: 5 years (from the date on which he enters upon his office)

Eligible for re-appointment

Shall hold office up to the age of 65 years

Sec 10(5):

1. Vacancy of chairperson: The senior most member shall be the Chairperson

Reason - Death, resignation or otherwise / due to or during the absence / illness or other cause

2. Disability of chairperson: The senior most member shall discharge the functions until the date on which the Chairperson resumes the charge of his functions.

Reason - Illness or other cause

### **3.2.5 Resignation, Removal and Suspension of Chairperson and other Members [Sec 11]**

**Resignation:** Sec 11(1)

By notice in writing under his hand | Addressed to CG

Permitted by CG | WEE – Relinquish sooner | 3 months | Successor's appointment | Expiry of his term of office

**Removal:** Sec 11(2)

By CG's Order | On the following:

(a) is, or at any time has been, adjudged as an insolvent. or

(b) has engaged at any time, during his term of office, in any paid employment, or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude. or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest. or (f) has become physically or mentally incapable of acting as a member

### **3.2.6 Restriction on employment of Chairperson and other Members in certain cases [Sec 12]**

For a period of two years from the date on which they cease to hold office

Not to accept any employment / To be connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission, other than employment in Government or Government Organisation/Companies

### **3.2.7 Administrative powers of Chairperson [Sec 13]**

Powers of general superintendence | Direction | Control

Includes Delegation to any other Member / Officer of the Commission

### **3.2.8 Salary & allowances & other terms & conditions of service of Chairperson & other Members [Sec 14] : Includes Travelling Expenses | HRA | Conveyance Facilities**

Sumptuary Allowance (expenses of living) | medical facilities

Not to be varied to their disadvantage after their appointment

### **3.2.9 Vacancy, etc., not to invalidate proceedings of Commission [Sec 15]**

Grounds:

- Vacancy / Defect in Constitution
- Defect in the appointment of Chairperson / Member
- Irregularity in the procedure of the Commission not affecting the merits of the case

### **3.2.10 Appointment of Director General (DG), etc. [Sec 16]**

CG | By Notification

To assist the Commission – To Conducting inquiry into contravention of any of the provisions

Perform other functions as per DG's control | Supervision | Direction

Prescribed:

- Number / manner of appointment: Additional, Joint, Deputy / Assistant DGs / Officers / Employees
- The Salary / Allowances / Other terms & Conditions of service

Qualification:

- Persons of integrity and outstanding ability
- Experience in investigation
- Knowledge of accountancy, management, business, public administration, international trade, law or economics
- Others

### **3.2.11 Secretary and officers and other employees of Commission [Sec 17]**

Appoint by CCI

For efficient performance of its functions under this Act

Prescribed: The Salary / Allowances / Other terms & Conditions of service

Engagement of Experts and Professionals

- of integrity and outstanding ability

- Special knowledge | Experience in Economics, Law, Business or other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.

### **3.2.12 Duties of Commission [Sec 18]**

Eliminate practices having adverse effect on competition

Promote / Sustain competition in markets in India

Protect the interests of consumers

Ensure freedom of trade carried on by other participants in markets in India

Memorandum / Arrangement - with any agency of any foreign country

- To discharge duties / Perform functions | Requires prior approval of CG

### **3.2.13 Inquiry into certain agreements and dominant position of enterprise [Sec 19]**

Alleged contravention of Sec 3(1) / Sec 4(1) | Either on its own motion or on:

(a) Receipt of any information from any person / Consumer / Association / Trade Association  
– Prescribed Manner and Determined fee

(b) Reference made to it by CG / SG / Statutory authority

Note: Procedure follows from Sec 26

### **3.2.14 Powers and Functions of the Commission**

(a) Appreciable Adverse effect: Agreement | Factors:

(1) Creation of barriers to new entrants in the market

(2) Driving existing competitors out of the market



- (3) Foreclosure of competition by hindering entry into the market
- (4) Accrual of benefits to consumers
- (5) Improvements in production or distribution of goods or provision of services
- (6) Promotion of Technical | Scientific | Economic development by means of production or distribution of goods or provision of services

(b) Dominant position of enterprise: Inquire | Factors:

- (1) Market share of the enterprise
- (2) Size and resources of the enterprise
- (3) Size and importance of the competitors
- (4) Economic power of the enterprise including commercial advantages over competitors
- (5) Vertical integration of the enterprises or sale or service network of such enterprises
- (6) Dependence of consumers on the enterprise
- (7) Monopoly / Dominant position whether acquired as a result of any statute or by virtue of being
  - a Government company or a public sector undertaking or otherwise
- (8) Entry barriers - Regulatory Barriers | Financial Risk | High capital cost of entry | Marketing Entry Barriers | Technical Entry Barriers | Economies of Scale | High cost of substitutable goods or service for consumers
- (9) Countervailing buying power
- (10) Market structure and size of market
- (11) Social obligations and social costs
- (12) Relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition.
- (13) Other factors

(c) Relevant Market: Constitutes - "Relevant Geographic Market" and "Relevant Product Market"

(d) Relevant Geographic Market: Factors to determine:

- (1) Regulatory trade barriers
- (2) Local specification requirements
- (3) National procurement policies
- (4) Adequate distribution facilities
- (5) Transport costs
- (6) Language
- (7) Consumer preferences
- (8) Need for secure or regular supplies or rapid after-sales services

(e) Relevant Product Market: Factors to determine:

- (1) Physical characteristics or end-use of goods
- (2) Price of goods or service
- (3) Consumer preferences
- (4) Exclusion of in-house production
- (5) Existence of specialised producers
- (6) Classification of industrial products

Case Law: "CCI vs SAIL"

– An important Judgement | Guidelines laid from the Hon'ble Supreme Court of India

Threshold stage: DG's direction (from CCI for enquiry, Sec 19) to SAIL to furnish information

Appeal by SAIL:

1<sup>st</sup> Appeal – To CAT

- Refusal to Grant Time – A violation of natural justice
- Refusal of the impalement of the matter

2<sup>nd</sup> Appeal: To Supreme Court | Guidelines enunciated and to be followed till the competent authority makes clear guidelines, as follows:

- (i) Reg 16 - Limitation of 15 days | CCI to hold its first ordinary meeting

Existence of prima facie case - Alleged anti- competitive agreements | Abuse of dominant position

| within 60 days.

To hold meetings and record opinion | within a period much shorter than the stated period.

(ii) Expeditious Completion by CCI / DG

No adverse affect, on parties as well as the open market in purposeful implementation of the provisions of the Act

(iii) Interim Orders by CCI – To pass final orders expeditiously | Not later than 60 days

(iv) Reg 20 – DG to submit report within reasonable time, as directed by CCI

Sec 26(1) - Not later than 45 days from the date of passing of directions

Section 26(2) - No inquiry by CCI, if no report

(v) Sec 57 and Reg 35 – Complete confidentiality

Breach - Aggrieved party gets right to approach the CCI to issue appropriate directions

### **3.2.15 Inquiry into combination by Commission (Section 20)**

Inquire on:

Own Knowledge

Information w.r.t – Acquisition, Sec 5(a) | Acquiring of control, Sec 5(b) | Merger / Amalgamation Sec 5(c)

On receipt of a notice, Sec 6(2)

To check: Whether, Combination has caused or is likely to cause an appreciable adverse effect on competition in India?

No initiation after the expiry of one year from the date on which such combination has taken effect

Notwithstanding Sec 5:

- CG | Notification | Consults CCI

- Enhance / Reduce - The value of Assets / Turnover:

- on the basis of Wholesale price Index fluctuations in exchange rate of rupee or foreign currencies

- on expiry of 2 years from the date of commencement of this Act | Every 2 years

In line with Sec 5: The MCA | Enhanced on the basis of the wholesale price index | 100%

Sec 20(4): Factors to determine the effect:

Evaluation of appreciable adverse effect on competition

A criterion for regulation of combinations as follows:

- (a) Actual and potential level of competition through imports in the market
- (b) Extent of barriers to entry into the market
- (c) Level of combination in the market
- (d) Degree of countervailing power in the market
- (e) Likelihood that the combination would result in the parties to the combination being able to
  - significantly and sustainably increase prices or profit margins
- (f) Extent of effective competition likely to sustain in a market
- (g) Extent to which substitutes are available or are likely to be available in the market
- (h) Market share, in the relevant market, of the persons or enterprise in a combination, individually
  - and as a combination.
- (i) Likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market
- (j) Nature and extent of vertical integration in the market
- (k) Possibility of a failing business
- (l) Nature and extent of innovation
- (m) Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition.
- (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

### **3.2.16 Reference by statutory authority (to CCI) [Sec 21]**

In the course of a proceeding | before any statutory authority

An issue is raised by any party / suo moto by such authority

That any decision which such statutory authority has taken or proposes to take is or would be

Contrary to any of the provisions of this Act

Then such statutory authority may make a reference in respect of such issue to the Commission.

Opinion from CCI: On receipt | within 60 days of receipt | Finding Recordings

### **3.2.17 Reference by Commission [Sec 21 A]: (same as above)**

Note: Includes also provisions of this Act whose implementation is entrusted to a statutory authority

### **3.2.18 Meetings of Commission [Sec 22]**

Such - Time / Place / Rules and Procedure by Regulations

Chairman's disability - Senior most Member present at the meeting shall preside at the meeting

Decision by majority (present and voted)

Chairman's Cast (second) Vote: In the case of equality of votes

Quorum – 3 members

### **3.2.19 Procedure for inquiry under Section 19 [Sec 26]**

(a) Detailed procedure | Suo moto inquiry by CCI - Sec 19, Complaints & References

Sec 27:

(1) Receipt | Reference | CG / SG / Statutory Authority / on its own knowledge / Information under Section 19,

Opinion – If Prima facie Case:

- Directs DG for investigation

- Same / Covered by previous info – New info is clubbed

(2) Opinion – If not prima facie Case:

- pass such orders

- sends a copy of its to the concerned

(3) The DG to submit report within specified period

(4) CCI forwards a copy to the concerned

(5) No contravention:

- On recommendation of DG's report | CCI invites objections or suggestions from the concerned

(6) After consideration of above,

- CCI agrees with the recommendation of the DG

- Closes the matter | passes such orders | Communicates to the concerned

(7) If further investigations is called for,

- CCI directs further investigation / inquiry to DG or proceeds itself

(8) On Contravention - On recommendation of DG's report

CCI's opinion for further inquiry | Orders by Inquiry into agreements or abuse of dominant position

(b) After inquiry,

Agreement (Sec 3) / Action of an enterprise in a dominant position - Contravention of Sec 3 / 4

(1) Direct – Enterprise / Association of enterprises / Person / AOP

- To discontinue & not to re-enter

(2) Imposition of penalty - not more than 10% x (Average T/O – 3 preceding years

Provided, in the case of Cartel:

Penalty – WEH [upto 3 x Profit of each year of continuance / 10% ofss T/O of each year of continuance]

To Producer / Seller / Distributor / Trader / Service Provider

(3) Direct for the modification of agreements to the extent

(4) Direct – To abide the passed orders | Comply with the directions, including payment of costs

(5) Omitted

(6) pass - other orders / directions

In finding | Enterprises in contravention of Sec 3/ 4 – Member, as defined in Sec 5(b)

- If the other members responsible / contributed for the contravention
- Orders passed against such members also

Case Law: “Belaire Owners Association vs. DLF Limited”

[Sec 27(b)] Penalty imposed: 7% of average of turnover for last three preceding years

Amount of Penalty – ₹ 630 Crs

Appeal by DLF to CAT: Held that

- Partial decision in favour of DLF
- CCI not to direct the modification of agreements entered b/f commencement of sec 4
- Abuse of dominant position in Gurgaon, relevant market
- Directed the deposit of the penalty

Current Status: For final Hearing before Supreme Court | Amount deposited in Supreme Court

### **3.2.20 Division of enterprise enjoying dominant position [Sec 28]**

Order in writing | Notwithstanding anything (any other law)

To ensure that such enterprise does not abuse its dominant position

w.r.t. the following matters:

- (a) Transfer / Vesting – Property / Rights / Liabilities / Obligations
- (b) Adjustment of contracts - Discharge / Reduction – Liability / Obligation
- (c) Creation, allotment, surrender or cancellation of any shares, stocks or securities
- (d) Omitted
- (e) Formation / Winding up of an enterprise | Amendment – MOA / AOA / Other instruments regulating the business of any enterprise
- (f) Alteration of order and registration thereof – Extent / Circumstances
- (g) Other matters

Notwithstanding anything (other laws/ Contract / MOA / AOA)

Not entitled to compensation from such cesser: An officer of a company who ceases to hold office as such in consequence

### **3.2.21 Procedure for investigation of combination [Sec 29]**

(a) Meaning of Combination:

The acquisition of  
one or more companies  
by one or more people  
or Merger / Amalgamation of enterprises

The following cases:

- (a) acquisition by large enterprises;
- (b) acquisition by group;
- (c) acquisition of enterprise having similar goods/services;
- (d) acquisition enterprise having similar goods/services by a group;
- (e) merger of enterprises;
- (f) merger in group company

(b) Notice to parties:

- CCI's Prima-facie opinion
  - Combination - Likely to cause / caused an appreciable adverse effect on competition within the relevant market in India
  - Issues a notice to show cause to the parties to combination
  - Calling to respond within 30 days of the receipt of the notice
  - for not conducting the investigation
- After receipt of the response Sec 29 (1),
- CCI calls for a report from DG
  - DG submits within such time as directed

(c) Directions to parties to publish details, Sec 29(2)



Direct within 7 working days from the date of receipt of the response / DG

Parties to publish details within 10 working days

To bring to the knowledge or information of the public and persons affected or likely to be affected by such combination

(d) Invitation to affected party: To file written objections | within 15 working days from the date on which the details of the combination were published.

(e) Additional information:

Call for: within 15 working days from the expiry of the above

Parties to furnish within 15 days from the expiry of the above

CCI deals in accordance, Sec 31 - After receipt of all information | within a period of 45 working days from the expiry of the period for additional information

### **3.2.22 Procedure in case of notice under Sec 6(2) [Sec 30]**

Notice by any person or enterprise | CCI examines | Forms prima facie opinion | Proceeds, Sec 29

### **3.2.23 Orders of Commission on certain combinations [Sec 31]**

(a) Approval of combination, Sec 31(1): does not likely or does not have an appreciable adverse effect on competition | Includes notice of Sec 6(2)

(b) Direction (not to take effect), Sec 31(2): Likely has an appreciable adverse effect on competition, it shall direct that the combination shall not take effect

(c) Modification

Sec 31(3): Propose appropriate modification

Sec 31 (4): Carry within specified period

Sec 31(5): Failure - deemed appreciable adverse effect

(d) Amendment to modification

Sec 31(6): Non – Acceptance of modification: within 30 days - Submit Amendment to the modification

Sec 31 (7): If CCI agrees | Passes order for approval

Sec 31(8): If CCI does not agree – Allows 30 days to accept modification proposed under Sec

(e) Consequence of non-acceptance of the modification, Sec 31(9): Failure to accept within 30 days | Deemed appreciable adverse effect

Sec 31(10): Follows from Sec 31 (2) or (9) | Without prejudice to penalty / prosecution

CCI orders, not to take effect:

(1) The acquisition, Sec 5(a)

(2) The acquiring of control, Sec 5(b)

(3) The merger or amalgamation, Sec 5 (c)

Note: CCI frames a scheme if considers appropriate

(f) Deemed approval by Commission, sec 31(12):

- If CCI does not pass order / direction (Sec 31 (1) / (2) / (7))

- within 210 days from the date of notice given to the CCI as in Sec 29(2),

Note: Calculation of 210 days excludes 30 days as in Sec 31(6) and Sec 31 (8)

- Extension of time: 90 working days deducted

(g) Consequence of a combination declared as void:

Sec31 (13): Dealt as if no acquisition / acquiring of control / merger/ amalgamation taken place

Sec 31 (14): Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated

**3.2.24 Acts taking place outside India but having an effect on competition in India [Sec 32]**

Outside India:

An agreement, Sec 3 and any party to that  
Enterprise abusing the dominant position  
Combination or any party to the combination  
Other related matters or practice

Notwithstanding | CCI has power to inquire u/s Sec 19, 20, 26, 29 and 30

Likely to have, an appreciable adverse effect on competition in the relevant market in India

And passes such orders as it may deem fit in accordance with the provisions of this Act

### **3.2.25 Power to grant interim relief [Sec 33]**

During an inquiry | Contravention w.r.t. sec3 (1) / Sec 4(1) / Sec 6

Committed / continues / about to be

Order – Temporary Restrain

Until the conclusion of such inquiry / further orders, without giving notice to such party

### **3.2.26 Appearance before Commission [Sec 35]**

A person / An Enterprise / DG

Appear in person

Authorise - CAs / CSs / CMAs / Legal practitioners / Officers

### **3.2.27 Power of Commission to regulate its own procedure (Section 36)**

(a) Procedure: To regulate its own | Principles of natural justice | subject to Act and Rules made by CG

Powers: vested with civil court, CPC, 1908 | Tries as follows

- (1) summoning and enforcing the attendance of any person and examining him on oath
- (2) requiring the discovery and production of documents
- (3) receiving evidence on affidavit
- (4) issuing commissions for the examination of witnesses or documents

(5) requisitioning, subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such of record or document from any office.

(b) The Commission may call upon such experts to conduct inquiry from the field of:

Economics | Commerce | Accountancy | International trade | Other discipline

Directs:

(1) To produce before the DG / Secretary / Authorised Officer

- Books | Other documents in the custody or under the control of such person so directed
- as may be specified or described in the direction,
- being documents relating to any trade,
- the examination of which may be required for the purposes of this Act.

(2) To furnish to the DG / Secretary / Authorised Officer

- as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

### **3.2.28 Rectification of orders [Sec 38]**

CCI – Amends | Own Motion | Notice by any party to the order

Only Rectification, but not on substantive part

### **3.2.29 Execution of orders of Commission imposing monetary penalty [Sec 39]**

Failure to pay monetary penalty

CCI – Recovery as Specified in Regulation | Refers to IT Authority as tax due

IT Act 1961

- Person in default - (Deemed) Assessee

-Applies To Competition Act:

- Sec 221 to 227 | 228A | 229 | 231 | 232
- Sc – II | Rules
- Penalty imposed

- Penalty / Fine / Interest, instead of the Assessing officer

Explanations:

1. Sec 220 (2) / (6), IT Act, 1961 = Sec 43 to 45 of The Competition Act, 2002
2. Drawing a certificate by The Tax Recovery Commissioner / officer, IT Act, 1961 | Applicable to Competition Act
3. Reference to appeal: Chapter XVIII & Sc II, IT Act, 1961 = CAT, Sec 53B of The Competition Act, 2002

The court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution.

### **3.2.30 Director General to investigate contravention [Sec 41]**

Direction by CCI | To assist the CCI

Powers as conferred upon CCI, Sec 36(2)

The Companies Act, 1956, Sec 240, 240(A) - Without prejudice | shall apply to an investigation by DG or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

### **3.2.31 Penalties**

(a) Contravention of orders of Commission [Sec 42]

Inquiry | Failure to comply the orders / directions | Sec 27, 28, 31, 32, 33, 42A and 43A

Penalty: ₹ 1Lakh / day/ Max ₹ 10 Crs

Chief Metropolitan Magistrate, Delhi: without prejudice to any proceeding under Section 39

Non-Compliance – orders/ directions | Failure to pay imposed penalty

Penalty: Imprisonment – upto 3 years / Fine – ₹ 25Cr / Both

The Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this Section save on a complaint filed by the Commission or any of its officers authorized by it.

(b) Compensation in case of contravention of orders of Commission [Sec 42A]

Without prejudice | Apply to CAT | Recovery of compensation

From any enterprise for any loss or damage shown to have been suffered, by such person

as a result of

Violating directions / contravention - decision or order of the Commission issued under Sections 27, 28, 31, 32 and 33

Or any conditions or restrictions subject to which any approval, sanction, direction or exemption

### **3.3 Areas Affecting Competition**

(a) The focus on the following areas:

(1) Prohibition of anti-competitive agreements

- Tie -in arrangements
- Exclusive dealings (supply and distribution)
- Refusal to deal
- Resale price maintenance

(2) Prohibition of Abuse of dominant position

- Imposing unfair / Discriminatory conditions
- Limiting and restricting production of goods or services
- Indulging in practices resulting in denial of market access or through in any other mode

(3) Regulation of combinations is also void

(b) Amended Act:

- Philosophy of modern competition laws
- Aims at fostering competition
- Protecting Indian markets against anti-competitive practices
- Prohibits: To ensure that there is no adverse effect

Anti-competitive agreements | Abuse of dominant position

Regulates Combinations (mergers and acquisitions) – Provisions w.e.f. 1<sup>st</sup> June 2011

**Important Definitions (concepts):**

Acquisition, Sec 2(a) - Means

Directly / indirectly

Acquiring / agreeing to acquire

Shares, voting rights or assets of any enterprise

Control over Management / Assets of any enterprise

Note: Acquiring / Acquisition are the relevant terms for Regulation of Combinations

Agreement, Sec 2(b) - Includes arrangement or understanding or action in concert

a) whether or not – in writing | Enforceable by legal proceedings

Note: Relevant to sec 3 – Anti-competitive agreements are void and prohibited by law

Cartel, Sec 2(c) - The most severe form of entering into 'anti - competitive agreements

- An association of
- Producers / Sellers / Distributors / Traders / Service provider
- who, by agreement amongst themselves
- Limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.

Nature: To raise price above competitive levels - resulting in injury to consumers and to the economy. w.r.t. Consumers

- Cartelisation results in higher prices / poor quality / less or no choice for goods or/and services.

Types of Cartel:

1. International cartel:

- Not all of the enterprises are in the same country
- Affecting markets of more than one country

2. Import Cartel:

Comprises enterprises (including an association of enterprises) that get together for the purpose of imports into the country.

3. Export Cartel:

Comprises enterprises (including an association of enterprises) that get together for the purpose of exports outside the country.

### **3.3.1 Prohibition of certain agreements:**

(a) Ch II | along with Abuse of Dominant Position and Regulation of Combinations

Anti-competitive agreement: An agreement having appreciable adverse effect on competition

Includes (But are not limited to)

To limit production and/or supply | To allocate markets | To fix price

Bid rigging / Collusive bidding

Conditional purchase/sale (tie-in arrangement) | Exclusive supply/distribution arrangement

Resale price maintenance | Refusal to deal

(b) Sec 3(1):

No Enterprise / association of enterprises / Person or AOP

shall enter into any agreement in respect of

Production / Supply / Distribution / Storage / Acquisition / Control of goods or provision of services

which causes or is likely to cause an appreciable adverse effect on competition

Sec 3(2): Agreement (whole) as per Sec 3(1) – void

Sec 3(3): kinds of agreements;

(1) directly or indirectly determines purchase or sale prices.

(2) limits or controls production, supply, markets, technical development, investment or provision of services

(3) shares the market or source of production or provision of services by way of allocation of

geographical area of market, or type of goods or services, or number of customers in the market

or any other similar way

(4) directly or indirectly results in bid rigging or collusive bidding



Presumption to have an appreciable adverse effect

Onus to prove otherwise lies on the defendant

Bid Rigging:

Definitions:

An agreement between enterprises or persons  
has the effect of eliminating or reducing competition for bids or  
adversely affecting or manipulating the process for bidding

Note:

1. It takes place when bidders collude and keep the bid amount at a pre-determined level

Such pre-determination is by way of intentional manipulation by the members of the bidding group.

Bidders could be actual or potential ones, but they collude and act in concert.

2. Efficiency enhancing joint ventures entered into by parties engaged in identical or similar goods or services, shall not be presumed to have appreciable adverse effect on competition but judged by rule of reason.

### **3.3.2 Prohibition of Abuse of dominant position**

[Ref: Belaire Owner's Association vs DLF Ltd]

(a) Dominance: Definition

A position of strength  
which enables an enterprise to operate independently of competitive forces  
or  
to affect its competitors / consumers / the market in its favour

Abuse of dominant position:

Impedes fair competition between firms

Exploits consumers

Makes it difficult for the other players to compete with the dominant undertaking on merit

Includes:

- (1) imposing unfair conditions or price,
- (2) predatory pricing,
- (3) limiting production/market or technical development,
- (4) creating barriers to entry,
- (5) applying dissimilar conditions to similar transactions,
- (6) denying market access, and
- (7) using dominant position in one market to gain advantages in another market.

(b) Sec 4: Express Prohibition to enable it to

- (1) operate independently of competitive forces prevailing in the relevant market. or
- (2) affect its competitors or consumers or the relevant market in its favour.

Not determined w.r.t. Assets / T/O / Market Share

Relevant market: Sec 2(r): The market determined by the Commission

- w.r.t 'relevant product market' / 'relevant geographic market' / both

Enterprise:

A person / A department of the Government,

who or which is, or has been, engaged in any activity

relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind,

or in investment

or

in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate,

either directly or through one or more of its units or divisions or subsidiaries,

whether such unit or division or subsidiary is located at the same / different,

but does not include

activity – Govt / Sovereign functions / Departments of CG with atomic energy, currency, defence and space.

(c) Activity includes profession or occupation

Article includes a new Article

Service includes a new service

Unit / Division in relation to an enterprise, includes:

(1) A plant / factory – Production / Storage / Supply / Distribution / Acquisition / Control of any article or goods.

(2) Any branch / office established for the provision of any service.

Sec 4(2): Abuse of dominant position

An enterprise / Group

Directly or indirectly imposes unfair or discriminatory

a) condition in purchase or sale of goods or services, or

b) price in purchase or sale (including predatory price) of goods or service.

Excludes discriminatory condition or price which may be adopted to meet the competition

Sec 4(2)(b): Includes | Enterprise or group limiting or restricting:

1) production of goods or provision of services or market therefore, or

2) technical or scientific development relating to goods or services to the prejudice of consumers.

(d) Sec 4 (2) (c), (d) and (e) – 3 other forms of abuses:

- if any person indulges in practice or practices resulting in denial of market access in any manner

- makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts

- if any person uses dominant position in one relevant market to enter into, or protect, other relevant market.

Predatory Price:

Definition:

The sale of goods or provision of services

at a price which is below the cost (as may be determined by regulations) of production of goods or provision of services

with a view to reduce competition or eliminate the competitors.

Conditions precedent:

(1) selling goods or provision of service at a price which is below its cost of production, and

(2) that practice is resorted to eliminate the competitors or to reduce competition.

Sec 19(4): CCI 's empowerment | To determine | enjoys a dominant position or not | 'relevant market' Note: Mere existence of dominance is not to be frowned upon unless the dominance is abused

### **3.3.3 Combinations**

Definition:

Acquisition of control / shares / Voting rights / Assets / Acquisition of control

by a person over an enterprise

direct or indirect control over another enterprise

engaged in competing businesses | mergers and amalgamations between or amongst enterprises

when the combining parties exceed the thresholds set in the Act.

Nature: Void | causes or is likely to cause an appreciable adverse effect | within the relevant market in India

Note: combination and merger are interchanged here

### **3.3.4 Thresholds for Combinations**

An Intro:

India is one of the fastest growing economies in the world.

The growth process is driven both by organic and inorganic (through the mergers and acquisition route) growth of enterprises.

It is neither feasible nor advisable to review all the mergers and acquisitions.

It is natural to presume that in the case of small size combinations there is less likelihood of appreciable adverse effect on competition in markets in India.

In relation to the Act:

Sufficiently high thresholds in terms of assets/turnover, for mandatory notification to the Commission

Revision:

- every 2 years by Govt, in consultation with the Commission, through notification
- based on the changes in WPI / fluctuations in exchange rates of rupee or foreign currencies.

Note:

1. Notification S.O. 675 (E) dated 4th March, 2016, the Government has enhanced the value of assets and turnover mentioned in Section 5, by 50% percent.

2. The term Group has been explained in the Act.

Notification S.O. 634(E) dated 4th March, 2016, the exemption to the “group” exercising < 50% of voting rights in other enterprise from the provisions of Sec. 5 of the Act under Notification No. S.O. 481(E) dated 4th March, 2011, has been continued for a further period of 5 years.

	APPLICABLE TO	ASSETS		TURNOVER	
<b>In India</b>	Individual	₹ 2,000 cr		₹ 6,000 cr	
	Group	₹ 8,000 cr		₹ 24,000 cr	
		ASSETS		TURNOVER	
<b>In India and outside</b>		Total	Minimum Indian Component	Total	Minimum Indian Component
	Individual parties	\$1bn	₹ 1,000 cr	\$ 3 bn	₹ 3,000 cr
	Group \$	\$4bn.	₹ 1,000 cr.	\$12 bn.	₹ 3,000 cr

Note:

T/O: The values of sales of goods or services.

The value of assets – (Audited) Book Value | FY imm preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation.

Includes: Brand value | Value of goodwill | IPR – Sec 5(c)

### **3.3.5 Exemption Notifications:**

Sec 54 (a) | CG is empowered

(a) An enterprise, whose control, shares, voting rights or assets are being acquired has

- Assets of the value of not more than ₹ 350 crore in India / T/O of not more than ₹ 1,000 crore in India

- follows from Sec 5

- for 5 years

(b) A banking company, Sec 45 of the Banking Regulation Act, 1949

- CG's notification | follows from Sec 5 and 6 | for 5 years

(c) All Combinations u/s 5 | Involving the CPSEs operating in the oil and gas sectors along with subsidiaries of CPSEs in this sector. (Notification in Nov. 2017)

### **3.3.6 Combination Notice**

Review process | Mandatory pre-combination notification to the Commission

Specified form | within 30 days of the approval by BoD / execution of any agreement / other document

CG's Power:

- A notifiable combination is not notified | Inquires | within 1 year of the taking into effect

- On failure, imposes Fine: WEH [upto 1% of Total T/O / Assets of the combination]

Effectiveness of filed notice:

WEL [a/f 210 days from the date of notification or till the Commission passes an order]

Deemed approval: If order is not passed within 210 days

### **3.3.7 Acquisition or financing facility by PFIs, VCFs etc.**

File details with CCI within 7 days:

Share Subscription / Financing facility / Acquisition

by PFI | FII | Bank | VCF

pursuant to any covenant of a loan agreement or investment agreement

### **3.3.8 Procedure for Investigation of Combinations**

Prima facie opinion - Whether the combination is likely to cause or has caused appreciable adverse effect within 30 days from the receipt of the notice

If yes - CCI issues a notice to show cause to the parties

On receipt of the response (with prima facie opinion), the Commission shall deal with the notice as per the provisions of the Act.

### **3.3.9 Evaluation of appreciable adverse effect on competition**

A criterion for regulation of combinations | Follows from Sec 20(4)

### **3.3.10 Consequence of failure to give notice**

CCI's Power: WEH [upto 1% of Total T/O / Assets of the combination]

### **3.3.11 Appeals**

(a) CAT [Sec 53A]

Established by CG's Notification

(1) To hear and dispose of appeals

- against any direction issued or decision made or order passed by the Commission

- under Sec 26 (2), (6), Sec 26, 27,28, 31, 33, 38, 39, 43, 43A, 44, 45, 46

(2) To adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal

- against any finding of the Commission or under Sec 42A, Sec 53Q (2)

- pass orders for the recovery of compensation under Sec 53N

(b) Appeal to Appellate Tribunal (Section 53B)

CG / SG / CCI / Statutory or Local authority / Enterprise / any person

aggrieved by any decision or order as in Sec 53A (a)

within 60 days + Additional days (sufficient cause)

Prescribed Form and Fees

On receipt | opportunity of being heard | Pass orders – Confirms / Modifies / Set aside

Copy sent to CCI and Parties to appeal

Dealt expeditiously | Disposed within 6 months from the date of receipt of the appeal

(c) Appeal to Supreme Court (Section 53T)

CG / SG / CCI / Statutory or Local authority / Enterprise / any person

aggrieved by any decision or order of the Appellate Tribunal

within 60 days + Additional days (sufficient cause)

(d) Power to Punish for contempt (Section 53U)

Same as High Court, Sec 70, Contempt of Courts Act, 1971: Jurisdiction | Powers | Authority Subject to modifications:

(1) The reference to High Court → A reference to the Appellate Tribunal

(2) The references to the Advocate-General (Sec 15, said Act) → Law Officer as specified by CG's notification



## 4. Foreign Exchange management Act, 1999

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### 4.1. Introduction

Constitutional Validity:

Article 246 – Parliament’s Exclusive Power | Matters enumerated in Sc – 7, Union List

Entry 16 – w.r.t. Foreign Jurisdiction

Entry 36 – w.r.t. Currency, coinage and legal tender, foreign exchange

Entry 37 – w.r.t. Foreign loans

Entry 41 – w.r.t. with Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers

Importance of management of Foreign Exchange

A Business enterprise:

Imports goods from other countries

Exports its products to them

Makes investments abroad

Towards FEMA, 1999

1<sup>st</sup> time – A system of exchange control | A series of rules - The Defence of India Act, 1939 | Temporary basis

Into a Statute - The foreign exchange crises persisted for a long time | FERA, 1947

Replacement of 1947 Act – FERA, 1973 | January 1, 1974 | Regulating foreign exchange for more than 26 years

Initiation of Policy of Economic liberalization by GoI, 1991

- After this foreign investment in many sectors were permitted in India.

“FEMA, 1999”

- Repealed and replaced FERA, 1974 (Sec 49, FEMA, 1999)

- Tarapore Committee on Capital Account Convertibility | Constituted by RBI

- Recommendation on changes w.r.t legislative framework governing foreign exchange transactions

- w.e.f. June 01, 2000

- On Management of Foreign Exchange

#### **4.1.1 Objectives**

- Conservation and proper utilization of the foreign exchange resources of the country
- Control certain aspects of the conduct of business outside the country by Indian companies and in India by foreign companies.
- Dealing in Foreign Exchange – Import / Exports / Makes investments abroad

Foreign exchange: Definition

means 'foreign currency'

and

includes deposits, credits and balances payable in any foreign currency

and

secondly drafts, travellers' cheques, letters of credit or bills of exchange

expressed or drawn in Indian currency but payable in any foreign currency

#### **4.1.2. Extent**

Extends to the whole of India

Applies to all Branches | Offices | Agencies - outside India | owned or controlled by a PRiI

Any contravention committed outside India by any person to whom this Act is applicable

Non – Applicability: Citizens of India who are outside India unless they are RoI.

#### **4.1.3. Purpose of the Act**

Preamble:

To consolidate and amend the law relating to foreign exchange

with the objective of facilitating external trade and payments

for promoting the orderly development and maintenance of foreign exchange market in India.

Rationale for strict regulations under FERA 1973, after independence India was left with little forex reserves and during the oil Crisis of seventies ballooning oil import bills further drained foreign exchange reserves.

Administrative Role of RBI: Consults CG | Lays down Rules, Regulations & Norms

Appointment of Adjudicating Authorities (AA): by CG | To hold inquiries on contravention

Appointment of one or more Special Directors (Appeals) – by CG | To hear appeals against the order of AA

Establishment of Appellate Tribunal (AT) – by CG | To hear appeals against the order of AA & Special Directors

Establishment of Directorate of Enforcement (DoE)

- by CG
- with Director and such other officers or class of officers
- for investigation of the contraventions under this Act

**4.1.4 Benefits of the Act**

Comparison between FERA and FEMA

FERA	FEMA
To regulate everything that was specified, relating to foreign exchange	lays down that ‘everything other than what is expressly covered is not controlled’.
To regulate and minimize dealings in foreign exchange and foreign securities	Aids in creation of a liberal foreign exchange market in India

Under FEMA:

- Increase in FE Reserves
- (more) flow of FE

This difference in terminology reflects seriousness of government towards deregulation of foreign exchange and promotion of free flow of international trade.

w.r.t. External trade,

Sec 5 – Removal of restrictions on withdrawal of FE | Purpose of current account transactions

Not necessary to seek RBI permission – in connection with Exports / Imports | on current account,

Deemed permission on Current account transactions, unless expressed

#### 4.1.5 The difference between the title, FERA and FEMA of legislations

Right Change of Title: From FERA to FEMA

Main Changes:

FERA	FEMA
Civil Law	Criminal Law
On Contravention - Arrest and imprisonment (even for very minor offences)	No Arrest and imprisonment
Deemed guilty - Defends	Onus – on ED
Stringent Provisions	Relaxed Provisions

#### 4.2 Broad Structure of the FEMA

Overall structure: Legislations | Rules | Regulations

(a) 7 chapters divided into 49 sections (Supreme Legislation) as detailed below:

Chapter	Description / Sections
1	Preliminary 01 – 02
II	Regulation and Management of Foreign Exchange 03 – 09
III	Authorised Person 10 – 12
IV	Contravention and Penalties 13 – 15
V	Adjudication and Appeal 16 – 35
VI	Directorate of Enforcement 36 – 38
VII	Miscellaneous 39 – 49

(b) 5 sets of Rules made by Ministry under section 46 of FEMA. (Delegated legislations).

(c) 23 sets of Regulations made by RBI under section 47 of FEMA. (Subordinate Legislations).

(d) Master Circular/Directions issued by Reserve Bank of India every year. The latest set of master

directions were issued during January 2016.

(e) Foreign Direct Investment (FDI) policy issued by DIPP time to time

(f) Notifications and A. P. (DIR Series) Circulars issued by Reserve Bank of India.

(g) Enforcement Directorate. Rules and Regulations have been issued along with main Act. They are

understandable and are available under public domain.

#### 4.3 Important Definitions: Sec 2

### **Authorized Bank**

- A Bank | includes co-operative bank (other than an authorized dealer) authorized by RBI
- An authorized dealer / Money changer / Off-shore banking unit
- Other authorized person u/s Sec 10(1) to deal in foreign exchange or foreign securities

### **Capital**

Equity shares

Preference shares- Fully, compulsorily & mandatorily convertible

Debentures - Fully, compulsorily & mandatorily convertible

Warrants

Note:

- Equity shares includes partly paid shares
- Preference shares and convertible debentures - Fully paid, and should be mandatorily and fully convertible.
- Warrant includes Share Warrant issued by an Indian Company

**Capital Account Transaction, Sec (e)** - A transaction

which alters the assets or liabilities

including contingent liabilities

outside India of PRiI / person outside India

includes transactions Sec 6(3)

**Current Account Transaction, Sec (j)** - A transaction other than a capital account transaction

without prejudice to the generality of the foregoing such transaction includes:

- (1) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
- (2) payments due as interest on loans and as net income from investments.
- (3) remittances for living expenses of parents, spouse and children residing abroad, and
- (4) expenses in connection with foreign travel, education and medical care of parents, spouse and children.

## **Depository Receipt (DR)**

A negotiable security

issued outside India

by a Depository bank, on behalf of an Indian company, which represent the local Rupee denominated equity shares of the company

held as deposit by a Custodian bank in India.

In other words, it is a foreign currency denominated instrument, issued by foreign depository on the books of securities transferred to it by the company.

DRs are traded on Stock Exchanges in the US, Singapore, Luxembourg, etc.

ADRs - DRs listed and traded in the US markets

GDRs – Other places

DRs are governed by Notification No. FEMA 330/ 2014-RB, issued by Reserve bank of India.

## **Export, Sec (I)**

Grammatical variations and cognate expressions, means:

- (1) the taking out of India to a place outside India any goods
- (2) provision of services from India to any person outside India.

**Foreign currency, Sec 2(m)** - any currency other than Indian currency

## **Foreign Currency Convertible Bond (FCCB)**

A bond issued by an Indian company expressed in foreign currency

the principal and interest of which is payable in foreign currency

Scheme: FCCBs & ordinary shares (through depository receipt mechanism) Scheme, 1993

subscribed by a non-resident entity in foreign currency and

convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.

## **FDI**

Investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

Note: Not defined here, but in the Consolidated FDI Policy Circular of DIPP, Government of India

Here, the investor directly invests (shares & Convertible debentures) in the company

**Foreign Exchange, Sec 2 (n)** - foreign currency and includes -

(1) deposits, credits and balances payable in any foreign currency.

(2) drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency.

(3) drafts, travelers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency

**FIPB** - Foreign Investment Promotion Board | constituted by the GoI | stands abolished from May, 2017

**Foreign Institutional Investor (FII)**

An entity established or incorporated outside India

which proposes to make investment in India and

which is registered as a FII in accordance with the SEBI (FII) Regulations 1995

**Foreign Portfolio Investor (FPI)**

A person registered | SEBI (FPI) Regulations, 2014

**Foreign Venture Capital Investor (FVCI)**

An investor incorporated and established outside India

Registered under the SEBI (FVCI) Regulations, 2000

Proposes to make investment in accordance with these Regulations

**Foreign Security, Sec 2(o)**

Any security

in the form of shares, stocks, bonds, debentures or any other instrument

denominated or expressed in foreign currency

includes securities expressed in foreign currency

but where redemption or any form of return such as interest or dividends is payable in Indian currency

### **Government route**

Investment in the capital of resident entities by non-resident entities

made only with the prior approval of Government

through Promotion of Industry and International Trade, under Ministry of Commerce & Industry

### **Import, Sec 2(p)**

Grammatical variations and cognate expressions | means bringing into India any goods or services

Indian currency, Sec 2(q)

Currency which is expressed or drawn in Indian rupees

but does not include

- special bank notes

- special one rupee notes issued under section 28A, RBI Act, 1934

### **Investment on repatriable basis**

Investment, the sale proceeds of which, net of taxes,

are eligible to be repatriated out of India

and the expression 'investment on non-repatriable basis' shall be construed accordingly

### **Non-resident entity**

A person resident outside India' as defined under FEMA

### **Non-Resident Indian (NRI)**

An individual resident outside India who is a citizen of India

or

an 'Overseas Citizen of India' cardholder, Sec 7 (A) of the Citizenship Act, 1955.



Note: 'Persons of Indian Origin' cardholders – Deemed 'Overseas Citizen of India' cardholders CG's Notification No. 26011/4/98 F.I. dated 19.8.2002 issued by the Central Government are deemed to be.

**Person, Sec 2(u):** 'person' includes:

- (1) an individual,
- (2) a Hindu undivided family,
- (3) a company,
- (4) a firm,
- (5) an AoP or BoI, whether incorporated or not,
- (6) every artificial juridical person, not falling within any of the preceding sub-clauses, and
- (7) any agency, office or branch owned or controlled by such person.

**Person of Indian Origin (PIO)**

A citizen of any country other than Bangladesh or Pakistan, if:

- (1) he at any time held Indian Passport, or
- (2) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955), or
- (3) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii).

**Person resident in India (PRiI), Sec 2(i)**

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include:

- (1) a person who has gone out of India or who stays outside India, in either case:
  - a) for or on taking up employment outside India, or
  - b) for carrying on outside India a business or vocation outside India, or
  - c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.
- (2) a person who has come to or stays in India, in either case, otherwise than:
  - a) for or on taking up employment in India, or
  - b) for carrying on in India a business or vocation in India, or

c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

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

(iii) an office, branch or agency in India owned or controlled by a person resident outside India.

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

#### **Person resident outside India, Sec 2(w)**

A person who is not resident in India

#### **Repatriate to India, Sec 2(y)**

Bringing into India the realized foreign exchange and-

(a) the selling of such foreign exchange to an authorized person in India in exchange for rupees, or

(b) the holding of realized amount in an account with an authorized person in India to the extent notified by the Reserve Bank

and includes use of the realized amount for discharge of a debt or liability

denominated in foreign exchange

and the expression "repatriation" shall be construed accordingly.

## **Chapter II**

### **4.4 Regulation and Management of Foreign Exchange**

#### **4.4.1 Dealing in foreign exchange, etc. (Sec 3)**

Prohibition of the following:

(a) dealing in or transferring – FE / Foreign securities by any person not being an authorized person

(b) making any payment - to or for the credit of any person resident outside India in any manner

(c) receiving (otherwise than through an authorized person), any payment by order or on behalf of any person resident outside India in any manner.

Explanation:

- (Deemed)Receiving without a corresponding inward remittance from any place outside India

- Includes an authorized person

(d) entering into any financial transaction in India - as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

Explanation: "financial transaction"

- Any Payment to / for the credit of any person

- receiving any payment for, by order or on behalf of any person

- drawing, issuing or negotiating any bill of exchange or promissory note

- transferring any security or acknowledging any debt

#### **4.4.2 Holding of foreign exchange, Sec 4**

No PRiI (except as provided in this Act)

shall acquire, hold, own, possess or transfer

any foreign exchange, foreign security or any immovable property situated outside India

Note:

1. Restriction to PRiI

2. Lease - Acquisition outside | not exceeding 5 years | permissible, if specifically not prohibited

3. Requires prior approval – Immoveable Property |except the following:

(a) Held by a foreign citizen (resident in India)

(b) Acquired on or before 8th July, 1947 | held with the permission of RBI

(c) By way of Gift / inheritance from persons referred to in above

(d) Property purchased out of funds held in RFC account.

#### **4.4.3 Current account transactions (Sec 5)**

Any person

may sell or draw foreign exchange

to or from an authorised person

Provided, CG in consultation with RBI | in public interest | imposes such reasonable restrictions

#### Foreign Exchange Management (Current Account Transactions) Rules, 2000 - 3 Schedules

Sc – I	Transactions – altogether prohibited	lottery earnings, income from racing/riding, purchase of lottery tickets, commission on exports towards equity, commission on exports through Rupee State Credit Route
Sc – II	subject to the approval of RBI	cultural tours, advertisement in foreign print media by a State Government and Public Sector Undertakings, remittance of freight of vessel chartered by a Public Sector undertaking, payment of ocean freight by a Government or Public Sector Undertaking, remittance of prize money exceeding US\$ 1,00,000 for sponsorship of sports
Sc - III	Prescribed upper ceiling	Foreign travel on private and official trips, gifts, donations, taking up employment, maintenance of close relatives, commission on sale of residential flats, consultancy services, reimbursement of pre-incorporation expenses, foreign studies, medical treatment abroad

Note:

1. Sc – II- Relates to the Government entities | Requirement of approval from the specified department
2. The foreign exchange today for a transaction is permissible without limit, if there are no specific restrictions and the authorized dealer banks would be making available subject to the applicant furnishing a declaration for compliance with FEMA and compliance with remittance of taxes as applicable.

#### 4.4.4 Capital account transactions, Sec 6

(a) Any person

may sell or draw foreign exchange

to or from an authorised person

subject to the provisions of Sec 6(2)

(b) RBI | in consultation with CG | specify:

(1) Permissible transactions - any class or classes of capital account transactions

(2) Admissible limit – for foreign exchange

Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

(c) Without prejudice to Sec 6(2) | RBI regulates, prohibits, restricts or regulates the following:

- (1) transfer or issue of any foreign security by a person resident in India.
- (2) transfer or issue of any security by a person resident outside India.
- (3) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India.
- (4) any borrowing or lending in foreign exchange in whatever form or by whatever name called.
- (5) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India.
- (6) deposits between persons resident in India and persons resident outside India.
- (7) export, import or holding of currency or currency notes.
- (8) transfer of immovable property outside India, other than a lease not exceeding five years, by person a resident in India.
- (9) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India.
- (10) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred:
  - a) by a person resident in India and owed to a person resident outside India; or
  - b) by a person resident outside India.

(d) PRiI - hold, own, transfer or invest in foreign currency, foreign security

or any immovable property situated outside India

if such currency, security or property was acquired, held or owned by such person

when he was resident outside India or inherited from a person who was resident outside India

The RBI vide A.P. (DIR Series) Circular No. 90 dated 9th January, 2014 has issued a clarification on section 6(4) of the Act. This circular clarifies that section 6(4) of the Act covers the following transactions:

(1) Foreign currency accounts opened and maintained by such a person when he was resident outside India.

(2) While such person was Resident outside India

- Income earned through employment or business or vocation outside India

- From investments made

- From gift or inheritance received while such a person was resident outside India.

(3) By way of Inheritance:

Foreign exchange including any income arising therefrom and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.

(4) Not in contravention with FEMA:

A PRiI

may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India

for making any payments or to make any fresh investments abroad without approval of Reserve Bank,

provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions

is not in contravention to extant FEMA provisions.

(e) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by a such person when he was resident in India or inherited from a person who was resident in India.

(f) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

#### **4.4.5 Export of goods and services, Sec 7**

w.r.t. Goods

(a) Every exporter of goods shall:

(1) Furnish a declaration | to RBI / other authority

such form and in such manner | containing true and correct material particulars

including the amount representing the full export value

or

if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India.

(2) Furnish other information | to RBI | to ensure the realization of the export proceeds by such exporter.

(b) RBI directs the exporter to comply with the requirements | Export value received without delay

w.r.t. Service

(c) Furnish a declaration | to RBI / other authority

such form and in such manner | containing true and correct material particulars

payment for such services

#### **4.4.6 Realisation and repatriation of foreign exchange, Sec 8**

Any amount of foreign exchange

due or has accrued to any PRiI

such person shall take all reasonable steps

to realise and repatriate to India

such foreign exchange

within such period and in such manner as may be specified by the Reserve Bank.

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

#### **4.4.7 Exemption from realisation and repatriation in certain cases, Sec 9**

Non – Applicability of Sec 4(Holding of FE) and Sec 8 (Realisation and repatriation of foreign exchange) to the following:

(a) possession of foreign currency or foreign coins by any person up to such limit as RBI may specify.

(b) foreign currency account held or operated by such person or class of persons and the limit up to which the RBI may specify.

(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing there on which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank.

(d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from.

(e) foreign exchange acquired from employment, business, trade, vocation, service, honorarium, gifts,

inheritance or any other legitimate means up to such limit as the Reserve Bank may specify, and

(f) such other receipts in foreign exchange as the Reserve Bank may specify.

#### **4.4.8 Possession and Retention of Foreign Exchange**

RBI | w.r.t. following persons | limits | by a PRiI

(a) Authorised Persons in accordance with the limits advised by the Reserve Bank.

(b) Any person may possess foreign coins without no restriction.

(c) Any person resident in India

- Retain in aggregate

- Foreign currency not exceeding USD 2,000 + Equivalent (Currency notes/bank notes or travellers cheques)

(d) A PRiI, but not permanently resident

- permitted without limit, if

- the foreign currency was acquired when he was resident outside India and was brought into India and declared to the Customs Authorities.

#### **4.4.9 Forms of business may be conducted by a Foreign Company in India.**



A foreign company planning to set up business operations in India may:

- (a) Incorporate a company under the Companies Act, 2103 – As a Joint Venture / WOS
- (b) Set up - A Liaison Office / Representative Office / Project Office / Branch Office of the foreign company

- To undertake activities permitted

- Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Reg, 2000.

#### **4.4.10 Foreign Investments in India**

Foreign Direct Investment - A category of cross border investment

- made by a resident in one economy (the direct investor)
- with the objective of establishing a lasting interest in an enterprise (the direct investment enterprise)

Motivation of the Direct Investor - A strategic long term relationship with the direct investment enterprise to ensure the significant degree of influence by the direct investor in the management of the direct investment enterprise.

Objectives of Direct Investment - Different from those of portfolio investment whereby investors do not generally expect to influence the management of the enterprise.

FDI Policy

- for FDI in India
- Formulated and announced by DPPII, GoI

Consolidated FDI Policy

- by MCI, GoI | Yearly basis | Elaborates the policy & the process in respect of FDI
- Foreign Exchange Management Act (FEMA), 1999.

Note:

1. FEMA Regulations prescribe amongst other things the mode of investments

- Issue or acquisition - Shares / Convertible Debentures & Preference Shares
- Manner of receipt of funds, pricing guidelines and reporting of the investments to RBI.

2. Latest FDI Policy issued in dated 15th October, 2020.

#### **4.4.11 Foreign Currency Borrowings: Resident entities | Following purposes:**

- (a) For execution of projects outside India and for exports on deferred payment terms:

A PRiI

may borrow - whether by way of loan or overdraft or any other credit facility,  
from a bank situated outside India

for execution outside India

of a turnkey project or civil construction contract or in connection

with exports on deferred payment terms,

provided the terms and conditions stipulated by the authority which has granted the approval to the project or contract or export is in accordance with the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000.

(b) External Commercial Borrowings (ECB):

The commercial loans raised

by eligible resident entities from recognised non-resident entities

should conform to parameters

- Minimum maturity

- Permitted and non-permitted end-uses

- Maximum all-in-cost ceiling, etc.

The parameters apply in totality and not on a standalone basis.

ECB Framework - 3 Tracks:

(1) Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.

(2) Long term foreign currency denominated ECB with minimum average maturity of 10 years.

(3) Indian Rupee (₹) denominated ECB with minimum average maturity of 3/5 years.

Forms of ECB:

a) Loans including bank loans.

b) Securitised instruments (e.g., floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares/debentures).

c) Buyers' credit.

d) Suppliers' credit.

- e) Foreign Currency Convertible Bonds (FCCBs)
- f) Financial Lease
- g) Foreign Currency Exchangeable Bonds (FCEBs)

#### **4.4.12 Entry Routes for Investment**

Investments in India | In accordance with any one of the 9 schedules to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

Investments can be made by non-residents in

- Equity shares | Fully, compulsorily and mandatorily convertible – Debentures & Preference shares
- of an Indian company
- through the Automatic Route / Government (Approval) Route.

Automatic Route:

- The non-resident investor / The Indian company does not require any approval from Government of India for the investment.
- Various filings are required to be made to RBI in automatic route.

Government Route

- Prior approval of the Government of India is required.
- Proposals for foreign investment under Government route, are considered by respective administrative ministry of central government.

#### **4.4.13 Eligible investee entities: FDI in**

- (a) Indian Company
- (b) Partnership Firm/Proprietary Concern
- (c) Trusts - Venture Capital Trusts (regulated by the SEBI & Investment vehicles)
- (d) LLPs

FDI in resident entities other than those mentioned above is not permitted.

#### **4.4.14 Investment Vehicle - An entity**

Registered and regulated under Regulations

- SEBI / Other authority, includes

REIT, The SEBI (REITs) Reg, 2014 | InvIts, The SEBI (InvIts) Reg, 2014 | AIFs, The SEBI (AIFs) Reg, 2012

Notified under Schedule 11, FEM (Transfer or Issue of Security by a Person Resident outside India) Reg 2000,

permitted to receive foreign investment from

a person resident outside India (other than an individual who is citizen of or any other entity which is registered / incorporated in Pakistan or Bangladesh),

including an RFPI / NRI

#### **4.4.15 Caps on Investments**

- Investments by non-residents in the capital of a resident entity

- % of total capital as specified in the FDI policy

- Sectoral caps (upper limit of investment) in each of the business/industry sector

#### **4.4.16 Procedure for receiving Foreign Direct Investment (FDI) in an Indian company**

Essential requirement

- Compliance with the KYC, specified by RBI

- During negotiations, the overseas investor should be apprised of the need to receive the KYC certification through the Banking channels.

Two Routes:

(a) Automatic Route

No prior approval by Govt / RBI required | All activities / sectors as specified in the consolidated FDI Policy

(b) Government Route

Activities not covered under the automatic route

Requires prior approval of the Government which is considered by the Ministry of Finance

To be routed through relevant administrative ministry.

Note: Indian Company to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank of India under both the routes

#### **4.4.17 Instruments for receiving Foreign Direct Investment in an Indian company**

Foreign investment - Reckoned as FDI:

If the investment is made in equity shares, fully and mandatorily convertible preference shares and fully and mandatorily convertible debentures

Pricing, being decided upfront as a figure or based on the formula that is decided upfront.

Eligible FDIs:

Partly paid equity shares and warrants

issued by an Indian company in accordance

with the provision of the Companies Act, 2013 and the SEBI guidelines, as applicable

Any foreign investment into an instrument issued by an Indian company which:

- (a) gives an option to the investor to convert or not to convert it into equity or
- (b) does not involve upfront pricing of the instrument as a date would be reckoned as ECB and would have to comply with the ECB guidelines.

Price/conversion formula of convertible capital instruments

- should be determined upfront at the time of issue of the instruments.

- Not in any case to be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the extant FEMA regulations

[valuation as per any internationally accepted pricing methodology on arm's length basis for the unlisted companies and valuation in terms of SEBI (ICDR) Regulations, for the listed companies]

- without any assured return

#### **4.4.18 Modes of payment allowed for receiving Foreign Direct Investment in an Indian company**

(a) inward remittance through normal banking channels by the Indian company against issue of DRs / FCCB

(b) debit to NRE / FCNR account of a person concerned maintained with an AD Category-I bank

(c) conversion of Royalty / Lump sum / Technical know-how fee due for payment or conversion of ECB, shall be treated as consideration for issue of shares

(d) conversion of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB.

(e) debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category-I bank and is maintained with the AD Category-I bank on behalf of residents and non-residents towards payment of share purchase consideration.

Refund of Amount: If Shares / Debentures not issued within 180 days from the date of receipt of inward remittance

Beyond 180 days: with sufficient cause

#### **4.4.19 Issue of ADRs / GDRs by Indian companies**

Eligible Person: Sc 10, Notification No. FEMA.20/2000-RB dated May 3, 2000

To Issue / Transfer eligible securities to a foreign depository,

Purpose - To convert the securities so purchased into depository receipts

Applicable Provisions: Depository Receipts Scheme, 2014 | GoI's guidelines

#### **4.4.20 Issue Foreign Currency Convertible Bonds (FCCBs)**

Issued by Indian companies in the overseas market

Applicable Law: Scheme - Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

Nature: Debt security

Conform the issue to the External Commercial Borrowing guidelines, issued by RBI.

#### **4.4.21 Issue of shares against Lumpsum Fee, Royalty, ECB, Import of capital goods / machineries etc**

An Eligible (FDI Policy) Indian company | subject to pricing guidelines – RBI

may issue shares to a person resident outside India

#### **4.4.22 Investment by NRI and RFPI in Indian Depository Receipts (IDRs)**

Permitted to Invest | Purchase | Hold & Transfer IDRs

of eligible companies resident outside India and issued in the Indian capital market.

#### **4.4.23 Regulations for Foreign Venture Capital Investment**

A SEBI registered FVCI has general permission from RBI to invest in a VCF / IVCU

Specified (RBI) manner and terms and conditions

#### **4.4.24 Sector Specific Conditions on FDI**

(a) Prohibited Sectors

(1) Lottery Business including Government / private lottery, online lotteries, etc.

(2) Gambling and Betting including casinos etc.

(3) Chit funds.

(4) Nidhi company.

(5) Trading in Transferable Development Rights (TDRs).

(6) Housing and Real Estate Business or Construction of Farm Houses

Note: Does not include

Development of townships | Construction of residential / commercial premises |  
Roads or bridges

& Registered and regulated REITs under SEBI (REITs) Regulations 2014.

(7) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.

(8) Activities / sectors not open to private sector investment e.g.,

a) Atomic Energy and

b) Railway operations (other than permitted activities mentioned in para 5.2).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

(b) Permitted Sectors

(1) subject to applicable laws/regulations; security and other conditionalities

Listed sectors / activities – Limit indicated against each | subject to applicable laws/regulations; security and other conditionalities.

Non – Listed sectors / activities - 100% on the automatic route

Minimum capitalization

- Includes share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor.
- Not to include, amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share

(2) Sectoral cap (the maximum amount which can be invested by foreign investors in an entity)

- unless provided otherwise
- is composite and includes all types of foreign investments, direct and indirect,
- regardless of whether the said investments have been made under FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations;

Sc – I: FDI | Sc – II: FII | Sc - 2A: FPI | Sc – 3: NRI

Sc – VII: FVCI | Sc – VI: LLPs | Sc – IX: DRs | Sc – VIII: Investment Vehicle

Not a foreign investment: FCCBs and DRs as debts | having underlying of instruments, issued under Sc – IX

Reckoned as foreign investment: Equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement, under the composite cap.

(3) Subject to approval:

Foreign investment in sectors under Government approval route

resulting in transfer of ownership and / or control of Indian entities

from resident Indian citizens to non-resident entities will be subject to Government approval.

Foreign investment in sectors under automatic route but with conditionalities,

resulting in transfer of ownership and/or control of Indian entities

from resident Indian citizens to non- resident entities,

will be subject to compliance of such conditionalities.



(4) Non – affected Sectors: under 100% automatic route and without conditionalities

(5) Portfolio investment:

Notwithstanding anything contained in paragraphs a) and c) above,

portfolio investment, up to aggregate foreign investment level,

will not be subject to either Government approval or compliance of sectoral conditions, as the case may be, if such investment does not result in transfer of ownership and/or control of Indian entities from resident Indian citizens to non-resident entities.

Other foreign investments will be subject to conditions of Government approval and compliance of sectoral conditions as laid down in the FDI policy.

(6) Total foreign investment, direct and indirect, in an entity will not exceed the sectoral/statutory cap.

(7) Any existing foreign investment already made in accordance with the policy in existence would not require any modification to conform to amendments introduced through Press Note 8 (2015 Series).

(8) The onus of compliance of above provisions will be on the investee company.

FDI is a capital account transaction and thus any violation of FDI regulations are covered by the penal provisions of the FEMA.

RBI administers the FEMA | DoE, MoF is the authority for the enforcement of FEMA.

The Directorate takes up investigation in any contravention of FEMA.

#### **4.4.25 Remittance, Reporting and Violation**

The above transactions entails either inward remittance to India or outward remittance from India.

Applicable Provision - The FEMA, 1999 | Detailed mechanism

Elaborated schemes as follows:

(a) Remittance and Repatriation

(1) Remittance of sale proceeds / Remittance on winding up / Liquidation of Companies

- (2) Repatriation of Dividend
- (3) Repatriation of Interest
- (b) Reporting of FDI - Sc 5 of FDI guideline issued on 15.10.2020
- (c) Adherence to Guidelines/Orders and Consequences of Violation

### **Chapter -III**

#### **4.5 Authorised Person, Sec 10**

- (a) Apply, Sec 10(1): To RBI | To deal in Foreign exchange / Foreign securities |  
As an authorised dealer / money changer / Off-shore banking unit / Other manner
- (b) Sec 10(2): An authorisation - writing and shall be subject to the conditions laid down therein
- (c) Revocation: If RBI is satisfied that:
  - (1) it is in public interest so to do, or
  - (2) Non – Compliance with the condition subject to which the authorisation was granted or has contravened any of the provisions of the Act or any rule, regulation, notification, direction order made thereunder.

Provided, reasonable opportunity of making a representation in the matter is given

- (d) Comply general / Special directions or Orders| All dealings in foreign exchange or foreign security

Authorised person not to engage, if not in conformity with the terms

- (e) Report to RBI:

B/f undertaking any transaction on behalf of any person,  
require that person to make such declaration and to give such information  
as will reasonable satisfy him

No Contravention / evasion of the provisions of - Act / Rule / Regulation / Notification /  
Direction / Order

And if the said person,

refuses to comply with any such requirement or makes only unsatisfactory compliance  
therewith,

the authorised person shall refuse in writing to undertake the transaction and shall, if he has reason to believe that any such contravention or evasion as aforesaid is contemplated by the person, report the matter to the Reserve Bank.

(f) Deemed Contravention:

Any person (other than an authorised person)

who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to authorised person under sub-section (5)

does not use it for such purpose or does not surrender it to authorised person within the specified period

or uses the foreign exchange so acquired or purchased for any other purpose for which purchase or acquisition of foreign exchange is not permissible

under the provisions of the Act / Rules / Regulations / Direction / Order

#### **4.5.1 Reserve Bank's powers to issue directions to authorised person, Sec 11**

Direct;

(a) in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.

(b) to furnish such information, in such manner, as it deems fit.

(c) On contravention of directions / failure to file return as directed

On giving reasonable opportunity,

Imposes penalty – Upto ₹ 10,000 | Continuing – Additional, Upto ₹ 2000 / day

Note: compliance with the provisions of this Act or of any rule, regulation, notification direction or order made thereunder

Case Law: Prof. Krishnaraj Goswami vs. Reserve Bank of India; (2008) 83 SCL 133 (BOM)

- In Policy decisions; there will be no Judicial intervention

The Government of India took a policy decision to permit FDI in infrastructure companies in securities market viz., stock exchanges, depositories and clearing corporation.

SEBI issued a circular in this regard.

RBI also issued a circular A.P.(DIR Series) Circular No. 25 dated 22.12.2006 giving certain directions to authorized dealers.

Petitioner challenged - The RBI Circular as invalid in as much as it restricts the trade activities of general corporate sector.

Bombay High Court observed that the RBI had issued the impugned circular dated 22.12.2006 by way of directions as contemplated under section 10(4) and 11(1) of the FEMA.

Power of RBI is confirmed from a bare reading

- To issue directions to authorized persons and this power is wide enough to cover any kind of directions so far it provides for regulation of foreign exchange management.

Non – Acceptance: The contention of petitioner, that RBI had no jurisdiction to issue such circulars, cannot be accepted.

Section 10(4) clearly stipulate that an authorized person, in all dealings, is bound by the directions, general, or special, issued by RBI.

Similarly, section 11(1) provides that RBI may, for the purpose of securing compliance of the provisions of the FEMA and of any rules, regulations and directions made thereunder, give to the authorized persons any direction in regard to making of payment or the doing or desist from doing of any act relating to foreign exchange or foreign security.

The petitioner had not challenged the policy decision of the Central Government, but had merely questioned the incidental act i.e. the impugned circular.

In any event, these are policy decisions which fall within the domain of the authorities concerned in the Central Government.

The effect and repercussions of such policy decision can hardly be subject matter of judicial review.

Policy decision unless and until are reversed or inconsistent with the constitutional mandate or a patent abuse of power, judicial intervention will normally be not necessitated.

Petition dismissed.

#### **4.5.2 Power of Reserve Bank to inspect Authorised person, Sec 12**

(a) Inspect by an Officer (authorised in writing) of RBI | Purpose of:

(1) verifying the correctness of any statement, information or particulars furnished to the RBI.

(2) obtaining any information or particulars which such authorised person has failed to furnish on being called upon to do so.

(3) securing compliance with the provisions of this Act or of any rules, regulations, directions or orders made thereunder.

(b) Duty of every authorised person – [Company - Every Director / Firm – Every Partner / Other officers

- to produce such books, accounts and other documents in his custody / power

- to furnish any statement or information relating to the affairs of such as required within such time and in such manner as the said officer may direct.

## Annexure 1: Abbreviations

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### [A]

- AA - Adjudicating Authorities
- AC - Audit Committee
- AD - Assistant Director
- ADR - American Depository Receipts
- AIF - Alternative Investment Fund
- AMC - Asset Management Company
- AOA - Articles of Association
- AR - Annual Report
- AT - Appellate Tribunal

### [B]

- BIFR - Board for Industrial and Financial Reconstruction
- BO - Beneficial Owner
- BoD - Board of Directors
- BoT - Board of Trustees
- BoM - Board of Members
- BRR - Business Responsibility Report

### [C]

- CAT - Competition Appellate Tribunal
- CCI - Competition Commission of India / Commission
- CDSL - Central Depositories Service Limited
- CG - Corporate Governance / Central Government
- CIS - Collective Investment Scheme
- CPSE - Central Public Sector Enterprises
- CY - Calendar Year

### [D]

- DIPP - Department of Industrial Policy and Promotion
- DD - Deputy Director
- DPII - Department for Promotion of Industry & International Trade
- DoE - Directorate of Enforcement

[E]

- ED - Executive Director / Enforcement Directorate
- ESC - Equity Share Capital
- ESH - Equity Share Capital
- ESOS - Employees Stock Option Scheme
- ESPS - Employees Stock Purchase Scheme

[F]

- FATF - Financial Action Task Force
- FCCB - Foreign Currency Convertible Bond
- FCEB - Foreign Currency Exchangeable Bonds
- FCVF - Foreign Venture Capital Fund
- FCVI - Foreign Venture Capital Investor
- FDI - Foreign Direct Investment
- FE - Foreign Exchange
- FEMA - Foreign Exchange Management Act
- FERA - Foreign Exchange Regulation Act
- FII - Foreign Institutional Investor
- FPI - Foreign Portfolio Investor
- FS - Financial Statements
- FY - Financial Year

[G]

- GDR - Global Depository Receipts
- GoI - Government of India

[I]

- ICDR - Issue of Capital and Disclosure Requirements
- ID - Independent Director
- IDR - Indian Depository Receipts
- IEPF - Investor Education and Protection Fund
- InvIts - Infrastructure Investment Trusts
- IPO - Initial Public Offer
- IPR - Intellectual Property Rights
- ITP - Institutional Trading Platform
- IVCU - Indian Venture Capital Undertaking

[J]

JD - Joint Director

[K]

KMP - Key Managerial Personnel

KYC - Know your customer

[L]

LODR - Listing Obligations and Disclosure Requirements

LMB - Lead Merchant Banker

[M]

MOA - Memorandum of Association

MCA - Ministry of Corporate Affairs

MCI - Ministry of Commerce and Industry

MFs - Mutual Funds

[N]

NED - Non – Executive Director

NRC -Nomination and Remuneration Committee

NRI - Non-Resident Indian

NSDL - National Securities Depository Limited

[O]

OPC - One Person Company

[P]

PAC - Person Acting in Concert

PCA - Chartered Accountant in practice

PCS - Company Secretary in practice

PCMA - Cost Accountant in practice

PFI - Public Financial Institutions

PAN - Permanent Account Number

PIO - Person of Indian Origin



PIT - Prohibition of Insider Trading  
PMLA - Prevention of Money Laundering  
PRiI - Person Resident in India

[Q]

QIP - Qualified Institutional Placement  
QIB - Qualified Institutional Buyer

[R]

RD - Regional Director  
REIT - Real Estate Investment Trusts  
RFC - Resident Foreign Currency  
RFPI - Registered Foreign Portfolio Investor  
R / L - Rights and Liabilities  
RO - Registered Office  
RoI - Resident of India  
RTI - Registrar to an Issue  
RPTs - Related Party Transactions  
R – SE - Recognised Stock Exchange

[S]

SAIL - Steel Authority of India Limited  
SARFAESI Act - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act  
SAST - Substantial Acquisition of Shares and Takeover  
SAT - Securities Appellate Tribunal  
SCRR - Securities Contract (Regulations) Rules  
SE - Stock Exchange  
SEC - Stock Exchange Commission  
SHs - Shareholders  
SRC - Stakeholders Relationship Committee  
SICA - Sick Industrial Companies (Special Provisions) Act, 1985  
SMEs - Small and Medium Enterprises  
ST - Securities Transaction  
STA - Share Transfer Agents

[U]

UoI - Union of India

UPSI - Unpublished Price Sensitive Information

[V]

VCF - Venture Capital Funds

[W]

WOS - Wholly Owned Subsidiary

WPI - Wholesale Price Index

**Annexure A2**  
**Securities Market Intermediaries**  
**(Not in Syllabus, only for Knowledge Purpose)**

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**1. Merchant Banker / Manager / Issue Manager:**

Any person – Net worth: Not less than ₹ 5Cr

Engaged in the business of issue management –

Arrangements – Sell / Buy / Subscribing

Acts as Manager / Consultant / Advisor

Renders Corporate advisory services in relation to such issue management

**Necessity:**

1. Managing of public issue of securities
2. Underwriting connected with the aforesaid public issue management business
3. Managing /Advising on international offerings of debt / equity - GDR, ADR, bonds & others
4. Private placement of securities
5. Primary or satellite dealership of government securities
6. Corporate advisory services related to securities market including takeovers, acquisition and disinvestment
7. Stock broking
8. Advisory services for projects
9. Syndication of rupee term loans
10. International financial advisory services

**2. Registrars (RTI) and Share Transfer Agents (STA):**

Networth: Category I – ₹ 50Lakhs | Category II – ₹ 25Lakhs

**Registrars:**

Appointed

By a body corporate / any person / group of persons to carry:

1. collecting application for investor in respect of an issue
2. keeping a proper record of applications and monies received from investors or paid to the seller of the securities
3. assisting body corporate or person or group of persons
  - a. To determine the basis of allotment of the securities in consultation with the stock exchange
  - b. finalising the list of person entitled to allotment of securities
  - c. processing and dispatching of allotment letters, refund orders or certificates and other related documents

**Share Transfer Agents (SHA):**

- (i) Person – To maintain the records of holders of securities issued by the body corporate and deals with all matters connected with the transfer and redemption of its securities
- (ii) The department or division of a body corporate – To perform the activities as above| Total number of holders of its securities issued > 1 Lakh

**Pre-issue Activities:**

- 1. Sending instructions to Banks for reporting of collection figures and collection of applications.
- 2. Providing Practical inputs to the Lead Manager and Printers regarding the design of the Bid cum Application form
- 3. Facilitate and establish information flow system between clients, Banks and Managers to the issue
- 4. Liaison with Regulatory Authorities such as SEBI & Stock Exchanges

**Activities during the Issue:**

- 1. Collection and Reporting of daily Collection figures
- 2. Collection of Data and Forms from Banks
- 3. Liaising with clients and Intermediaries to the Issue

**Post Issue Activities**

- 1. Data capturing & validation
- 2. Reconciliation
- 3. Provide Allotment Alternatives in consultation with Client / Merchant Banker and Stock Exchanges
- 4. Facilitating Listing
- 5. Uploading of data to the Depositories for crediting of securities electronically
- 6. Dispatch of Refund orders / Share Certificates / Credit Advise
- 7. Periodic Report submission to Regulatory Authorities
- 8. Reconciliation of Refund payments
- 9. Attending to post issue Investor queries
- 10. Web-based investor enquiry system for allotment / refund detail

**General Obligations and Responsibilities:**

- 1. Abides by the Code of Conduct
- 2. Non – Applicability for a Registrar - An associate of the body corporate issuing the securities
- 3. Keep and maintain proper books of accounts and records
- 4. Preserve the books of accounts and other records and documents – 3 years
- 5. Appoint a compliance officer
  - responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions
  - issued by the SEBI or the Central Government

### **3. Underwriters:**

A person – Networth – not less than ₹ 20 Lakhs | Engages in underwriting

Agrees to take up securities which are not fully subscribed in a public issue

Makes a commitment to get the issue subscribing either by others or by themselves

Underwriting:

- An arrangement
- assure to take up Shares / Debentures / Other securities to a specified extent
- in case the public subscription does not amount to the expected levels

#### **General Obligations and Responsibilities**

1. Abide the Code of Conduct| Enter into an agreement with each body corporate
2. No deriving any direct or indirect benefit (except commission or brokerage by agreement)
3. Total underwriting obligations shall not exceed 20 times the net worth
4. In the event of being called upon to subscribe – Subscribewithin 45 days of the receipt of intimation
5. Keep and maintain proper books of account and records
6. Preserve the books of accounts and other records and documents – 3 years
7. Appoint a compliance officer
  - Responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions
  - issued by the SEBI or the Central Government
8. SEBI Calls for Information – w.r.t. underwriting business and for redressal of investors' grievances

### **4. Banker to an Issue:**

A scheduled bank

Accepting application form and money / Allotment and call monies

Refund of application monies

Payment of dividend or interest warrants

Ensures that the funds are collected and transferred to the Escrow accounts

While one or more banks may function as Bankers to the Issue as well as collection banks, others may do the limited work of collecting the applications for securities along with the remittance in their numerous branches in different centres.

Expected to furnish prompt information and records – To the company and lead manager for monitoring and progressing the issue work

#### **General Obligations and Responsibilities**

1. Maintains books of account, records and the documents
2. Furnish the information to the SEBI when required
3. Informs SEBI forthwith if any disciplinary action is taken by RBI against the banker to an issue only in relation to issue payment work
4. Abide the Code of Conduct | Enter into an agreement with body corporate
5. Appoint a compliance officer
  - Responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions

- issued by the SEBI or the Central Government
- Redressal of investors' grievances

### **5. Debenture Trustee / Trustee of a trust deed**

Networth- Not less than ₹ 10 Crs

To secure any issue of debentures of a body corporate

#### **Roles and Responsibilities:**

1. Call for periodical reports from the issuer
2. Take possession of trust property (as in Trust deed)
3. Enforce security in the interest of the debenture holders
4. Ensure - Continuous basis | Availability / Adequately of charged property | To discharge the interest and principal amount | Property is free from any other encumbrances except those which are specifically agreed with the debenture trustee.
5. Exercise due diligence - To ensure compliance [The Companies Act, The Listing agreement, Trust deed
6. To take appropriate measures for protecting the interest, breach if any
7. To ascertain – Converted / Redeemed | As per the offer
8. Inform the SEBI immediately of any breach of trust deed or provision of any law
9. Appoint a nominee director on the board of the body corporate when required

### **6. Stock-broker:**

A member of stock exchange

Allowed to trade in securities on the exchange of which they are members

Buy / Sell – For own / Clients

#### **Roles and Responsibilities:**

1. An important role in the secondary market
2. Helps both the seller and the buyer | To enter into a transaction [Buyer & Seller – Broker / Client]
3. Buys / Sells from his own account – To execute the order | i.e. as principal or act as an agent
4. Has to issue necessary contract note – To indicate as principal or as an agent
5. As a principal - Has to obtain the consent of his client and the prices charged should be fair and justified by conditions of the market
6. General Obligations and Responsibilities:
7. Keep and maintain the proper books of account, records and documents.
8. Preserve the books of account and other records – Min 5 years
9. Appoint a compliance officer
  - Responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions
  - issued by the SEBI or the Central Government | Redressal of investors' grievances

Note: Sub – Brokers: Agents of Stock Brokers

## **7. Portfolio manager:**

A body corporate – Networth of Not less than ₹ 5 Crs  
pursuant to a contract with a client

Advises / Directs / Undertakes on behalf of the client

The management / administration - Portfolio of securities / Goods / Funds of the client

Provided that the Portfolio Manager may deal in goods received in delivery against physical settlement of commodity derivatives.

A pivotal role in deciding the best investment plan for an individual (Income, age and risk taking)

Responsible for making an individual aware of the various investment tools available in the market and benefits associated with each plan.

Make an individual to realize why he actually needs to invest and which plan would be the best for him.

Responsible for designing customized investment solutions for the clients according to their financial needs

Note:

Discretionary portfolio manager - A Portfolio manager | Discretionary power

Portfolio - The total holdings of securities belonging to any person

## **8. Custodians:**

A person – Networth – Min ₹ 50Cr

carries on / proposes to carry on

the business of providing custodial services to the client

keeps the custody of the securities of the client

Provides incidental services

- Maintaining the accounts of securities of the client
- Collecting the benefits or rights accruing to the client in respect of securities

## **Roles and Responsibilities:**

1. Administrate and protect the assets of the clients
2. Open a separate custody account and deposit account in the name of each client
3. Record assets
4. Conduct registration of securities

## **General Obligations and Responsibilities:**

1. Abide by the Code of Conduct
2. Other activities – Separated and segregated
3. Adequate mechanisms for the purposes of reviewing, monitoring, evaluating and inspection the custodian's controls, systems, procedures and safeguards  
No custodian shall assign or delegate its functions as a custodian to any other person unless such person is a custodian.
4. Open a separate custody account for each client and the assets of one client shall not be mixed with other

5. Enters into an agreement
6. Adequate internal controls to prevent any manipulation of records and documents including audits for securities, goods and rights or entitlements arising from the securities and goods held by it on behalf of its client.
7. Maintains the records and documents
8. Appoint a compliance officer
  - Responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions
  - issued by the SEBI or the Central Government
  - Redressal of investors' grievances
9. To furnish Information when duly called by SEBI

### **9. Investment Adviser:**

Any person – Non – individuals: Net worth of not less than ₹ 50 Lakhs | Individuals: Net tangible Assets – Net worth of not less than ₹ 5 Lakhs

For consideration

Engaged in the business of providing investment advice to clients / other persons / Group of persons

Includes any person who holds out himself as an investment adviser, by whatever name called

“Investment Advice” - Advice on

- investing in, purchasing, selling or otherwise dealing in securities or investment products,
- investment portfolio containing securities or investment products - written, oral or through any other means of communication for the benefit of the client and shall include financial planning
- Not an investment - Advice given through newspaper, magazines, any electronic or broadcasting or telecommunications medium | available to the public

### **General Obligations and Responsibilities:**

1. Act in a fiduciary capacity towards its clients | Disclose all conflicts of interests as and when they arise
2. Not to receive any consideration by way of remuneration / compensation / Other form from any person other than the client being advised
3. Maintain an arms-length relationship between its activities as an investment adviser and other activities
4. Segregation from all its other activities
5. Disclosure of any conflict of interest
6. Not to divulge any confidential information about its client (but with prior permission) other than any mentioned in law
7. Not to enter into transactions on its own account which is contrary to its advice given to clients for a period of 15 days from the day of such advice
8. Follow Know Your Client procedure
9. Abide by Code of Conduct
10. Not to act on its own account | knowingly to sell securities or investment products to or purchase securities or investment product from a client.
11. Prior approval from the SEBI required - Change in control
12. Furnish information and reports



13. Ensure compliance with the certification and qualification requirements [Reg 7]

#### **10. Research analyst:**

A person - Body corporate / LLP – not less than Rs. 25 Lakhs | Individual / Partnership - Net tangible assets of value not less than Rs. 1 Lakh.

Primarily responsibility on -

- i. Preparation / publication of the content of the research report
- ii. Providing research report
- iii. Making 'buy/sell/hold' recommendation
- iv. giving price target
- v. Offers an opinion concerning public offer (listed / to be listed in a stock exchange)

#### **Roles and Responsibilities:**

1. Studies Companies and Industries
2. Analyses raw data / information to provide recommendations about investments
3. Makes forecasts or recommendations (to buy, hold or sell securities)
4. Investors often view analysts as experts and important sources of information about the securities they review and often rely on their advice.

#### **General Obligations and Responsibilities:**

1. Maintain an arms-length relationship
2. Abide by Code of Conduct
3. Prior approval from the SEBI required - Change in control of the investment adviser
4. Furnish information / reports
5. Responsible for complying with the certification and qualification
6. Record Maintenance:
  - Report duly signed and dated | Recommendation provided and its rationale for arriving | Record of public appearance
  - Physical or electronic form and preserved for a minimum period of five years
7. Conducts annual audit in respect of compliance with these regulations from a member of ICAI / ICSI
8. Appoint a compliance officer
  - Responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions
  - issued by the SEBI

Note: Types of Analysts: Sell-Side Analysts | Buy-Side Analysts | Independent Analysts

### **11. Credit Rating Agency:**

A body corporate – Min Networth of ₹ 25 Crs

Engaged in / proposes to be engaged in

the business of rating of securities offered by way of public or rights issue

Importance of Credit Rating

- Plays a role in investor protection
- Benefits industry as a whole in terms of direct mobilization of savings from individuals
- Rating - A marketing tool to the company and its investment bankers in placing company's debt obligations with an investor base that is aware of, and comfortable with, the level of risk.
- Encourages discipline amongst corporate borrowers to improve their financial structure and operating risks to obtain a better rating for their debt obligations and thereby lower the cost of borrowing.

#### **General Obligations and Responsibilities:**

1. Abides by the Code of Conduct
2. Enters into a written agreement
3. Continuous monitoring of securities
4. Disseminates information:
  - Newly assigned ratings | changes in earlier rating - through press releases and websites
  - For securities issued by listed companies – Provide to SEs
5. Discloses Rating Definitions and Rationale
6. Furnishes Informations and Reports to SEBI
7. Complies with guidelines, directives, circulars and instructions
8. Appoint a compliance officer
  - Responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions
  - issued by the SEBI / CG
9. Keeps and maintain books of accounts, records and documents for a minimum period of five years.

### **12. Depository Participant (DP):**

An agent of the depository through which it interfaces with the investor and provides depository services

As specified in Reg 35

#### **Roles and Responsibilities:**

Executes pledge requests and off market transfers and on market transfer request of the investors who hold shares in Demat form

Handling Transmission requests of investors

Handling Demat/Remat requests in consultation with RTI/ STAs

### **13. Foreign Portfolio Investor:**

A person

Registered with Chapter II, SEBI (Foreign Portfolio Investors) Regulations, 2019

Deemed Intermediary

#### **General Obligations and Responsibilities:**

1. Comply – Regulations / Circulars / other terms and conditions
2. Inform the false / misleading - In writing | Materialistic information or particulars previously submitted
3. Submit – Information / Record / Documents | SEBI or any other Government agency in India
4. Inform – penalty / pending litigation or proceedings/ findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against it
5. Obtain PAN
6. Subject itself to the extant Indian laws, rules, regulations, guidelines and circulars issued from time to time;
7. Fit and proper person – Sc II, SEBI (Intermediaries) Reg, 2008
8. Undertakes necessary KYC on its shareholders/ investors in accordance with the rules applicable to it in the jurisdiction where it is organised
10. provide any additional information or documents including beneficiary ownership details of their clients as may be required to ensure compliance with - PMLA, 2002 | Rules and Regulations specified thereunder | FATF standards and circulars issued
9. Ensure – Securities are Free from all encumbrances (Excludes, those created to meet any statutory and regulatory requirements)

**Annexure 3.2 – Definitions**  
**[The Competition Act, 2002]**

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**Definitions from Bare Act - Sec 2, The Competition Act, 2002**

- (a) “acquisition” means, directly or indirectly, acquiring or agreeing to acquire –
- (i) shares, voting rights or assets of any enterprise; or
  - (ii) control over management or control over assets of any enterprise;
- (b) “agreement” includes any arrangement or understanding or action in concert, –
- (i) whether or not, such arrangement, understanding or action is formal or in writing;  
or
  - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
- (c) “cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;
- (f) “consumer” means any person who—
- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
  - (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

(h) "enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space

Explanation - For the purposes of this clause, -

(a) "activity" includes profession or occupation;

(b) "article" includes a new article and "service" includes a new service;

(c) "unit" or "division", in relation to an enterprise, includes

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;

(ii) any branch or office established for the provision of any service;

(i) "goods" means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes –

(A) products manufactured, processed or mined;

(B) debentures, stocks and shares after allotment;

(C) in relation to goods supplied, distributed or controlled in India, goods imported into India;

(r) "relevant market" means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

(s) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas

(t) “relevant product market” means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

(u) “service” means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising

### **Other Definitions:**

**Bid Rigging:**

An agreement between enterprises or persons that has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

Case Law: IOCL vs LPG Manufactures

**Combination:**

Acquisition of control / shares / Voting rights / Assets / Acquisition of control by a person over an enterprise, directly or indirectly control over another enterprise engaged in competing businesses mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the Act.

**Dominance:**

A position of strength which enables an enterprise to operate independently of competitive forces

or to affect its competitors / consumers / the market in its favour

**Exclusive supply agreement:**

Includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

Exclusive distribution agreement:

Includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;

Predatory Price:

The sale of goods or provision of services at a price which is below the cost (as may be determined by regulations) of production of goods or provision of services with a view to reduce competition or eliminate the competitors.

Example: Amazon / Flipkart selling at high discounts

Refusal to deal:

Includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

Resale price maintenance:

Includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged

Example: Cigarettes, Tobacco, Rubber Tyres, Shoes, Engineering and Electrical Goods

Tie-in arrangement:

Includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods

Example: Booking LPG gas cylinders and condition to buy Gas Stoves / Cooker, etc