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SUMMARY OF IMPORTANT PENALTIES:

Section No.	Punishment	Amount
4	Any person who commits the offence of ML shall be punishable with:	Imprisonment for a term not less than 3 years, but may extend upto 7 years AND Fine of any amount (without any limit)
4	Any person who commits the offence of ML under Paragraph 2 of Part A of Schedule i.e. under Narcotic Drugs and Psychotropic Substances Act, 1985, then he shall be punishable with:	Imprisonment for a term not less than 3 years, but may extend upto 10 years AND Fine of any amount (without any limit)
13	If Reporting entity / director / employees failed to comply with obligations, then Director may Impose Penalty	Rs. 10000 – Rs. 100000 (for each Failure)
62	Punishment for Vexatious Search	Imprisonment for a term upto 2 years or fine upto Rs.50,000 or Both.
63	Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made	Imprisonment for a term upto 2 years or fine upto Rs.50,000 or Both.
63	If any person: - being legally bound to state the truth, refuses to answer any question or - refuses to sign any document / statement or - to whom a summon is issued, omits to attend / - produce books of accounts / documents	Rs. 500 – Rs. 10000 (for each Failure)

ML Stages:

Placement
Integration

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Super - Quick Revision of IMP Provisions of PMLA:

<p>ML Stages: Placement, Layering & Integration</p>	<p>Powers of Director:</p> <ul style="list-style-type: none"> - Conduct Inquiry, - To get Audit done, - Issue warning - Direct them to comply - Periodic Reporting - Impose Penalty 	<p>Adjudication (Section 8):</p>
<p>Def. of Offence of ML:</p> <ul style="list-style-type: none"> - whosoever directly / indirectly attempts to indulge, - or knowingly assists or - knowingly is a party or - is actually involved, in any process or activity connected with proceeds of crime, including its concealment, Possession, Acquisition or Use & Projecting as Untainted Property shall be guilty of offence of ML 	<p>Attachment of Property in ML:</p> <ul style="list-style-type: none"> - Where director or officer, not below the rank of Deputy Director, authorised by Director, has reason to believe (in writing) on the basis of material in possession, that any person is in possession of proceeds of crime & are likely to be concealed, transferred which may result in frustrating any proceeding relating to confiscation of such proceeds, then such property may be provisionally attached. 	<ul style="list-style-type: none"> - On receipt of complaint from Director, if AA has reasons that person has committed offence or is in possession of proceeds of crime, AA shall serve SCN of 30 days. - If the property is held by some other person, then notice must be served on such other person also & If the property is jointly held, then to all co-owners.
<p>Def. of Scheduled Offence:</p> <p>Offence under Part A of Schedule, or Offences under Part B of Schedule, if total value involved in such offence is > Rs 1 crore or Offences specified under Part C of Schedule</p>	<ul style="list-style-type: none"> - Report must be forwarded to Magistrate. In emergency case, forwarding the report to Magistrate / court etc is not a pre-requisite requirement. 	<ul style="list-style-type: none"> - AA shall after Considering the reply & Hearing the aggrieved person and director and Considering all the relevant materials placed before him, record a finding if the properties are involved in ML
<p>Modes of Verification u/s 11A:</p> <ul style="list-style-type: none"> - Authentication under Aadhaar; - Offline verification under Aadhaar; - Use of Passport - Other Officially Valid Document 	<ul style="list-style-type: none"> - Provisional Attachment shall be for a max period 180 days from the date of order. Extra period allowed in case of Stay = Period of stay by High Court (+) Maximum 30 days. 	<ul style="list-style-type: none"> - If AA decides that property is involved in ML, then AA shall by an order, confirm the provisional attachment or if no property was provisionally attached, then AA shall confirm by an order - the retention of property.
<p>Obligations of Reporting Entity:</p> <ul style="list-style-type: none"> - Maintain a record of all transactions for 5 years from the date of transaction between client & reporting entity. - Furnish info to the Director - Maintain records of documents for 5 years after the business relationship between client and reporting entity has ended or A/c has been closed, whichever is LATER 	<ul style="list-style-type: none"> - Director shall within 30 days of provisional attachment, file a complaint stating facts of such attachment before the AA - Provisional attachment shall cease to have effect - After 180 days from date of order or Date of an order made u/s 8 (Whichever is earlier) 	<ul style="list-style-type: none"> - If the above order is made by AA, then attachment shall continue during investigation for max 365 days (stay period excluded) & shall become final only when the ORDER OF CONFISCATION is passed by Special Court. - If Offence is committed, then confiscate & if not committed, then release.

<p><u>Vesting of Property (Sec 9):</u> Property shall vest in CG, free from all encumbrances.</p>	<p><u>Contracting State (Sec. 55):</u> It means a country outside India in respect of which arrangements have been made by CG with Govt of such country by a TREATY.</p>	<p><u>Recovery Of Fine Or Penalty (Sec 69)</u> If not paid within 6 months from date of imposition, then may be recovered as per IT Provisions.</p>
<p><u>Power to Arrest (Sec.19):</u> If authorised person has reason to believe that offence has been committed, then Arrest can happen. Such arrested person, shall be taken to SPECIAL COURT /JM/MM, within 24 hours of his Arrest. (Excluding travel time)</p>	<p><u>Offences of Cross Border Implications:</u> - Conduct of an offence by a person OUTSIDE INDIA & if such person transfers Proceeds of SUCH CONDUCT TO INDIA; OR - Offence committed in India & the proceeds of crime has been trfd to a place outside India.</p>	<p><u>Offences by Companies (Sec 70):</u> If person committing an offence → is a Company, then Person - in - Charge = Guilty Exception: done without his knowledge or If exercised due diligence to prevent offence.</p>
<p><u>Section 38:</u> In case of AT, decision to be taken by majority & in case of equal majority, involve 1 new member or chairperson & take revised majority.</p>	<p><u>Agreement with Foreign Countries (Sec 56):</u> CG may enter into an agreement with foreign countries: - To enforce the provisions of Act; - Exchange of information for: Prevention of such offence or Investigation of cases or Prevention of offence under corresponding law in force in that country.</p>	<p><u>Section 72:</u> Proceedings can continue in case of Death or Insolvency.</p>
<p><u>Section 39:</u> Person who has filed an appeal may in person / through authorised rep, appear before AT.</p>	<p><u>Letter Of Request to a Contracting State:</u> Investigation officers → Special Court → that any evidence is required and → is of the opinion that such evidence is available in Contracting State → then Special Court may, on satisfaction, issue a letter of Request to a Court / Authority in Contracting State.</p>	<p><u>Please Refer:</u> Penalties & Appeal Provisions from the Summary given</p>
<p><u>Section 41:</u> Civil Court Not To Have Jurisdiction</p>	<p><u>Assistance to a Contracting State:</u> Received by CG from Contracting State, requesting for, investigation into an offence, CG may forward it to Special Court.</p>	
<p><u>Offences To Be Cognizable And Non-Bailable (Sec.45):</u> Person Accused of an offence under this Act, shall not be released on Bail / Bond, unless: Public Prosecutor has been given an opportunity to oppose the release & where he opposes the application, Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence & that he is not likely to commit any offence while on bail. If the person is under the age of 16 years/ is a woman /is sick / infirm / is accused of ML for a sum less than Rs. 1 crore, he may be released on bail, if special court so directs.</p>		

SUMMARY OF IMPORTANT - APPEAL - TIME PERIODS:

Section Ref	Circumstance	Appeal to	Appeal Within	Disposal Within	Extension for Disposal
4	ARC aggrieved by RBI's certificate cancellation order	CG (Secretary of MOF)	30 days	--	--
17	Person aggrieved by measures taken u/s 13	DRT	45 days	60 days	Total period shall be ≤ 4 months
17A	Person aggrieved by measures taken u/s 13 & borrower resides in Jammu & Kashmir	Court of District Judge	--	--	--
18	Person aggrieved by order of DRT	AT	30 days	--	--
18B	Person aggrieved by order of Court of District judge	HC	30 days	--	--

Super - Quick Revision of IMP Provisions of SARFAESI:

<p>Concept Of Securitisation: Securitisation is a method adopted by BFI for raising funds by way of selling receivables for money. However these receivable are illiquid because these are non - performing assets.</p>	<p>Registration Cancellation: -Reasons: Cease to carry on this business; Cease to hold investments from QIB; Failed to comply with RBI's directions; Failed to comply with any conditions; Failed to maintain proper accounts as per law; Failed to submit its BOA for inspection; Failed to obtain approval of RBI, whenever required. -ROBH before cancellation -If aggrieved then appeal to CG -Will be treated as ARC till repayment to QIB.</p>	<p>Enforcement Of Security Interest: -Security Interest created in favour of secured creditor may be enforced without Court's intervention. -If default has occurred → A/c has been classified as NPA → then the secured creditor may give borrower last notice to discharge his liab within 60 days. If not done, then secured creditor shall be eligible to exercise his rights v/s 13. -If borrower fails to discharge his liability in full, then take measures - PMNM.</p>
<p>Registration Of ARC's: -Mandatory requirement: CERTIFICATE OF REGISTRATION and have NET OWNED FUNDS of ≥ Rs. 100 crores. -Following conditions are to be fulfilled: (a) that ARC has not incurred losses in any of the 3 preceding FY's ; (b) that ARC has made adequate arrangements for: Realisation of FA acquired, Shall be able to pay periodical returns, Redeem on respective due dates the investment made in the company; (c) Directors of ARC have adequate professional experience; (d) None of the directors are convicted of any offence involving moral turpitude; (e) Sponsor is a fit & proper person (f) ARC has complied with prudential norms specified by RBI; (g) that ARC has complied with 1 or more conditions specified by RBI -If not satisfied, then reject after ROBH & -Decision of RBI =final & binding. -Once registered, prior approval of RBI for: Change in Mgmt, RO & Name.</p>	<p>Acquisition Of Rights Or Interest In FA: All rights/title/interest shall vest in ARC</p>	<p>CMM/DM To Assist: In taking possession of assets/document within 30days (max. 60days)</p>
	<p>Notice To Obligor: Any future payments must be made to ARC & not BFI.</p>	<p>Manner & Effect Of Takeover Of Mgmt: -After takeover, publish notice in 2 newspapers & appoint administrators for borrower's business → then all existing office bearers shall vacate. - Effects: Not be lawful for SHS to appoint directors; No resolution without approval of secured creditors; No proceeding for winding up shall lie with court, except with consent of secured creditor. -No compensation for loss of office for persons vacated the office.</p>
	<p>Issue Of Security: By ARC to QIB</p>	<p>Appeals: Refer Summary table for appeal</p>
	<p>Exemption From Registration: Reg under Registration Act, 1908 not reqd.</p>	
	<p>Measures For Asset Reconstruction: Mgmt Sale Reschedules the SPECS.</p>	
	<p>Resolution Of Disputes: Between BFI, ARC, QIB -- by Arbitration / Conciliation.</p>	

Super - Quick Revision of IMP Provisions of ACA:

<p>Arbitration: It is a method of Adjudication of disputes; By a neutral 3rd party or parties, selected by party; Who renders a final and binding decision.</p>	<p>Types of AA: a) Arbitration Clause: i.e. a clause is contained in a principal contract. (b) Submission Agreement: It is a separate agreement for arbitration (usually after dispute)</p>	<p>Arbitration Agreement Through Reference: Parties to an agreement could agree to arbitrate by referring to another contract containing an Arbitration Agreement.</p>
<p>Basic Features of Arbitration: (a) Arbitration Agreement (b) Arbitrator (c) Seat of Arbitration (means the legal system which would supervise the arbitration) (d) Party Autonomy & Procedure: (Freedom to choose) (e) Finality of Outcome (generally decision is not appealable). Few grounds on which it can be done: - Invalid Arbitration Agreement; Independence & impartiality of Arbitrator; Unfair procedure.. (f) Confidentiality (g) Arbitral Awards (Final Decision) ; (h) Enforcement of Arbitral Award</p>	<p>General Principles of AA: 1. Arbitration Agreement ; 2. Consent; 3. Ouster of Jurisdiction (cannot unilaterally proceed to court to litigate that matter) ; 4. Doctrine of Separability (if the main contract is rendered invalid, AA would not be rendered invalid) ; 5. Competency to rule on its jurisdiction: Arbitral Tribunal has the capacity to rule on its own jurisdiction, even if it involves a question of validity of the main contract.</p>	<p>Termination Of An Arbitral Agreement: AA can be terminated by: (1) Mutual Consent of both the parties ; (2) Termination of Principal contract .However if principal contract is breached, then AA survives (as per doctrine of separability); (3) Death of Parties (shall be enforceable by or against the legal representatives) (4) Operation of Law (If any law says so)</p>
<p>Arbitration in India: 3 Different Authorities in India: - Judicial Authority; - Courts; - HC/SC</p>	<p>Requirements of A Valid Arbitration Agreement: 1. Should be in Writing (no particular form / template) 2. Clarity of consent 3. Defined legal relationship (Disputes concerning illegal activities cannot be submitted to arbitration) 4. Final and Binding award 5. Mere use of words like 'arbitration' or 'arbitrator' in a clause ≠ AA. 6. Dispute must be there 7. Arbitrability (as there are certain matters/ disputes which can be decided only in Court) 8. Sign is required when AA is contained in a contract i.e. 1 set of document.</p>	<p>Who Can be An Arbitrator? - Any person capable of contracting ; - Person agrees to act as an arbitrator and adjudicates any disputes.</p>
<p>Arbitration Agreement: - Since Consent is the most fundamental requirement in arbitration, document which notes this consent is an Arbitration Agreement (AA). - AA records that in event of dispute, parties instead of taking the matter to court, shall submit to arbitration. - AA may be in form of an arbitration clause in a contract or in form of separate agreement. - It shall be in writing (with no specific format)</p>	<p>Appointment of Arbitral Tribunal: - Important principle of arbitration is principle of PARTY AUTONOMY, which means "freedom to choose" i.e. its procedure, venue, seat or the arbitrators. - Parties have the right to choose the persons who would act as arbitrators in their dispute.</p>	<p>Number Of Arbitrators: Parties have high level of freedom, in respect of number of arbitrators.</p>

Section 10:

- Parties are free to determine the number, provided that such number shall not be an even number. - Failing the determination in above point, arbitral tribunal shall consist of a sole arbitrator.

Procedure For Appointment:

Most common procedures are:

- Parties will jointly appoint.
- Each party will appoint one and then 2 arbitrators would appoint the rest.
- Appointment would be made by an unrelated person/ institution.

Requirements Of An Arbitral Tribunal:

- Any nationality;
- Capable of Contracting
- Lack of Bias

Grounds For Challenge:

- Existence of direct / indirect, past / present / relationship, interest in any parties, which raises doubts relating to independence or impartiality; &
- which are likely to affect his ability to devote sufficient time to arbitration and his inability to complete the arbitration within 12 months.

Instances Which can Give Rise To Doubts as to Presence of Bias:

- Previous involvement;
- Arbitrator is an employee, consultant, advisor or has / had any business relationship with a party.
- Arbitrator is currently the lawyer / law firm of any of the party.
- Close family member of arbitrator has financial interest in one of the parties.
- Arbitrator is a legal representative of any party.
- Arbitrator has significant financial interest in one of the parties etc.

Duties & Liabilities Of Arbitrator:

- Conduct the proceedings without delay
- Remain impartial at all times
- Keep all relevant matters confidential
- Deliberation (Award should be a reasoned award)
- Avoid unilateral communication
- Ensure that all documents / communications from one party are communicated to the other.
- Ensure that award / other decisions comply with legal requirement.
- Ensure that he/she at all times comply with legal requirements, associated with arbitrator.

Termination, Removal & Substitution Of Arbitral Tribunal:

- Arbitrator leaves voluntarily (may / may not disclose reasons to parties)
- When all parties involved in the arbitration agree that arbitrator should be removed (Reasons: Does not have proper expertise)
- Operation of Law:
 - Arbitrator unable to continue (ill / becomes busy with some other matters; loses interest in this one etc.) Therefore, here, the law steps in and terminates the arbitrator.
 - Arbitration process ends:
 - when final award is made
 - failure to make award within 12 months.
 - parties decide to discontinue with arbitration.
 - When the Court decides that the arbitrator should be removed (Biasness/ lack of independence)
 - In addition to all of the above, there may be a possibility, where none of the above reason is present. (A party feels that the arbitrator should not continue, and then it could, for reasons of bias, approach the court to remove the arbitrator.

Before Whom the Challenge is to Be Raised?

1st before Arbitral Tribunal, Then before District Court (for domestic arbitration) and before High Court (for international commercial arbitration)

<p><u>Once An Arbitrator Is Terminated, Then What?</u></p> <p>New Arbitrator could be appointed, keeping in mind the original method of appointment. If however that fails, then approach SC / HC for appointment.</p>	<p><u>Challenging An Award (Grounds For Challenging):</u></p> <p>(a) <u>Challenge of bias against the Tribunal (u/s 13)</u></p> <p>(b) <u>Over - stepping of jurisdiction by Tribunal:</u> If tribunal over- rules the jurisdiction, then it can be challenged</p> <p>(c) <u>Specific grounds for reviewing an award (u/s 34):</u></p> <p>Category 1: which can be specifically raised by a party (Eg: Party is under some incapacity like Minor, Invalid Arbitration Agreement, Party is not given proper notice about appointment of arbitrator / proceedings, Awards deals with disputes not submitted for arbitration, Legal requirements were not followed)</p> <p>Category 2: which Court can look at its own motion (Subject matter of dispute is not capable of settlement by arbitration, Award in contravention of India's public policy)</p>	<p><u>Characteristics of Conciliation:</u></p> <p>(a) Voluntary Process (if any party is forced, then outcome shall not be binding)</p> <p>(b) Non - Adversarial: Parties don't compete against each other, to prove themselves as correct and others as wrong.</p> <p>(c) Assisted Procedure ie conciliators are present</p> <p>(d) Finality of Settlement</p> <p>(e) Confidentiality</p>
<p><u>Arbitral Award:</u></p> <p>It is a conclusive determination as to the questions / issues / disputes that are put forward.</p>		<p><u>Conciliation In India:</u></p> <ul style="list-style-type: none"> - Governed by this Act and Code of Civil procedure, 1908 - Disputes which are not prohibited by law, can be submitted for conciliation - Number of conciliators: 1 to 3 - When conciliation proceedings are going on, parties cannot start arbitration proceedings/ approach the Court for the same dispute. (Exception- When it comes to preserving its rights)
<p><u>General Principles:</u></p> <ul style="list-style-type: none"> - Only a party to arbitration agreement can challenge an award. - Can be challenged before District Court / HC within 3 months from the date when award is received and this can be further extended by maximum 30 days. 	<p><u>Consequence Of Challenge:</u></p> <p>(a) set aside (b) Confirm</p> <p>(c) Modify (d) Remit back to Tribunal</p>	<p><u>Settlement Agreement:</u></p> <p>(a) <u>Initial Steps:</u> Attempt of Conciliation is to resolve the dispute and arrive at a settlement</p> <p>(b) <u>Agreement:</u> If parties reach a settlement, then it has to be written down as an agreement. Known as Settlement Agreement or Memorandum of Conciliation. (Mandatorily authenticated by Conciliator)</p> <p>(c) <u>Enforcement:</u> Awards shall be final & binding. Award can be challenged before a Court & once the time lapse, then can be enforced under Code of Civil Procedure, 1908.</p>
<p><u>Types Of Arbitral Award:</u></p> <ol style="list-style-type: none"> (1) Final Award (2) Interim Award (3) Settlement Award (4) Additional Award (Such a request can be made within 30 days of final award) 	<p><u>Conciliation:</u></p> <p>- Alternative method of dispute resolution ; - Can be understood as a process of getting the parties to come to an agreement about a common dispute through confidential discussion.</p>	
<p><u>Requirements Of An Arbitral Award:</u></p> <p>(a) Must be a decision by the majority ; (b) Must be made in writing, signed and dated ; (c) Must be reasoned, otherwise invalid; (d) Must not be vague.. (e) It should be capable of being performed , (f) It must not be illegal; (g) Award must be delivered / enforced as soon as it is signed.</p>		

(V) ACT NOT TO APPLY TO CERTAIN GOVERNMENT TRANSACTIONS (Section 51):

i.e. to transactions between Government of India and Government of any foreign country or territory.

(VI) APPLICATION OF OTHER LAWS, NOT BARRED (Section 52):

Provisions of this Act, shall be in addition to other laws and not in derogation.

SUMMARY of APPEAL – TIME PERIODS:

Any person aggrieved by any order:		
(a) If order is passed by Session Court	Appeal before High Court	Within 1 month from date of communication of order.
(b) Any other officer (i.e. not below Assistant Session Judge)	Appeal before Session Court (within local limits of whose jurisdiction such order of adjudication of confiscation was made)	(However extension of maximum 1 more month can be provided)
Any organisation referred to in Section 3 or person/association referred to in Section 6 or Section 9, if aggrieved by any order made u/s 5 or by CG's order refusing to grant permission or CG's order u/s 12 or 14	Appeal before High Court	Within 60 days from date of such order.

Super - Quick Revision of IMP Provisions of FCRA:

<p>Applicability: FCRA applies to whole of India, Citizens of India outside India, Associate Branches/ subsidiaries of Indian Cos.</p>	<p>Section 4: Following is allowed:</p> <ul style="list-style-type: none"> - Salary, Wages / remuneration from foreign sources (FS) or payment for business transacted in India in ordinary course of business; - Payment in course of international trade/ commerce; - Payment as an agent of FS regarding transaction made by such foreign source with CG / SG; - Gift / Present made to a person as a member of Indian delegation; - Received from relatives (If in excess of Rs.1,00,000 in a FY, shall inform CG in Form FC - 1 by uploading details electronically within 30 days of receipt); - Remittance received in ordinary course. 	<p>Manner Of Receiving FH:</p> <ol style="list-style-type: none"> 1: Apply to CG for prior permission in Form FC - 2 electronically; 2 weeks before the proposed date of onward journey 2: Such application + Invitation letter from host + administrative clearance of Ministry / Department concerned, if visits are sponsored by them. 3: In case of emergent medical aid, needed due to sudden illness, during a visit abroad, acceptance of FH shall be intimated to CG within 1 month of such receipt (No such intimation is required if the value of such hospitality in emergent medical aid is \leq Rs. 100000)
<p>Definition of FC: means the donation, delivery or transfer made by any foreign source of:</p> <ul style="list-style-type: none"> - any article (Upto Rs. 100000 allowed if given as gift for personal use) - any currency (Indian / Foreign) - any security (including foreign security) 	<p>Restriction on Acceptance of FH: Following categories of persons require prior approval of MHA before accepting FH:</p> <ol style="list-style-type: none"> (a) Members of a Legislature; (b) Office Bearers of a Political Party; (c) Judges; (d) Government Servants; (e) Government Employees <p>-Not necessary to obtain permission for an emergent medical aid needed on account of sudden illness during a visit abroad.</p> <p>-If FH has been received, then such person shall give an intimation to CG within 1 month of receipt (+) the source and manner in which it was received.</p>	<p>Prohibition to Transfer FC to Other Person:</p> <ul style="list-style-type: none"> -Authorised Person cannot trf FC to any other person. (Exception: With CG Approval max 10% can be done) - No permission required if transfer is made by 1 authorised person to another authorised person.
<p>Prohibition To Accept FC: Prohibited Persons:</p> <ul style="list-style-type: none"> - Candidate for election; - Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; -Public Servant, Judge, government servant / employee; - Member of legislature; - Political party or office bearer; - Organisation of a political nature; - Company engaged in production / broadcast of audio news/AV news or current affairs program through any electronic mode. - Correspondent or columnist, cartoonist, editor, owner of a company, mentioned above (news). 		<p>Restriction To Utilise FC for Administrative Purpose:</p> <ul style="list-style-type: none"> -Every authorised person shall utilise FC for the purpose for which it was received -Should not be used for Speculative business -Max 20% can be used for administrative expenses (If > 20%, then obtain prior approval of CG)

Registration:

Two – Modes of obtaining permission to accept FC:

- Registration
- Prior Permission

Registration of Certain Persons with CG:

(1) Person having a definite cultural, economic, educational, religious or social programme: shall not accept FC unless a certificate of registration (application in Form 3A) has been obtained from CG.

However:

- an association registered u/s 6 with CG or - granted permission under FCRA, 1976 shall be deemed to have been registered or granted prior permission under this Act and shall be valid for 5 years from the date on which this section comes into force.
- (2) Acceptance of FC after obtaining prior permission (Form FC-3B) of CG: Every person who is not registered with CG, may accept any FC, only after prior permission of CG and this shall be valid for specific purpose for which it is obtained.
- The person may open one or more accounts in one or more banks for the purpose of utilizing the FC after it has been received & in all such cases, intimation [electronically online in form [FC-6D]] shall be furnished to the Secretary of MHA within 15 days of the opening of any account.

Grant of Certificate of Registration:

Certificate can be given only if person making an application:

- is not fictitious / benami
- Has not been prosecuted / convicted for indulging in activities aimed at conversion through inducement / force from 1 religious faith to another or creating communal tension / disharmony in any district / any part of country
- has not been found guilty of diversion / mis-utilisation of funds.
- is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends.
- is not likely to use FC to achieve personal gains or for undesirable purpose.
- has not contravened any provisions of Act.
- has not been prohibited from accepting FC.
- Has never been convicted under any law nor any prosecution is pending against him etc

Procedure for Regn:

Refer Flowchart given in Sec.12

Suspension Of Certificate:

- If CG is satisfied that pending consideration of the question of cancelling the certificate on grounds mentioned in Sec 14(1), may, suspend the certificate for a period of 180 days, or such further period, not exceeding 180 days, as may be specified
- After Suspension, we shall not receive FC & utilise the FC in his custody in manner prescribed by CG.
- If registration certificate is suspended u/s 13(1), then upto 25% of unutilised amount may be spent, with prior approval of CG, for the object for which FC was received.
- Remaining 75% of unutilised FC shall be utilised only after suspension revocation.

Cancellation Of Certificate

- Reasons for cancellation:
 - (a) Statement for grant / renewal, which is incorrect or false, or;
 - (b) Violated any terms / conditions;
 - (c) It is in public interest to cancel it;
 - (d) Violated any provisions of Act/ Rules;
 - (e) Certificate holder has not been engaged in any reasonable activity in its chosen field for benefit of society for 2 consecutive years or has become defunct
- Cancellation only after ROBH.
- Cooling Period = 3 years from date of cancellation.

Management of FC of Person whose Certificate has been Cancelled:

- FC and assets out of FC of such person shall now vest in prescribed authority.
- Authority shall return the FC/ assets out of FC to such person, if it subsequently gets registered under this Act.

Certificate Renewal:

- Every person who has been granted a certificate shall get it renewed (Form FC-3C) within 6 months before the expiry (i.e. in advance)
- CG shall renew ordinarily within 90 days from date of receipt of application and this renewal certificate shall be valid for 5 years. (If not renewed within 90 days, then communicate the reasons to applicant)
- If validity has ceased, then later on, fresh request for grant can be made.
- CG may refuse to renew the certificate, if there is any violation of provisions of Act / Rules.
- If a person provides sufficient grounds for not submitting the renewal form within given time, then his application (+) requisite fee (+) late fee of Rs.5000 may be accepted after expiry of original certificate, but not later than 1 year from such expiry.

Accounts, Intimation, Audit, & Disposal Of Assets Etc:

- FC through Scheduled Bank:
Refer full Section (as amended)
- Bank shall report to the CG within 48 hours any transaction in respect of receipt or utilisation of any FC.

Maintenance Of Accounts

- Every authorised person shall maintain in prescribed manner: amount of FC received & utilised by him (Separate set of a/cs)

Disposal of Assets Created Out of FC:

- Where any person who was allowed to accept FC:
- ceases to exist or has become defunct, then all assets of such person shall be disposed off as per law.
 - in absence of any such law: CG may specify that all such assets shall be disposed off in the prescribed manner.

Confiscation of Article / Currency / Security Obtained in Contravention of Act:

- Above mentioned things, if seized, shall be liable to confiscation if it has been adjudged v/s 29 to have been received in contravention.

Adjudication of Confiscation:

- Any confiscation of article / currency / security may be adjudged:
- By Court of Session - within local limits of whose jurisdiction the seizure was made (without any limit)
 - By such officer, not below the rank of an Assistant Sessions Judge (If value does not exceed Rs.10,00,000)
 - After adjudication, Judge may make such order as he thinks fit for disposal of such confiscated thing.
 - Confiscation shall begin only after giving ROBH.

Offences by Company:

- If person committing an offence → is a Company, then Person - in - Charge = Guilty
Exception: done without his knowledge or If exercised due diligence to prevent offence.

Bar On Prosecution Of

- Offences Under The Act: No court shall take cognizance, except with prior permission of CG / authorised officer.

Compounding of Certain Offences:

- Any offence committed under this Act (except those punishable with imprisonment only) may before institution of any prosecution, be compounded by officers / authorities.
- Above compounding shall not apply, if such person has again committed similar offence within 3 years of previous offence.

Appeals:

- Refer Summary table for appeal

Super - Quick Revision of IMP Provisions of IBC:

<p>Purpose of Code: (a) To consolidate and amend the laws; (b) To fix time period for execution of law in a time bound manner; (c) To maximise value of assets of interested persons; (d) To promote entrepreneurship; (e) To increase availability of credit; (f) To balance interest of all stakeholders; (g) To establish IBBI.</p>	<p>Applicability: Companies; any other company governed by any Special Act; LLP; Such other body incorporated under any law, as CG may specify; Personal guarantors to CD; Partnership firms & proprietorship firms; & Other Individuals. Exception: Code is not applicable to corporates who are regulated service providers. Note: Code applies to certain NBFCs.</p>	<p>Initiation of CIRP by CD: CD → with all documents + Name of IRP → apply to AA → AA will ascertain the default → Can either Accept or Reject.</p>
<p>Distinguishing Features of Code: One² New Established Law² protects process in low time.</p>	<p>Application: Minimum amount of default is Rs. 1 lakh. Wef 24.03.2020 - minimum amount of default = Rs. 1 crore.</p>	<p>Persons not entitled to make an Application: (a) CD undergoing a CIRP; (b) CD having completed CIRP 12 months preceding the date of making of application; (c) CD or FC, who has violated any terms of resolution plan which was approved 12 months before the date of making an application; (d) CD in respect of whom a liquidation order has been made.</p>
<p>Regulatory Mechanism of IBBI: IPA, IP & IU</p>	<p>Persons who may Initiate CIRP FC, OC or CD himself</p>	<p>Time - Limit for Completion of Process: Generally → 180 days → 1 time extension of max 90 days can be given by AA if approved by CoC by 66% voting. If Legal Proceedings involved, then 330 days.</p>
<p>Adjudicating Authority: For Corporates incl LLP: NCLT → NCLAT → SC For Others: DRT → DRAT → SC</p>	<p>Initiation of CIRP by FC: FC → with all documents + Name of IRP → apply to AA → AA will ascertain the default → Can either Accept or Reject.</p>	<p>Withdrawal of Application: With 90% voting of CoC.</p>
<p>About IBBI: - Established on 01/10/2016 with HO at New Delhi. - Is a Body Corporate, has perpetual succession & common seal. - Purpose → to perform functions with respect to IPA, IP, and IU. - Composition: 1 chairman; 3 members from office of CG to represent MoF, MCA, MoL; 1 member nominated by RBI; 5 other members nominated by CG (Atleast 3 whole - time).</p>	<p>Initiation of CIRP by OC: Send demand notice to CD of 10 days → if no payment or no reply & no existence of dispute → then apply to AA → with all documents + Name of IRP (not mandatory) → apply to AA → AA will ascertain the default → Can either Accept or Reject.</p>	<p>Moratorium: Calm period of 180 days (generally). Prohibited Acts during this: suits/pending proceedings; dealing in any assets; Enforcement of Security Interest; Recovery of any property by an owner / lessor. Supply of goods / services shall be allowed.</p>

<p><u>Public Announcement:</u> Will be given by IRP within 3 days of his appt with all necessary content like Name/ Address of CD; Authority with which CD is incorporated / registered; Last date for submission of claims; Details of IRP; Penalties for false or misleading claims; Date on which CIRP shall close. Expenses of this shall be borne by applicant, which can be reimbursed by COC, to the extent it ratifies them.</p>	<p><u>Appt of RP:</u> In 1st meeting of COC, either IRP is appt as RP (with his consent) or new IP is appt as RP, by vote of 66%</p>	<p><u>Submission Of Resolution Plan:</u> -Resolution Applicant may submit a plan to RP on the basis of IM.-RP will primarily check the plan. If approved by RP, then it will be presented by RP before CoC & then if CoC approves it by 66% vote, then it will be finally presented before AA. If rejected by RP, then RP may entertain a new plan. If rejected by CoC, then also it cannot be presented before AA. If rejected by AA, then will lead to liquidation.</p>
<p><u>Appt & Tenure of IRP:</u> Refer Flowchart of Sec. 16</p>	<p><u>Meetings of CoC:</u> - Notice for meeting to: members of COC including the authorised representatives (AR); members of suspended BOD or partners of CD; OC or their representatives if amount of their aggregate dues is $\geq 10\%$ of the debt. - Directors / partners / representatives of OC shall not have any right to vote, however they may attend them.</p>	<p><u>Appeal:</u> Against the order of AA may be filed on following grounds: Approved plan is in contravention of law; If there is material irregularity by RP during process; If debt owed to OC is not considered; Insolvency process cost, have not been provided for repayment in priority; Plan does not comply with any other conditions specified by IBBI.</p>
<p><u>Powers of IRP:</u> MERI Powers</p>	<p><u>Rights/ Duties of AR of FC:</u> - They can participate and vote in meetings of COC on behalf of FC. AR shall not act against the interest of FC; If AR, represents, several FC, then he shall cast his vote in respect of each FC, to the extent of his voting share; If any FC, does not give prior instruction then AR shall abstain from voting on behalf of such creditor.</p>	<p><u>Eligibility for RP:</u> -Must be independent of CD. (ie eligible to be appointed as ID on Board of CD u/s 149 of Companies Act if CD = Company) -Is not a related party of CD; or -Is not an employee / proprietor / partner of an audit firm / secretarial auditors in practice / cost auditors of CD in last 3 FY or of a legal firm / consulting firm, that has / had any transaction with CD of $\geq 5\%$ of Gross Turnover of such firm in last 3 FY's.</p>
<p><u>Committee of Creditors:</u> -Composition: If FC exists: then all FC excl Related Parties If No FC or all are related parties: then 18 largest OC by value + 1 rep of workmen & 1 rep of employees. -Where CD owes financial debts to 2 or more FC in consortium agreement, then each FC shall form part of COC -If a creditor is FC and OC both, then he shall be a FC to the extent of financial debt owed by him -When an OC has assigned any operational debt to a FC, then transferee shall be considered as an OC to the extent of such transfer.</p>	<p><u>Replacement of RP:</u> Existing RP can be replaced by another RP by vote of 66% + written consent from new IP.</p>	
	<p><u>Preparation of Information Memorandum (IM):</u> RP shall prepare IM & give to resolution applicant for preparation of resolution plan.</p>	

<p><u>Liquidation:</u> Cases: When resolution plan is not received within 180 days + 90 days, if any; When plan is rejected by AA; When RP, before confirmation of plan, intimates the AA of decision of CoC (approved by > 66% of voting share) to liquidate the CD; When plan approved by AA is contravened by CD, then any person other than CD, who is affected, may apply to AA for liquidation.</p>	<p><u>Distribution of Assets:</u> 1st – Insolvency and Liquidation Process cost in full 2nd – Following debts shall rank equally: (i) Workmen's dues for last 24 months before the liquidation commencement date. (ii) Debts of Secured Creditor, if he has relinquished his security u/s 52 3rd – Wages and Other Dues owed to Employees (other than workmen) for last 12 months before the liquidation commencement date 4th – Financial Debts owed to Unsecured creditors 5th – Following Debts shall rank equally: (i) Amount due to CG / SG for whole / part of last 2 years before liquidation commencement date (ii) Debts owed to secured creditors i.e. for any unpaid amount (in case of deficit u/s 52) 6th – Any remaining debts and dues 7th – Preference SHS, if any 8th – Equity shares</p>	<p><u>Fast Track CIRP:</u> Fast track CIRP shall be made in respect of following CD's only: A small company (as per Companies Act, 2013) A start-up (other than partnership firm) An unlisted company with total assets does not exceed Rs. 1 crore (as per immediately preceding FY) Must be completed within 90 days + 1 time extension of max. 45 days (by vote of 75% of CoC)</p>
<p><u>Liquidation Estate:</u> Included: Assets over which CD has ownership rights; Assets that may or may not be in possession of the CD; Encumbered Assets, Tangible, Intangible Assets i.e. which are not free to sell; Assets issued as collateral over which creditors have relinquished rights; All proceeds of liquidation, as and when realised, etc Excluded: Sum due to Workmen / Employees from Provident / Pension / Gratuity funds; Assets owned by 3rd party, which are in CD's possession; Personal Assets of SHS or partners of CD; Bailment Contracts; Any other assets as specified by IBBI; Assets of any Indian or foreign subsidiary of the corporate debtor.</p>	<p><u>Quorum for Meeting Of CoC:</u> Members of CoC of atleast 33% of voting rights are present (either in person or through electronic means) If quorum is not available, then meeting shall stand adjourned, at same time and place on the next DAY.</p>	<p><u>Voluntary Liquidation:</u> A corporate person who intends to liquidate itself and has not committed any default, may initiate Voluntary Liquidation Proceedings. Declaration from Majority of directors stating that full inquiry has been made + not getting liquidated to defraud creditors. Declaration must be accompanied by: Audited FS of 2 years + Valuation report. Within 4 weeks of declaration: SR by members OR Resolution by members that fixed time period has expired OR Resolution that event given in AOA is done. Then will lead to liquidation + dissolution.</p>
<p><u>Secured Creditor in Liquidation Proceedings (Option):</u> 1) Relinquish his security interest to liquidator 2) Realise its Security Interest</p>		

SUMMARY of IMP PENALTIES:

Section	Contravention	Penalty
23A	Any person who is required to furnish any info., document, books, returns or reports to RSE/SEBI fails to furnish the same, within the time specified in listing agreement/ conditions/ bye-laws of RSE or Act or Rules made or who furnishes false, incorrect or incomplete information, document, books, return or report	Minimum = Rs.1 lakh
(a)		
(b)	to maintain BOA/records as per listing agreement/conditions/bye-laws of RSE, fails to do so -	Maximum = Rs.1 lakh/day of default but not exceeding Rs. 1 crore (for each default)
23B	Failure by any person to enter into agreements with clients	
23C	Failure to redress investors' grievances (penalty on stock broker/sub-broker or company) after being called by SEBI/RSE to redress within specified time.	
23D	Failure to segregate securities/moneys of client/clients or using them for self use or other client.	Min = Rs.1 lakh Max = Rs.1 crore

SUMMARY FOR IMPORTANT TIME-PERIOD FOR APPEALS:

Section Ref	Circumstance	Appeal to	Appeal Within	Disposal Within
21A	Person aggrieved by order of RSE of De-Listing.	SAT	15 days (may be extended by 1 month)	--
22A	Person aggrieved by order of RSE for refusal to List	SAT	15 days (if reasons furnished); 15 days + 1 month (if not furnished)	6 Months (Directory)
23L	Person aggrieved by other orders of RSE/AO/SEBI	SAT	45 days (can be condoned)	6 Months (Directory)
22F	Person aggrieved by order of SAT	SC (On any Question of law)	60 days (may be extended by another 60 days max)	--

Super - Quick Revision of IMP Provisions of SCR Act:

Act Not to Apply in Certain Cases:

Government ; RBI; Local Authority; Any corporation setup under / by special law; Any convertible bond / share warrant, which entitles that person to obtain shares (optional) on the basis of AGREED PRICE.

Application for Recognition:

Stock exchange may apply to SEBI:

Application form (+) Bye-Laws (+) Rules and Regulations (+) details on following 4 things:

Governing Body of Stock exchange (SE); its powers and management ; Powers & Duties of Office Bearers; Classes of members, Qualification for membership, suspension etc.; Procedure for registration of Partnerships as members, its rules, appointment of representatives, clerks etc.

Granting of Recognition:

If Rules and Bye-laws are in conformity, SE is willing to comply with conditions that CG/SEBI may impose; Recognition is in Trade & Public Interest.

- Grant of recognition shall be published in Gazette of India & Official Gazette of State
- Application cannot be refused without giving ROBH
- No rules of SE must be amended without approval of CG/SEBI

Withdrawal of Recognition:

If CG/SEBI is of the opinion that recognition granted to SE must be withdrawn in the interest of trade or public, it may withdraw after serving due notice on governing body of SE. It will not affect validity of contracts entered into before date of withdrawal notification.

Recognition granted to SE shall stand withdrawn if:

- RSE has not been corporatized or demutualised or
- it fails to submit the scheme of C/D within specified time or
- the scheme has been rejected by SEBI.

CG/SEBI shall publish such withdrawal, by notification in the Official Gazette.

Power of CG/SEBI to call for information:

-Furnish periodical returns to SEBI ; BOA maintained by RSE may be inspected by SEBI; SEBI may also call for information / explanation relating to affairs of an Exchange, members; On inquiry, all are bound to provide information to inquiry officers or SEBI representatives; Special investigation may also be carried out, if market condition warrants.

Annual Reports to be furnished to CG/SEBI by RSE

Every RSE must submit a copy of Annual Report.

Restricting voting rights:

RSE is empowered to amend rules for following:

Restrictions of voting rights to members ; Each member is entitled to 1 vote only, irrespective of shares held; Restriction on right of member to appoint proxy to attend and vote at the meeting of RSE.

Power Of CG/SEBI to Make Rules:

CG/SEBI in consultation with SE may order in writing to make/amend rules to SE within 2 months from date of such order. -If SE fails to do so, CG/SEBI may make/amend & rules will be valid, as if they are made/amended by SE.

- Amended Rules to be published in Gazette of India and Official Gazette of State (as per location)

Power of SE to make bye-laws:

Any RSE may make bye-laws for regulation and control of contracts relating to purchase/sale of securities, subject to approval of SEBI

-Such bye-laws when approved by SEBI, shall be published in Gazette of India and Official Gazette of State.

Power of SEBI to amend bye laws:

SEBI may either on request or suo-moto, amend any bye-laws, made by RSE. - SEBI will have to be satisfied after consultation with governing body of RSE, that it is necessary to amend.
- Published in 2 Gazettes (same as last section) - If RSE has any objection, then it may apply to SEBI for revision within 2 months.

Superseding Of SE:

CG is vested with power to supersede the Board of RSE, after serving a notice and giving ROBH to governing body of SE. CG may by notification, declare any SE as superseded and may appoint person/(s) to perform or exercise all powers of Board / Governing Body.

Power To Suspend Business Of RSE:

If in the opinion of CG, an emergency has arisen and for the purpose of meeting the emergency, CG may, if necessary, suspend such of its business for maximum 7 days. This period is extendable by notification.

Power of SEBI to issue directions:

- If after an enquiry, SEBI is satisfied that it is necessary: In interest of investors or to prevent detrimental affairs of RSE or to secure proper mgmt, Then - It may issue such directions to: Any SE, clearing corporation or person associated with SE Or to any listed company or proposed listed company as may be appropriate.

Note: Power always include the power to direct any person, who made profit or averted loss by contravention of SCR Law, to pay an amount equivalent to profit made or loss averted.

Members not to act as principals:

Members of SE normally carry out transactions on behalf of investor and therefore, principal - agent relationship exists.
- However a member can enter into transaction as principal with another member of RSE only
- If a member desires to enter into contract as principal with a non-member, then he has to: Get written consent from such other person and If consent is not in writing, then he shall secure written consent within 3 days of contract. (Contract note shall indicate that member is acting as principal..)

De-listing of securities:

- RSE may delist the securities on any grounds as prescribed but after giving ROBH. - A listed company or the aggrieved investor may file an appeal before SAT against the decision of RSE within 15 days (+1 month) of date of decision of RSE delisting the securities.

Right of appeal against refusal of SE to list securities:

When a RSE refuses to list the securities, the company shall be entitled to be furnished with reasons for refusal and it may file appeal before SAT and then SAT may after giving ROBH to RSE:- vary or set aside decision of RSE or - where RSE has not furnished and omitted / failed to dispose off the application, grant or refuse the permission and such decision shall be final.

Civil court not to have jurisdiction

Appeal to SC: If aggrieved by SAT's order.

Factors to be taken into account by AO:

- Amount of disproportionate gain or unfair advantage (wherever quantifiable) due to default, - Amount of loss caused to investors; - Repetitive nature of default