



CS-EXECUTIVE *Module-II*

ECONOMIC, BUSINESS & COMMERCIAL LAWS

AMENDMENTS

for June 20/July 20

Adv Chirag Chotrani



CS Vikas Vohra (Founder)

Foundation :Business Environment & Law
Executive :Company Law / Securities Laws & Capital Markets
Professional :Drafting, Pleadings, and Appearances



CA CS Harish A. Mathariya (Founder)

Foundation :Fundamentals of Accounting & Auditing
Executive :Corporate & Management Accounting



Adv Chirag Chotrani

Foundation :Business Management, Ethics & Entrepreneurship
Executive :Jurisprudence, Interpretation & General Laws / Setting up of Business Entities and Closure
:Economic Business & Commercial Laws,
Professional :Governance, Risk Management, Compliances and Ethics / Corporate Funding and Listing in Stock Exchanges



CA CMA Suraj Tatiya

Foundation :Business Economics
Executive :Financial & Strategic Management



CMA Vipul Shah

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CS Vaibhav Chitlangia

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On behalf of **TEAM YES**

CS Vikas Vohra CA CS Harish A. Mathariya
Founders

CHAPTER 5- FOREIGN DIRECT INVESTMENT – REGULATION AND POLICY

INTRODUCTION

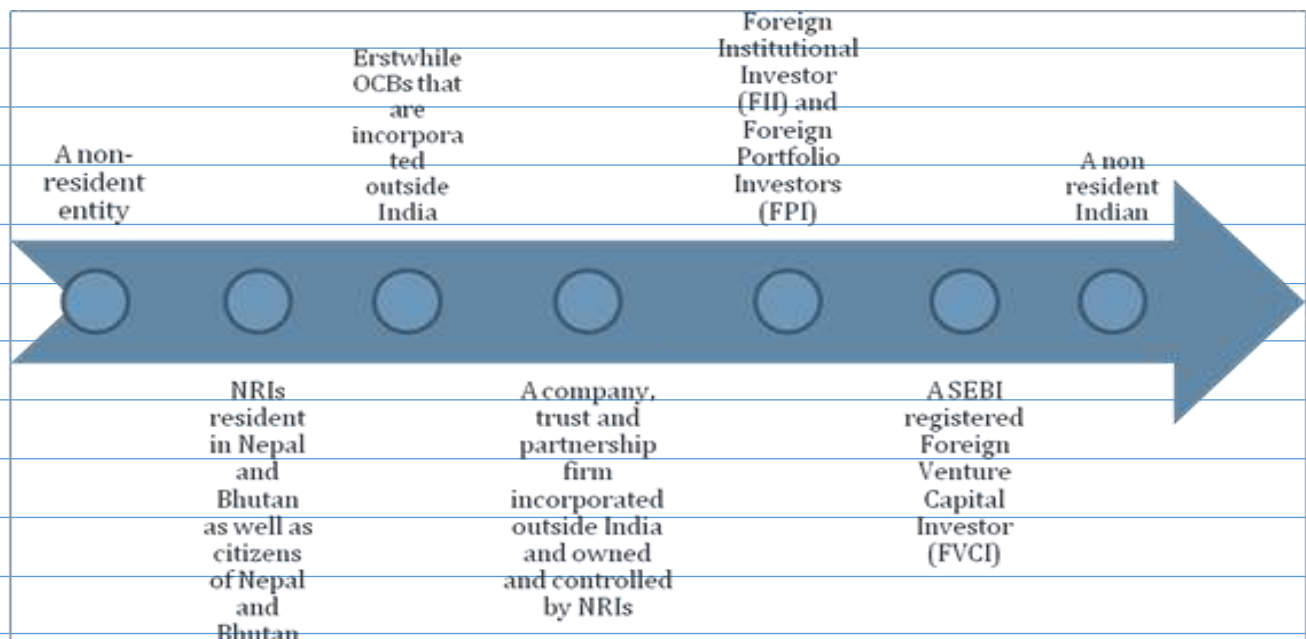
To promote Foreign Direct Investment (FDI), the Government has put in place an investor-friendly policy, wherein except for a small negative list, most sectors are open for 100% FDI under the Automatic route. Further, the policy on FDI is reviewed on an ongoing basis, to ensure that India remains attractive & investor friendly destination.

DEFINITIONS

1. **'AD Category-I Bank'** - means a bank (Scheduled Commercial, State or Urban Cooperative) which is authorized under Section 10(1) of FEMA to undertake all current and capital account transactions according to the directions issued by the RBI from time to time.
2. **'Control'** - shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements. For the purposes of Limited Liability Partnership, 'control' will mean right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of the LLP.
3. **'Erstwhile Overseas Corporate Body' (OCB)** means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty percent by non-resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by non-resident Indians directly or indirectly but irrevocably and which was in existence on the date of commencement of the Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)) Regulations, 2003 (the Regulations) and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations.

4. **'Foreign Currency Convertible Bond' (FCCB)** means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme, 1993 and subscribed by a non-resident entity in foreign currency and convertible into Ordinary Shares of the issuing company in any manner, either in whole, or in part.
5. **'Transferable Development Rights' (TDR)** means certificates issued in respect of category of land acquired for public purposes either by the Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

ELIGIBLE INVESTORS UNDER FDI



- A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited.
- However, a citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under the Government route.
- Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the

Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.

- NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis.
- Foreign Institutional Investor (FII) and Foreign Portfolio Investors (FPI) invest in the capital of an Indian company under the Portfolio Investment Scheme which limits the individual holding of an FII/FPI below 10% of the capital of the company and the aggregate limit for FII/FPI investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling.

ELIGIBLE INVESTEE ENTITIES

FDI in an Indian Company	Indian companies can issue capital against FDI.
FDI in Partnership Firm/ Proprietary Concern	<p>A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis provided;</p> <p>Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers/Authorized banks.</p> <p>The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.</p> <p>Amount invested shall not be eligible for repatriation outside India.</p>

FDI in Trust	FDI is not permitted in Trusts other than in Venture Capital Fund (VCF) registered and regulated by SEBI and 'Investment vehicle'.
FDI in LLP	<p>FDI in LLPs is permitted subject to the following conditions:</p> <p>FDI is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.</p> <p>An Indian company or an LLP having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions.</p>
FDI in Investment Vehicle	An entity being 'investment vehicle' registered permitted to receive foreign investment from a person resident outside India (other than an individual who is citizen of or any other entity which is registered / incorporated in Pakistan or Bangladesh), including a Registered Foreign Portfolio Investor (RFPI) or a non-resident Indian (NRI).

FDI in Startup Companies

A person resident outside India (other than an individual who is citizen of Pakistan or Bangladesh or an entity which is registered/incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of twenty five lakh rupees or more in a single tranche.

A startup company engaged in a sector where foreign investment requires Government approval may issue convertible notes to a non-resident only with approval of the Government.

A startup company issuing convertible notes to a person resident outside India shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE / FCNR (B)

/ Escrow account maintained by the person concerned in accordance with the Foreign Exchange

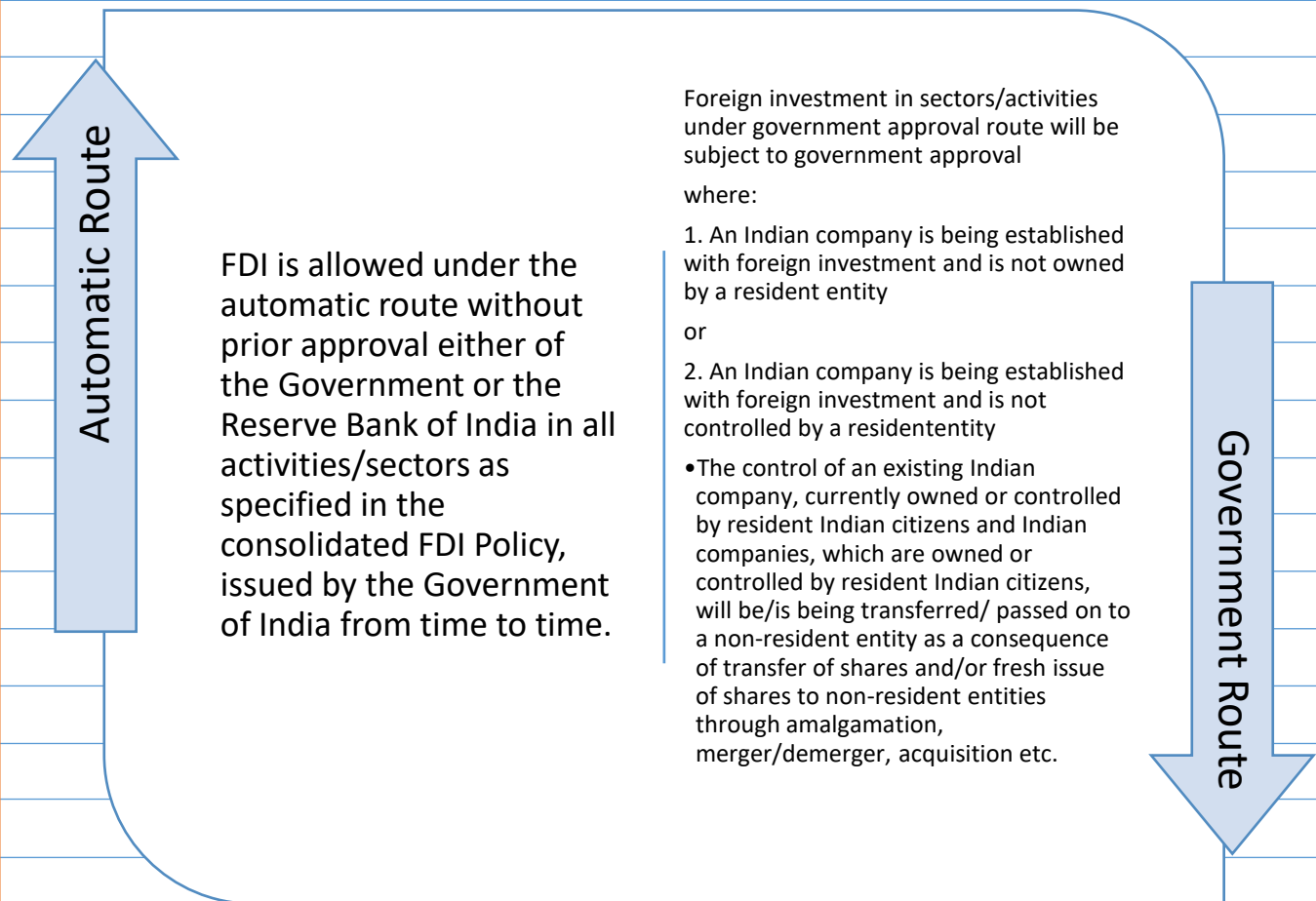
Management (Deposit) Regulations, 2016, as amended from time to time.

NRIs may acquire convertible notes on non-repatriation basis.

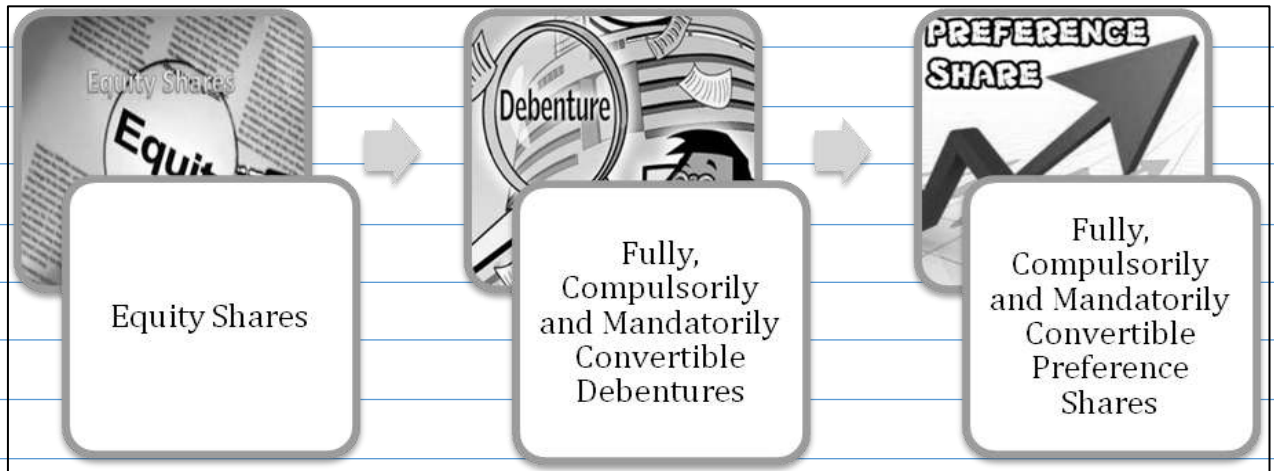
A person resident outside India may acquire or transfer, by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the pricing guidelines as prescribed by RBI. Prior approval from the

	<p>Government shall be obtained for such transfers in case the startup company is engaged in a sector which requires Government approval.</p> <p>The startup company issuing convertible notes shall be required to furnish reports as prescribed by Reserve Bank of India.</p>
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ENTRY ROUTES FOR INVESTMENT



INSTRUMENT FOR INVESTMENT

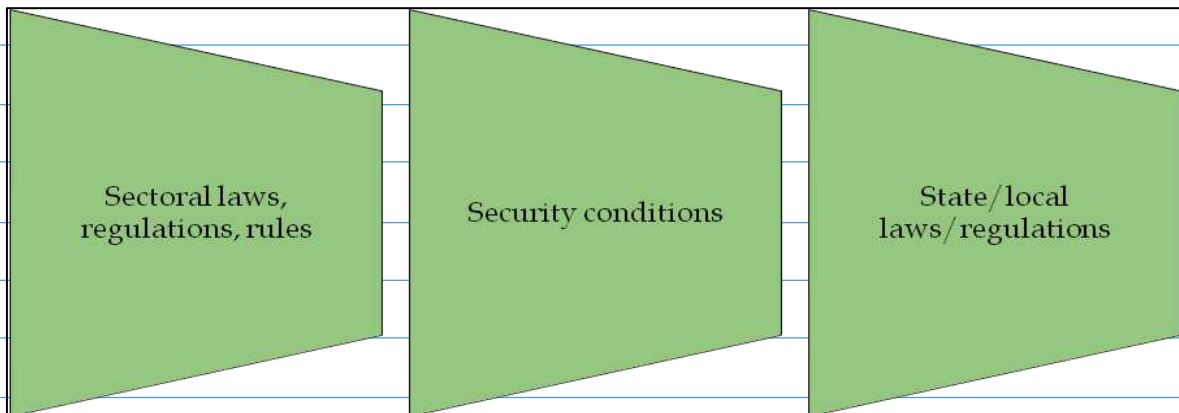


ENTRY CONDITIONS ON INVESTMENT

Investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for:



OTHER CONDITIONS ON INVESTMENT BESIDES ENTRY CONDITIONS



PROHIBITED SECTORS

Lottery Business including Government/private lottery, online lotteries etc.

Gambling and Betting including casinos etc.

Chit Funds

Nidhi Company

Trading in Transferable Development Rights (TDRs)

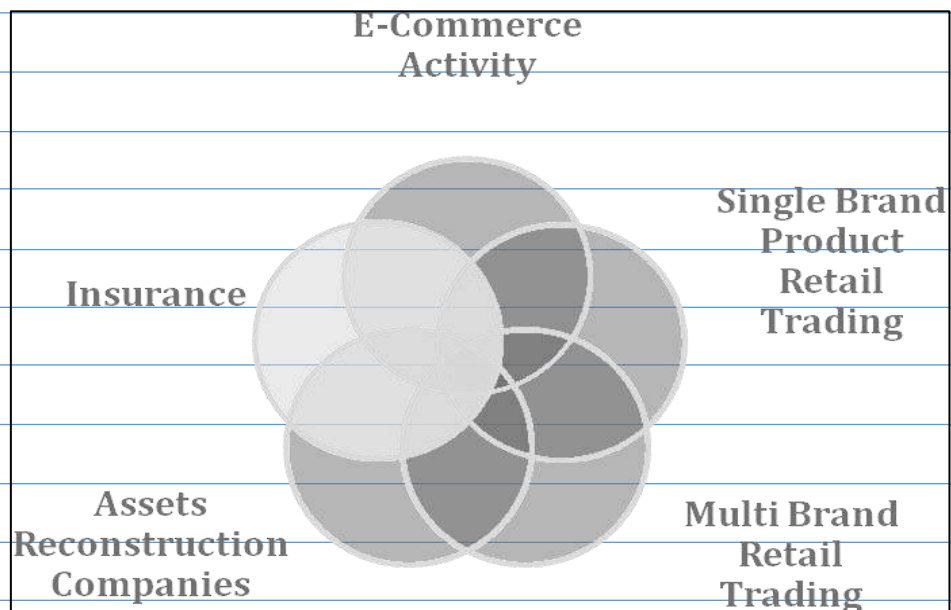
Real Estate Business* or Construction of Farm Houses

Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

Activities/sectors not open to private sector investment e.g.(I) Atomic Energy and (II) Railway operations(other than permitted activities).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

CONDITIONS OF FDI IN MAJOR SECTORS



FDI IN E COMMERCE ACTIVITY

- Subject to provisions of FDI Policy, e-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce.
- E-commerce means buying and selling of goods and services including digital products over digital & electronic network.
- Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.
- Marketplace based model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

OTHER CONDITIONS OF INVESTMENT

- 100% FDI under automatic route is permitted in marketplace model of e-commerce.
- FDI is not permitted in inventory based model of e-commerce.
- Digital & electronic network will include network of computers, television channels and any other internet application used in automated manner such as web pages, extranets, mobiles

etc.

- Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.
- E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call Centre, payment collection and other services.
- An e-commerce entity will not permit more than 25% of the sales value on financial year basis affected through its marketplace from one vendor or their group companies.
- In marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.
- In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.
- In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller.
- E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field.
- Guidelines on cash and carry wholesale trading of FDI Policy will apply on B2B e-commerce.
- Subject to the conditions of FDI policy on services sector and applicable laws/regulations, security and other conditionalities, sale of services through e-commerce will be under automatic route.

FDI IN SINGLE BRAND PRODUCT RETAIL TRADING

In Single Brand product retail trading, 49% FDI is allowed under Automatic route and beyond 49% under Government route.

- FDI in Single Brand product retail trading would be subject to the following conditions:
- Products to be sold should be of a 'Single Brand' only.
- Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India.
- 'Single Brand' product-retail trading would cover only products which are branded during manufacturing.

- A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'single brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading.

FDI IN MULTI BRAND RETAIL TRADING

In Multi Brand Retail Trading, 51% FDI allowed under Government route.

- (1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:
- Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.
 - Minimum amount to be brought in, as FDI, by the foreign investor, would be US \$ 100 million.
 - At least 50% of total FDI brought in the first tranche of US \$ 100 million, shall be invested in 'back-end infrastructure' within three years.
 - At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries, which have a total investment in plant & machinery not exceeding US \$ 2.00 million.
 - Self-certification by the company, to ensure compliance of the conditions at serial nos. (ii), (iii) and (iv) above, which could be cross-checked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.
 - Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census or any other cities as per the decision of the respective State Governments.
 - Government will have the first right to procurement of agricultural products.
 - Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading.

FDI IN ASSET RECONSTRUCTION COMPANY

Conditions -

- Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank of India, up to 100% on the automatic route.
- Investment limit of a sponsor in the shareholding of an ARC will be governed by the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,
- The total shareholding of an individual FII/FPI shall be below 10% of the total paid-up capital.
- FIIs/FPIs can invest in the Security Receipts (SRs) issued by ARCs. FIIs/FPIs may be allowed to invest up to 100 per cent of each tranche in SRs issued by ARCs, subject to directions/guidelines of Reserve Bank of India. Such investment should be within the relevant regulatory cap as applicable.

FDI IN INSURANCE

49% FDI is allowed in (i) Insurance Company (ii) Insurance Brokers (iii) Third Party Administrators (iv) Surveyors and Loss Assessors (v) Other Insurance Intermediaries appointed under the provisions of Insurance Regulatory and Development authority Act, 1999 (41 of 1999) under Automatic route.

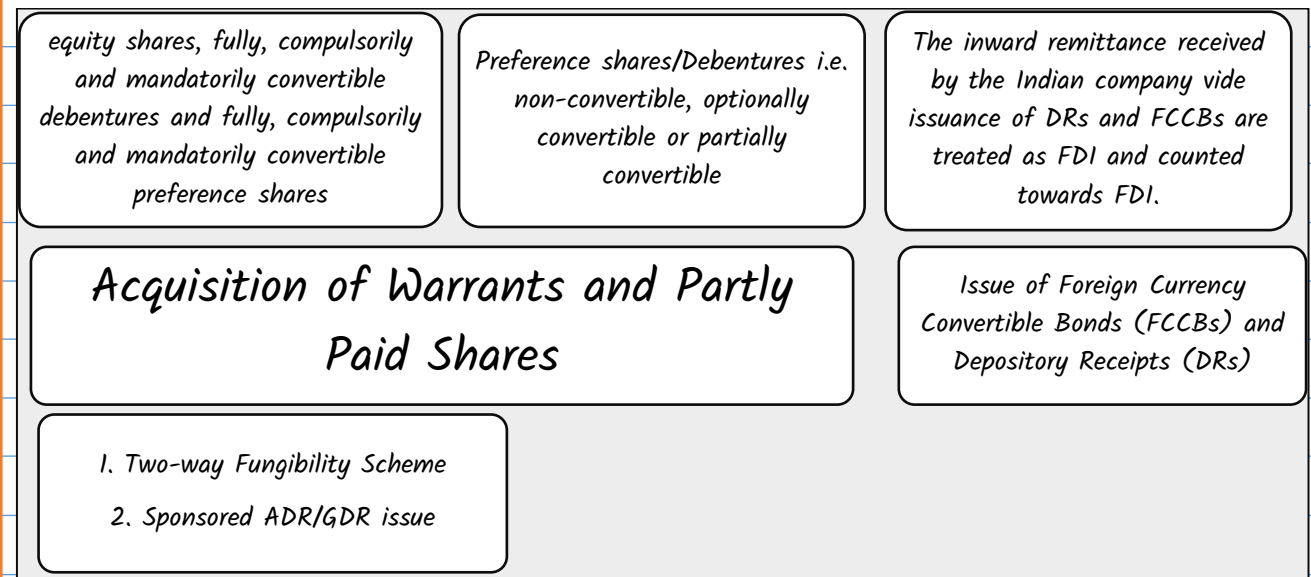
Conditions -

- (a) No Indian Insurance company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including portfolio investors, to exceed forty-nine percent of the paid up equity capital of such Indian Insurance company.
- (b) The foreign investment up to forty-nine percent of the total paid-up equity of the Indian Insurance Company shall be allowed on the automatic route subject to approval/verification by the Insurance Regulatory and Development Authority of India.
- (c) Foreign investment in this sector shall be subject to compliance with the provisions of the Insurance Act, 1938 and the condition that Companies receiving FDI shall obtain necessary

license /approval from the Insurance Regulatory & Development Authority of India for undertaking insurance and related activities.

- (d) An Indian Insurance company shall ensure that its ownership and control remains at all times in the hands of resident Indian entities .
- (e) Any increase in foreign investment in an Indian Insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the FEMA Regulations.

TYPES OF INSTRUMENTS THAT CAN BE USED UNDER FDI



TRANSFER OF SHARES

- The capital instruments should be issued within 180 days from the date of receipt of the inward remittance
- In case, the capital instruments are not issued within 180 days from the date of receipt of the inward remittance, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking .

ISSUE PRICE OF SHARES

Price of shares issued to persons resident outside India under the FDI Policy, shall not be less than -

- a. the price worked out in accordance with the SEBI guidelines, where the shares of the company are listed on any recognised stock exchange in India;
- b. the fair valuation of shares done by a SEBI registered Merchant Banker or a Chartered Accountant as per any internationally accepted pricing methodology on arm's length basis, where the shares of the company are not listed on any recognised stock exchange in India; and
- c. the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.

TRANSFER OF SHARES AND CONVERTIBLE DEBENTURES

General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:

- (a) A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs). Government approval is not required for transfer of shares in the investee company from one non-resident to another non-resident in sectors which are under automatic route. In addition, approval of Government will be required for transfer of stake from one non-resident to another non-resident in sectors which are under Government approval route.
- (b) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.
- (c) A person resident outside India can transfer any security to a person resident in India by way of gift.
- (d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.



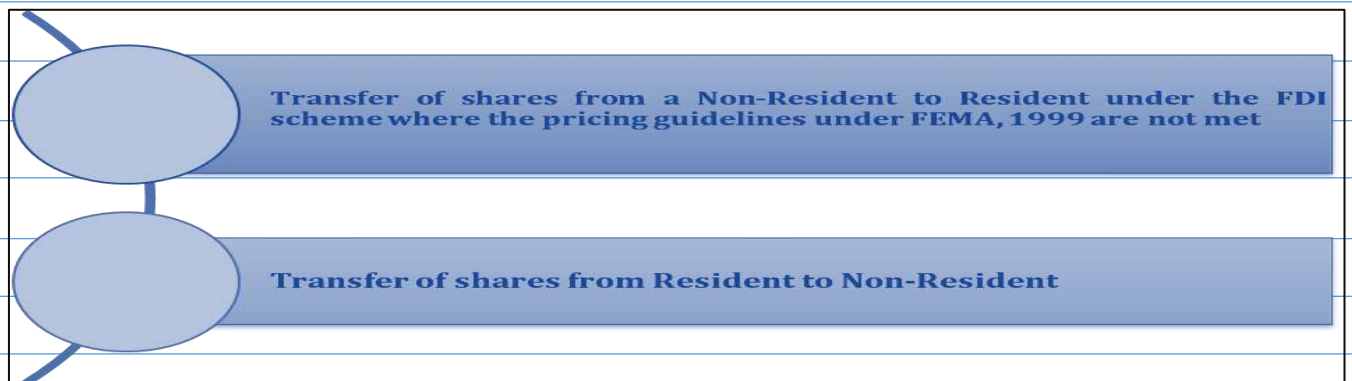
- (e) A person resident in India can transfer by way of sale, shares/ convertible debentures (including transfer of subscriber's shares), of an Indian company under private arrangement to a person resident outside India, subject to the guidelines.
- (f) General permission is also available for transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the guidelines.
- (g) The Form FC-TRS should be submitted to the AD Category-1 Bank, within 60 days from the date of receipt of the amount of consideration.
- (h) The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a Know Your Customer (KYC) check by the remittance receiving AD Category-1 bank at the time of receipt of funds. Category-1 bank carrying out the transaction along with the Form FC-TRS.
- (i) Escrow: AD Category-1 banks have been given general permission to open escrow account and special account of non-resident corporate for open offers/exit offers and delisting of shares.
- (j) In case of transfer of shares between a resident buyer and a non-resident seller or vice-versa, not more than twenty five per cent of the total consideration can be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement.

PRIOR PERMISSION OF RBI IN CERTAIN CASES OF TRANSFER

In the following cases, prior approval of RBI is required:

- Transfer of capital instruments from resident to non-residents by way of sale.
- Transfer of any capital instrument by way of gift by a person resident in India to a person resident outside India. While forwarding applications to Reserve bank for approval for transfer of capital instruments by way of gift, the documents should be enclosed.
- Transfer of shares from NRI to Non-resident

In the Following Cases, Approval of RBI Is Not Required



CONVERSION OF ECB INTO EQUITY

- (I) Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into equity shares/fully compulsorily and mandatorily convertible preference shares, subject to the following conditions and reporting requirements:
- (a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company;
 - (b) The foreign equity after conversion of ECB into equity is within the sectoral cap, if any;
 - (c) Pricing of shares is as per the issue price of shares;
 - (d) Compliance with the requirements prescribed under any other statute and regulation in force; and
 - (e) The conversion facility is available for ECBs availed under the Automatic or Government Route and is applicable to ECBs, due for payment or not, as well as secured/unsecured loans availed from non-resident collaborators.
- (II) Issue of equity shares against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 has been permitted by the Reserve Bank .
- (III) A wholly owned subsidiary set up in India by a non-resident entity, operating in a sector where 100 percent foreign investment is allowed in the automatic route and there are no FDI linked conditionalities, may issue equity shares or preference shares or convertible debentures or warrants to the said non-resident entity against pre-incorporation/ pre-operative expenses



incurred by the said non-resident entity up to a limit of five percent of its capital or USD 500,000 whichever is less, subject to the conditions laid down below:

- a. Within thirty days from the date of issue of equity shares or preference shares or convertible debentures or warrants but not later than one year from the date of incorporation or such time as Reserve Bank of India or Government of India permits, the Indian company shall report the transaction in the Form FC- GPR to the Reserve Bank.
- b. The valuation of the equity shares or preference shares or convertible debentures or warrants shall be subject to the provisions of Schedule I of the FEM (Transferor Issue of Security by a person resident outside India) Regulations.
- c. A certificate issued by the statutory auditor of the Indian company that the amount of pre-incorporation/ pre-operative expenses against which equity shares or preference shares or convertible debentures or warrants have been issued has been utilized for the purpose for which it was received should be submitted with the FC-GPR form.

(IV) Issue of equity shares under the FDI policy is allowed under the Government route for the following:

- (i) import of capital goods/ machinery/ equipment (excluding second-hand machinery), subject to compliance with the following conditions:
 - (a) Any import of capital goods/machinery etc., made by a resident in India, has to be in accordance with the Export/Import Policy issued by Government of India.
 - (b) The application clearly indicating the beneficial ownership and identity of the Importer Company as well as overseas entity.
 - (c) Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.
- (ii) Pre-operative/pre-incorporation expenses (including payments of rent etc.), subject to compliance with the following conditions:
 - (a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred.
 - (b) Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor.
 - (c) Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations.



- (d) *The applications, complete in all respects, for capitalization being made within the period of 180 days from the date of incorporation of the company.*

General conditions-

- (i) *All requests for conversion should be accompanied by a special resolution of the company.*
- (ii) *Government's approval would be subject to pricing guidelines of RBI and appropriate tax clearance.*

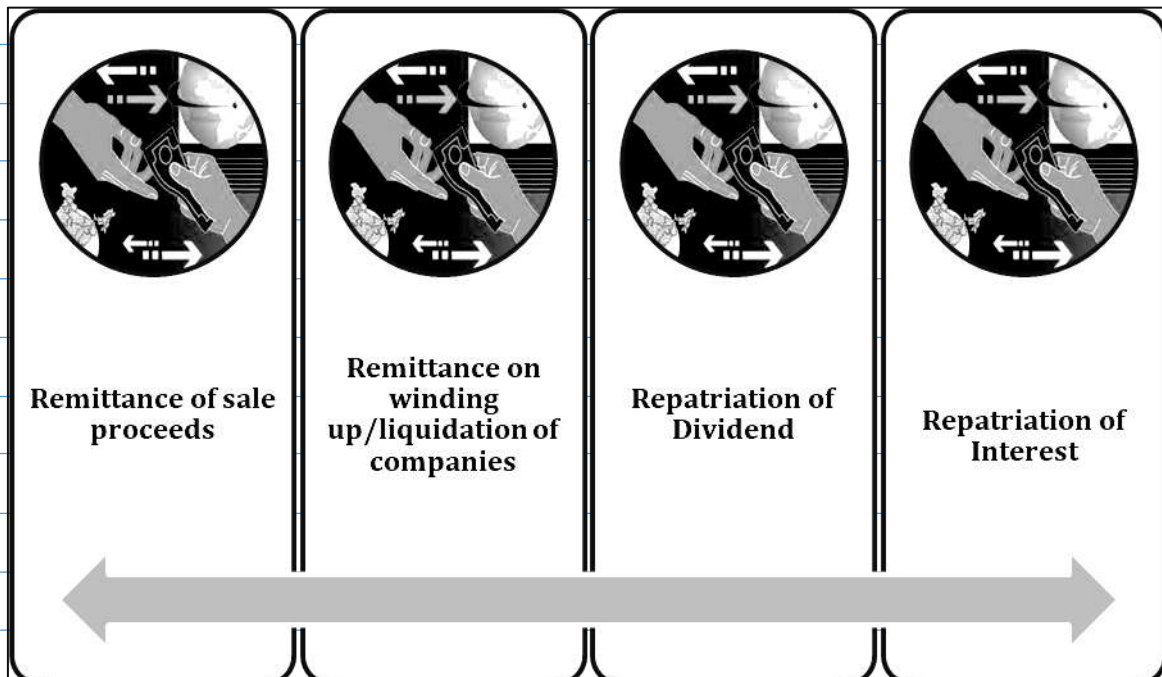
PLEDGE OF SHARES

A person being a promoter of a company registered in India (borrowing company)	Non-residents holding shares of an Indian company	Non-residents holding shares of an Indian company
<p>The authorized dealer, shall issue the no objection for such a pledge after having satisfied itself that the external commercial borrowing is in line with the extant FEMA regulations for ECBs and that:</p> <p>the loan agreement has been signed by both the lender and the borrower, there exists a security clause in the Loan Agreement requiring the borrower to create charge on financial securities, and the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank; and the said pledge would be subject to the following conditions:</p> <p>the period of such pledge shall be co-terminus with</p>	<p>In case of invocation of pledge, transfer of shares should be in accordance with the FDI policy in vogue at the time of creation of pledge;</p> <p>submission of a declaration/ annual certificate from the statutory auditor of the investee company that the loan proceeds will be / have been utilized for the declared purpose;</p> <p>the Indian company has to follow the relevant SEBI disclosure norms; and</p> <p>pledge of shares in favour of the lender (bank) would be subject to Section 19 of the Banking Regulation Act, 1949.</p>	<p>can pledge these shares in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor/non-resident promoter of the Indian company or its overseas group company, subject to the following:</p> <p>loan is availed of only from an overseas bank;</p> <p>loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;</p> <p>overseas investment should not result in any capital inflow into India;</p> <p>in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and</p> <p>submission of a declaration/annual certificate</p>

the maturity of the underlying ECB;
in case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy and directions issued by the Reserve Bank; the Statutory Auditor has certified that the borrowing company will utilized/has utilized the proceeds of the ECB for the permitted end use/s only.

from a Chartered Accountant/ Certified Public Accountant of the non-resident borrower that the loan proceeds will be / have been utilized for the declared purpose.

REMMITTANCE AND REPATRIATION





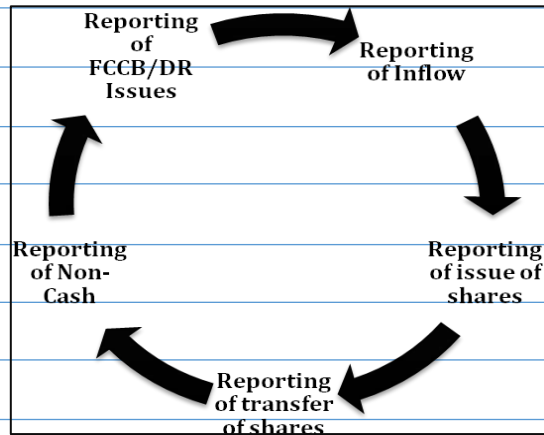
MODES OF PAYMENT ALLOWED FOR RECEIVING FDI IN AN INDIAN COMPANY

An Indian company issuing shares/ convertible debentures to a person resident outside India shall receive the amount of consideration by:

- (a) inward remittance through normal banking channels;
- (b) debit to NRE/ FCNR (B) account of a person concerned maintained with an AD Category I bank;
- (c) debit to non-interest bearing escrow account in Indian Rupees in India which is opened with the approval from AD Category - I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards payment of share purchase consideration;
- (d) conversion of royalty/ lump sum/ technical know-how fee due for payment or conversion of ECB;
- (e) conversion of pre-incorporation/ pre-operative expenses incurred by the a non-resident entity up to a limit of five percent of its capital or USD 500,000 whichever is less;
- (f) conversion of import payables/ pre incorporation expenses/ can be treated as consideration for issue of shares with the approval of FIPB;
- (g) against any other funds payable to a person resident outside India, the remittance of which does not require the prior approval of the Reserve Bank or the Government of India; and
- (h) Swap of capital instruments, provided where the Indian investee company is engaged in a Government route sector, prior Government approval shall be required.

If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE/ FCNR (B)/ escrow account, the amount shall be refunded.

REPORTING OF FDI WITHIN 30 DAYS



ESTABLISHMENT OF BRANCH OFFICE/ LIASON OFFICE/ PROJECT OFFICE

BRANCH OFFICE

Normally, the branch office should be engaged in the activity in which the parent company is engaged.

- Export/import of goods.
- Rendering professional or consultancy services.
- Carrying out research work in which the parent company is engaged.
- Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- Representing the parent company in India and acting as buying/ selling agent in India.
- Rendering services in Information Technology and development of software in India.
- Rendering technical support to the products supplied by parent/group companies.
- Representing a foreign airline/shipping company.

LIASON OFFICE

Liaison Office means a place of business to act as a channel of communication between the principal place of business or Head Office or entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

Permitted activities for a liaison office in India of a person resident outside India

Representing the parent company / group companies in India.

Promoting export / import from / to India.

Promoting technical/ financial collaborations between parent / group companies and companies in India.

Acting as a communication channel between the parent company and Indian companies.

PROJECT OFFICE

Project office means a place of business in India to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

Parameters of project office

A foreign company may open project office/s in India provided it has secured from an Indian company, a contract to execute a project in India, and the project is funded directly by inward remittance from abroad; or

the project is funded by a bilateral or multilateral International Financing Agency; or the project has been cleared by an appropriate authority; or
a company or entity in India awarding the contract has been granted term loan by a Public Financial Institution or a bank in India for the Project.

In the case of the Bar Council of India vs A.K. Balaji & Ors., has directed RBI not to grant any permission to any foreign law firm, on or after the date of the said interim order, for opening of LO in India. Hence, no foreign law firm shall be permitted to open any LO in India till further orders/notification in this regard. However, foreign law firms which have been granted permission prior to the date of interim order for opening LOs in India may be allowed to continue provided such permission is still in force. No fresh permissions/ renewal of permission shall be granted by the Reserve Bank/AD Category-1 banks respectively till the policy is reviewed based on, among others, final disposal of the matter by the Hon'ble Supreme Court.

GENERAL CRITERIA

- i. Applications from foreign companies (a body corporate incorporated outside India, including a firm or other association of individuals) for establishing BO/ LO/ PO in India shall be considered by the AD Category-1 bank
- ii. An application from a person resident outside India for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India in the following cases:

The applicant is a citizen of or is registered/incorporated in Pakistan
The applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
The principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting.*
The applicant is a Non-Government Organisation (NGO), Non-Profit Organisation, Body/ Agency/ Department of a foreign government.**

iii. *The non-resident entity applying for a BO/LO in India should have a financially sound track record viz:*

Branch Office	A profit making track record during the immediately preceding five financial years in the home country and net worth of not less than USD 100,000 or its equivalent.
Liaison Office	A profit making track record during the immediately preceding three financial years in the home country and net worth of not less than USD 50,000 or its equivalent.
An applicant that is not financially sound and is a subsidiary of another company	May submit a Letter of Comfort (LOC) from its parent/ group company, subject to the condition that the parent/ group company satisfies the prescribed criteria for net worth and profit.

PROCEDURE FOR ESTABLISHMENT

The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC to a designated AD Category - I bank

AD Category-I bank shall forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India,

After receipt of the UIN from the Reserve Bank, the AD Category-I bank shall issue the approval letter to the non-resident entity for establishing BO/LO in India.

An applicant that has received permission for setting up of a BO/LO/PO shall inform the designated AD Category I bank as to the date on which the BO/LO/PO has been set up. The AD Category I bank in turn shall inform Reserve Bank accordingly

The validity period of an LO is generally for three years, except in the case of Non-Banking Finance companies

The approval granted by the AD Category I bank should include a proviso to the effect that in case the BO/LO/PO for which approval has been granted is not opened within six months from the date of the approval letter, the approval shall lapse.

All applications for establishing a BO/LO in India by foreign banks and insurance companies will be directly received and examined by the Department of Banking Regulation (DBR)

There is a general permission to non-resident companies for establishing BO in the Special Economic Zones (SEZs) to undertake manufacturing and service activities subject to the conditions

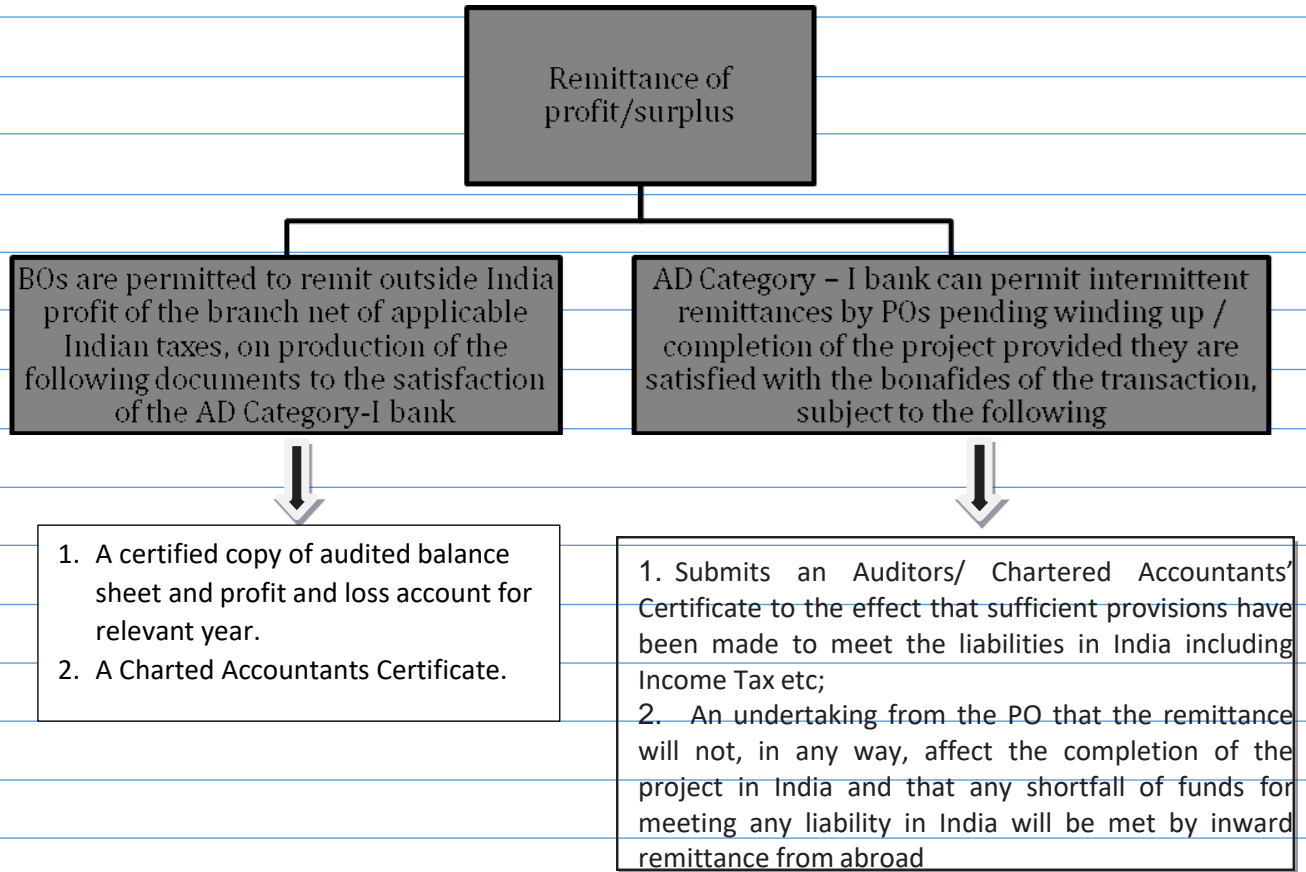
(a) such BOs are functioning in those sectors where 100% FDI is permitted;
(b) such BOs comply with Chapter XXII of the Companies Act, 2013; and
(c) such BOs function on a stand-alone basis.

EXTENSION OF VALIDITY PERIOD

- i. The designated AD Category - I bank may extend the validity period of LO/s for a period of 3 years from the date of expiry of the original approval / extension granted if the applicant has complied with the following conditions and the application is otherwise in order:
- (a) The LO should have submitted the Annual Activity Certificates for the previous years and
 - (b) The account of the LO maintained with the designated AD Category - I bank is being operated in accordance with the terms and conditions stipulated in the approval letter.

APPLICATION FOR ADDITIONAL OFFICE

- i. Requests for establishing additional BOs / LOs may be submitted to the AD Category-I bank in a fresh FNC form. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.
- (a) If the number of offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s and it shall require prior approval of RBI.
 - (b) The applicant may identify one of its offices in India as the Nodal Office, which will coordinate the activities of all of its offices in India.
- Whenever the existing BO/LO is shifting to another city in India, prior approval from the AD Category-I bank is required.

REMITTANCE OF PROFITS/ SURPLUS

1

Requests for closure of the BO / LO/ PO and submit the application along with following documents for remittance of winding up proceeds of BO / LO/ PO to the designated AD Category - I bank

- Copy of the Reserve Bank's/AD Category-I bank's approval
- Auditor's certificate ;
- Confirmation from the applicant/parent company that no legal proceedings is pending in any Court in India ;
- A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013;
- The designated AD Category - I banks has to ensure that the BO / LO/ PO had filed their respective AACs ; and
- Any other document/s, specified by Reserve Bank of India/AD Category-I bank.

2

Designated AD Category-I bank may allow remittance of winding up proceeds in respect of offices of banks and insurance companies, after obtaining copies of permission of closure from the sectoral regulators along with the documents mentioned above.

TRANSFER OF ASSETS OF LO/BO/PO

- (i) *Transfer of assets by way of sale to the JV/WoS be allowed by AD Category-I bank only when the non- resident entity intends to close their BO/LO/PO operations in India.*
- (ii) *A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or written down value (WDV) and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.*
- (iii) *The assets should have been acquired by the BO/LO/PO from inward remittances and no intangible assets such as good will, pre-operative expenses should be included. No revenue expenses such as lease hold improvements incurred by the BO/LO can be capitalised and transferred to JV/WOS.*
- (iv) *AD Category-I bank must ensure payment of all applicable taxes while permitting transfer of*



assets.

- (v) Credits to the bank accounts of BO/LO/PO on account of such transfer of assets will be treated as permissible credits.
- (vi) Donation by BO/LO/PO of old furniture, vehicles, computers and other office items etc. to NGOs or other not-for-profit organisations may be permitted by the AD category-1 banks after satisfying itself about the bonafide of the transaction.

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

General conditions applicable to all investors-

1. No person resident outside India shall make any investment in India.
2. An Indian entity or an investment vehicle, or a venture capital fund or a firm or an association of persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books.
3. Any investment made by a person resident outside India shall be subject to the entry routes, sectoral caps or the investment limits.

INVESTMENT BY PERSON RESIDENT OUTSIDE INDIA

- a person resident outside India may subscribe, purchase or sell equity instruments of an Indian company in the manner and subject to the specified terms and conditions.
- A person who is a citizen of Bangladesh or Pakistan or is an entity incorporated in Bangladesh or Pakistan cannot purchase equity instruments without the prior government approval.
- A citizen of Pakistan or an entity incorporated in Pakistan cannot invest in defence, space, atomic energy and sectors or activities prohibited for foreign investment even through the government route.
- It may be noted that issue or transfer of "participating interest or right" in oil fields by Indian companies to a person resident outside India would be treated as foreign investment and shall comply with the specified conditions.

Sectors prohibited for FDI.-

1. Lottery business including Government or private lottery, online lotteries, etc.
2. Gambling and betting including casinos, etc.
3. Chit funds
4. Nidhi company
5. Trading in Transferable Development Rights
6. Real estate business or construction of farm houses
7. Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes.
8. Activities or sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations (other than permitted activities)
9. Foreign technology collaborations in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for lottery business and gambling and betting activities.

INVESTMENT BY PERSON RESIDENT OUTSIDE INDIA IN LLP

- (a) A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity incorporated in Pakistan or Bangladesh), not being a Foreign Portfolio Investor (FPI) or a Foreign Venture Capital Investor (FVCI), may contribute to the capital of an LLP operating in sectors or activities where foreign investment up to 100 per cent is permitted under automatic route and there are no FDI linked performance conditions.
- (b) Investment by way of "profit share" shall fall under the category of reinvestment of earnings.
- (c) Investment in a LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008.
- (d) A company having foreign investment, engaged in a sector where foreign investment up to 100 percent is permitted under the automatic route and there are no FDI linked performance conditions, may be converted into a LLP under the automatic route.
- (e) A LLP having foreign investment, engaged in a sector where foreign investment up to 100 per



cent is permitted under the automatic route and there are no FDI linked performance conditions, may be converted into a company under the automatic route.

- (f) Investment in a LLP either by way of capital contribution or by way of acquisition or transfer of profit shares, should not be less than the fair price worked out as per any valuation norm which is internationally accepted or adopted as per market practice (hereinafter referred to as "fair price of capital contribution or profit share of a LLP") and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practising Cost Accountant or by an approved valuer from the panel maintained by the Central Government.
- (g) In case of transfer of capital contribution or profit share from a person resident in India to a person resident outside India, the transfer shall be for a consideration not less than the fair price of capital contribution or profit share of a LLP. Further, in case of transfer of capital contribution or profit share from a person resident outside India to a person resident in India, the transfer shall be for a consideration which is not more than the fair price of the capital contribution or profit share of an LLP.
- (h) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

INVESTMENT BY PERSON RESIDENT OUTSIDE INDIA IN INVESTMENT VEHICLE

- (1) An Investment vehicle may issue its units to a person resident outside India against swap of equity instruments of a Special Purpose Vehicle (SPV) proposed to be acquired by such Investment Vehicle.
- (2) Investment made by an Investment Vehicle into an Indian entity shall be reckoned as indirect foreign investment for the investee Indian entity if the Sponsor or the Manager or the Investment Manager (i) is not owned and not controlled by resident Indian citizens or (ii) is owned or controlled by persons resident outside India.
- (3) An Alternative Investment Fund Category III which has received any foreign investment shall make portfolio investment in only those securities or instruments in which a FPI is allowed to invest under the Act or rules or regulations made thereunder.
- (4) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank.

ACQUISITION THROUGH RIGHT ISSUE

Indian company may make investment in equity instruments (other than share warrants) issued by such company as a rights issue or a bonus issue, provided that,-

- (a) the offer made by the Indian company is in compliance with the provisions of the Companies Act, 2013;
- (b) such issue shall not result in a breach of the sectoral cap applicable to the company;
- (c) the shareholding on the basis of which the rights issue or the bonus issue has been made must have been acquired and held as per the provisions of FEM(Non-debt Instruments) Rules, 2019;
- (d) in case of a listed Indian company, the rights issue to persons resident outside India shall be at a price determined by the company;
- (e) in case of an unlisted Indian company, the rights issue to persons resident outside India shall not be at a price less than the price offered to persons resident in India;
- (f) such investment made through rights issue or bonus issue shall be subject to the conditions as are applicable at the time of such issue;
- (g) the mode of payment and attendant conditions for such transactions shall be specified by the Reserve Bank.
- (h) an individual who is a person resident outside India exercising a right which was issued when he or she was a person resident in India shall hold the equity instruments (other than share warrants) so acquired on exercising the option on a non-repatriation basis.

INVESTMENT BY FPI

(a) Purchase and sale of equity instruments.-

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

1. The total holding by each FPI or an investor group, shall be less than 10 percent of the total paid-up equity capital on a fully diluted basis.

2. The FPIs investing in breach of the prescribed limit shall have the option of divesting their holdings within 5 trading days from the date of settlement of the trades causing the breach
3. The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government or its related entities for the purpose of calculation of 10 percent limit for FPI investments.

INVESTMENT BY NRI ON REPATRIATION BASIS

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

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

- (a) NRIs or OCIs may purchase and sell equity instruments through a branch designated by an Authorized Dealer for the purpose;
- (b) The total holding by any individual NRI or OCI shall not exceed 5 percent of the total paid-up equity capital on a fully diluted basis.

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

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

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

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

PURCHASE OR SALE OF EQUITY INSTRUMENTS OF AN INDIAN COMPANY OR UNITS OR CONTRIBUTION TO THE CAPITAL OF A LLP BY NON-RESIDENT INDIAN (NRI) OR OVERSEAS CITIZEN OF INDIA (OCI) ON NON-REPATRIATION BASIS.

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

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

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

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

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

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

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

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

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

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

A. Investment in a firm or a proprietary concern.

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

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

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

Note: A NRI or an OCI may trade or invest in all exchange traded derivative contracts approved by the Securities and Exchange Board of India.

TRANSFER BY NRI

a NRI or an OCI or an eligible investor holding equity instruments or units of an Indian company on a non- repatriation basis may transfer the same to a person resident outside India by way of gift with the prior approval of the Reserve Bank of India, in the manner prescribed, and subject to the following conditions, namely:-

- (i) the donee is eligible to hold such a security under relevant Schedules of these rules;
- (ii) the gift does not exceed five percent of the paid up capital of the Indian company or each mutual fund scheme;
- (iii) the applicable sectoral cap in the Indian company is not breached;
- (iv) the donor and the donee shall be "relatives" within the meaning in clause (77) of section 2 of the Companies Act, 2013;
- (v) the value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift during the financial year does not exceed the rupee equivalent of USD 50000;
- (vi) such other conditions as may be considered necessary in public interest by the Central Government.

INVESTMENT BY FOREIGN VENTURE CAPITAL INVESTORS

- (1) Subject to the terms and conditions as may be laid down by the Central Government, a Foreign Venture Capital Investor (FVCI) may purchase, -
- i. securities, issued by an Indian company engaged in any sector
 - ii. units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund
 - iii. equity or equity linked instrument or debt instrument issued by an Indian 'start-up'

irrespective of the sector in which the start-up is engaged.

- (2) A FVCI may purchase the securities or instruments mentioned above either from the issuer of these securities/ instruments or from any person holding these securities or instruments. The FVCI may invest in securities on a recognised stock exchange subject to the provisions of the Securities and Exchange Board of India (FVCI) Regulations, 2000.
- (3) The FVCI may acquire, by purchase or otherwise, from, or transfer, by sale or otherwise, to, any person resident in or outside India, any security or instrument it is allowed to invest in, at a price that is mutually acceptable to the buyer and the seller/ issuer. The FVCI may also receive the proceeds of the liquidation of VCFs or of Cat-I AIFs or of schemes or funds set up by the VCFs or Cat-I AIFs.
- (4) The mode of payment and other attendant conditions for remittance of sale or maturity proceeds shall be specified by the Reserve Bank of India
- (5) List of sectors in which a Foreign Venture Capital Investor is allowed to invest is as follows -
 - (a) biotechnology;
 - (b) IT related to hardware and software development;
 - (c) nanotechnology;
 - (d) seed research and development;
 - (e) research and development of new chemical entities in pharmaceutical sector.
 - (f) dairy industry;
 - (g) poultry industry;
 - (h) production of bio-fuels;
 - (i) hotel-cum-convention centres with seating capacity of more than three thousand;

REMITTANCE OF SALE PROCEEDS

- (a) No remittance of sale proceeds of an Indian security held by a person resident outside India shall be made otherwise than in accordance with these rules, the conditions prescribed in the relevant Schedule and as specified by the Reserve Bank.
- (b) An authorised dealer may allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India :

DOWNSTREAM INVESTMENT

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

- (1) Guidelines for calculating total foreign investment in Indian companies are as follows,-
 - (a) any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned for total foreign investment;
 - (b) FCCBs and DRs having underlying of instruments in the nature of debt shall not be reckoned for total foreign investment;
 - (c) the methodology for calculating total foreign investment shall apply at every stage of investment in Indian companies and thus in each and every Indian company;
 - (d) indirect foreign investment received by a wholly owned subsidiary of an Indian company shall be limited to the total foreign investment received by the company making the downstream investment.
- (2) Downstream investment that is treated as indirect foreign investment for the investee entity shall be subject to the following conditions, namely:-
 - (a) downstream investment shall have the approval of the Board of Directors as also a shareholders' Agreement, if any;
 - (b) for the purpose of downstream investment, the Indian entity making the downstream investment shall bring in requisite funds from abroad and not use funds borrowed in the domestic markets and the downstream investments may be made through internal accruals and for this purpose, internal accruals shall mean profits transferred to reserve account after payment of taxes. Further raising of debt and its utilisation shall be in compliance with the Act, rules or regulations made thereunder.
- (3) Equity instrument of an Indian company held by another Indian company which has received foreign investment and is not owned and not controlled by resident Indian citizens or is owned or controlled by persons resident outside India may be transferred to-
 - (a) a person resident outside India, subject to the reporting requirements as specified by the Reserve Bank.
 - (b) a person resident in India subject to adherence to pricing guidelines;



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

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA

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

- (a) Acquire immovable property in India other than an agricultural land or farm house or plantation property: Provided that the consideration, if any, for transfer, shall be made out of:
- (i) funds received in India through banking channels by way of inward remittance from any place outside India ; or
 - (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder:
- (b) Acquire any immovable property in India other than agricultural land or farm house or plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in clause (77) of section 2 of the Companies Act, 2013;
- (c) Acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property:-
- (i) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or
 - (ii) from a person resident in India;
- (d) transfer any immovable property in India to a person resident in India;
- (e) transfer any immovable property other than agricultural land or farm house or plantation property to an NRI or an OCI.



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

MODES OF PAYMENT AND REPATRIATION OF SALE PROCEEDS

Mode of payment:

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

Explanation: The amount of consideration shall include:

- (i) Issue of equity shares by an Indian company against any funds payable by it to the investor
 - (ii) Swap of equity instruments.
- (2) Equity instruments shall be issued to the person resident outside India making such investment within sixty days from the date of receipt of the consideration.
- (3) Where such equity instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR (B) accounts, as the case may be within fifteen days from the date of completion of sixty days.
- (4) An Indian company issuing equity instruments under this Schedule may open a foreign currency account with an Authorised Dealer in India in accordance with Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2016.

Remittance of sale proceeds

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

REPORTING REQUIREMENT

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

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

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

- (3) **Form Foreign Currency-Transfer of Shares (FC-TRS):***
 - (a) Form FCTRS shall be filed for transfer of equity instruments in accordance with the rules, between:*
 - i. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and person resident outside India holding equity instruments on a non-repatriable basis; and*
 - ii. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India, the onus of reporting shall be on the resident transferor/transferee or the person resident outside India holding equity instruments on a non-repatriable basis, as the case may be.*

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



- (b) Transfer of equity instruments on a recognised stock exchange by a person resident outside India shall be reported by such person in Form FC-TRS.
- (c) Transfer of equity instruments prescribed in Rule 9(6) of the Rules, shall be reported in Form FC-TRS on receipt of every tranche of payment. The onus of reporting shall be on the resident transferor/ transferee.
- (d) Transfer of 'participating interest/rights' in oil fields shall be reported Form FC-TRS. The form FCTRS shall be filed within sixty days of transfer of equity instruments or receipt/remittance of funds whichever is earlier.
- (4) Form Employees' Stock Option (ESOP):** An Indian company issuing employees' stock option to persons resident outside India who are its employees/directors or employees/directors of its holding company/joint venture / wholly owned overseas subsidiary/subsidiaries shall file Form-ESOP, within 30 days from the date of issue of employees' stock option.
- (5) Form Depository Receipt Return (DRR):** The Domestic Custodian shall report in Form DRR, the issue / transfer of depository receipts issued in accordance with the Depository Receipt Scheme, 2014 within 30 days of close of the issue.
- (6) Form LLP (I):** A Limited Liability Partnerships (LLP) receiving amount of consideration for capital contribution and acquisition of profit shares shall file Form LLP (I), within 30 days from the date of receipt of the amount of consideration.
- (7) Form LLP (II):** The disinvestment/transfer of capital contribution or profit share between a resident and a non-resident (or vice versa) shall be filed in Form LLP(II) within 60 days from the date of receipt of funds. The onus of reporting shall be on the resident transferor/transferee.
- (8) LEC(FII):** The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (FII) the purchase/transfer of equity instruments by FPIs on the stock exchanges in India.

- (9) **LEC(NRI):** The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (NRI) the purchase/transfer of equity instruments by Non-Resident Indians or Overseas Citizens of India on stock exchanges in India.
- (10) **Form InVI:** An Investment vehicle which has issued its units to a person resident outside India shall file Form InVI within 30 days from the date of issue of units.
- (11) **Downstream Investment**
- a. An Indian entity or an investment vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the investee Indian entity in terms of the Rules, shall notify the Secretariat for Industrial Assistance, DPIIT within 30 days of such investment, even if equity instruments have not been allotted, along with the modality of investment in new/existing ventures (with/without expansion programme).
- b. **Form DI:** An Indian entity or an investment Vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the investee Indian entity in terms of Rule 22 of the Rules shall file Form DI with the Reserve Bank within 30 days from the date of allotment of equity instruments.
- (12) **Form Convertible Notes (CN):**
- a. The Indian Start-up Company issuing Convertible Notes to a person resident outside India shall file Form CN within 30 days of such issue.
- b. A person resident in India, who may be a transferor or transferee of Convertible Notes issued by an Indian start-up company shall report such transfers to or from a person resident outside India, as the case may be, in Form CN within 30 days of such transfer.

FOREIGN EXCHANGE MANAGEMENT (DEBT INSTRUMENTS) REGULATIONS, 2019

- no person resident outside India shall make any investment in India.
- Indian entity or a mutual fund, or a venture capital fund or a firm or an association of persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books.
- any investment made by a person resident outside India shall be subject to the entry routes, the investment limits and the attendant conditionalities for such investment as laid down.

PURCHASE AND SALE OF DEBT INSTRUMENT BY PERSON RESIDENT OUTSIDE INDIA

Permission to person's resident outside India

A. Permission to Foreign Portfolio Investors (FPIs)

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

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



k) *Municipal Bonds:*

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

- (1) *A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may, without limit, purchase the following instruments on repatriation basis,*
- a. *Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity;*
 - b. *Bonds issued by a Public Sector Undertaking (PSU) in India;*
 - c. *Bonds issued by Infrastructure Debt Funds;*
 - d. *Listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations;*

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

- (1) *An NRI or an OCI may, without limit, purchase on non-repatriation basis, listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations.*
- (2) *An NRI or an OCI may, without limit, on non-repatriation basis subscribe to the chit funds authorised by the Registrar of Chits or an officer authorised by the State Government in this behalf.*

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

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

Mode of Payment

- (1) *The amount of consideration for purchase of instruments by FPIs shall be paid out of inward*



remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or Special Non- Resident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. The foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule.

REMIITANCE OF SALE / MATURITY PROCEEDS

- (1) The sale/ maturity proceeds (net of taxes) of instruments held by Foreign Portfolio Investors (FPIs) may be remitted outside India or may be credited to the foreign currency account or SNRR account of the FPI.
- (2) The net sale/ maturity proceeds (net of taxes) of instruments held by NRIs or OCIs, may be:
 - a) Credited to the NRO account person concerned where the instruments were held on non-repatriation basis
 - b) Credited to the NRO account person concerned where the payment for the purchase of the instruments sold was made out of funds held in NRO account, or
 - c) Remitted abroad or at the NRI/ OCI investor's option, credited to his NRE/ FCNR (B)/ NRO account, where the instruments were purchased on repatriation basis.

CHAPTER 8- EXTERNAL COMMERCIAL BORROWING

INTRODUCTION

ECBs are commercial loans raised by eligible resident entities from recognized non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. These parameters apply in totality and not on a standalone basis.

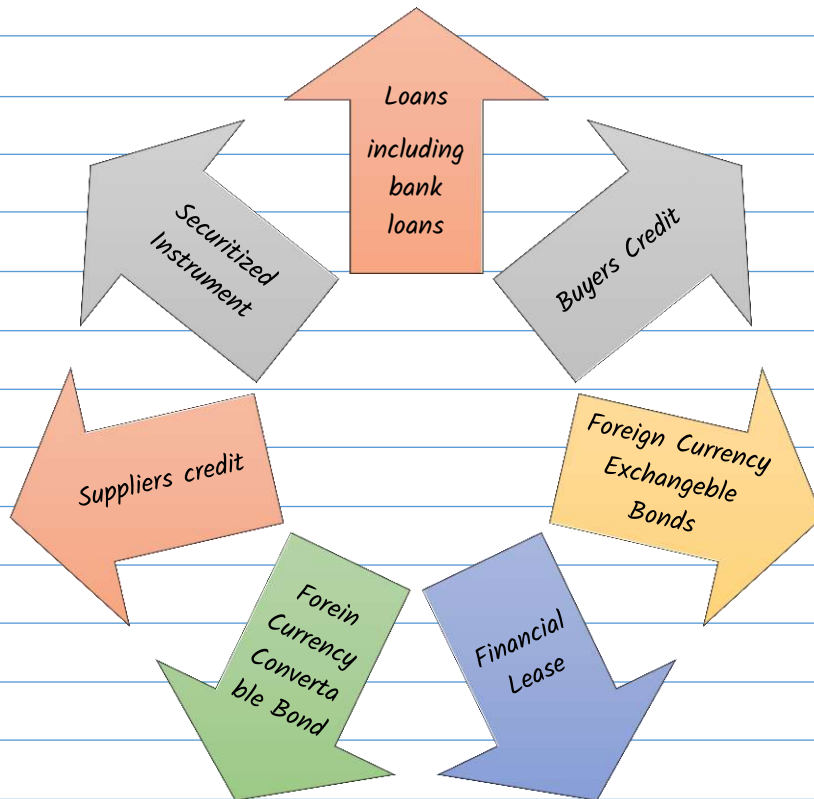
The framework for raising loans through ECB comprises the following two options:

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

	<p>accordance with the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, as amended from time to time. Issuance of FCCBs shall also conform to other applicable regulations. Further, FCCBs should be without any warrants attached.</p>	
<p>Eligible Borrowers</p>	<p>All entities eligible to receive Foreign Direct Investment (FDI). Further, the following entities are also eligible to raise ECB:</p> <p>Port Trusts; Units in SEZ; SIDBI; and EXIM Bank of India.</p>	<p>a) All entities eligible to raise Foreign Currency ECB; and b) Registered entities engaged in micro-finance activities, registered Not for Profit companies, registered societies/trusts/ cooperatives and Non-Government Organisations.</p>

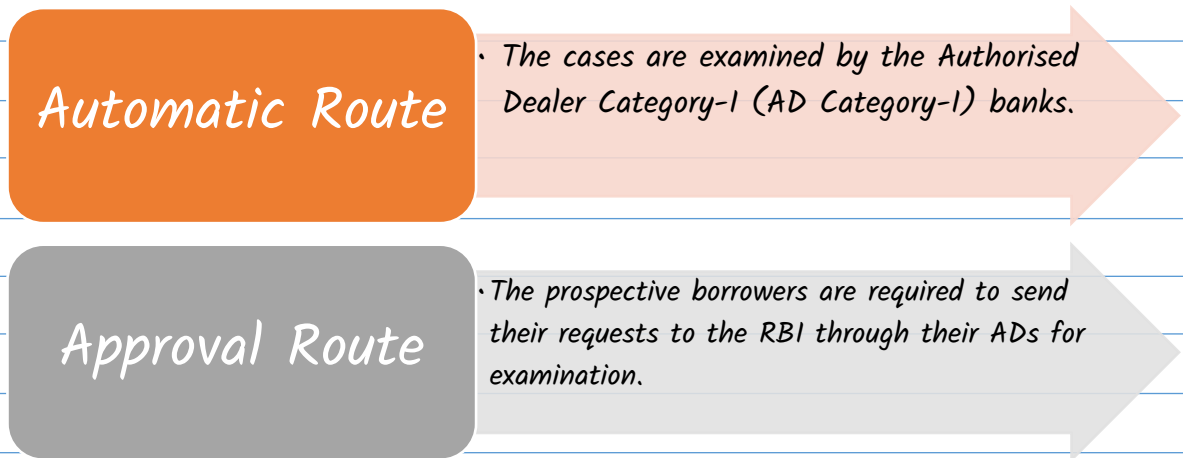
KINDS OF ECB

The ECB Framework enables permitted resident entities to borrow from recognized non-resident entities in the following forms:



However, ECB framework is not applicable in respect of investment in Non-convertible Debentures (NCDs) in India made by Registered Foreign Portfolio Investors (RFPIs).

AVAILABLE ROUTES FOR RAISING ECB



RECOGNISED LENDERS

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

- Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders;
- Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/debentures listed abroad; and
- Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for Foreign Currency ECB (except FCCBs and FCEBs).
- Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas.
- However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.



Who is FATF Compliant Country?

FATF Compliant Country means a country that is a member of the Financial Action Task Force (FATF) or a member of a FATF-Style Regional Body; and should not be a country identified in the public statement of the FATF as

- (i) A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
- (j) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

Who can be IOSCO Compliant Country?

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

MINIMUM AVERAGE MATURITY PERIOD

The minimum average maturities are set out as under:

Category I	Category II	Category III
<ul style="list-style-type: none"> • ECB with minimum average maturity of 1/5 years. • 1 year for ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year • 5 years for ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans. <p>• It may be noted that:</p> <ul style="list-style-type: none"> • ECB cannot be raised from foreign branches / subsidiaries of Indian banks 	<ul style="list-style-type: none"> • ECB with minimum average maturity of 10 years. • ECB raised for <ul style="list-style-type: none"> • Working capital purposes or general corporate purposes • on-lending by NBFCs for working capital purposes or general corporate purposes. <p>• It may be noted that:</p> <ul style="list-style-type: none"> • ECB cannot be raised from foreign branches / subsidiaries of Indian banks <ul style="list-style-type: none"> • ECB raised for <ul style="list-style-type: none"> • repayment of Rupee loans availed domestically for purposes other than capital expenditure • on-lending by NBFCs for the same purpose. <p>• It may be noted that:</p> <ul style="list-style-type: none"> • ECB cannot be raised from foreign branches / subsidiaries of Indian banks 	<ul style="list-style-type: none"> • ECB with minimum average maturity of 7 years. • repayment of Rupee loans availed domestically for capital expenditure • on-lending by NBFCs for the same purpose. <p>• It may be noted that:</p> <ul style="list-style-type: none"> • ECB cannot be raised from foreign branches / subsidiaries of Indian banks

ELIGIBLE BORROWERS

The list of entities eligible to raise ECB under the three tracks is set out below:

<p>Track 1</p>	<p>Medium term foreign currency denominated ECB with minimum average maturity of 3/5 years.</p> <p>Companies in manufacturing and software development sectors.</p> <p>Shipping and airlines companies.</p> <p>Small Industries Development Bank of India (SIDBI).</p> <p>Units in Special Economic Zones (SEZs).</p> <p>Export Import Bank of India (Exim Bank) (only under the approval route).</p> <p>Companies in infrastructure sector, Non-Banking Financial Companies -Infrastructure Finance Companies (NBFC-IFCs), NBFCs-Asset Finance Companies (NBFC-AFCs), Holding Companies and Core Investment Companies (CICs).</p>
<p>Track 1</p>	<p>Long term foreign currency denominated ECB with minimum average maturity of 10 years.</p>

	<p>All entities listed under Track I above.</p> <p>Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (INVITs) coming under the regulatory framework of the Securities and Exchange Board of India (SEBI).</p>
<p>Track II</p>	<p>Indian Rupee (INR) denominated ECB with minimum average maturity of 3/5 years.</p> <p>All entities listed under Track I above.</p> <p>All Non-Banking Financial Companies (NBFCs) coming under the regulatory purview of the Reserve Bank.</p> <p>NBFCs-Micro Finance Institutions (NBFCs-MFIs), Not for Profit companies registered under the Companies Act, 1956/2013, Societies, trusts and cooperatives (registered under the Societies Registration Act, 1860, Indian Trust Act, 1882 and State-level Cooperative Acts/Multi-level Cooperative Act/State-level mutually aided Cooperative Acts respectively), Non-Government Organizations (NGOs) which are engaged in micro finance activities.</p> <p>Companies engaged in miscellaneous services viz. research and development (R&D), training (other than educational institutes),</p>

companies supporting infrastructure, companies providing logistics services.

Developers of Special Economic Zones (SEZs)/ National Manufacturing and Investment Zones (NMIZs).

It may be noted that entities engaged in micro-finance activities to be eligible to raise ECB:

should have a satisfactory borrowing relationship for at least three years with an AD Category I bank in India, and should have a certificate of due diligence on 'fit and proper' status from the AD Category I bank.

ALL-IN-COST CEILING PER ANNUM

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

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

Withholding tax payable in INR shall not be a part of all-in-cost. Various components of all-in-cost have to be paid by the borrower without taking recourse to the drawdown of ECB/TC, i.e., ECB/TC proceeds cannot be used for payment of interest/charges.

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

OTHER COSTS

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

END-USES (NEGATIVE LIST)

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

Real estate activities.
Investment in capital market.
Equity investment.
Working capital purposes, except ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and except ECB raised for <ul style="list-style-type: none"> - working capital purposes or general corporate purposes - on-lending by Non-Banking Financial Companies (NBFCs) for working capital purposes

or general corporate purposes.

General corporate purposes,

except in case of ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and

except ECB raised for

- working capital purposes or general corporate purposes
- on-lending by NBFCs for working capital purposes or general corporate purposes.

Repayment of Rupee loans,

except in case of ECB raised for

- repayment of Rupee loans availed domestically for capital expenditure
- on-lending by NBFCs for the same purpose and

except ECB raised for

- repayment of Rupee loans availed domestically for purposes other than capital expenditure
- on-lending by NBFCs for the same purpose.

On-lending to entities for the above activities,

except in case of ECB raised by NBFCs for

- working capital purposes or general corporate purposes
- on-lending by NBFCs for working capital purposes or general corporate purposes and repayment of Rupee loans availed domestically for capital expenditure
- on-lending by NBFCs for the same purpose and

except ECB raised for

- repayment of Rupee loans availed domestically for purposes other than capital expenditure
- on-lending by NBFCs for the same purpose.



EXCHANGE RATE

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

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

HEDGING PROVISION

The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure. Infrastructure space companies shall have a Board approved risk management policy. Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure in case the average maturity of the ECB is less than 5 years. The designated AD Category-1 bank shall verify that 70 per cent hedging requirement is complied with during the currency of the ECB and report the position to RBI through Form ECB 2.

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

Coverage	Tenor and rollover	Natural Hedge
<p>⑩ The ECB borrower will be required to cover the principal as well as the coupon through financial hedges.</p> <p>⑩ The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e. the day the liability is created in the books of the borrower).</p>	<p>⑩ A minimum tenor of one year for the financial hedge would be required with periodic rollover, duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of the ECB.</p>	<p>⑩ Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency, net of all other projected outflows.</p> <p>⑩ For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting year.</p> <p>⑩ Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as a natural hedge</p>

CHANGE OF CURRENCY OF BORROWING

- Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to Indian Rupee is freely permitted.
- Change of currency from Indian Rupee to any freely convertible foreign currency is not permitted.

LIMIT AND LEVERAGE

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

However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent.

Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

ISSUANCE OF GUARANTEE, ETC. BY INDIAN BANKS AND FINANCIAL INSTITUTIONS

Issuance of any type of guarantee by Indian banks, All India Financial Institutions and NBFCs relating to ECB is not permitted. Further, financial intermediaries (viz., Indian banks, All India Financial Institutions, or Non-Banking Financial Companies) shall not invest in Foreign Currency Convertible Bonds/ Foreign Currency Exchangeable Bonds in any manner whatsoever.

PARKING OF ECB PROCEEDS

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

Parking of ECB proceeds abroad

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

Till utilisation, these funds can be invested in the following liquid assets-

(a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's;

(b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and

(c) deposits with foreign branches/subsidiaries of Indian banks abroad.

Parking of ECB proceeds domestically

ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India.

ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

CONVERSION OF EQUITY INTO ECB



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

- (i) The activity of the borrowing company is covered under the automatic route for Foreign Direct Investment (FDI) or approval route wherever applicable, for foreign equity participation which has been obtained as per the extant FDI policy;
- (ii) The conversion, which should be with the lender's consent and without any additional cost, will not result in breach of applicable sector cap on the foreign equity holding;
- (iii) Applicable pricing guidelines for shares are complied with;
- (iv) Reporting requirements under ECB framework are complied with;
- (v) If the borrower concerned has availed of other credit facilities from the Indian banking system, including overseas branches/subsidiaries, the applicable prudential guidelines issued by the Department of Banking Regulation of RBI, including guidelines on restructuring are complied with; and
- (vi) Consent of other lenders, if any, to the same borrower is available or at least information regarding conversions is exchanged with other lenders of the borrower.



EXCHANGE RATE FOR CONVERSION OF ECB DUES INTO EQUITY

For conversion of ECB dues into equity,

- the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion
- or
- any lesser rate can be applied with a mutual agreement with the ECB lender.

SECURITY FOR RAISING ECB

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

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

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

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



- Such security shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulation 2017.
- The permission should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender/ security trustee.
- In the event of enforcement / invocation of the charge, the immovable asset/ property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

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

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

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



Issue of Corporate or Personal Guarantee:

The arrangement shall be subject to the following:

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

PROCEDURE FOR RAISING ECB

The procedure for raising ECB under approval route requires the borrowers to-

- Approach the RBI with an application in prescribed format Form ECB for examination through their AD Category I bank.
- Such cases are considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals.
- ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) are placed before the Empowered Committee set up by the Reserve Bank.
- The Reserve Bank takes a final decision taking into account recommendation of the Empowered Committee.

Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form 83.

REPORTING REQUIREMENT

Borrowings under ECB Framework are subject to following reporting requirements:

1. Loan Registration Number (LRN):

- Any draw-down in respect of an ECB as well as payment of any fees / charges for raising an ECB should happen only after obtaining the LRN from RBI.
- Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

2. Changes in terms and conditions of ECB:

Permitted changes in ECB parameters should be reported to the DSIM by submitting revised Form 83 at the earliest, in any case not later than 7 days from the changes effected. While submitting revised Form 83 the changes should be specifically mentioned in the communication.

3. Monthly Reporting of actual transactions:

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

4. Late Submission Fee (LSF) for delay in reporting:

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

5. Standard Operating Procedure (SOP) for Untraceable Entities:

The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or

electronically, for past eight quarters or more.

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

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

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

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

ECB FACILITY FOR OIL MARKETING COMPANIES

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

ECB FACILITY FOR STARTUPS

AD Category-1 banks are permitted to allow Startups to raise ECB under the automatic route as per the following framework:

- **Eligibility:** An entity recognised as a Startup by the Central Government as on date of raising ECB.
- **Maturity:** Minimum average maturity period will be 3 years.
- **Recognised lender:** Lender / investor shall be a resident of a FATF compliant country. However, foreign branches/subsidiaries of Indian banks and overseas entity in which Indian entity has made overseas direct investment as per the extant Overseas Direct Investment Policy will not be considered as recognised lenders under this framework.
- **Forms:** The borrowing can be in form of loans or non-convertible, optionally convertible or partially convertible preference shares.
- **Currency:** The borrowing should be denominated in any freely convertible currency or in Indian Rupees (INR) or a combination thereof. In case of borrowing in INR, the non-resident lender, should mobilise INR through swaps/outright sale undertaken through an AD Category-1 bank in India.
- **Amount:** The borrowing per Startup will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.
- **All-in-cost:** Shall be mutually agreed between the borrower and the lender.
- **End uses:** For any expenditure in connection with the business of the borrower.
- **Conversion into equity:** Conversion into equity is freely permitted subject to Regulations



applicable for foreign investment in Startups.

- **Security:** The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities, etc. and shall comply with foreign direct investment / foreign portfolio investment / or any other norms applicable for foreign lenders / entities holding such securities.

Further, issuance of corporate or personal guarantee is allowed.

Guarantee issued by a non- resident(s) is allowed only if such parties qualify as lender under ECB for Startups. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFCs is not permitted.

- **Hedging:** The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category - I banks in India. The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis. Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.

- **Conversion rate:** In case of borrowing in INR, the foreign currency - INR conversion will be at the market rate as on the date of agreement.

- **Other Provisions:** Other provisions like parking of ECB proceeds, reporting arrangements, powers delegated to AD banks, borrowing by entities under investigation, conversion of ECB into equity will be as included in the ECB framework.

BORROWING BY ENTITIES UNDER INVESTIGATION

- All entities against which investigation / adjudication / appeal by the law enforcing agencies for violation of any of the provisions of the Regulations under FEMA pending, may raise ECB as per the applicable norms, if they are otherwise eligible.
- The borrowing entity shall inform about pendency of investigation / adjudication / appeal to the AD Category-I bank / RBI.

ECB BY ENTITIES UNDER RESTRUCTURING/ ECB FACILITY FOR REFINANCING STRESSED ASSETS

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

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

CHAPTER 10- NON-BANKING FINANCIAL COMPANY (NBFC)



INTRODUCTION

NBFCs were brought under the regulation of the Reserve Bank in 1964 by inserting Chapter III B in the Reserve Bank of India Act, 1934. In more recent years, regulatory measures have been motivated by the objectives of financial stability, financial inclusion and harnessing of specialised domain expertise. NBFCs suggests that they are emerging as an important source of credit to micro and small enterprises and infrastructure.

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/construction of immovable property.

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

NBFC cannot accept demand deposits

NBFC's do not form part of the payment and settlement system and cannot issue cheques drawn on itself

Deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFC's, unlike in the case of banks

DEFINITION OF NBFC UNDER RBI ACT

According to Section 45-1(f) of the Reserve Bank of India Act, 1934, "Non-Banking Financial Company" means—

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

It may be noted that as per Section 45-1 (c) of the Reserve Bank of India Act, 1934, "Financial Institution" means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:—

- (i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;
- (ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature;
- (iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in



clause (c) of section 2 of the Hire-Purchase Act, 1972;

- (iv) the carrying on of any class of insurance business;
- (v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;
- (vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, but does not include any institution, which carries on as its principal business,—
 - (a) agricultural operations; or (aa) industrial activity; or
 - (b) the purchase, or sale of any goods (other than securities) or the providing of any services; or
 - (c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;

According to Section 45-1 (e) of the Reserve Bank of India Act, 1934, “**Non-banking institution**” means a company, corporation or co-operative society;

Further as per Section 45-1 (bb) of the Reserve Bank of India Act, 1934, “**Deposit**” includes and shall be deemed always to have include any receipt of money by way of deposit or loan or in any other form, but does not include,—

- (i) amounts raised by way of share capital;
- (ii) amounts contributed as capital by partners of a firm;
- (iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of section 5 of a Banking Regulation Act, 1949;
- (iv) any amount received from,—
 - (a) a State Financial Corporation,
 - (b) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964 , or



- (c) any other institution that may be specified by the Bank in this behalf;
- (v) amounts received in the ordinary course of business, by way of—
 - (a) security deposit,
 - (b) dealership deposit,
 - (c) earnest money, or
 - (d) advance against orders for goods, properties or services;
- (vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in any State; and
- (vii) any amount received by way of subscriptions in respect of a chit.

REGISTRATION WITH RBI

A company incorporated under the Companies Act and desirous of commencing business of non-banking financial institution as defined under Section 45 1(a) of the RBI Act, 1934 should comply with the following:

- it should be a company registered under the Companies Act, and
- It should have a minimum net owned fund.

No non- banking financial company shall commence or carry on the business of a non-banking financial institution without—

- (a) obtaining a certificate of registration issued under Chapter IIIB; and
- (b) having the net owned fund of twenty-five lakh rupees or such other amount, not exceeding hundred crore rupees, as the Bank may, by notification in the Official Gazette, specify:

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

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

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

- (b) that the affairs of the non-banking financial company are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;
- (c) that the general character of the management or the proposed management of the non-banking financial company shall not be prejudicial to the public interest or the interests of its depositors;
- (d) that the non-banking financial company has adequate capital structure and earning prospects;
- (e) that the public interest shall be served by the grant of certificate of registration to the non-banking financial company to commence or to carry on the business of India;
- (f) that the grant of certificate of registration shall not be prejudicial to the operation and consolidation of the financial sector consistent with monetary stability, and economic growth considering such other relevant factors which the Reserve Bank of India may, by notification in the Official Gazette, specify; and
- (g) any other condition, fulfilment of which in the opinion of the Reserve Bank of India, shall be necessary to ensure that the commencement of or carrying on of the business in India by a non-banking financial company shall not be prejudicial to the public interest or in the interests of the depositors.

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

CANCELLATION OF A CERTIFICATE OF REGISTRATION

The Reserve Bank of India may cancel a certificate of registration granted to a non-banking financial company under Section 45-1A of the Reserve Bank of India Act, 1934, if such company—

- (i) ceases to carry on the business of a non-banking financial institution in India; or
- (ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or
- (iii) at any time fails to fulfil any of the conditions such as adequate capital structure and earning prospects; public interest, monetary stability, and economic growth etc. or



- (iv) fails to comply with any direction issued by the Reserve Bank of India under the provisions of Chapter III B of RBI Act ; or fails to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank of India under the provisions of Chapter III B of RBI Act ; or fails to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Reserve Bank of India ; or has been prohibited from accepting deposit by an order made by the Reserve Bank of India under the provisions of Chapter III B of RBI Act and such order has been in force for a period of not less than three months.
- (v) A company aggrieved by the order of rejection of application for registration or cancellation of certificate of registration may prefer an Appeal, within a period of thirty days from the date on which such order of rejection or cancellation is communicated to it, to the Central Government and the decision of the Central Government where an appeal has been preferred to it, or of the Bank where no appeal has been preferred, shall be final.

MAINTENANCE OF PERCENTAGE OF ASSETS

- According to Section 45-1B of the Reserve Bank of India Act, 1934, every non-banking financial company shall invest and continue to invest in India in unencumbered approved securities, valued at a price not exceeding the current market price of such securities, an amount which, at the close of business on any day, shall not be less than five per cent. or such higher percentage not exceeding twenty-five per cent.
- If the amount invested by a non-banking financial company at the close of business on any day falls below the specified rate , such company shall be liable to pay to the Reserve Bank of India , in respect of such shortfall, a penal interest at a rate of three per cent. per annum above the bank rate on such amount by which the amount actually invested falls short of the specified percentage, and where the shortfall continues in the subsequent quarters, the rate of penal interest shall be five per cent. per annum above the bank rate on such shortfall for each subsequent quarter.

RESERVE FUND

- Section 45-1C of the Reserve Bank of India Act, 1934 provides that every non-banking financial company shall create a reserve fund the transfer therein a sum not less than twenty per cent. of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.
- Appropriation of any sum from the reserve fund shall not be made by the non-banking financial company except for the purpose as may be specified by the Reserve Bank of India from time to time and every such appropriation shall be reported to the Reserve Bank of India within twenty-one days from the date of such withdrawal:

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

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

POWER OF RESERVE BANK OF INDIA TO REMOVE DIRECTORS FROM OFFICE

As per Section 45-1D of the Reserve Bank of India Act, 1934, the Reserve Bank have power to remove Director from office after giving him opportunity of being heard under following circumstances-

- in the public interest or
- to prevent the affairs of a non-banking financial company being conducted in a manner detrimental to the interest of the depositors or creditors,
- or financial stability or for securing the proper management of such company,
- he shall cease to be a director of that non-banking financial company and shall not take part in the management of any non- banking financial company for period not exceeding five years at a time as may be specified in the order.



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

Any person appointed Reserve Bank shall,—

- (a) hold office for a period not exceeding three years or such further periods not exceeding three years at a time;
- (b) not incur any obligation or liability by reason only of his being a director for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto.

Notwithstanding anything contained in any other law for the time being in force or in any contract, memorandum or articles of association, on the removal of a director from office under section 45-1D, such director shall not be entitled to claim any compensation for the loss or termination from office.

SUPERSESSION OF BOARD OF DIRECTORS OF NON-BANKING FINANCIAL COMPANY

- Section 45-1E of the Reserve Bank of India Act, 1934 provides that where the Reserve Bank is satisfied that in the public interest or to prevent the affairs of a non-banking financial company or of the non-banking financial company (other than Government Company), or for securing the proper management of such company or for financial stability, supersede the Board of Directors of such company for a period not exceeding five years, which may be extended from time to time, so, however, that the total period shall not exceed five years.
- on supersession of the Board of Directors of the non-banking financial company, The Reserve Bank may appoint a suitable person as the Administrator for such period as it may determine.
- Upon making the order of supersession of the Board of Directors of a non-banking financial company,—
 - (a) the chairman, managing director and other directors shall from the date of super session of the Board of Directors vacate their offices;
 - (b) all the powers, functions and duties of NBFC shall be exercised and discharged by such administrator on behalf of the Board of Directors.

RESERVE BANK MAY REGULATE OR PROHIBIT ISSUE OF PROSPECTUS OR ADVERTISEMENT SOLICITING DEPOSITS OF MONEY

Power of Bank to Determine Policy and Issue Directions

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

- (a) the purpose for which advances or other fund based or non-fund based accommodation may not be made; and
- (b) the maximum amount of advances or other financial accommodation or investment in shares and other securities which, having regard to the paid-up capital, reserves and deposits of the nonbanking financial company and other relevant considerations, may be made by that non-banking financial company to any person or a company or to a group of companies.

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

- Section 45K of the Reserve Bank of India Act, 1934 provides that the Reserve Bank may direct to every non-banking institution to furnish statements information or particulars relating to or connected with deposits received by the non-banking institution.
- The Reserve Bank may, if it considers necessary in the public interest so to do, give directions to nonbanking institutions in respect of any matters relating to or connected with the receipt of deposits, including the rates of interest payable on such deposits, and the periods for which deposits may be received.

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

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

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

- Call for information from NBFC or
- May issue directions to NBFC.



Powers and Duties of Auditors

- Section 45MA(1) of the Reserve Bank of India Act, 1934 provides that it shall be the duty of an auditor of a non-banking institution to inquire whether or not the non-banking institution has furnished to the Bank statements, information or particulars relating to or connected with deposits received by it.
- The auditor shall, make a report to the Bank giving the aggregate amount of such deposits held by the non-banking institution.

Power to Take Action against Auditors

- If any auditor fails to comply with any direction given or order, the Reserve Bank may remove or debar the auditor from exercising the duties as auditor of any of the Reserve Bank regulated entities for a maximum period of three years, at a time.

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

- if any non-banking financial company violates the provisions of any section or fails to comply with any direction or order given by the Bank, the Reserve Bank may prohibit the non-banking financial company from accepting any deposit.

RESOLUTION OF NON-BANKING FINANCIAL COMPANY

Section 45MABA(1) of the Reserve Bank of India Act, 1934 provides that the Reserve Bank may, if it is satisfied, upon an inspection of the Books of a non-banking financial company that it is in the public interest or in the interest of financial stability so to do for enabling the continuance of the activities critical to the functioning of the financial system, frame schemes which may provide for any one or more of the following, namely:—

- (a) amalgamation with any other non-banking institution;
- (b) reconstruction of the non-banking financial company;
- (c) splitting the non-banking financial company into different units or institutions and vesting viable and non-viable businesses in separate units or institutions to preserve the continuity of the activities of that non-banking financial company that are critical to the functioning of



the financial system and for such purpose establish institutions called "Bridge Institutions".

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

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

(1) may provide for—

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

Power of Reserve Bank to File Winding Up Petition

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

- (a) is unable to pay its debt; or
 - (b) has by virtue of the provisions of section 45-1A become disqualified to carry on the business of a non-banking financial institution; or
 - (c) has been prohibited by the Reserve Bank from receiving deposit by an order and such order has been in force for a period of not less than three months; or
 - (d) the continuance of the non-banking financial company is detrimental to the public interest or to the interest of depositors of the company,
- may file an application for winding up of such non-banking financial company under the Companies Act.

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

CLASSIFICATION OF NBFCs BY ACTIVITY

TYPE OF NBFC	ACTIVITY
Asset Finance Company (AFC) (NBFC-Investment and Credit Companies)	Financing of physical assets including automobiles, tractors and generators.
Loan Company (NBFC-Investment and Credit Companies)	Provision of loan finance
Investment Company (NBFC-Investment and Credit Companies)	Acquisition of securities for purpose of selling
NBFC-Infrastructure Finance Company (NBFC-IFC)	Provision of infrastructure loans
NBFC-Systemically Important Core Investment Company (CIC-ND-SI)	Makes investments and loans to group companies
Infrastructure Debt Fund-NBFC (IDF-NBFC)	Facilitation of flow of long-term debt into infrastructure projects
NBFC-Micro Finance Institution (NBFC-MFI)	Credit to economically dis-advantaged groups
NBFC-Factor	Acquisition of receivables of an assignor or extending loans against the security interest of the receivables at a discount
NBFC-Non-Operative Financial Holding Company (NOFHC)	Facilitation of promoters/ promoter groups in setting up new banks

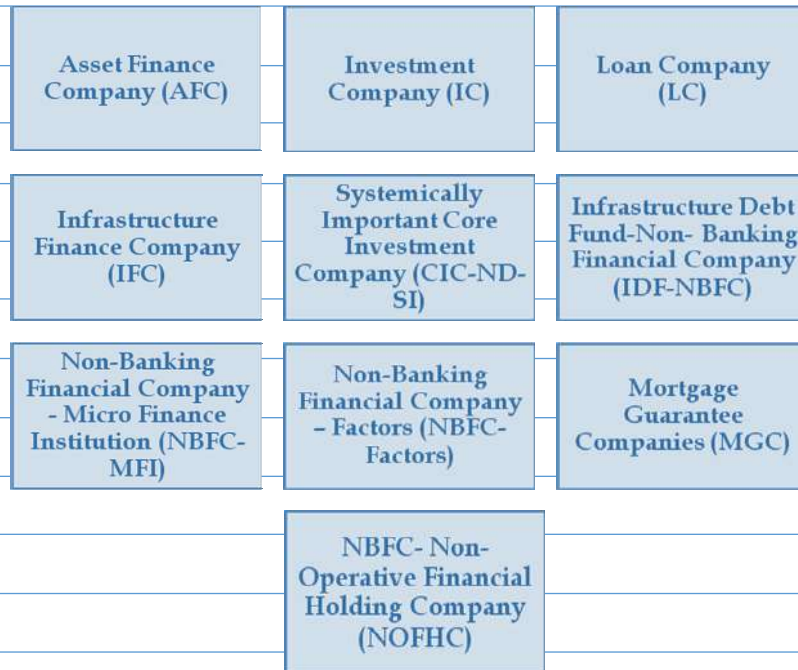
Mortgage Guarantee Company (MGC)	Undertaking of mortgage guarantee business
NBFC-Account Aggregator (NBFC-AA)	Collecting and providing information about a customer's financial assets in a consolidated, organised and retrievable manner to the customer or others as specified by the customer.
NBFC-Peer to Peer Lending Platform (NBFC-P2P)	Providing an online platform to bring lenders and borrowers together to help mobilise funds

CATEGORIES OF NBFCs REGISTERED WITH RBI

NBFCs are categorized:

- (a) • In terms of the type of liabilities into Deposit and Non-Deposit accepting NBFCs
- (b) • Non deposit taking NBFCs by their size into systemically important and other non-deposit holding companies (NBFC-NDSI and NBFC-ND)
- (c) • By the kind of activity they conduct

TYPES OF NBFCs



Asset finance company

An AFC is a company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive/economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines. Principal business for this purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising therefrom is not less than 60% of its total assets and total income respectively.

Investment company

IC means any company which is a financial institution carrying on as its principal business the acquisition of securities,

Loan company

LC means any company which is a financial institution carrying on as its principal business the providing of finance whether by making loans or advances or otherwise for any activity other than its own but does not include an Asset Finance Company.

Infrastructure finance company

- a. IFC is a non-banking finance company which deploys at least 75 per cent of its total assets in infrastructure loans,
- b. has a minimum Net Owned Funds of `300 crore,
- c. has a minimum credit rating of 'A' or equivalent,
- d. CRAR of 15%.

Systematically important core investment company

CIC-ND-SI is a NBFC carrying on the business of acquisition of shares and securities which satisfies the following conditions: -

- a. it holds not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, debt or loans in group companies;
- b. its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Total Assets;
- c. it does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
- d. it does not carry on any other financial activity referred to in Section 451(c) and 451(f) of the RBI act, 1934 except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies;
- e. Its asset size is `100 crore or above, and
- f. It accepts public funds



Infrastructure debt fund non banking financial company

IDF-NBFC is a company registered as NBFC to facilitate the flow of long term debt into infrastructure projects. IDF-NBFC raise resources through issue of Rupee or Dollar denominated bonds of minimum 5 year maturity.

NBFC - micro finance institution

NBFC-MFI is a non-deposit taking NBFC having not less than 85% of its assets in the nature of qualifying assets which satisfy the following criteria:

- a. loan disbursed by an NBFC-MFI to a borrower with a rural household annual income not exceeding `1,00,000 or urban and semi-urban household income not exceeding `1,60,000;
- b. loan amount does not exceed `50,000 in the first cycle and `1,00,000 in subsequent cycles;
- c. total indebtedness of the borrower does not exceed `1,00,000;
- d. tenure of the loan not to be less than 24 months for loan amount in excess of `15,000 with prepayment without penalty;
- e. loan to be extended without collateral;
- f. aggregate amount of loans, given for income generation, is not less than 50 per cent of the total loans given by the MFIs;
- g. loan is repayable on weekly, fortnightly or monthly instalments at the choice of the borrower.

NBFC - factors

NBFC-Factor is a non-deposit taking NBFC engaged in the principal business of factoring. The financial assets in the factoring business should constitute at least 50 percent of its total assets and its income derived from factoring business should not be less than 50 percent of its gross income.

Mortgage guarantee company

MGC are financial institutions for which at least 90% of the business turnover is mortgage guarantee business or at least 90% of the gross income is from mortgage guarantee business and net owned fund is Rs. 100 crore.



NBFC- non-financial holding company

NBFC- Non-Operative Financial Holding Company (NOFHC) is financial institution through which promoter / promoter groups will be permitted to set up a new bank .It's a wholly-owned Non-Operative Financial Holding Company (NOFHC) which will hold the bank as well as all other financial services companies regulated by RBI or other financial sector regulators, to the extent permissible under the applicable regulatory prescriptions.

SALIENT FEATURES OF NBFC

Some of the important regulations relating to acceptance of deposits by NBFCs are as under:

- a. The NBFCs are allowed to accept/renew public deposits for a minimum period of 12 months and maximum period of 60 months. They cannot accept deposits repayable on demand.
- b. NBFCs cannot offer interest rates higher than the ceiling rate prescribed by RBI from time to time. The present ceiling is 12.5 per cent per annum. The interest may be paid or compounded at rests not shorter than monthly rests.
- c. NBFCs cannot offer gifts/incentives or any other additional benefit to the depositors.
- d. NBFCs should have minimum investment grade credit rating.
- e. The deposits with NBFCs are not insured.
- f. The repayment of deposits by NBFCs is not guaranteed by RBI.
- g. Certain mandatory disclosures are to be made about the company in the Application Form issued by the company soliciting deposits.

RETURNS TO BE SUBMITTED BY DEPOSIT TAKING NBFC

NBS-1 Quarterly Returns on deposits in First Schedule.

NBS-2 Quarterly return on Prudential Norms is required to be submitted by NBFC accepting public deposits.

NBS-3 Quarterly return on Liquid Assets by deposit taking NBFC.

NBS-4 Annual return of critical parameters by a rejected company holding public deposits.

NBS-5 stands withdrawn as submission of NBS 1 has been made quarterly.)

NBS-6 Monthly return on exposure to capital market by deposit taking NBFC with total assets of `100 crore and above.

Half-yearly ALM return by NBFC holding public deposits of more than `20 crore or asset size of more than `100 crore

Audited Balance sheet and Auditor's Report by NBFC accepting public deposits.

Branch Information Return.

CORE INVESTMENT COMPANIES (RESERVE BANK) DIRECTIONS , 2016

<p>Registration</p>	<p>Every CIC-ND-SI is required to apply to the Reserve Bank for grant of Certificate of Registration, irrespective of any advice in the past, issued by the Bank, to the contrary, within a period of three months from the date of becoming a CIC-ND-SI.</p>
<p>Capital Requirement</p>	<p>Adjusted Net Worth of a CIC-ND-SI should at no point of time be less than 30% of its aggregate risk weighted assets on balance sheet</p>
<p>Leverage Ratio</p>	<p>The outside liabilities of a CIC-ND-SI should at no point of time exceed 2.5 times of its Adjusted Net Worth as on the date of the last audited balance sheet as at the end of the financial year.</p>
<p>Accounting of Investments</p>	<p>(a) The Board of Directors of every CIC-ND-SI should frame investment policy for the company and shall implement the same; The criteria to classify the investments into current and long term investments shall be spelt out by the Board of the company in the investment policy; Investments in securities should be classified into current and long term, at the time of making each investment; In case of inter-class transfer - There should be no such transfer on ad-hoc basis;</p>

	<p><i>Such transfer, if warranted, should be effected only at the beginning of each half year, on April 1 or October 1, with the approval of the Board;</i></p> <p><i>The investments should be transferred scrip-wise, from current to long-term or vice-versa, at book value or market value, whichever is lower;</i></p> <p><i>The depreciation, if any, in each scrip should be fully provided for and appreciation, if any, shall be ignored;</i></p> <p><i>The depreciation in one scrip should not be set off against appreciation in another scrip, at the time of such inter-class transfer, even in respect of the scrip of the same category.</i></p>
<p>Need for policy on Demand/Loan Calls</p>	<p><i>The Board of Directors of every CIC-ND-SI granting/intending to grant demand/call loans should frame a policy and implement for the company.</i></p> <p><i>Such policy shall, inter alia, stipulate the following,-</i></p> <p><i>A cut-off date within which the repayment of demand or call loan be demanded or called up;</i></p> <p><i>The sanctioning authority is required to record specific reasons in writing at the time of sanctioning demand or call loan, if the cut-off date for demanding or calling up such loan is stipulated beyond a period of</i></p>

	<p>one year from the date of sanction;</p> <p>The rate of interest to be payable on such loans;</p> <p>Interest on such loans, as stipulated shall be payable either at monthly or quarterly rests;</p> <p>The sanctioning authority to record specific reasons in writing at the time of sanctioning demand or call loan, if no interest is stipulated or a moratorium is granted for any period;</p> <p>A cut-off date, for review of performance of the loan, not exceeding six months commencing from the date of sanction;</p> <p>Such demand or call loans need not be renewed unless the periodical review has shown satisfactory compliance with the terms of sanction.</p>
<p>Acquisition / transfer of control of systematically important CIC</p>	<p>A systemically important CIC, shall require prior written permission of the Reserve Bank for the following:</p> <p>any takeover or acquisition of control of CIC, which may or may not result in change of management;</p> <p>any change in the shareholding of CIC, including progressive increases over time, which results in acquisition / transfer of shareholding of 26 per cent or more of the paid up equity capital of the CIC.</p> <p>Provided that, prior approval shall not be required in case of any shareholding going</p>

	<p>beyond 26% due to buyback of shares / reduction in capital where it has approval of a competent Court. The same is to be reported to the Bank not later than one month from its occurrence;</p> <p>any change in the management of the CIC which results in change in more than 30 per cent of the directors, excluding independent directors.</p> <p>Provided that, prior approval need not be required in case of directors who get re-elected on retirement by rotation.</p>
<p>Requirement of Prior Public Notice about change in control/management</p>	<p>A public notice of at least 30 days is to be given before effecting the sale of, or transfer of the ownership. Such public notice be given by the CIC and also by the other party or jointly by the parties concerned, after obtaining prior permission of the Bank.</p> <p>The public notice should indicate the intention to sell or transfer. The notice be published in at least one leading national and in one leading local (covering the place of registered office) vernacular newspaper.</p>

NON BANKING FINANCIAL COMPANY SYSTEMATICALLY IMPORTANT NON DEPOSIT COMPANY, DIRECTIONS 2016

Applicability

The provisions of Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 shall apply to the following:

Every Systemically Important Non-Deposit taking Non-Banking Financial Company (NBFC-ND-SI) registered with the Bank under the provisions of RBI Act, 1934;

Every Deposit taking Non-Banking Financial Company (NBFC-D) registered with the Bank under the provisions of RBI Act, 1934;

Every NBFC-Factor registered with the Bank under section 3 of the Factoring Regulation Act, 2011 and having an asset size of Rs. 500 crore and above;

Every Infrastructure Debt Fund - Non-Banking Finance Company (IDF-NBFC) registered with the Bank under the provisions of RBI Act, 1934;

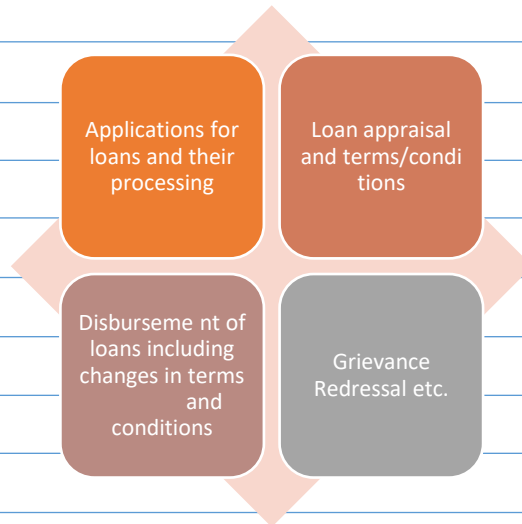
Every Non-Banking Finance Company - Micro Finance Institutions (NBFC-MFIs) registered with the Bank under the provisions of RBI Act, 1934 and having an asset size of Rs.500 crore and above;

Every Non-Banking Finance Company - Infrastructure Finance Company (NBFC-IFC) registered with the Bank under the

	provisions of RBI Act, 1934 and having an asset size of `500 crore and above.
Registration	Reserve Bank, specifies two hundred lakhs rupees as the Net Owned Fund (NOF) required for a non-banking financial company to commence or carry on the business of non-banking financial institution. NBFCs failing to achieve the prescribed level within the stipulated period shall not be eligible to hold the CoR as NBFCs.
Capital Requirement	Every applicable NBFC shall maintain a minimum capital ratio consisting of Tier I and Tier II capital which shall not be less than 15 percent of its aggregate risk weighted assets on-balance sheet and of risk adjusted value of off-balance sheet items.

FAIR PRACTICE CODE FOR APPLICABLE NBFC

Applicable NBFCs having customer interface shall adopt the following guidelines:



CORPORATE GOVERNANCE

Constitution of committee of the Board

Audit Committee

- All applicable NBFCs shall constitute an Audit Committee, consisting of not less than three members of its Board of Directors.
- The Audit Committee must ensure that an Information System Audit of the internal systems and processes is conducted at least once in two years to assess operational risks faced by the applicable NBFCs.

Nomination Committee

- All applicable NBFCs shall form a Nomination Committee to ensure 'fit and proper' status of proposed/ existing directors.

Risk management Committee

- To manage the integrated risk, all applicable NBFCs shall form a Risk Management Committee, besides the Asset Liability Management Committee.

FIT AND PROPER CRITERIA

All applicable NBFCs shall-

- ensure that a policy is put in place with the approval of the Board of Directors for ascertaining the fit and proper criteria of the directors at the time of appointment, and on a continuing basis.
- obtain a declaration and undertaking from the directors giving additional information on the directors.
- obtain a Deed of Covenant signed by the directors.
- furnish to the Bank a quarterly statement on change of directors, and a certificate from the Managing Director of the applicable NBFC that fit and proper criteria in selection of the directors has been followed. The statement must reach the Regional Office of the Department of Non-Banking Supervision of the Bank where the company is registered, within 15 days of the close of the respective quarter.



DISCLOSURE AND TRANSPARENCY

All applicable NBFCs shall put up to the Board of Directors, following information: the progress made in putting in place a progressive risk management system and risk management policy and strategy followed by the applicable NBFC; conformity with corporate governance standards viz., in composition of various committees, their role and functions, periodicity of the meetings and compliance with coverage and review functions, etc.

All applicable NBFCs shall also disclose the following in their Annual Financial Statements:

- registration/ licence/ authorisation, by whatever name called, obtained from other financial sector regulators;
- ratings assigned by credit rating agencies and migration of ratings during the year;
- penalties, if any, levied by any regulator;
- information namely, area, country of operation and joint venture partners with regard to joint ventures and overseas subsidiaries and
- Asset-Liability profile, extent of financing of parent company products, NPAs and movement of NPAs, details of all off-balance sheet exposures, structured products issued by them as also securitization/ assignment transactions and other disclosures.

OTHER REQUIREMENTS

Rotation of Auditor	All applicable NBFCs shall rotate the partner/s of the Chartered Accountant firm conducting the audit, every three years . However, the partner so rotated shall be eligible for conducting the audit of the applicable NBFC after an interval of three years, if the applicable NBFC, so decides.
Framing of internal Guidelines	All applicable NBFCs shall frame their internal guidelines on corporate governance with the approval of the Board of Directors.
Applicability of KYC Directions	All applicable NBFCs having customer interface shall follow the Know Your Customer (KYC) Direction, 2016, issued by the Department of Banking Regulation
Need for public notice before closure of branch/office	Applicable NBFCs shall give at least three months public notice prior to the date of closure of any of its branches / offices in, at least, one leading national newspaper and a leading local vernacular newspaper .



NON BANKING FINANCIAL COMPANY – PEER TO PEER LENDING PLATFORM DIRECTIONS, 2017

“Peer to Peer Lending Platform” is an intermediary providing services of loan facilitation via online medium or otherwise, to person who has entered into an arrangement with NBFC-P2P to lend on it or to avail of loan facilitation services provided by it.

Eligibility Criteria

No non-banking institution other than a company can undertake the business of Peer to Peer Lending Platform.

No NBFC-P2P can commence or carry on the business of a Peer to Peer Lending Platform without obtaining a Certificate of Registration (hereinafter referred to as “CoR”) from the Bank.

Every company seeking registration with the Bank as an NBFC-P2P is required to have a net owned fund of not less than rupees twenty million or such higher amount as the Bank may specify.

Scope of activities

The scope of activities of a Non-banking financial company - Peer to Peer Lending Platform” (NBFC-P2P) are as follows:

- a. act as an intermediary providing an online marketplace or platform to the participants involved in Peer to Peer lending;*
- b. not to raise deposits as defined by or under Section 451(bb) of the Act or the Companies Act, 2013;*
- c. not to lend on its own;*
- d. not to provide or arrange any credit enhancement or credit guarantee;*
- e. not to facilitate or permit any secured lending linked to its platform; i.e. only clean loans will be permitted;*
- f. not to hold, on its own balance sheet, funds received from lenders for lending, or funds received from borrowers for servicing loans; or such funds as stipulated Fund Transfer Mechanism*



- g. not to cross sell any product except for loan specific insurance products;
- h. not to permit international flow of funds;
- i. ensure adherence to legal requirements applicable to the participants as prescribed under relevant laws.

Process of Registration

- a. Every existing and prospective NBFC-P2P is required to make an application for registration to the Department of Non-Banking Regulation, Mumbai of the Bank, in the form which will be specified by the Bank for the purpose.
- b. The Bank, for the purpose of considering the application for registration, shall require the following conditions, among others, to be fulfilled:
- c. The company is incorporated in India;
- d. The company has the necessary technological, entrepreneurial and managerial resources to offer such services to the participants;
- e. The company has the adequate capital structure to undertake the business of Peer to Peer Lending Platform;
- f. The promoters and the Directors of the company are fit and proper;
- g. The general character of the management of the company is not prejudicial to the public interest;
- h. The company has submitted a plan for, or implemented, a robust and secure Information Technology system;
- i. The company has submitted a viable business plan for conducting the business of Peer to Peer Lending Platform;
- j. Public interest shall be served by the grant of CoR;
- k. Any other condition as may be specified by the Bank, fulfillment of which, in the opinion of the Bank, is necessary to ensure that the commencement of or carrying on the business in India shall not be prejudicial to the public interest.

Prudential Norms

- a. NBFC-P2P shall maintain a Leverage Ratio not exceeding 2.
- b. The aggregate exposure of a lender to all borrowers at any point of time, across all P2Ps,



shall be subject to a cap of Rs. 10,00,000/-.

- c. The aggregate loans taken by a borrower at any point of time, across all P2Ps, shall be subject to a cap of Rs. 10,00,000/-.
- d. The exposure of a single lender to the same borrower, across all P2Ps, shall not exceed Rs. 50,000/-.
- e. The maturity of the loans shall not exceed 36 months.
- f. P2Ps shall obtain a certificate from the borrower or lender, as applicable, that the limits prescribed above are being adhered to.

Transparency and disclosure requirements

NBFC-P2P shall be required to disclose the following:

To the lender:

- a. details about the borrower/s including personal identity, required amount, interest rate sought and credit score as arrived by the NBFC-P2P.
- b. details about all the terms and conditions of the loan, including likely return, fees and taxes;
- c. to the borrower - details about the lender/s including proposed amount, interest rate offered but excluding personal identity and contact details;
- d. publicly disclose on its website:
- e. overview of credit assessment/score methodology and factors considered;
- f. disclosures on usage/protection of data;
- g. grievance redressal mechanism;
- h. portfolio performance including share of non-performing assets on a monthly basis and segregation by age; and
- i. its broad business model.

NBFC-P2P shall ensure that the providing of services to a participant, who has applied for availing of such services, is backed by appropriate agreements between the participants and the NBFC-P2P. The agreements shall categorically specify all the terms and conditions among the borrower, the lender and the NBFC-P2P.

The interest rates displayed on the platform shall be in Annualized Percentage Rate (APR) format.



Reporting requirements

The Bank may, from time to time, prescribe return/s to be submitted by NBFC-P2P, as it deems fit.

The following quarterly statements shall be submitted to the aforesaid Regional Office within 15 days after the quarter to which these relate.

A statement, showing the number and amount in respect of loans;

- a. disbursed during the quarter;
- b. closed during the quarter; and
- c. outstanding at the beginning and at the end of the quarter, including the number of lenders and borrowers outstanding as at the end of the quarter.

The amount of funds held in the Escrow Account, bifurcated into funds received from lenders and funds received from borrowers, with credit and debit summations for the quarter.

Number of complaints outstanding at beginning and at end of quarter, and disposed of during the quarter, bifurcated as received from lenders and borrowers.

The Leverage Ratio, with details of its numerator and denominator.

CHAPTER 13- THE CONSUMER PROTECTION ACT, 2019

INTRODUCTION

Who is a Consumer?

- i. A consumer is a **user** of goods and services; therefore, every producer is also a consumer. Over the time, the doctrine of '**Caveat Emptor**' or 'let the buyer beware' has been **replaced by** the principle of '**Consumer Sovereignty**' or 'Consumer is the King'. But, with tremendous increase in the world population, the growing markets were unable to meet the rising demand which created a gap between the general 'demand' and 'supply' levels in the markets. This to some extent watered down the concept of 'Consumer Sovereignty', what with consumers being forced to accept whatever was offered to them. On the other hand, the expanding markets necessitated the introduction of various intermediaries between the producer and the ultimate consumer.

Why Consumer Protection Act, 2019?

- i. 'Advertising', though ostensibly directed at informing potential consumers about the availability and uses of a product began to be resorted to as a medium for exaggerating the uses of ones products or disparaging others products so as to have an edge over competitors. Unfair and deceptive practices such as selling of defective or sub-standard goods, charging exorbitant prices, misrepresenting the efficacy or usefulness of goods, negligence as to safety standards, etc. became rampant. **It, therefore, became necessary to evolve statutory measures, even in developed countries, to make producers/traders more accountable to consumers.**
- ii. It also became inevitable for consumers to unite on a common platform to deal with issues of common concern and having their grievances redressed satisfactorily.
- iii. Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1986. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has



rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment and to counter unfair trade practices.

- iv. Therefore, it has become inevitable to modernise the Consumer Protection Act in 1986 to address the constantly emerging vulnerabilities of the consumer in the market economy extant.
- v. In this backdrop, the Consumer Protection Bill, 2019 was passed by the Lok Sabha on 30th July, 2019 and by Rajya Sabha on 06th August, 2019 respectively. The Consumer Protection Act, 2019 received the assent of the President on the 9th August, 2019. The Consumer Protection Act, 2019 replaced the more than three decades old Consumer Protection Act, 1986.
- vi. Preamble of the Consumer Protection Act, 2019 provides for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto.
- vii. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, a network of rackets or a society in which, producers have secured power to rob the rest and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. **The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot**".

IMPORTANT DEFINITIONS

Complaint

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

- (i) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;
- (iv) a trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price-
 - (a) fixed by or under any law for the time being in force; or
 - (b) displayed on the goods or any package containing such goods; or
 - (c) displayed on the price list exhibited by him by or under any law for the time being in force; or
 - (d) agreed between the parties;
 - (v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public-
 - (a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;
 - (b) where the trader knows that the goods so offered are unsafe to the public;
 - (vi) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;
 - (vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be.



Complainant

Complainant means-

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

Consumer

Consumer means any person who-

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

Note:

The expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

What is commercial purpose?

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

Case Laws

Laxmi Engineering Works v. P.S.G. Industrial Institute

The Supreme Court observed that whether the purpose for which a person has bought goods is a 'commercial purpose' is always a question of facts and to be decided in the facts and circumstances of each case. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment such purchaser of goods would yet be a consumer. The Supreme Court further observed that if a person purchased a machine to operate it himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer. But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.

Important Judgements

- a. The National Commission held that a tractor purchased primarily to till the land of the purchaser and let out on hire during the idle time to till the lands of others would not amount to commercial use.
- b. the term 'consumer' includes any beneficiary of service other than the person who hires the services for consideration, the widow being the beneficiary of services is a 'consumer' under the Act entitled to be compensated for the loss suffered by her due to negligence.
- c. Tenant will not be construed as consumer where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service.

Goods

Same as defined under Sales of Goods Act, 1930

Case Laws

Morgan Stanley Mutual Fund v. Kartik Das

The Supreme Court held that an application for allotment of shares cannot constitute goods. It is after allotment; rights may arise as per the articles of association of the company. At the stage of application there is no purchase of goods for consideration and again the purchaser cannot be called the hirer of services for consideration.

Consumer Rights

Consumer rights include-

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

Defect

Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained in relation to any goods or product.

Deficiency

Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law in relation to any service and includes:

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

Misleading Advertisement

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

- (i) falsely describes such product or service; or
- (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- (iv) deliberately conceals important information

Product liability

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

Product Liability Action

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

Product Manufacturer

Product manufacturer means a person who

- (i) makes any product or parts thereof; or



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

Unfair Contract

Unfair contract means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:

- (i) requiring excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- (ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- (iii) refusing to accept early repayment of debts on payment of applicable penalty; or
- (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- (v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- (vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage

Unfair Trade Practice

It means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:

- i. making any statement, whether orally or in writing or by visible representation including by means of electronic record, which -



- a. falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- b. falsely represents that the services are of a particular standard, quality or grade;
- c. falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
- d. represents that the goods or services have characteristics, accessories, uses or benefits which such goods or services do not have;
- e. represents that the seller or the supplier has approval or affiliation which such seller or supplier does not have;
- f. makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- g. gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof.
Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence
- h. makes to the public a representation in a form that purports to be:
 - (A) a warranty or guarantee of a product or of any goods or services; or
 - (B) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- i. materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided,
- j. gives false or misleading facts disparaging the goods, services or trade of another person.
 - ii. Permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price.

Note:**“bargain price” means-**

- (A) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or
- (B) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

iii. **Permitting-**

- a. the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;
- b. the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game of chance or skill as may be prescribed;
- c. withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.

Note : The participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;

- iv. permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- v. permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services



- vi. manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;
- vii. not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
- viii. refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;
- ix. disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

CONSUMER PROTECTION COUNCIL

CENTRAL CONSUMER PROTECTION COUNCIL

- i. The Central Government empowers to establish the Central Consumer Protection Council to be known as the Central Council.
- ii. It shall work as an advisory council which shall consist of the **Minister-in-charge of the Department of Consumer Affairs in the Central Government, who shall be the Chairperson**; and such number of other official or non-official members representing such interests as may be prescribed.
- iii. It is required to hold at least 1 meeting every year and the day, date, time, place regarding the same shall be decided by the chairperson.
- iv. The objects of the Central Council shall be to render advice on promotion and protection of the consumers' rights under the Act.

STATE CONSUMER PROTECTION COUNCIL

- i. The State Government empowers to establish the State Consumer Protection Council to be known as the State Council.
- ii. It shall work as an advisory council which shall consist of the **Minister-in-charge of the Department of Consumer Affairs in the State Government, who shall be the**



Chairperson; and such number of other official or non-official members not exceeding 10, representing such interests as may be prescribed.

- iii. It is required to hold at least 2 meeting every year and the day, date, time, place regarding the same shall be decided by the chairperson.
- iv. The objects of the State Council shall be to render advice on promotion and protection of the consumers' rights under the Act within the state.

DISTRICT CONSUMER PROTECTION COUNCIL

- i. The State Government empowers to establish the District Consumer Protection Council to be known as the District Council.
- ii. It shall work as an advisory council which shall consist of the **Collector of the district (by whatever name called)**, who shall be the **Chairperson**; and such number of other official or non-official members, representing such interests as may be prescribed.
- iii. It is required to hold at least 2 meeting every year and the day, date, time, place regarding the same shall be decided by the chairperson.
- iv. The objects of the District Council shall be to render advice on promotion and protection of the consumers' rights under the Act within the district.

CENTRAL CONSUMER PROTECTION AUTHORITY (CCPA)

Establishment of Central Consumer Protection Authority

- i. Section 10 empowers the Central Government to establish a Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.
- ii. The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government to exercise the powers and discharge the functions under the Act.

- iii. *The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi, and it shall have regional and other offices in any other place in India as the Central Government may decide.*
- iv. *Central government will make rules and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority.*

Note:

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

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

Note:

Appointment of officers, experts, professionals and other employees of Central Authority and their salary and other allowances shall be done by the Central Government.

Investigation Wing of Central Authority

1. *The Central Authority shall have an Investigation Wing headed by a Director General for the purpose of conducting inquiry or investigation.*
2. *The Central Government may appoint a Director General and such number of Additional Director General, Director, Joint Director, Deputy Director and Assistant Director who shall possess such qualification as may be prescribed under the Act.*
3. *Every Additional Director General, Director, Joint Director, Deputy Director and Assistant Director shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director-General*
4. *The Director General may delegate all or any of his powers to the Additional Director General or Director, Joint Director or Deputy Director or Assistant Director, as the case may be, while conducting inquiries or investigations under this Act.*

5. The inquiries or the investigations made by the Director General shall be submitted to the Central Authority.

Power of District Collector

The District Collector (by whatever name called) may, on a complaint or on a reference made to him by the Central Authority inquire into or investigate complaints regarding violation of rights of consumers as a class, on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction and submit his report to the Central Authority

Powers and functions of Central Authority

The Central Authority empowers to:

- a. protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;
- b. prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
- c. ensure that no false or misleading advertisement is made of any goods or services;
- d. ensure that no person takes part in the publication of any advertisement which is false or misleading.

Section 18(2) states that without prejudice to the generality of the provisions contained in Section 18 (1), the Central Authority may, for any of the purposes aforesaid -

- a. inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government;
- b. file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;
- c. intervene in any proceedings before the District Commission or State Commission or National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;
- d. review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the



- time being in force and recommend appropriate remedial measures for their effective implementation;
- e. recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;
 - f. undertake and promote research in the field of consumer rights;
 - g. spread and promote awareness on consumer rights;
 - h. encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;
 - i. mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;
 - j. issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
 - k. advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;
 - l. issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

Power of Central Authority to refer matter for investigation or to another Regulator

The Central Authority may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a prima facie case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers and if it is satisfied that there exists a prima facie case, it shall cause investigation to be made by the Director General or by the District Collector.

For the purposes of investigation, the Central Authority, the Director General or the District Collector may call upon a person referred to in Section 19(1) and also direct him to produce any document or record in his possession.

Power of Central Authority

If the Central Authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or unfair trade practice by a person, it may pass such order as may be necessary, including:

- a. recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;
- b. reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and
- c. Discontinuation of practices which are unfair and prejudicial to consumers' interest

Note

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

Power of Central Authority to issue directions and penalties against false or misleading advertisements

- a. Section 21 provides that where the Central Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in that order.
- b. It may, by order, impose on manufacturer or endorser a **penalty** which may extend to **ten lakh rupees**.
- c. For every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees.
- d. Where the Central Authority deems it necessary, it may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which **may extend to one year**.
- e. Central Authority may, for every subsequent contravention, prohibit such endorser from making endorsement in respect of any product or service for a period which may **extend to three years**.



- f. Where the Central Authority is satisfied after investigation that any person is found to publish, or is a party to the publication of, a misleading advertisement, it may impose on such person a penalty which may extend to ten lakh rupees.
- g. No endorser shall be liable to a penalty, if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed by him.
- h. No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business
While determining the penalty, regard shall be had to the following, namely:
- (a) the population and the area impacted or affected by such offence;
 - (b) the frequency and duration of such offence;
 - (c) the vulnerability of the class of persons likely to be adversely affected by such offence; and
 - (d) the gross revenue from the sales effected by virtue of such offence.

Search and seizure

The Director General or any other officer authorised by him in this behalf, or the District Collector, as the case may be, may, if he has any reason to believe that any person has violated any consumer rights or committed unfair trade practice or causes any false or misleading advertisement to be made, shall,-

- (a) enter at any reasonable time into any such premises and search for any document or record or article or any other form of evidence and seize such document, record, article or such evidence;
- (b) make a note or an inventory of such record or article; or
- (c) require any person to produce any record, register or other document or article.

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

Every document, record or article seized or produced shall be returned to the person, from whom they were seized or who produced the same, within a period of **twenty days** of the



date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.

What about goods which are subject to natural decay?

Where any article seized are subject to speedy or natural decay, the Director General or such other officer may dispose of the article in such manner as may be prescribed.

What about goods which are not subject to natural decay?

In the case of articles other than the articles of speedy or natural decay, provisions contained in section 38(2) (c) shall mutatis mutandis apply in relation to analysis or tests. Section 38(2)(c) provides that if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it.

Vexatious Search

The Director General or any other officer, exercising powers under section 22, who knows that there are no reasonable grounds for so doing, and yet:

- (a) searches, or causes to be searched any premises; or
- (b) seizes any record, register or other document or article,

Shall, for every such offence, be punished with imprisonment for a term which may extend to **one year**, or with **fine which may extend to ten thousand rupees** or with both.

Appeal

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

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

- a. Section 28 of the Act, empowers the State Government to establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State. State Government may also, if it deems fit, establish more than one District Commission in a district.
- b. Each District Commission shall consist of:
 - i. a President; and
 - ii. not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

Note

Qualifications of President and members of District Commission shall be decided by The Central Government.

Jurisdiction of District Commission

- a. District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration **does not exceed one crore rupees**.
- b. A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction:
 - i. the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or
 - ii. any of the opposite parties, where there are more than one, voluntarily resides or has a branch office, provided that in such case the **permission of the District Commission** is taken; or



iii. the cause of action, wholly or in part, arises; or the complainant resides or personally works for gain.

The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.

Manner in which complaint shall be made

Section 35 provides that a complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by:

- a. The consumer:
 - i. to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or
 - ii. who alleges unfair trade practice in respect of such goods or service;
 - b. any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;
 - c. one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or
 - d. The Central Government, the Central Authority or the State Government, as the case may be. It may be noted that the complaint may be filed electronically in prescribed manner.
- “Recognised Consumer Association” means any voluntary consumer association registered under any law for the time being in force. (2) Every complaint filed shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.



Proceedings before District Commission

- a. On receipt of a complaint made under section 35, the District Commission may, by order, admit the complaint for being proceeded with or reject the same.
- b. A complaint shall not be rejected unless an opportunity of being heard has been given to the complainant.
- c. The admissibility of the complaint shall ordinarily be decided **within twenty-one days** from the date on which the complaint was filed and if the commission fails to decide the issue of admissibility, it shall be deemed to have been admitted.
- d. Every Proceeding before The District Commission shall be conducted by the President of that Commission and at least one member.
- e. It may be noted that that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

Note:

If it appears to the district commission that the dispute can be settled through mediation then it should give option to the parties to settle the dispute through mediation and the same should be confirmed by the parties within 5 days and within 5 Days from the receipt of the consent the same shall be referred for mediation.

Procedure on admission of complaint

Section 38 deals with procedure on admission of complaint by the District Commission.

Section 38 provides that:

1. The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint.
2. Where the complaint relates to any goods, the District Commission shall:
 - a. refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by it;

- b. if the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);
 - c. if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;
 - d. before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;
 - e. remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;
 - f. if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;
 - g. give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.
3. The District Commission shall, if the complaint admitted by it under section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services:



- a. refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;
- b. if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute:
 - (i) on the basis of evidence brought to its notice by the complainant and the opposite party, if the opposite party denies or disputes the allegations contained in the complaint, or
 - (ii) ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission;
- c. decide the complaint on merits if the complainant fails to appear on the date of hearing.
4. For the purposes of sub-sections (2) and (3), the District Commission may, by order, require an electronic service provider to provide such information, documents or records, as may be specified in that order.
5. No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.
6. Every complaint shall be heard by the District Commission on the basis of affidavit and documentary evidence placed on record: Provided that where an application is made for hearing or for examination of parties in person or through video conferencing, the District Commission may, on sufficient cause being shown, and after recording its reasons in writing, allow the same.
7. Every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities: Provided that no adjournment shall ordinarily be granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Commission: Provided further that the District Commission shall make such orders as to the

costs occasioned by the adjournment as may be specified by regulations: Provided also that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.

8. Where during the pendency of any proceeding before the District Commission, if it appears necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.
9. For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:
 - a. the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
 - b. requiring the discovery and production of any document or other material object as evidence;
 - c. receiving of evidence on affidavits;
 - d. the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
 - e. issuing of commissions for the examination of any witness, or document; and
 - f. any other matter which may be prescribed by the Central Government.
10. Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
11. Where the complainant is a consumer referred to in sub-clause (v) of clause (5) of section 2, the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Commission thereon.
12. In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

Findings of District Commission

Where the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices, or claims for compensation under product liability are proved, it shall issue an order to the opposite party directing him to do one or more of the following:

- a. to remove the defect pointed out by the appropriate laboratory from the goods in question;
- b. to replace the goods with new goods of similar description which shall be free from any defect;
- c. to return to the complainant the price, or, as the case may be, the charges paid by the complainant along with such interest on such price or charges as may be decided;
- d. to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party
- e. to pay such amount as may be awarded by it as compensation in a product liability action under Chapter VI;
- f. to remove the defects in goods or deficiencies in the services in question;
- g. to discontinue the unfair trade practice or restrictive trade practice and not to repeat them;
- h. not to offer the hazardous or unsafe goods for sale;
- i. to withdraw the hazardous goods from being offered for sale;
- j. to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;
- k. to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently.
It may be noted that the minimum amount of sum so payable shall not be less than twenty-five per cent of the value of such defective goods sold or service provided, as the case may be, to such consumers
- l. to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;
- m. to provide for adequate costs to parties; and
- n. to cease and desist from issuing any misleading advertisement.

Important Note:

According to Section 39(3), in any proceeding conducted by the President and a member and if they differ on any point or points, they shall state the point or points on which they differ and refer the same to another member for hearing on such point or points and the opinion of the majority shall be the order of the District Commission.

However, the other member shall give his opinion on such point or points referred to him within a **period of one month** from the date of such reference.

Every order made by the District Commission shall be signed by the President and the member who conducted the proceeding. Provided that where the order is made as per majority opinion under sub-section (3), such order shall also be signed by the other member.

Review by District Commission and Appeal against District Commission

- a. District commission can review its order if it appears an error on the face of it within 30 days from the original order was passed.
- b. any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order. (Extension may be granted if there appears sufficient ground)

Note:

- a. If the district commission has ordered any compensation to be paid, then the appellant first should deposit 50% of the said amount.
- b. There lies no appeal against any decision arrived through mediation.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION

- a. Section 42 of the Act, empowers the State Government to establish a state Consumer Disputes Redressal Commission, to be known as the State Commission, in the State. State Government may also, if it deems fit, establish more than one State Commission in a state as it deems fit.
- b. Each State Commission shall consist of:
 - i. a President; and
 - ii. not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

Note-

Qualifications of President and members of the Commission shall be decided by The Central Government.

Jurisdiction of State Commission

State Commission shall have jurisdiction

To entertain:

- a. complaints where the value of the goods or services paid as consideration, **exceeds rupees one crore, but does not exceed rupees ten crore:**
 - b. complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;
 - c. **appeals against the orders of any District Commission within the State; and**
- To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.
 - Section 47(2) provides that the jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, and a Bench may be constituted by the President



with one or more members as the President may deem fit. It may be noted that the senior-most member shall preside over the Bench.

- Section 47(3) states that where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.
- The President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of one month from the date of such reference.
- According to Section 47(4), a complaint shall be instituted in a State Commission (Same as District Commission)

Review by State Commission and Appeal against State Commission (Appeal to National Commission)

- a. State commission can review its order if it appears an error on the face of it within 30 days from the original order was passed.
- b. Any person aggrieved by an order made by the State Commission may prefer an appeal against such order to the National Commission only on question law within a period of **30 days** from the date of the order. (Extension may be granted if there appears sufficient ground).

Note:

If the State commission has ordered any compensation to be paid, then the appellant first should deposit 50% of the said amount.

There lies no appeal if the question is not question of Law.

An appeal may lie to the National Commission from an order passed ex parte by the State Commission



Hearing of appeal by State Commission or National Commission

- a. According to Section 52 of the Act, an appeal filed before the State Commission or the National Commission, as the case may be, shall be heard as expeditiously as possible and every endeavour shall be made to dispose of the appeal within a period of ninety days from the date of its admission.
- b. Any delay should be recorded in writing along with reason for the same and shall also make such orders as to the costs occasioned by the adjournment, as may be specified by regulations.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

- a. Section 42 of the Act, empowers the Central Government to establish a National Consumer Disputes Redressal Commission, to be known as the National Commission, in the Country.
- b. The National Commission shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette
- c. National Government may also, if it deems fit, establish more benches as it deems fit.
- d. Each National Commission shall consist of:
 - i. a President; and
 - ii. not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

Note-

- a. Qualifications of President and members of the Commission shall be decided by The Central Government.
- b. It may be noted that no President or members shall hold office for more than 5 years or he has attained such age as specified in the rules made by the Central Government which shall not exceed
 - (a) in the case of the President, the age of seventy years;
 - (b) in the case of any other member, the age of sixty-seven years, whichever is earlier.
 Reappointment is permitted

Jurisdiction of National Commission

National Commission shall have jurisdiction to entertain:

- a. Complaints where the value of the goods or services paid as consideration, **exceeds rupees ten crore:**
 - b. complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;
 - c. **appeals against the orders of any state Commission;**
 - d. Appeals against the orders of the Central Authority
- To call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission, where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.
 - Section 58(2) provides that the jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof, and a Bench may be constituted by the President with one or more members as the President may deem fit. It may be noted that the senior-most member shall preside over the Bench.
 - Section 58(3) states that where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.
 - **The President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of 2 months from the date of such reference.**

Note:

National Commission can review its order Suo moto or on any application within 30 days from such order.



Procedures for Service of Notice

All notices to be served under this act can be served through:

- a. Speed Post
- b. Courier
- c. may be served on an electronic service provider at the address provided by it on the electronic platform.

Note:

If the notice is received back with an endorsement purporting by any person authorised by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (1) when tendered or transmitted to him, the District Commission or the State Commission or the National Commission, as the case may be, shall declare that the notice has been duly served on the opposite party.

Appeal to Supreme Court

Any person aggrieved by an order made by the National Commission may prefer an appeal against such order to the Supreme Court only on question law within a period of **30 days** from the date of the order. (Extension may be granted if there appears sufficient ground).

Note:

If the National commission has ordered any compensation to be paid, then the appellant first should deposit 50% of the said amount.

There lies no appeal if the question is not question of Law.

MEDIATION

Establishment of Consumer Mediation Cell

- Section 74 empowers the State Government to establish a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.
- Further the Central Government also empowers to establish a consumer mediation cell to be attached to the National Commission and each of the regional Benches.
- A consumer mediation cell shall consist of such persons as may be prescribed. Every consumer mediation cell shall maintain:
 - a. a list of empanelled mediators;
 - b. a list of cases handled by the cell;
 - c. record of proceeding; and
 - d. any other information as may be specified by regulations.

Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations.

Duty of Mediator to Disclose Certain Fact

According to the Section 77 of the Act, it shall be the duty of the mediator to disclose:

- (a) any personal, professional or financial interest in the outcome of the consumer dispute;
- (b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and
- (c) such other facts as may be specified by regulations.

Note:

The appropriate commission, as the case may be can replace the mediator if they receive a complaint regarding the same.

Settlement through Mediation

Section 80(1) provides that pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to



only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

Section 80(2) states that the mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission. Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

Recording Settlement and Passing of Order

The appropriate commission shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

If some issues are still left after the mediation then those issues shall be heard in the normal proceedings in front of the appropriate commissions.

PRODUCT LIABILITY

Product Liability Action

According to Section 83 of the Act, a product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

Liability of Product Manufacturer

Section 84 states that a product manufacturer shall be liable in a product liability action, if:

- (a) the product contains a manufacturing defect; or
- (b) the product is defective in design; or
- (c) there is a deviation from manufacturing specifications; or
- (d) the product does not conform to the express warranty; or
- (e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

Liability of Product Service Provider

Section 85 provides that a product service provider shall be liable in a product liability action, if:

- (a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or
- (b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or
- (c) the service provider did not issue adequate instructions or warnings to prevent any harm; or
- (d) the service did not conform to express warranty or the terms and conditions of the contract.

Liability of Product Sellers

Section 86 states that a product seller who is not a product manufacturer shall be liable in a product liability action, if:

- (e) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or
- (f) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or
- (g) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or
- (h) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or
- (i) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

Exceptions to Product Liability

Action According to Section 87 of the Act a product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified. In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer shall not be liable, if:

- (a) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;
- (b) the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;
- (c) the product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or
- (d) the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.

Note:

A product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product.

COMPOUNDING OF OFFENCES

- a. It may be noted that no compounding of offence shall be made without the leave of the court before which a complaint has been filed.
- b. Further, such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.
- c. Section 96(2) provides that the Central Authority or any officer as may be specially authorised by him in this behalf, may compound offences under sub-section (1).
- d. Section 96(3) states that nothing in sub-section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.
- e. Any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.
- f. Section 96(4) provides that where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.
- g. Section 96(5) states that the acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Central Authority or an officer of the Central Authority empowered in this behalf shall be deemed to amount to an acquittal within the meaning of the Code of Criminal Procedure, 1973

OFFENCES AND PENALTIES

1. Failure to comply with the order of Central Authority - Imprisonment which may extend to 6 Months or with fine which may extend to 20 lakh or with both
2. Punishment for False or Misleading Advertisement - Imprisonment which may extend to 2 years and Fine which may extend to 10 lakhs, in case of subsequent offence Imprisonment which may extend to 5 years and Fine which may extend to 50 lakh.
3. Punishment for Manufacturing for Sale or Storing, Selling or Distributing or Importing Products Containing Adulterant



Section 90(1) provides that whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any product containing an adulterant shall be punished, if such act-

- (a) does not result in any injury to the consumer, with imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees;
- (b) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;
- (c) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees; and
- (d) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

4. *Punishment for Manufacturing for Sale or for Storing or Selling or Distributing or Importing Spurious Goods* Section 91(1) provides that whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any spurious goods shall be punished, if such act-

- (a) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;
- (b) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees;
- (c) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

Section 91(2) states that the offences under clauses (b) and (c) of sub-section (1) shall be cognizable and non-bailable.

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