

# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

## CHAPTER-1

### INTERPRETATION OF STATUTES

#### Primary Rules of Interpretation

##### Literal/ Grammatical Interpretation

This Rule is used when the language of statute is simple and no technical words is used.

Used unless language is ambiguous.

Used unless the statute of language Is not defeated.

##### Reasonable/Logical/Functional Construction

This Rule is used when the language of statute when technical words is used.

Used when language is ambiguous.

Used when the statute of language is defeated.

##### Harmonious Construction

Where there is a conflict between two or more provisions, Compliance should be made in such a way that all applicable provisions are complied with.  
Eg: 185 vs 186.

When there is a doubt about meaning of words of statute these should be understood in the sense in which they harmonise with object of statute.

##### Mischief Rule or Heydon's Rule or Beneficial Construction

**In general 4 things are to be considered:**

- a) What was the common law before the act?
- b) What was the mischief and defect for which the common law did not provide.
- c) What the Parliament has done to cure the mischief
- d) The true reason of the remedy;

Held that Heydon's case is applicable only when words are ambiguous & are reasonably capable of >1 meaning.

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## ● Rule of Ejusdem Generis

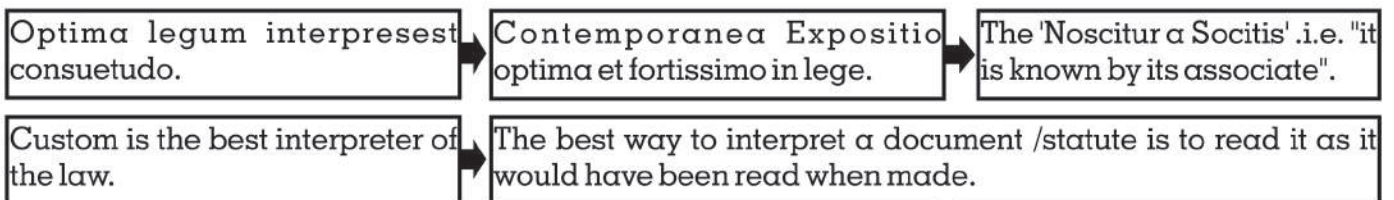
"General words" following the "specific words" are to be construed/interpreted with reference to the specific words that proceed them.



**Example-** Where the act permits keeping of dogs, cats, cows, buffaloes and **other animals**, the expression 'other animals' would not include wild animals like lions and tigers, but would mean domestic animals like horses, etc

**Example-** Where there was prohibition on importation of arms, ammunition or gunpowder or any other goods 'the words' any other goods will be construed as referring to goods similar to arms, ammunition or gunpowder. -**A.G. Brown(1920)**.

## ● Secondary Rules of Interpretation



a) Associate words shall be read and understood in commonsense manner.

b) Two or more words which are coupled together and can have PARALLEL OR SIMILAR MEANING should be understood in COGNATE /SIMILAR SENSE.

## ● Various Internal Aids to Interpretation

Title	Long title is a legitimate aid to its construction.
Preamble	The <b>Preamble</b> expresses the scope, object and purpose of the Act. Preamble discloses the primary intention of law maker. Preamble can be used as an aid to construction only if the language of the statute is not clear.
Heading and Title of a Chapter	One Section of Experts consider that heading is regarded as key to interpretation. The other Section of Experts emphasizes that heading can be used only when enacting words are ambiguous.



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MARGINAL NOTES	C.I.T vs. Ahmed bhai Umar bhai & Co-S.C. had declared -"Marginal notes in any Indian statute or in any ACT of Parliament cannot be referred to for the purpose of constructing the statute. However, marginal notes appended to the Constitution is used in constructing the articles.
Definitional Clauses	Advantage: <ul style="list-style-type: none"><li>· Used for interpretation.</li><li>· Carries same meaning throughout the act unless repugnancy arises.</li></ul> Means or Means and Includes : <b>Exhaustive definition.</b> Includes: <b>Inclusive definition.</b>
Illustrations	<ul style="list-style-type: none"><li>⊙ Do not form a part of the section, cannot curtail or expand ambit of section.</li><li>⊙ Relevant in constructing text of section.</li></ul>
PROVISO	<ul style="list-style-type: none"><li>✦ qualify or create an exception to what is there in the Act.</li><li>✦ exception to the main provision.</li><li>✦ To create additional conditions.</li><li>✦ For elaborating a new concept.</li></ul>
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Explanation	<ul style="list-style-type: none"><li>⏪ To include or exclude something in the main section.</li><li>⏪ To harmonize &amp; clear ambiguity in the Section.</li></ul>
Schedules	☆ It is always used as a key to interpretation whether or not words used in statute are ambiguous.

"IF YOU CAN **dream**  
IT, YOU CAN **do**  
IT."



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## Other Terms

Notwithstanding anything contained in this Act- non-obstante clause which prevails over the other provisions.

**Subject to** - effect of non-obstante clauses is opposite to provision which includes the term "subject to".

## What are the external aids to interpretation/construction?

- A Historical Setting-external or historical facts necessary in understanding and comprehension of subject matter.
- B Consolidating Statutes & Previous Law.
- C Usage-Usage is also sometimes taken into consideration in constructing an Act. When language in a statute is doubtful, usage helps to determine its true meaning.
- D Earlier Acts.
- E Reference to Repealed /Deleted Part of the Act.
- F Dictionary Meaning.
- G Use of foreign decisions.

## Various rules of Interpretation of Deeds & Documents?

- ★ Interpretation from point of view of reasonable man
- ★ Uniformity of Meaning
- ★ The Golden Rule-a)Ascertain intention of parties after considering all words in document in ordinary sense. b)Read document as a whole. c)Consider the circumstances in which particular words have been used. d)Consider training and status of parties.
- ★ One invalid clause does not make the whole document invalid.
- ★ Resolving Conflict-if not possible, earlier clause will override later one.

# END OF CHAPTER-1





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## CHAPTER-2

### COMPETITION ACT, 2002

#### Definitions:

##### 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.

##### 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;

##### Enterprise

- ⊙ means a person or a department of the Government.
- ⊙ engaged in any activity(production, storage, supply, distribution, service etc.
- ⊙ Investment-directly or through subsidiary.
- ⊙ **Not including sovereign functions provided by the central govt- atomic energy, currency, defence and space.**

##### Consumer

###### Buyer of Goods

↓  
Buys any goods for a consideration.

Including user of such goods.

whether such purchase of goods is for resale or for any commercial purpose or for personal use.

###### Hires of avails of any services

↓  
hires or avails of any services for a consideration.

and **includes any beneficiary of such services.**

whether such hiring or availing of services is for any commercial purpose or for personal use.

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## Goods

Means goods as defined in the Sale of Goods Act, 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.

## Person

Includes-individual, HUF, company, firm, AOP, BOI, corporate established under any law, bodycooperate,co-operative society,local authority, any other artificial judicial person.

### Section 3- Anti Competitive Agreements

Agreements between persons or enterprises including cartels

- ⊙ directly or indirectly determines purchase or sale price
- ⊙ directly or indirectly results in bid rigging or collusive bidding
- ⊙ limits or controls production, supply, markets, technical development, investment or provision of services;
- ⊙ shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- ⊙ shall be presumed to have an appreciable adverse effect on competition and regarded as void.

### Section 4-Abuse of Dominant Position

- ⊙ No enterprise shall abuse its dominant position
- ⊙ There shall be abuse of dominant position if
  - (a) Unfair or discriminatory condition is imposed **including predatory pricing**
  - (b) Limits or restricts-production, scientific or technical development,
  - (c) Indulges in practices resulting in **denial of market access**,
  - (d) forceful **supplementary obligations** having no connection with subject matter of contract
  - (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

**Section 3(4)**-Agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods.

(b) "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



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(c) "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.

(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought.

(e) "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.

## ● What is combination? (SECTION-5)

-Acquisition/Control/Merger/Amalgamation

### (A) Individual(Acquirer plus enterprise acquired)

<u>LOCATION</u>	→	<u>ASSETS</u>	→	<u>TURNOVER</u>
In India	→	Rs 2000 Crore	→	Rs 6000 Crore
In India or outside India	→	>1000 million US \$(of which atleast Rs 1000 crore in India).	→	>3000 million US\$(of which atleast Rs.3000 Crore in India).

### (B) Group

<u>LOCATION</u>	→	<u>ASSETS</u>	→	<u>TURNOVER</u>
In India	→	Rs 8000 Crore	→	Rs 24000 Crore
In India or outside India	→	>4000 million US \$(of which atleast Rs 1000 crore in India).	→	>12000 million US\$(of which atleast Rs.3000 Crore in India).

## ● Regulation of combinations(SECTION-5)

- No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.
- Any person or enterprise proposes to enter into combination shall give notice to competition commission in prescribed form within 30 days of:
  - + Approval of BOD of proposal relating to merger or amalgamation.
  - + Execution of any agreement relating to acquisition or acquiring control.

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**Factors** to be considered by Commission while determining whether enterprise enjoys dominant position:

- Market Share
- Size of enterprise/Competitor.
- Economic power.
- Monopoly exercised.
- Dependence of consumers.
- Countervailing buying power.
- Relative advantage by way of economic development.
- Other factors.

**The** Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:

- (a) Regulatory trade barriers.
- (b) Local specification requirements.
- (c) National procurement policies.
- (d) Adequate distribution facilities.
- (e) Transport costs.
- (f) Language.
- (g) Consumer preferences.
- (h) Need for secure or regular supplies or rapid after-sales services.

**The** Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:

- (a) physical characteristics or end-use of goods;
- (b) price of goods or service
- (c) consumer preferences;
- (d) exclusion of in-house production;
- (e) existence of specialised producers;
- (f) classification of industrial products



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## IMPORTANT POWERS OF CCI:

- ⌚ Powers of Civil Court
- ⌚ Inquire into certain agreements or dominant position of enterprise suo moto or on complain received.
- ⌚ Power to call upon experts from various fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry or proceeding before it.
- ⌚ If after enquiry by the Director General, the commission finds that the agreement entered are in contravention of Section 3, it may pass all or any of the following orders.
  - (a) Direct to discontinue and not to reenter such agreement.
  - (b) impose penalty up to 10% of average turnover for last 3 preceding FY's.
  - (c) Direct to modify the agreement.
  - (d) Give directions including payment of costs.

## IMPORTANT PROVISIONS W.R.T. CHAIRMAN AND MEMBERS OF CCI:

A) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in various fields.

B) Term of office of Chairperson and other Members

- ⊙ 5 years
- ⊙ Max age - 65 years

C) Resignation shall be valid from : (Section 11)

expiry of three months from the date of receipt of such notice or

b) until a person duly appointed as his successor enters upon his office or

c) until the expiry of his term of office

d) he is permitted by the Central Government, whichever is earliest.

Removal-4 grounds- insolvent, convicted of moral turpitude, paid employment, acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or) has so abused his position as to render his continuance in office prejudicial to the public interest; or mentally become incapable.

Whenever CG forms an opinion that any commission has acquired financial interest in any enterprise or abused his position, it shall make a reference to Supreme Court. The S.C. shall hold an enquiry and then report that the member in question ought to be removed from his office

D) Restriction on employment of Chairperson and other Members

⊙ 2 years from the date on which they cease to hold office of, any enterprise which has been a party to a proceeding before the Commission under this Act.

Exception:

a) employment under the Central Government or a State Government.

b) local authority.

c) statutory authority or any corporation established by or under any Central, State or Provincial Act

d) Government company.

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## RTP MAY 2018:

- 1 Exemption has been granted to Regional Rural Banks from application of Sections 5 and 6 of the Competition Act, 2002 for a period of 5 years from date of publication of this notification in the Official Gazette.
- 2 Exemption has been granted to the Vessels Sharing Agreements of the Liner Shipping Industry from the provisions of Section 3 of the Competition Act, 2002.
- 3 Exemption has been granted to all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks from the application of provisions of Section 5 and 6 of the Competition Act, 2002.

## END OF CHAPTER-2

### CHAPTER-3

#### PREVENTION OF MONEY LAUNDERING ACT

## Definitions:

### Money Laundering

- In the PMLA, 2002, money laundering has been defined as "any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property". (Section 3)
- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in process of money laundering shall be punished as:-
  - ⊙ 3 years to 7 years imprisonment and fine.
  - ⊙ 3 years to 10 years imprisonment and fine if offence is committed under Narcotics and Psychotropic substances Act, 1985 (Section 4).



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## Proceeds of Crime

Proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

## Scheduled offence

- (a). The offences specified under Part A of the Schedule; or
- (b). The offences specified under Part B of the Schedule if the total value involved in such offences is **ONE CRORE** or more;
- (c). The offences specified under Part C of the Schedule.

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money laundering.

## Property

"Property" means any property or assets of every description, whether **corporeal (material object)** or **incorporeal, movable or immovable, tangible or intangible** and includes **deeds and instruments evidencing title to, or interest in, such property or assets, wherever located**. Further, property includes, property of any kind used in the commission of an offence under this Act or any of the scheduled offences [Section 2(1)(v)].

## Payment System

"Payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement services or all of them. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

**Mujhe nahi pata mera pehla attempt kounsa tha, lekin aane wala attempt mera aakhri attempt hoga.**



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## Process of Money Laundering

- (a). Placement:- introduces the illegal funds into the financial systems.
- (b). Layering:- a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin
- (c). Integration:- The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc.

## Obligations of Banks/FI (Section-12)

- ✘ Maintain record of all transactions prescribed to reconstruct individual transaction.
- ✘ shall verify the identity of its clients.
- ✘ They shall maintain record of documents evidencing identity of its clients and beneficial owners(KYC Norms) for 5 years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.(including accounts files and business files)
- ✘ identify the beneficial owner
- ✘ furnish prescribed information to the director of Financial Intelligence unit.

Monetary fine if above info not submitted on directors/EE's of reporting entity





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## ● Provision of appeals:

- (a) Appeal against the order of Adjudicating Authority to the Appellate Tribunal within 45 days accompanied by such fee prescribed.
- (b) AT may condone the delay if sufficient cause.
- (c) AT may confirm/modify/set aside the order.
- (d) Appeal against the order of AT may be filed to High Court within 60 days of communication of decision of AT.
- (e) HC may condone the delay maximum by further 60 days.

*Note-Money Laundering does not only mean siphoning of funds but also means conversion of money which is illegally obtained by placing the funds into the financial system.*

## ● Provision regarding special courts:

- ⊙ Special Court Constituted under this Act is the authority to take cognizance of offence for which accused is committed upon a complaint made.
- ⊙ The Special Court cannot take cognizance of any offence under the Act, unless a complaint in writing is made by:
  - (a) The Director, or
  - (b) Any officer of CG/SG authorised in writing by CG by general or special order.

## ● Nature of offence:

Cognizable and Non-bailable.

Exceptions where Special Court may direct to release the person on bail

- (a) Age < 16 years or
- (b) Accused is Woman or
- (c) Sick or infirm person.
- (d) Accused either on his own or along with other co-accused of money laundering a sum of < 1 cr may be released on bail.

# END OF CHAPTER-3

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## CHAPTER-4

### THE INSURANCE (AMENDMENT) ACT

#### Definitions:

**Health insurance Business**  
**Section-2 (6C)**  
**(New)**

"health insurance business" means the effecting of contracts which provide for:-

- ⊙ sickness benefits or medical, surgical or hospital expense benefits.
- ⊙ whether in-patient or out-patient travel cover.
- ⊙ and personal accident cover.

**Life Insurance Business**  
**Section2(11)**

"life insurance business" means the

- ⊙ business of effecting contracts of insurance upon human life,
- ⊙ including any contract whereby the payment of money is assured on death (except death by accident only).
- ⊙ or the happening of any contingency dependent on human life,
- ⊙ and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

the **granting of disability** and double or triple indemnity accident benefits, if so provided in the contract of insurance; the **granting of annuities** upon human life; and the **granting of superannuation** allowances .

**Indian insurance company:Section 2(7A)**  
**(Amended)**

"Indian insurance company" means any insurer, being a company which is limited by shares, and,

- (a) which is formed and registered under the Companies Act, 2013
- (b) in which the aggregate holdings of equity shares by foreign investors, including portfolio investors, do not exceed forty-nine per cent. of the paid up equity capital of such Indian insurance company, which is Indian owned and controlled, in such manner as may be prescribed
- (c) whose sole purpose is to carry on life insurance business or general insurance business or re-insurance business or health insurance business.

**Insurer:Section2(9)**

"Insurer" means

- (a) an Indian Insurance Company
- (b) a statutory body established by an Act of Parliament to carry on insurance business, or
- (c) an insurance co-operative society, or
- (d) a foreign company engaged in re-insurance business through a branch established in India. (Registration will be given to such foreign insurer only if it has a minimum net owned funds of Rs.5000 cr)





# SUMMARY NOTES OF ALLIED LAW

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## Section 2CB(New)

Properties in India not to be insured with foreign insurers except with permission of IRDA.

1. No person shall take out or renew any policy of insurance in respect of any property in India or any ship or other vessel or aircraft registered in India with an

insurer whose principal place of business is outside India except with the prior permission of IRDA.

2. If any person contravenes the provision of sub-section (1), he shall be liable to a penalty which may extend to five crore rupees.

## Section 6A(Amendment)

A public company limited by shares having its registered office in India, shall carry on life insurance business or general insurance business or health insurance business or re-insurance business, only if it satisfies the following conditions, namely:—

(i) that the capital of the company shall consist of equity shares each having a single face value and such other form of capital, as may be specified by the regulations;

(ii) that the voting rights of shareholders are restricted to equity shares;

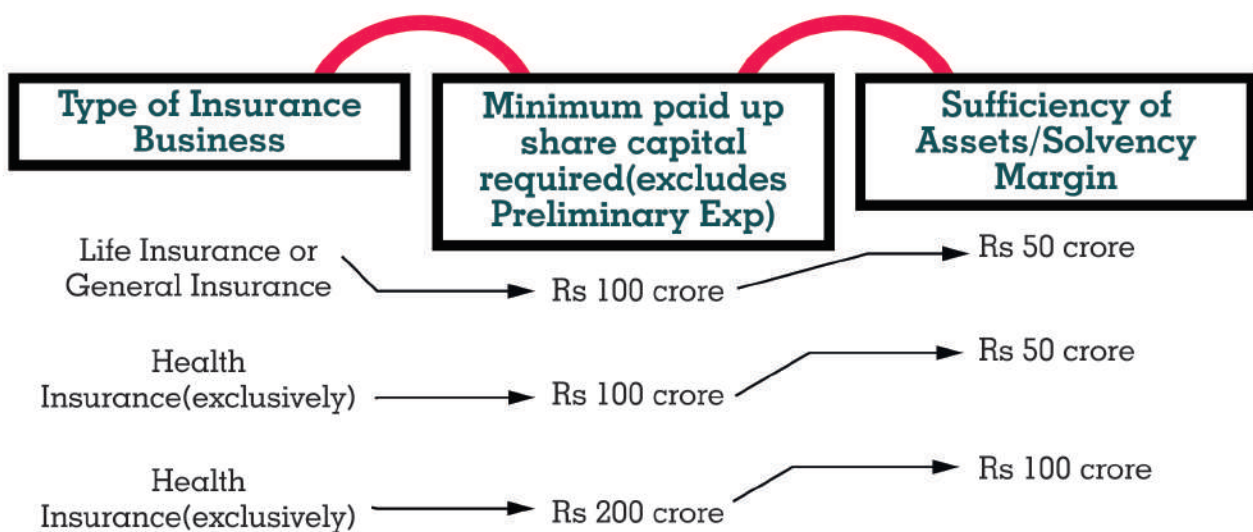
(iii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or new.

## Section 14(Amended)

**Record of policies and claims to be maintained**( including electronic mode)

(a) a record of policies- the name and address of the policyholder, date when the policy was effected, record of any transfer, assignment or nomination of which the insurer has notice;

(b) a record of claims- the name and address of the claimant, the date on which the claim was discharged or rejected, the date of rejection and reasons.





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## SECTION 45-POLICY NOT TO BE CALLED IN QUESTION AFTER 3 YEARS

- |  |   |   |
|--|---|---|
| <p>⊙ No policy of life insurance shall be called in question on any ground whatsoever after the expiry of 3 years from the date of policy i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later.</p> | <p>⊙ A policy of life insurance may be called in question at any time within 3 years from the date of policy i.e., from the date of issuance of the policy or the date of commencement of risk or the date of revival of the policy or the date of the rider to the policy, whichever is later on the ground of misstatement or suppression of material facts or fraud.</p> | <p>⊙ The insurer can call for proof of age any time and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.</p> |
|--|---|---|

# END OF CHAPTER-4

## CHAPTER-5

### SECURITIES CONTRACTS (REGULATION) ACT, 1956

#### Corporatization

corporatisation" means the **succession of a recognised stock exchange**, being a body of individuals or a society registered under the Societies Registration Act, 1860 (21 of 1860), **by another stock exchange, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities carried on by such individuals or society.**

#### Demutualization

"Demutualization" means the **segregation of ownership and management from the trading rights** of the members of a recognized stock exchange in accordance with a **scheme** approved by the Securities and Exchange Board of India;

#### Scheme

"scheme" means a scheme for corporatization or demutualization of a recognized stock exchange which may provide for—

- (i) the **issue** of shares for a lawful consideration and provision of trading rights in lieu of membership cards of members of a recognized stock exchange;
- (ii) the **restrictions** on voting rights;
- (iii) the **transfer** of property, business, assets, rights, liabilities, recognitions, contracts of the recognized stock exchange, legal proceedings by, or against, the recognized stock exchange/**transfer of employees**
- (iv) other incidental matters.





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### Securities

"securities" include—

- shares, scrips (a written document that acknowledges a debt), stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- derivative
- units or any other instrument issued by any collective investment scheme to the investors in such schemes;]
- security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;]
- units or any other such instrument issued to the investors under any mutual fund scheme;]
- Government securities;
- such other instruments as may be declared by the Central Government to be securities;
- rights or interest in securities;

### Specific delivery contract-Section 2(ha)

"specific delivery contract" means a commodity derivative which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned.

It may be transferable as well as non transferable.

### Commodity derivative

"commodity derivative" means a contract —

- (i) for the delivery of such goods, as may be notified by the Central Government in the Official Gazette, and which is not a ready delivery contract; or
- (ii) for differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified by the Central Government, in consultation with the Board.

**Note-**Commodity derivatives also included in definition of derivatives given in Section 2(ac).

### Spot delivery Contract

spot delivery contract" means a contract which provides for,—

- (a) actual delivery of securities and
- (b) payment of a price therefore either on the **same day** as the date of the contract or **on the next day**
- (c) the actual period taken for the despatch 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;
- (d) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.





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## Ready Delivery Contract

"ready delivery contract" means a contract which provides for the

(a) delivery of goods

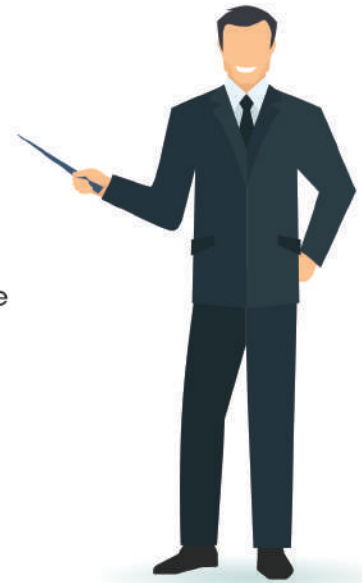
(b) and the payment of a price therefore, either immediately, or within such period not exceeding eleven days after the date of the contract.

(c) the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise:

(d) Commodity derivative is not a ready delivery contract.

## Non applicability of SCRA(Section 28)

- ⌚ Government
- ⌚ RBI
- ⌚ Local Authorities
- ⌚ Any corporation set up by special law
- ⌚ any person who has effected any transaction with or through the agency of any such authority referred above
- ⌚ Any class of persons effected by CG by issuing a notification in Official Gazette.



## Application for recognition of SE(Sec 3)

- Application to be made to SEBI.
- Information to be provided with application
  - ✦ Constitution of Governing body and its powers of management.
  - ✦ the powers and duties of the office bearers of the stock exchange.
  - ✦ Admission, suspension and expulsion of members and conditions for those.
  - ✦ Procedure for registration of Partnership firm as a member to the stock exchange and rules of appointment of their representatives.

## Granting of recognition to stock exchange(Sec 4)

CG/SEBI may grant recognition subject to the following conditions:

(i) the qualifications for membership of stock exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members;

(iii) the representation of the Central Government on each of the stock exchange by such number of persons not exceeding three;

(iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

**Note:** Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India.

**Note:** No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.





# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

## Procedure for Corporatisation and demutualisation( Sec 4B)

- RSE to submit a scheme to SEBI.
- If scheme is in public interest, SEBI may approve the scheme with or without modification.
- When scheme is approved- Notification in official Gazette plus Newspaper Advertisement.
- The Securities and Exchange Board of India may, while approving the scheme by an order in writing, restrict—
  - (a) the voting rights of the shareholders who are also brokers
  - (b) Right of shareholders to appoint representatives
  - (c) SEBI can appoint it representative upto one-fourth of total strength.
- Every RSE shall ensure that at least fifty-one per cent of its equity share capital is held, within twelve months from the date of publication(Extension allowed by further 12 months) of the order by the public other than shareholders having trading rights.
- Where Scheme is against public interest SEBI may reject the scheme after giving opportunity of being heard and notification in official gazette.

## Power of recognised stock exchange to make rules restricting voting rights, etc. 7A:

A recognized stock exchange may make rules or amend any rules made by it to provide for all or any of the following matters, namely:—

- (a) the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting;
- (b) **each member may be entitled to have one vote** only, irrespective of his share of the paid-up equity capital of the stock exchange;
- (c) the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange;
- (d) such incidental, consequential and supplementary matters as may be necessary to give effect to any of above matters.

**Note-** Such rules can be made or amended only after CG approval and notification in official gazette.



## Power of Central Government/SEBI to direct rules to be made or to make rules.(Section 8)

- 🕒 After consultation with the governing bodies of stock exchanges the Central Government direct recognised stock exchanges to make any rules or amend any rules within a period of two months from the date of the order.
- 🕒 If any recognised stock exchange fails or neglects to comply with any order made within the period specified therein, the Central Government may make the rules for, or amend the rules
- 🕒 The rules so made or amended shall be published in the Official Gazette.



# SUMMARY NOTES OF ALLIED LAW

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## Clearing corporation.(Section 8A)

- ⌚ Stock Exchange can set up a clearing corporation after approval of SEBI.
- ⌚ Purpose of Clearing Corporation-periodical settlement of contracts, delivery and payment of securities, other incidental matters related to such transfer.

## Additional trading floor.(Section 13A)

- ⌚ Stock Exchange can set up additional trading floor after approval of SEBI.
- ⌚ additional trading floor" means a trading ring or trading facility offered by a recognized stock exchange outside its area of operation to enable the investors to buy and sell securities through such trading floor under the regulatory framework of that stock exchange.

## Power of Central Government to supersede governing body of a recognised stock exchange.(Section 11)

### Analysis

- CG shall give a written notice to the governing body.
- Opportunity of being heard should be given.
- Notification in Official Gazette.
- Appoint chairman, vice chairman and other persons to perform their duties.

## Power of CG to suspend business of recognised stock exchanges.(Section 12)

- In event of emergency.
- Initial period of suspension = 7 days.
- Extension after giving opportunity of being heard.

## Power to Notify Areas

CG has the power to declare a State or an area as notified area u/s 13 after considering the nature and volume of transactions in securities in such state or area. Any contract entered into such areas shall be illegal and void.

**Exception:** Spot Delivery contract, Contract entered through/with members.

## Members may act as principals in certain circumstances.(Section 15)

General Rule: No member of a recognised stock exchange shall in respect of any securities enter into any contract as a principal with any person other than a member of a recognized stock exchange, Exceptions:

- has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he is acting as a principal:
- If written consent has not been obtained, secure written confirmation by such person or such consent or authority within three days from the date of the contract
- no such written consent or authority of such person shall be necessary for closing out any outstanding contract entered into by such person in accordance with the bye-laws, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he is acting as a principal.

## Exception-Spot Delivery Contracts





## Delisting of securities.(Section 21A)

A recognized stock exchange may delist the securities, after recording the reasons and giving opportunity of being heard.

## Provisions relating to Appeal/Common in SEBI

Companies Right to Appeal when Stock Exchange Refuses to list the securities in Stock Exchange OR Against order of Delisting.

Companies Right to Appeal to Securities Appellate Tribunal	Procedure adopted by SAT	Appeal to Supreme Court
<ul style="list-style-type: none"><li>• Appeal to SAT within 15 /45( in SEBI) days of refusal to list the securities or decision of delisting the securities.</li><li>• SAT may condone the delay but the period of extension shall not exceed one month.</li></ul>	<ul style="list-style-type: none"><li>• Give opportunity of being heard.</li><li>• Dispose of the appeal within 6 months.</li><li>• SAT may either set aside or vary or confirm order of SE.</li><li>• Copies of order of SAT shall be sent to both the parties.</li><li>• SE shall comply with order of SAT.</li></ul>	<ul style="list-style-type: none"><li>• Any person aggrieved by order of SAT may file an appeal to SC.</li><li>• The appeal can be filed only on <b>Question of law</b>.</li><li>• Appeal shall be filed within 60 days of receipt of order of SAT.</li><li>• SC may condone the delay but the period of extension shall not exceed 60 days.</li></ul>

## Compounding of Offences (Section 23N)-Same in SEBI

- ⊙ The application for compounding can be made at anytime (whether before or during prosecution)
- ⊙ Offences which can be compounded-Offences punishable with fine, with fine or imprisonment or both.
- ⊙ Offence punishable with imprisonment only or with imprisonment and fine cannot be compounded.
- ⊙ Any offence committed under this Act shall be compounded by SAT or Court before which such proceedings are pending.

## Title to Dividends(Section 27)

### General Rule:

It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend declared by the company even if he has already transferred such security for consideration.

### Exception:

- ⊙ However if the transferee who claims the dividend from the transferor has lodged the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due, in such a case the transferee will have the right to receive and retain the dividend and not the registered holder.
- ⊙ 15 days can be extended if delay is due to post/death of transferee/loss of transfer deed.

# END OF CHAPTER-5



# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

## CHAPTER-6

### SEBI ACT, 1992

(As amended by the Securities Law (Amendment) Act, 2014)

#### OBJECTIVES OF SEBI

- Protect the interests of investors in securities.
- Promote the development of securities market.
- Provide a degree of protection to investors and safeguards their rights and interest.
- Promote fair dealings by issuer of securities
- Ensure a market place where funds can be raised at lower cost.
- Regulate the securities market.
- Regulate and develop a code of conduct and fair practises by intermediaries like brokers, merchant bankers with a view to make them competitive and professional.

#### FUNCTIONS OF SEBI

##### Objectives plus:

- ✧ promoting and regulating self-regulatory organizations;
- ✧ prohibiting fraudulent and unfair trade practices relating to securities markets;
- ✧ promoting investors' education and training of intermediaries of securities markets;
- ✧ prohibiting insider trading in securities;
- ✧ regulating substantial acquisition of shares and take over of companies;
- ✧ Conducting Inspection ,Inquiries and Audit of Stock Exchanges ;
- ✧ Calling information and records from other persons and authorities;
- ✧ Levying fees.

##### Powers to undertake inspection of any book, record, other documents

- (A) Listed Public Company or Public company which intends to get its securities listed where SEBI has reasonable ground to believe that company has been indulged in
- ⊙ Insider training or
  - ⊙ Fraudulent and unfair trade practices related to securities market.

##### Cease and desist proceedings.

SEBI shall pass such order in respect of any listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has indulged in

- ⊙ insider trading.
- ⊙ market manipulation.

#### OTHER POWERS OF SEBI

- Ⓛ Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.(any scheme to defraud parties or to contravene provisions of SEBI Act).
- Ⓛ Direct Investigation when SEBI has reasonable ground to believe that transaction are detrimental to investors or securities market or any intermediary or any person associated with securities market has violated provisions of SEBI Act.



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# SUMMARY NOTES OF ALLIED LAW

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## PENALTY FOR DEFAULT IN CASE OF STOCK BROKERS (SECTION 15F)

Fails to issue contract notes in the form and manner specified by the stock exchange	Fails to deliver any security or fails to make payment of the amount due to the investor	Charges an amount of brokerage which is in excess of the brokerage specified in the regulations
<ul style="list-style-type: none"> <li>★ Minimum Rs 1 lakh</li> <li>★ Maximum – 5 times of Amount of Contract Note</li> </ul>	<ul style="list-style-type: none"> <li>★ Minimum Rs 1 lakh</li> <li>★ Maximum Rs 1 crore</li> </ul>	<ul style="list-style-type: none"> <li>★ Rs 1 lakh</li> <li>★ Or 5 times of excess of brokerage</li> <li>★ Whichever is higher</li> </ul>

### Penalty for insider training(Section 15 G)

SEBI ACT	Companies Act-Section 195
<ul style="list-style-type: none"> <li>➤ Minimum –Rs 10 lakh.</li> <li>➤ Maximum-Rs 25 crore or 3 times the amount of profits made out of insider training w.i.h.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Minimum –Rs 5 lakh.</li> <li>➤ Maximum-Rs 25 crore or 3 times the amount of profits made out of insider training w.i.h. OR</li> <li>➤ Upto 5 years imprisonment.</li> </ul>



## COMMON PENALTIES UNDER THE CHAPTER

Fine up to Rs ` 1 lac/day or 1 cr whichever is less	Fine upto Rs 25 crore or 3 times of amount of profit whichever is more
<ul style="list-style-type: none"> <li>● Failure to maintain records or to file returns or to furnish information</li> <li>● Failure to redress investor grievances</li> <li>● Defaults by Mutual fund/Asset Management Co and Collective investment scheme</li> <li>● Failure to enter into contract or contract in specified format.</li> </ul>	<ul style="list-style-type: none"> <li>● Penalty for insider training</li> <li>● Failure to comply with requirements of Take over code</li> <li>● Adopting fraudulent or manipulative practices.</li> </ul>
<p>☞ General Penalty-Upto Rs 1 cr</p>	

15J. While adjudging quantum of penalty under section, the adjudicating officer shall have due regard to the following factors, namely :—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.



# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

## COLLECTIVE INVESTMENT SCHEME

Any scheme or arrangement made or offered by any person under which,—

- (i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;
- (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;
- (iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
- (iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.

### Composition of Securities Appellate Tribunal

- The Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.
- Bench in the SAT may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit.
- However, every bench shall include at least one Judicial Member and one Technical Member.

### Qualification for appointment as presiding officer or member of SAT

- A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he is
- Presiding officer is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of High Court for at least seven years
- Judicial Member is, or has been, a Judge of High Court for at least five years
- Technical Member is is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance

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# SUMMARY NOTES OF ALLIED LAW

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## Insertion of Sections 15A, 15MB and 15 MC

- 15 MA-The Presiding Officer and Judicial Members of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.
- 15 MB-The Technical Members of the Securities Appellate Tribunal shall be appointed by the CG on recommendation of search cum selection committee which shall consist of Presiding officer(Chairman), Secretary of Department of Economic Affairs(Member), Secretary of Department of Financial Services(Member), Secretary of Department of Legal affairs(Member).
- 15 MC- No appointment of the Presiding Officer, a Judicial Member or a Technical Member of the Securities Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of Search cum selection committee.

## Tenure of office of presiding officer and other members of SAT

- The Presiding Officer or every Judicial or Technical Member of the Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, and shall be eligible for reappointment for another term of maximum five years.
- No Presiding Officer or the Judicial or Technical Member shall hold office after he has attained the age of seventy years.

# END OF CHAPTER-6

## CHAPTER-7

### Securities and Exchange Board of India (Issue Of Capital And Disclosure Requirements, 2009)

#### REGULATION-4

- ⊙ Company can't make public issue or right issue when:
  - + It is **prohibited** to access capital market
  - + its **promoters or promoter group or directors or person in control** of company is prohibited to access capital market.
  - + its **convertible debt instrument** is in list of **wilful defaulters**.
  - + it is in defaults of payment of interest or repayment of principal amount of **debt instrument**.
- ⊙ Warrant may be issued along with public or right issue of specified securities after complying the following conditions:
  - + Tenure-Max 18 months
  - + 1 security-1 warrant
  - + Consideration should be determined up front and at least 25% of consideration should be received up front.
  - + If warrant not exercised, consideration paid should be forfeited.

# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

## SNAPSHOT COVERING CONDITIONS OF FAST TRACK ISSUE COVERING AMENDMENTS

### 1. Average market capitalisation of public shareholding

1000 cr- Public issue

250 cr- Right issue

### 2. Compliance with the equity listing agreement

Period of 3 years preceding the reference date

### 3.

Promoter Group

No alleged violation of security laws in the past 3 yrs.

in case of a rights issue, promoters and promoter group shall **mandatorily subscribe to their rights entitlement** and shall not renounce their rights.

## REGULATION-26-Eligibility conditions for Public issue

<b>A</b>	Minimum NTA=3 crore in all 3 PY's. Maximum 50% must be held in monetary assets If > 50% held in monetary assets, make commitment to use in business.
<b>B</b>	Average pre-tax operating profit- minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years.
<b>C</b>	Net worth it has a net worth of at least one crore rupees in each of the preceding three full years(of twelve months each)
<b>D</b>	Issue size in the same full year (proposed issue + previous issue) < 5(pre issued net worth)
<b>E</b>	Change in name in preceding 1 year if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.
<b>Alternative</b>	Book Building Process.



# SUMMARY NOTES OF ALLIED LAW

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## REGULATION-27-Further Public Offer-Compliance with conditions given in clause (d) and (e) or Book Building Process

<b>Regulation 28 Pricing</b>	Determine price and coupon rate In consultation with merchant banker or Book Building Process specified in Schedule XI.
<b>Regulation 29 Differential Pricing</b>	<ul style="list-style-type: none"><li>⊙ Retail Individual Investors or retail individual shareholders or employees may be offered at a price lower than the price offered to other categories. However difference shall not be <math>&gt; 10\%</math> of price offered to other applicants.</li><li>⊙ In an issue by Book Building Process, Anchor investor shall not be offered at lower price as compared to other categories.</li><li>⊙ In a composite issue, the public issue price and right issue price may be different. However, justification for price difference must be given in the document.</li></ul>
<b>Regulation 30 Price Band</b>	<ul style="list-style-type: none"><li>⊙ In Red Herring Prospectus in case of Book Building issue-cap and floor price are specified.</li><li>⊙ cap on the price band shall be less than or equal to one hundred and twenty per cent. of the floor price.</li><li>⊙ Price band can be revised by revising the floor price upto <math>20\%</math> more or less. The cap price can be recompute accordingly.</li><li>⊙ The floor price or the final price shall not be less than the face value of the specified securities.</li></ul>
<b>Regulation 31-Face Value of equity shares</b>	<ul style="list-style-type: none"><li>⊙ Applicable only in case of IPO and not FPO.</li><li>⊙ If Issue Price is <math>&gt; \text{Rs } 500</math>, then Face value shall be <math>&lt; \text{Rs } 10</math> but not <math>&lt; \text{Rs } 1</math>.</li><li>⊙ If Issue Price is <math>&lt; \text{Rs } 500</math>, then Face value = Rs 10.</li></ul>

## Regulation 33-Securities Ineligible for Purchase Consideration

(a). Specified securities acquired in last 3 years:

- ⊙ Acquired for consideration other than cash
- ⊙ Acquired in a bonus issue(out of revaluation reserves or unrealized profits)
- ⊙ Acquired in a bonus issue(against the equity shares which are itself in eligible for Purchase Consideration)

(b). Specified securities acquired by promoters during last 1 year at a price lower than that offered to public in public issue. However, if the difference is paid then the shares acquired can be considered as minimum purchase consideration

## Regulation 36-Lock In Period of Promoters Contribution

- ⊙ Minimum Lock in period = 3 years from Date of commencement of commercial production Or Date of allotment whichever is later.
- ⊙ For the excess Promoters Contribution, Lock in period = 1 year





# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

Reg. 92	Reg. 93	Reg. 94	Reg. 95
<p>A listed issuer can make bonus issue to its members if</p> <ul style="list-style-type: none"> <li>⊙ it has authority in AOA.</li> <li>⊙ no default by company in payment of interest/principle amount on Fixed Deposits/Debt securities.</li> <li>⊙ no default in payment of statutory dues to employees (PF, Gratuity and Bonus)</li> <li>⊙ partly paid shares are made fully paid up.</li> </ul>	<p>If any compulsorily convertible debt instruments are due to conversion at the time of bonus issue then make reservation for the same.</p>	<p>Sources-Free Reserves &amp; Securities Premium Account(cash only).</p>	<ul style="list-style-type: none"> <li>⊙ Bonus issue must be completed within 15 days from the BM(if approval of SH's is not required for capitalization and within 2 months if approval reqd.</li> <li>⊙ Bonus issue once made cannot be revoked.</li> </ul>

## POINTS TO REMEMBER

- If there is no provision in AOA, firstly authorise articles by passing SR.
- If payment of interest/principal amount is O/S on date of bonus issue, advice the company to make good such payment before proceeding for bonus issue.
- Always check whether because of bonus issue, total share capital exceeds authorised capital. If yes, first increase the authorised capital by passing SR.

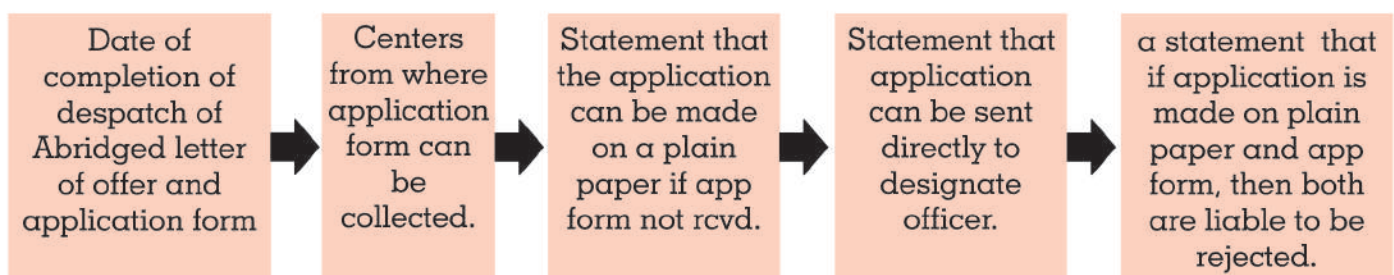


## REGULATION-52

The issuer shall not withdraw rights issue after announcement of the record date. If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for listing of any of its specified securities on any recognised stock exchange for a period of twelve months from the record date.

Pre-Issue Advertisement for rights issue-Regulation 55

**The issuer shall issue an advertisement for rights issue disclosing the following:-**





# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

## Regulation-52

**A listed issuer may make a preferential issue of specified securities, if:**

- (a) a special resolution has been passed by its shareholders;
  - (b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialized form;
  - (c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognized stock exchange where the equity shares of the issuer are listed;
  - (d) the issuer has obtained the Permanent Account Number of the proposed allottees..
- The issuer shall not make preferential issue of specified securities to any person who has sold any equity shares of the issuer during the six months preceding the relevant date.

## Regulation 76-Pricing of Preferential Shares frequently traded

If the equity shares of the issuer have been listed on a recognised stock exchange for a period of twenty six weeks or more as on the relevant date (26 weeks weighted average price method) OR (2 weeks weighted average price method) Whichever is higher.

Note-Weighted average of weekly highest and lowest is to be taken

If the equity shares of the issuer have been listed on a recognised stock exchange for a period of less than twenty six weeks or more as on the relevant date

- ⊙ price at which equity shares were issued by the issuer in its initial public offer or the value per share arrived at in a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, pursuant to which the equity shares of the issuer were listed, as the case may be; or
- ⊙ Weighted average of weekly highest and lowest is to be taken of period for which it is listed or
- ⊙ 2 weeks weighted average price method Whichever is highest

## Pricing for Preferential Issue of Infrequently Traded Shares Regulation 76A

- ⊙ Where shares are not frequently traded , the price determined by issuer shall consider comparable trading Book values and other parameters.
- ⊙ Certificate stating that this rule has been complied shall be obtained from independent merchant banker or practising CA having atleast 10 years experience.

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# SUMMARY NOTES OF ALLIED LAW

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## ● Lock in Period for Preferential Issue

- For promoter and promoter groups – 3 years from date of allotment of securities.
- For others – 1 year from the date of allotment of securities.
- Equity shares issued in pursuant to **corporate debt restructuring scheme** is subject to lock in of 1 year from the date of allotment.
- Locked in securities can be **transferred among the promoters or promoters group.**

Conditions for qualified institutional placement	Conditions for institutional placement program
SR is required	SR is required
Only fully paid up shares to be offered	Only fully paid up shares to be offered
Lock in period- 1 yr. Can be sold on a recognised stock exchange.	Lock in period- 1 yr. Can be sold on a recognized stock exchange.

Additional conditions for QIB - Minimum public shareholding requirement of SCRA to be complied, Issue size = Max 5 times of net worth, eligible securities should be listed on RSE having nation wide trading terminals for a period of 1 year prior to notice of SR, Allotment should be made within 12 months of passing of resolution.

## ● Recent Amendments:

### Wilful defaulters

“wilful defaulter” means an issuer who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes an issuer whose director or promoter is categorized as such.

No issuer shall make

- (a). public issue of equity securities, if the issuer or any of its promoters or directors is a wilful defaulter; or
- (b). a public issue of convertible debt instruments if,

- (I). the issuer or any of its promoters or directors is a wilful defaulter, or
- (ii). it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months.



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## CHAPTER VI-A - CONDITIONS AND MANNER OF PROVIDING EXIT OPPORTUNITY TO DISSENTING SHAREHOLDERS

<p><b>Applicability</b></p>	<p>The provisions of this Chapter shall apply to an exit offer made by the promoters or shareholders in control of an issuer to the dissenting shareholders in terms of section 13(8) and section 27(2) of the Companies Act, 2013, in case of change in objects or variation in the terms of contract referred to in the prospectus.</p>
<p><b>Conditions for exit offer.</b></p>	<ul style="list-style-type: none"> <li>• the public issue has opened after April 1, 2014; and</li> <li>• the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is dissented by at least ten per cent of the shareholders who voted in the general meeting; and</li> <li>• the amount to be utilized for the objects for which the prospectus was issued is less than seventy-five per cent of the amount raised</li> </ul>
<p><b>Exit offer price.</b></p>	<p>The exit price payable shall be highest of the following:</p> <ul style="list-style-type: none"> <li>• volume-weighted average price during the fifty-two weeks immediately preceding the relevant date</li> <li>• highest price during the twenty-six weeks immediately preceding the relevant date</li> <li>• If shares are frequently traded- the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the relevant date as traded on the recognised stock exchange</li> <li>• If shares are not frequently traded-price based on book value and comparable trading multiples.</li> </ul>
<p><b>Manner of providing exit</b></p>	<ul style="list-style-type: none"> <li>• Notice proposing passing of special resolution for changing objects shall contain information about the exit offer to the dissenting shareholders.</li> </ul>

**to dissenting shareholders.**

- After passing of the special resolution, the issuer shall submit the voting results to the recognised stock exchange(s).
- The issuer shall also submit the list of dissenting shareholders to the recognised stock exchange.
- The promoters or shareholders in control, shall appoint a merchant banker registered with the Board and finalize the exit offer price.
- The issuer shall intimate the recognised stock exchange(s) about the exit offer to dissenting shareholders.
- The recognised stock exchange(s) shall immediately on receipt of such intimation disseminate the same to public within one working day.

# END OF CHAPTER-7

## CHAPTER-8

### SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITIES INTEREST ACT, 2002(SARFAESI ACT)

**Borrower**

**Borrower means-**

- **any person** who has been granted financial assistance by any bank or financial institution or
- who has given any guarantee or



	<ul style="list-style-type: none"> <li>• who has created any mortgage or pledge as security for the financial assistance granted by bank or financial institution</li> <li>• <b>and includes</b> a person who becomes borrower of an asset reconstruction company after such reconstruction company acquired the mortgage rights or interest of any Bank or Financial institution in relation to such financial assistance.</li> </ul>
<p><b>Secured creditor</b></p>	<p>secured creditor” means—</p> <ul style="list-style-type: none"> <li>(i) any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (1);</li> <li>(ii) debenture trustee appointed by any bank or financial institution; or</li> <li>(iii) an asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitisation or reconstruction, as the case may be; or</li> <li>(iv) debenture trustee registered with the Board appointed by any company for secured debt securities; or</li> <li>(v) any other trustee holding securities on behalf of a bank or financial institution,</li> </ul> <p>in whose favor security interest is created by any borrower for due repayment of any financial assistance.'</p>
<p><b>Financial Asset</b></p>	<p><b>Financial Asset</b> means debt or receivables and includes –</p> <ul style="list-style-type: none"> <li>• a claim to any debt or receivables or part thereof, whether secured or unsecured or</li> <li>• any debt or receivables secured by, mortgage of, or charge on, immovable property or</li> </ul>

	<ul style="list-style-type: none"> <li>• a mortgage, charge, hypothecation or pledge of movable property or</li> <li>• any right or interest in the security, whether in full or part underlying such debt or receivables or</li> <li>• any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent or</li> <li>• <b>any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or</b></li> <li>• <b>any right, title or interest on any intangible asset or license or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain license of the intangible asset; or</b></li> <li>• any financial assistance.</li> </ul>
<p style="color: red; text-align: center;"><b>Debt</b></p>	<p>"debt" shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and includes—</p> <ul style="list-style-type: none"> <li>(a) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;</li> <li>(b) any right, title or interest on any intangible asset or license or assignment of such intangible asset, which secures the obligation to pay any</li> </ul>



	<p>unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain license of such asset;</p>
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<p><b>Section 3- Registration of Securitisation Co's or Reconstruction Co's</b></p>	<p>Minimum Net owned requirement to register as Asset Reconstruction Company shall be <b>One hundred crore.</b></p> <p>Asset reconstruction company is also required to comply with additional conditions specified by RBI.</p>
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## Section 4-Cancellation of Certificate of Registration by RBI

<p>When ARC ceases to receive or hold any investment from qualified institutional buyer or ceases to carry on asset reconstruction company or</p>	<p>fails to comply with its direction.</p>	<p>Before cancelling registration, RBI shall give an opportunity of being heard.</p>	<p>A asset received aggrieved by the order of rejection or cancellation of certificate of registration may prefer an appeal to CG(Ministry of Finance) within 30 days</p>
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### How disputes are resolved under the SARFAESI Act

- Such dispute may relate to non payment of any amount due or interest of any of the parties, namely, the bank, or financial institution, or securitisation company or reconstruction company or QIB.
- Such dispute shall be settled by **conciliation or arbitration council** as provided in Arbitration and Conciliation Act,1996 if parties have consented in writing.

### Section 9- Measures for asset reconstruction

#### 1. Measures for asset reconstruction









- (a) the proper management of the business of the borrower, by change in, or takeover of, the management of the business of the borrower;
- (b) the sale or lease of a part or whole of the business of the borrower;
- (c) rescheduling of payment of debts payable by the borrower;
- (d) enforcement of security interest in accordance with the provisions of this Act;
- (e) settlement of dues payable by the borrower;
- (f) taking possession of secured assets in accordance with the provisions of this Act;
- (g) **conversion of any portion of debt into shares of a borrower company:**

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.






2. **RBI has the power to determine policy and issue directions for the purpose of asset reconstruction.**
3. **It will be the duty of asset reconstruction companies to comply with the policies and directions laid down by RBI.**



<p><b>Enforcement of Security Interest (Sec 13)</b></p>	<p>Event of being declared NPA</p> <p style="text-align: center;">↓</p> <p>60 days' notice</p> <p style="text-align: center;">↓</p> <p>Representation by borrower-Then Bank to reply in 15 days</p> <p style="text-align: center;">↓</p> <p>Measures to be taken for recovery-Takeover of mgt, assets, appointment of manager to manage the assets</p> <ul style="list-style-type: none"> <li>❶ In case of joint financing under consortium or multiple lending arrangements, if 60% of the secured creditors in value agree to the recovery action, the same is binding on all secured creditors.</li> <li>❶ All cost, expenses and charges incurred by secured creditor against borrower for taking action can be recourse first.</li> <li>❶ In case of company in liquidation, amount realized from sale of secured assets should be distributed as per Section 529A of Companies Act, 1956.</li> </ul> <p>New proviso inserted provides that –The requirement of classification of secured debt as NPA shall not apply to a borrower who has raised funds through issue of debt securities.</p> <p>In case of default in repayment of debt securities , the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favor of the debenture trustee;</p>
<p><b>Benefit of stamp duty</b></p>	<p>Section 5 provides that –Any asset reconstruction company may acquire financial assets of any bank or financial institution by</p> <p>(a) by issuing debentures for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or</p>

	<p>(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.</p> <p>Exemption from payment of stamp duty  Any document executed by any bank or financial institution under sub-section (1) in favor of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty if the acquisition of financial asset is for the purpose of asset reconstruction.</p>
<p><b>Section 15- Manner and effect of takeover of Management</b></p>	<ul style="list-style-type: none"> <li> Newspaper advertisement-English language and Vernacular language</li> <li> Old directors will vacate the office.</li> <li> New directors will be appointed by secured creditors who will exercise superintendence and control.</li> <li> it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;</li> <li> no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;</li> <li> no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.</li> <li> Earlier Law- Sub-section (4) to section 15 states that where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.</li> <li> However, the new law creates an exception in this regard. If any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower.</li> </ul>



<p><b>Section 16. No compensation to directors for loss of office</b></p>	<p> No managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act of any contract of management entered into by him with the borrower.</p> <p> Moneys recoverable otherwise than by way of such compensation can be recovered.</p>
<p><b>Section 17. Application against measures to recover secured debts</b></p>	<p> Any person aggrieved by the measures taken by secured creditor under Section 13 may make an application to Debt Recovery Tribunal within 45 days from the date of such measure.</p> <p> Any person aggrieved by an order of Debt Recovery Tribunal may appeal to Appellate Tribunal within 30 days from date of receipt of order of DRT. (A borrower residing in J &amp; K may file an appeal to High Court against order of district court)</p> <p> However before filing the appeal 75% of dues are to be deposited. (It can be reduced by Tribunal to amount not less than 25%.</p>
<p><b>Non-Applicability of the Act</b></p>	<p>Lien of goods given, pledge of movables, creation of security in aircraft, creation of security interest in a vessel, security interest not exceeding Rs 100000, security interest created in agricultural land, amount due is less than twenty percent of the principal amount and interest thereon.</p>
<p><b>Applicability of the Act to NBFC's</b></p>	<p>Asset base <math>\geq</math> 500 crore, Amount of default should exceed 1 crore, only applicable to secured loans, security can be enforced only when security interest is registered with central registry.</p>

# END OF CHAPTER-8

# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

## CHAPTER-9

As per Section 5(c) of the Banking Regulation Act, 1949 a "**Banking Company**" means any company which transacts the business of banking in India.

Explanation: Any company which is engaged in the manufacture of goods or carries on any trade and which accepts the deposits of money from public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause.

General functions	Utility functions
<ul style="list-style-type: none"><li>❶ Issuing Letter of Credit/Guarantee.</li><li>❶ Facility of remittance of funds.</li><li>❶ Portfolio Management or Merchant Banking.</li><li>❶ Money Exchange Business as Authorised Dealer.</li><li>❶ Other Services</li></ul>	<ul style="list-style-type: none"><li>❶ Providing safe custody to its customers for keeping their valuables.</li><li>❶ Locker facilities.</li><li>❶ General utility services like Tele banking, phone banking, online banking, ATM services, Credit Card Services etc.</li><li>❶ Payment of pension.</li><li>❶ Payment of salaries of employees of schools.</li><li>❶ Payment of salaries.</li><li>❶ Many others.</li></ul>

<b>Section 7</b>	<p>Only a Banking company can use the words " bank, "banking" or "banking company" after its name.</p> <p>No other firm, individual, group of individual, company can use as a part of its name of the word's "bank", "banking" or banking co.</p>
<b>Section 9</b>	<p>Immovable property of 3<sup>rd</sup> party held by bank should be disposed of within max 7 yrs. Extension by RBI is possible for max 5 years. Exception- Property held for own use.</p>



**Section 17**

**Reserve Fund**

Every banking company incorporated in India shall create a reserve fund and shall, out of the balance of profit of each year, as disclosed in the profit and loss account prepared under section 29 and before any dividend is declared, transfer to the reserve fund a sum equivalent to not less than twenty per cent of such profit.(Minimum 20 %)

**Exceptions:**


the Central Government may, on the recommendation of the Reserve Bank after considering the following may exempt:


- i) Paid up capital + Reserves should be adequate in relation to deposit liabilities
- ii) Reserve fund + Share premium\_ > Paid up capital

**Appropriation from reserve fund or share premium account-Intimate to RBI reasons within 21 days. (Delay can be condoned.)**


**Section 21**


**Power of Reserve Bank to control advances by banking companies**


 Where the Reserve Bank is satisfied that it is necessary or expedient **in the public interest or in the interests of depositors or banking policy** it may determine the policy in relation to advances which shall be binding on banking co's.


 **RBI may give directions regarding- Purpose of advance, terms and conditions, rate of interest, margin to be maintained in respect of secured advances and the maximum amount advances given or guarantee that may be given by a banking co. on behalf of any person. Company, Aop or individual.**


**Section 35- Inspection**


 RBI can conduct inspection of any bank and give them directions as it deems fit.











 All banks are bound to comply with such direction.

 Every director or other officer of the Bank shall produce all such books, documents as required by the inspector.

 The inspector may **examine on oath** any directors or other officers.

 RBI shall supply the bank **copy of such inspection.**




 RBI **submit reports** to Central Government about inspection if inspection done on direction of CG.

<p><b>Section 35A- Power of RBI to give directions</b></p>	<p> RBI can issue direction to banking company if it is satisfied that is:</p> <ul style="list-style-type: none"> <li> in the <b>public interest</b> ,or</li> <li> in the interest of <b>banking policy</b>,or</li> <li> to prevent the affairs of any bank conducted in a manner <b>detrimental to the interest of depositors</b> or in a manner prejudicial to the interest of the bank, or</li> <li> necessary to secure the <b>proper management</b>.</li> </ul> <p> RBI may, <b>on representation</b> made to it or <b>on its own motion</b>, modify or cancel any of the direction issued.</p>
<p><b>Section 35B</b></p>	<p>Any amendment of provision regarding appointment/re-appointment/termination of chairman/MD/Manager/CEO by whatever name called by way of any resolution or provision in MOA or AOA will require the approval of RBI.</p>
<p><b>Section 36AA</b></p>	<p><b>Powers of RBI to Remove Managerial and Other Persons from office</b></p> <p> Where the Reserve Bank is satisfied that in the public interest or for preventing the affairs of a banking company being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of any banking company it is necessary so to do, the Reserve Bank may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any Chairman, Director], Chief Executive Officer (by whatever name called) or other officer or employee of the banking company.</p> <p> Before removal opportunity of being heard must be given.</p> <p> Such terminated officials can make appeal to CG <b>within 30 days</b>.</p> <p> The decision of CG cannot be called into question</p>
<p><b>Section 36AB</b></p>	<p><b>Power of RBI to appoint Additional Director</b></p> <p>If the Reserve Bank is of opinion that <b>in the interest of banking policy</b> or in the <b>public interest</b> or in the <b>interests of the banking company or its depositors</b> it is necessary to do so, it may</p>









appoint additional director who shall hold office for not more than 3 years.

### Section 29. Accounts and balance-sheet

-  Balance-sheet and profit and loss account shall be prepared as on the last working day of the Accounting Year, in the Forms set out in the Third Schedule.
-  The balance-sheet and profit and loss account shall be signed
  - a) in the case of a banking company incorporated in India- by the manager or the principal officer of the company and where there are more than three Directors of the company, by at least three of those Directors, or where there are not more than three Directors, by all the Directors, and
  - b) in the case of a banking company incorporated outside India- by the Manager or Agent of the principal office of the company in India.
-  The requirement of Schedule VI/III of Companies Act, 2013 shall, in so far as they are not inconsistent with this Act, apply to the B/S and P&L A/C of a Banking Company.

### Section 30. Audit



-  The balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited by a Chartered Accountant.
-  Every banking company shall, before appointing, re-appointing or removing any Auditor or Auditors, obtain the previous approval of the Reserve Bank.
-  Where the Reserve Bank is of opinion that it is necessary in the public interest or in the interests of the banking company or its depositors so to do, it may at any time by order direct that the special audit of the banking company's accounts by the Auditor of Banking Company or a person duly qualified under any law . the Auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the company.
-  The expenses of, or incidental to, the special audit specified in the order made by the Reserve Bank shall be borne by the banking company.
-  Powers and duties same as Section 143.
- 

### Section 31-32

-  3 Copies of Balance sheet and Auditor's Report shall be filed to ROC and RBI within 3 months in the prescribed manner.

<b>Powers of Central Government</b>	
<b>Section 36 AE-Acquiring undertaking of Banking Co's</b>	<b>Section 36AG-Compensation to Shareholders of Acquired Bank</b>
<p>CG can acquire in consultation with RBI</p> <ul style="list-style-type: none"> <li>❶ if directions of RBI not complied by banking company more than once or</li> <li>❶ is being managed in a manner detrimental to the interests of its depositors,</li> <li>❶ If it is in interest of depositors of banking co/banking policy /to provide better provisions of credit to a particular section of community.</li> </ul>	<ul style="list-style-type: none"> <li>❶ Compensation shall be given in accordance with the principles contained in Fifth Schedule.</li> <li>❶ Compensation is payable to the <b>Shareholders of Acquired Bank.</b></li> <li>❶ Shareholders aggrieved with the matter of compensation may request the CG to refer the matter to <b>Tribunal.</b></li> <li>❶ If 1/4th of Number of Shareholders holding atleast 1/4th of paid up share capital request to CG, CG shall refer matter to tribunal and compensation determined by Tribunal shall be final and binding.</li> </ul>

## RTP-May 2018

<b>Section 35 AA</b>	<p>Power of Central Government to authorize Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process.</p> <p>The Central Government may, by order, authorize the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.</p>
<b>Section 35 AB</b>	<p>Power of Reserve Bank to issue directions in respect of stressed assets</p> <ul style="list-style-type: none"> <li> Without prejudice to the provisions of section 35 A, the Reserve Bank may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets.</li> <li> The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets.</li> </ul>



# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

## CHAPTER-10

### Foreign Exchange Management Act, 1999

#### Important definitions:

<p><b>Person</b> <b>[Section 2(u)]</b></p>	<p>"person" includes-</p> <ul style="list-style-type: none"><li>(i) an individual,</li><li>(ii) a Hindu undivided family,</li><li>(iii) a company,</li><li>(iv) a firm,</li><li>(v) an association of persons or a body of individuals, whether incorporated or not,</li><li>(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and</li><li>(vii) any agency, office or branch owned or controlled by such person;</li></ul>
<p><b>Person Resident in India</b> <b>[Section 2(v)]</b></p>	<p>"person resident in India" means-</p> <ul style="list-style-type: none"><li>(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-<ul style="list-style-type: none"><li>(A) <b>a person who has gone out of India or who stays outside India, in either case-</b><ul style="list-style-type: none"><li>(a) for or on taking up employment outside India, or</li><li>(b) for carrying on outside India a business or vocation outside India, or</li><li>(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;</li></ul></li><li>(B) <b>a person who has come to or stays in India, in either case, otherwise than-</b><ul style="list-style-type: none"><li>(a) for or on taking up employment in India, or</li><li>(b) for carrying on in India a business or vocation in India, or</li><li>(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;</li></ul></li></ul></li></ul>

	(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;
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**PTR:**

The Reserve Bank notifies debit cards, ATM cards or any other instrument by whatever name called that can be used to create a financial liability, as 'currency'-

Current Account Transactions-Sec 5		
Schedule 1-Rule 3	Schedule 2-Rule 4	Schedule 3-Rule 5
Prohibited Cuat's	CG approval needed	RBI approval needed
<ul style="list-style-type: none"> <li>✚ Transaction specified in Sch 1 or Travel to Nepal /Bhutan or transaction with person resident in Nepal/Bhutan.</li> <li>✚ Remittance of <ul style="list-style-type: none"> <li>a) income from racing /riding</li> <li>b) <b>purchase of lottery tickets,banned /prescribed magazines, football pools, sweepstakes etc.</b></li> <li>c) <b>interest income on funds held in Non-Resident</b></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>✚ Remittance of <ul style="list-style-type: none"> <li>a) freight of vessel chartered by a PSU</li> <li>b) Multi-modal transport operators to their agents abroad</li> <li>c) hiring charges of transponders by TV channels/Internet Service Providers.</li> <li>d) container detention charges exceeding the rate prescribed by Director General of Shipping</li> <li>e) prize money/sponsorship of sports activity</li> </ul> </li> </ul>	<ol style="list-style-type: none"> <li>1. Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limits for the following purposes shall require prior approval of RBI. <ul style="list-style-type: none"> <li>✚ . Private visits to any country (except Nepal and Bhutan).</li> <li>✚ Gift or Donation.</li> <li>✚ Going abroad for employment</li> <li>✚ Emigration</li> <li>✚ Maintenance of close relatives abroad,</li> <li>✚ Business travel, or attending a conference or specialized training or for maintenance expenses of a patient going abroad for</li> </ul> </li> </ol>



<p><b>Special Rupee (Account) Scheme.</b></p> <p>d) Dividend by a company to which requirement of dividend balancing is applicable.</p> <p>+ <b>Payment of</b></p> <p>a) Commission on exports-towards equity investment in J.V./WOS abroad in Indian Co's</p> <p>b) Commission on exports under Rupee State Credit Route except commission up to 10% of invoice value of tea and tobacco.</p> <p>c) Call back services of Telephone</p>	<p>abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds USD 100,000.</p> <p>f) Remittance for membership of P&amp;I Club</p> <p>+ Cultural Tours</p> <p>+ Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings</p> <p>+ Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e. other than f.o.b. and f.a.s. basis</p>	<p>medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.</p> <p>+ Meeting expenses for medical treatment abroad</p> <p>+ Studies abroad</p> <p>+ Any other current account transaction</p> <p><b>Exceptions:</b></p> <p>a) higher exchange facility can availed under Liberalized Remittance Scheme for emigration/ medical treatment / education if so required by a country of emigration, medical institute offering treatment or the university, respectively</p> <p>b) a person who is a resident but not permanently resident in India and is a citizen of foreign state (other than Pak) or Indian citizen on deputation of such foreign country may make remittance up to his net salary.</p>
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**2. Facilities for persons other than individual-**

The following remittances by persons other than individuals shall require prior approval of RBI.

- ❶ Donations exceeding one per cent of their foreign exchange earnings during the previous three financial years or US\$ 5,000,000, whichever is less, for:-

(a) creation of Chairs in reputed educational institutes,

and (b) to funds (not being an investment fund) promoted by educational institutes;

(c) to a technical institution or body or association in the field of activity of the donor Company.

- ❶ Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more.
- ❷ Remittances exceeding five per cent of investment brought into India or US\$ 1,00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

- ❸ Remittances exceeding US\$ 10,00,000 per project for any consultancy services in respect of infrastructure projects and US\$ 1,00,000 per project, for other consultancy services procured from outside india.

***Infrastructure project' is those related to –Power, Telecommunication, Railways, Roads including bridges, Sea port and airport, Industrial parks, and Urban Infrastructure (water supply, sanitation and sewerage)***

No person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank;

Provided that Schedule II and III Rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.

### **CAPITAL ACCOUNT TRANSACTIONS:**

#### Section 2(e)-Definition

"capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub -section (3) of section 6 i.e. transfer of share, deposits between PRI and PROI, transfer of immovable property export, import or holding of currency or currency notes; borrowing; lending .

**Any PROI cannot establish a place of business of India without the prior approval of RBI. For such approval, application shall be made in Form No. FNC 1.**

**The following are the objects for which RBI permits companies engaged in manufacturing and trading activities abroad to set up a Branch Office in India.**



1. Consultancy.

2. Import/Export Trading activities.

3. Software Development.

4. Sales & After Sales Service/Technical support to products supplied by partners/group activities.

5. Promote technical collaborations between Indian Companies and Overseas Companies.

6. R&D in areas where parent company is engaged.

## Schedule II

### [See Regulation 3 (1) (B)]

#### Classes of capital account transactions of persons resident outside India

- |   |
|---|
| <b>a)</b> Investment in India by a person resident outside India, that is to say,                                 |
| i) issue of security by a body corporate or an entity in India and investment therein                             |
| by a person resident outside India; and   |
| ii) investment by way of contribution by a person resident outside India to the capital                           |
| of a firm or a proprietorship concern or an association of persons in India.                                      |
| <b>b)</b> Acquisition and transfer of immovable property in India by a person resident outside India.             |
| <b>c)</b> Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India. |
| <b>d)</b> Import and export of currency/currency notes into/from India by a person resident outside India.        |
| <b>e)</b> Deposits between a person resident in India and a person resident outside India.                        |
| <b>f)</b> Foreign currency accounts in India of a person resident outside India.                                  |
| <b>g)</b> Remittance outside India of capital assets in India of a person resident outside India.                 |

## Transactions with no restrictions

- Amortization of loan and
- Depreciation of direct investments in ordinary course of business.
- When drawl is of the purpose of repayment of loan instalments

## Prohibited Capital Account Transactions

No person resident outside India shall make investment in India , in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage –

- a) in the business of chit fund, or
- b) as Nidhi Company, or
- c) in agricultural or plantation activities or
- d) in real estate business, or construction of farm houses or
- e) in trading in Transferable Development Rights (TDRs).



**Note-** Registrar of Chits or an officer authorized by SG in this behalf, may in consultation with SG, permit any chit fund to accept subscriptions from NRI's. NRI's shall be eligible to subscribe, through banking channel and on non-repatriation basis to such chit funds, without limits subject to conditions stipulated by RBI from time to time.

For the purpose of this regulation, 'real estate business' shall not include development of townships, construction of residential/commercial premises, roads or bridges **and** bridges **and** Real Estate Investment Trusts (REITs) Regulations 2014".

## Section 7-Export of Goods and Services

1. Every exporter of goods shall furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value

OR

If the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India.

Note-Such declaration should contain true and correct material particulars.

2. Export declaration should be submitted in the following forms;

Form	When it is applicable
Form GR	Export is made otherwise than by post. It includes export of software in physical form
Form SDF	Export is made by Electronic Data Interchange (EDI) system for processing.
Form PP	Export is made by post.
Form Softex	Export of software is made otherwise than in physical form.

### 3. Export without furnishing declaration

a)	trade samples of goods and publicity material supplied free of payment;
b)	personal effects of travelers, whether accompanied or unaccompanied;
c)	ship's stores, trans-shipment cargo and goods supplied under the orders of Central Government or of such officers as may be appointed by the Central Government in this behalf or of the military, naval or air force authorities in India for military, naval or air force requirements;
d)	goods or software accompanied by a declaration by the exporter that they are not more than <b>five lakhs</b> rupees in value;
e)	by way of gift of goods accompanied by a declaration by the exporter that they are not more than <b>five lakh</b> rupees in value;
f)	aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export;
g)	goods imported free of cost on re-export basis;
h)	Goods send outside India for testing subject to re-import into India;
i)	Replaced goods exported free of charge in accordance with provisions of Exim.
j)	defective goods sent outside India for repair and re-import provided the goods are accompanied by a certificate from an authorized dealer in India that the export is for repair and re-import and that the export does not involve any transaction in foreign exchange.



<b>Period within which export value of goods/software to be realized: -</b>	
	The amount representing the full export value of goods or software exported shall be realized and repatriated to India within <b>nine</b> months from the date of export.
	Provided that where the goods are exported to a warehouse realization period is 15 months.
	Provided further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorized dealer may, for a sufficient and reasonable cause shown, extend the said period of six months or fifteen months, as the case may be.

**Section 9-Exemption from realization and repatriation in certain cases.- The provisions of sections 4 and 8 shall not apply to the following, namely:-**

(a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve

Bank may specify; **(Every resident can hold foreign currency upto 2000 US \$ and foreign coins without limit)**

(b) foreign currency account held or operated by such person or class of persons and the limit up

to which the Reserve Bank may specify;

(c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or

accruing thereon 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, services, 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.

### Contraventions and Penalties in Brief

Section No.	Contravention	Quantum of Penalty
Section 11	Authorized person contravenes any direction by RBI or failure to file any return as directed by RBI	<ul style="list-style-type: none"> <li>❶ Up to ` 10,000.</li> <li>❷ If continuing offence additional penalty up to ` 2,000 per day.</li> </ul>
Section 13	Of any provision of the Act, or any rule, regulation, notification, direction or order or of any condition subject to which an authorization issued	<ul style="list-style-type: none"> <li>❶ Up to three times, the sum involved, if it is quantifiable.</li> <li>❷ If not quantifiable up to ` 2 lacs.</li> <li>❸ If continuing, further penalty upto ` 5,000 per day after first day.</li> </ul>
Section 14	Failure to pay penalty as above <ul style="list-style-type: none"> <li>- where demand is of an amount exceeding ` 1 crore.</li> <li>- in any other case</li> </ul>	Civil imprisonment. <ul style="list-style-type: none"> <li>❶ Upto 3 years</li> <li>❷ Upto 6 months.</li> </ul>

Section No.	Obligation	Time Limit
Section 14	<b>Full</b> penalty to be paid	Within 90 days from the date on which notice for payment of penalty is served.
Section 15	Compounding of Contravention under section 13	Within 180 days of receipt of application by Directorate of
Section 16	Complaint under section 16(1) to be dealt by Adjudicated	Within 1 year of receipt of complaint.

<b>Section 17</b>	Appeal to Special Director (Appeals)	Within 45 days from receipt of order.
<b>Section 19</b>	Appeal to Appellate Tribunal	Within 45 days from receipt of order.
<b>Section 19(5)</b>	Appeal to be dealt with by Appellate Tribunal	Will try to dispose of the appeal within 180 days from receipt of appeal.
<b>Section 35</b>	Appeal to High Court	Within 60 days of communication of order or decision.

<b>Compounding of Offences(Section 15)</b>	
<b>Contraventions that can be compounded</b>	Contravention punishable u/s 13 can be compounded.
<b>Time limit for compounding</b>	The Compounding Authority shall compound the offence within 180 days from the date of application.
<b>Authorities appointed for compounding</b>	RBI if contravention is related to foreign exchange or foreign security and Directorate of Enforcement if related to any other contravention.
<b>Amount must be quantifiable</b>	No contravention shall be compounded unless amount involved in such contravention is quantifiable.
<b>Similar offences</b>	Similar offences cannot be compounded within 3 years.

### Some important regulations

1. Issue of equity shares to PROI is a permissible CAT. NRI may purchase shares of an Indian Company which is not engaged in Print Media Sector on non-repatriation basis without any limit.
2. NRI may transfer shares of Indian Companies to another NRI by way of sale. (Not gift)
3. NRI may transfer shares of Indian Companies to PRI by way of gift.



# SUMMARY NOTES OF ALLIED LAW

By CA Sanidhya Saraf

## Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015 w.e.f. 21.01.2016

Acquisition and Transfer of Immovable Property outside India:-

1. A person resident in India may acquire immovable property outside India, -
  - (a). by way of gift or inheritance from a person on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.
  - (b). by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015;
    - ©. jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;
2. A person resident in India may acquire immovable property outside India, by way of inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.
3. A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

### Explanation:

For the purposes of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

## Foreign Exchange Management (Acquisition of Transfer of Immovable Property) Regulations, 2018

1

A PROI who has established any branch /agency/office/place of business in India may acquire any immovable property in India which is necessary /incidental to carrying on such activity. However, all the rules and regulations of RBI must be complied and declaration in prescribed form must be filed to RBI within 90 days of acquisition.

He may further mortgage such property to an authorised dealer as a security for any borrowings needed to carry out such business in India.

2

No person of Pakistan/Bangladesh/Srilanka/Afghanistan/China/IRAQ/Hongkong/Macau/Nepal/Bhutan/Korea shall acquire/sell any immovable property other than lease not exceeding 5 years without prior approval of RBI.

3

Foreign Embassies/Diplomats/Consulate can purchase /sell immovable property in India other than Agriculture Land/Farmhouse/Plantations.

However, they have to obtain clearance from the Government of India {Ministry of External Affairs} and consideration must be paid out of funds remitted from abroad through banking channels

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# SUMMARY NOTES OF ALLIED LAW

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4

A person resident outside India not being NRI/OCI who is spouse of NRI/OCI may acquire immovable property in India (other than Agriculture Land/Farmhouse/Plantations) jointly with spouse.

However, the following conditions may be satisfied:

- (a). consideration must be paid out of funds remitted from abroad through banking channels.
- (b). Marriage should be registered and subsisted for 2 continuous period of minimum 2 years immediately preceding acquisition of such property.

5

A person being citizen of Afghanistan/Bangladesh/Pakistan belonging to minority communities namely Hindus, Sikhs, Buddhists, Jain, Parsis and Christians residing in India & granted Long Term Visa by CG may purchase only 1 residential property for residential purpose and 1 immovable property for carrying self employment.

However, the following conditions may be satisfied:

- ⊙ property should not be located in protected/cantonment areas
- ⊙ persons should give a declaration of the Revenue Authority of district where property is located, source of funds and that he is residing on Long Term Visa.
- ⊙ Registration documents of property should clearly mention the nationality of Long Term Visa Holder.
- ⊙ Property shall be confiscated/attached if found involved in anti India activities.
- ⊙ The property can be sold only after acquiring Indian Citizenship. Prior approval of Deputy Commissioner of Police and Foreign Registration Office

6

Repatriation outside India By PROI-RBI approval is needed.

7

As a general rule, PROI cannot transfer any immovable property in India.

However, the transfer can be done after fulfilling the following conditions:

- (a). Approval of RBI must be obtained.
- (b). Transfer of amount must be through Banking Channel.

8

Acquisition of Property in India by NRI/OCI

- (a). An NRI/OCI can acquire immovable property in India other than agricultural land/farm house/plantation. However, consideration shall be by way of funds received in India by way of inward remittance or funds held in Non Resident Account.
- (b). Acquisition cannot be done by way of Traveller's cheque or foreign currency notes.
- (c). NRI/OCI can acquire from PRI/NRI/OCI by way of gift from a relative as defined u/s 2(77) of the Companies Act, 2013.
- (d). NRI/OCI can acquire by way of inheritance from PROI who acquired property as per Foreign Exchange Management Rules at that time or from PRI.
- (e). NRI/OCI can transfer any immovable property in India to PRI.
- (f). NRI/OCI can transfer any immovable property other than Agriculture/ Farm house/ Plantation in India to an NRI/OCI.

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