

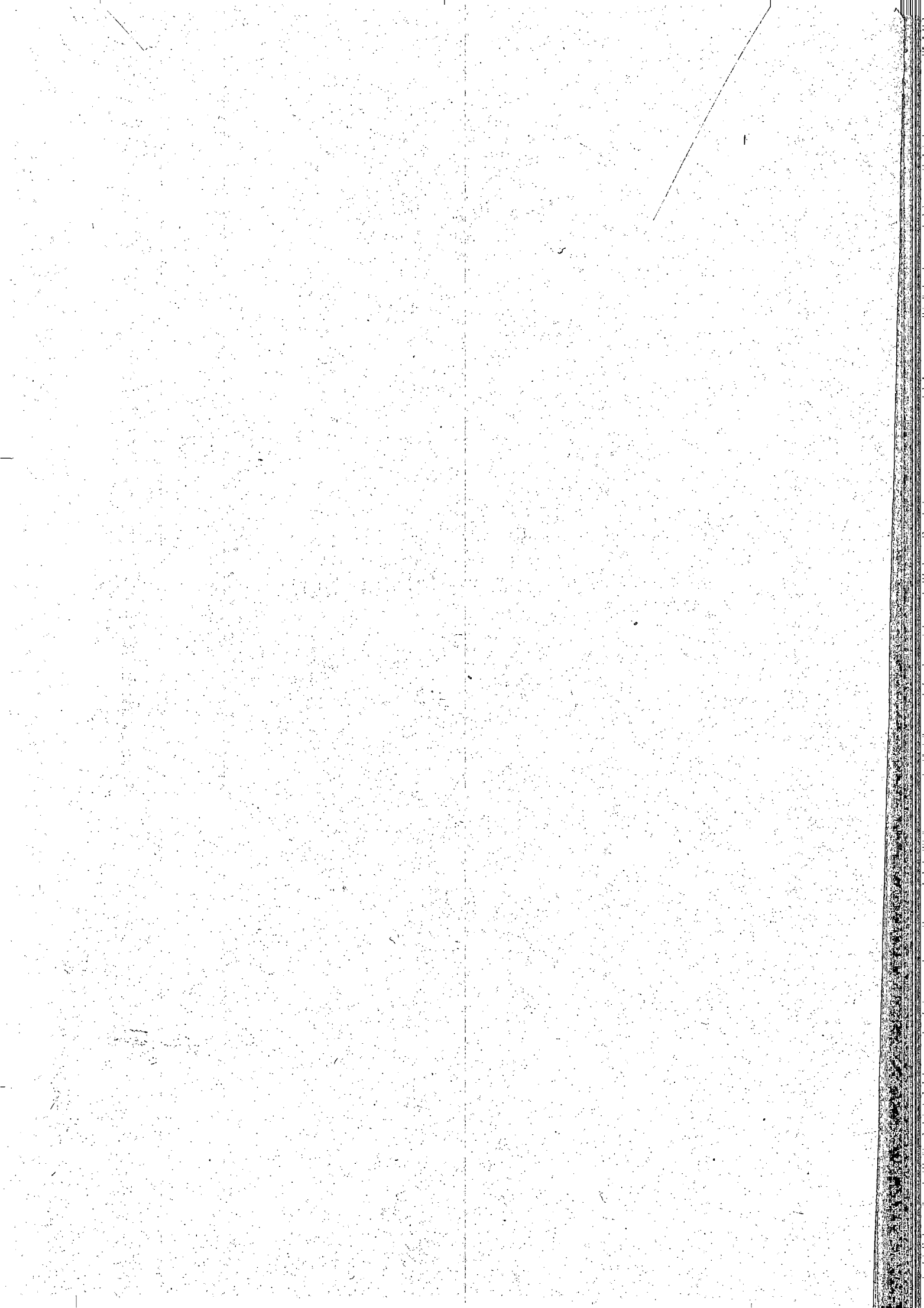


Government of India

Report of the
Financial Sector Legislative Reforms Commission

Volume II: Draft Law

March 2013



Indian Financial Code

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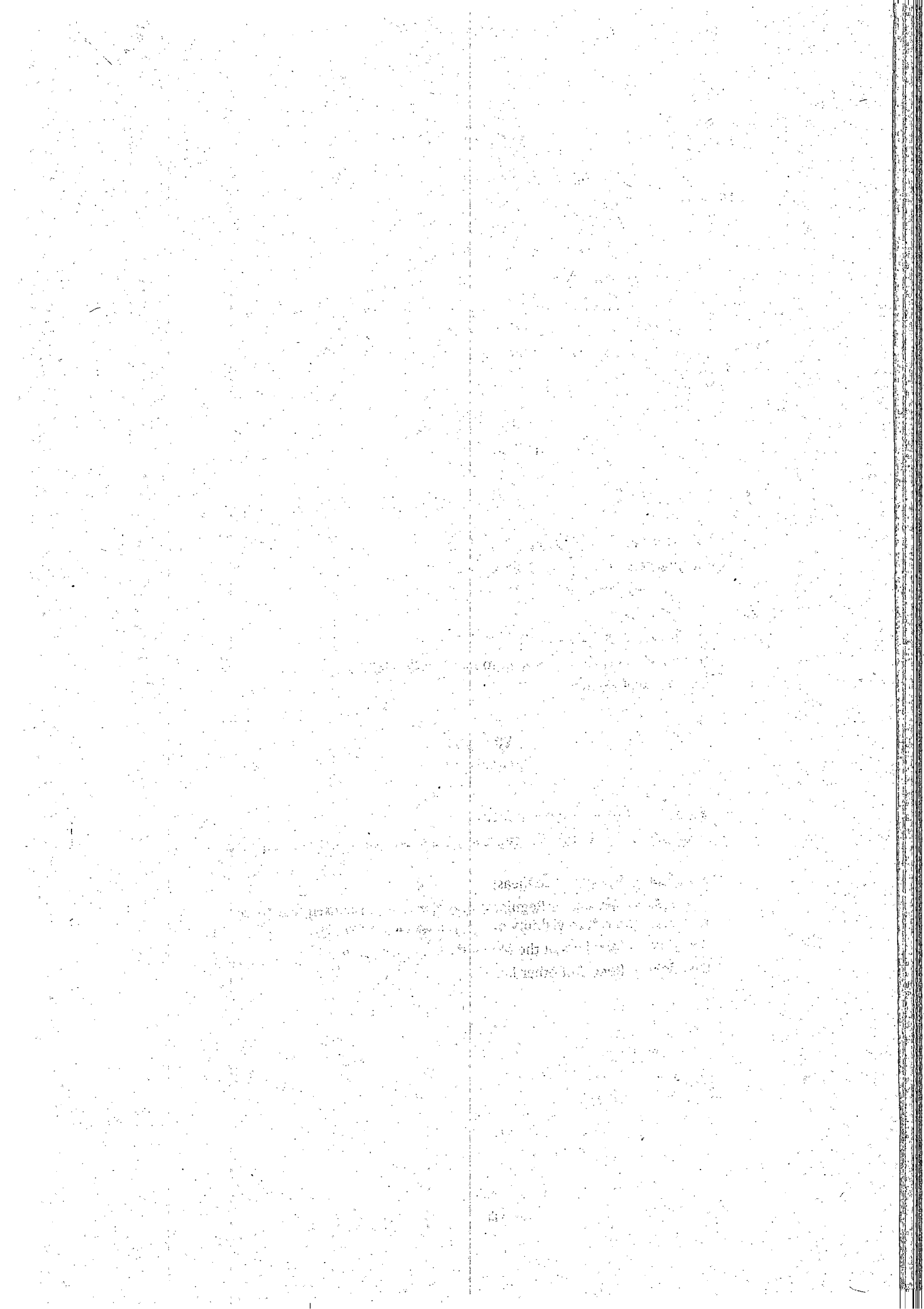
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Bill No. abc of 2013

Indian Financial Code

A

BILL

to consolidate and amend the law regulating the Indian financial sector and to set out principles for financial regulation, and to provide for the establishment, objectives, powers of, and framework for interaction among, financial regulatory agencies; and for matters connected therewith or incidental thereto, with a view to bring coherence and efficacy in the financial regulatory framework.

WHEREAS this Act lays down mechanisms of independence and accountability, and provides for judicial review and oversight over financial sector regulation;

AND WHEREAS this Act is intended to be a principles-based law, enabling its application to any segment of the financial sector, intending to focus on ownership-neutrality, and seeking to foster competition;

AND WHEREAS this Act is aimed at strengthening and formalising the governance of financial regulatory agencies, and to provide for a comprehensive framework for consumer protection, prudential regulation, regulation of certain types of financial contracts, market abuse, resolution of financial service providers, systemic risk oversight, effective and affordable access to financial services, market development, capital controls, and public debt management in India;

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

PART I

PRELIMINARY

CHAPTER 1

PRELIMINARY

Short title,
application and
commencement.

1. (1) This Act will be called the Indian Financial Code, 2013. 5
- (2) This Act extends to the whole of India.
- (3) This Act will come into force from such date as may be notified by the Central Government.
- (4) The Central Government will have the power to notify different dates for different Parts of this Act to be brought into force, with no such Part being made effective partially. 10

CHAPTER 2

DEFINITIONS

Definitions.

2. In this Act, unless the context requires otherwise –
 - (1) “actuary” means a person certified to practice as such by the Institute of Actuaries of India under section 9 of the Actuaries Act, 2006 (35 of 2006). 15
 - (2) “administrative law member” means an executive member of the board of a Financial Agency who is qualified in the field of law, and is designated as such under section 33.
 - (3) “advice” means a recommendation, opinion, statement or any other form of personal communication directed at a consumer that is intended, or could reasonably be regarded as being intended, to influence the consumer in making a transactional decision. 20
 - (4) “auditor” means a chartered accountant certified to practice as such by the Institute of Chartered Accountants of India under section 6 of the Chartered Accountants Act, 1949 (38 of 1949), and carrying out the task of audit. 25
 - (5) “authorised dealer” means a person authorised under Chapter 70, in relation to capital account transactions, to engage in the business of –
 - (a) dealing in foreign exchange; or
 - (b) receiving any payment by order or on behalf of any non-resident, in any manner. 30
 - (6) “banking” means the business of accepting deposits from the public with the promise of repaying such deposits at an assured rate of return.
 - (7) “banking service provider” means a financial service provider which carries on banking. 35
 - (8) “beneficial owner” means a person whose name is recorded as such with a depository and the term “beneficial ownership” will be construed accordingly.

- (9) "bridge service provider" means a wholly owned subsidiary of the Corporation, established in accordance with section 255(1), to which the Corporation may transfer some or all of the assets or liabilities of one or more covered service providers.
- 5 (10) "bye-laws" means the bye-laws made under this Act.
- (11) "capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of residents, or in India of non-residents.
- 10 (12) "capital distribution" means a distribution of cash or other property by a financial service provider to its owners made on account of their ownership.
- (13) "central counterparty" means a person interposed between counterparties to contracts traded in one or more markets for securities, becoming the buyer to every seller and the seller to every buyer.
- (14) "Class A offence" means an offence described under section 415(1)(a).
- 15 (15) "Class B offence" means an offence described under section 415(1)(b).
- (16) "Class C offence" means an offence described under section 415(1)(c).
- (17) "clearing" means the process of transmitting, reconciling and wherever relevant, confirming payments or securities transfers, prior to settlement.
- 20 (18) "combination" has the meaning assigned to it under section 5 of the Competition Act.
- (19) "compensation" means the amount that may be given to persons identified under a compensation order.
- (20) "compensation notice" means a notice issued by the Corporation under section 276.
- 25 (21) "compensation order" means an order issued by the Corporation under section 278.
- (22) "Competition Act" means the Competition Act, 2002 (12 of 2002).
- (23) "Competition Commission" means the Competition Commission of India established under section 7 of the Competition Act.
- 30 (24) "complainant" means a retail consumer who has filed a complaint with the Redress Agency or whose complaint has been forwarded by the Regulator to the Redress Agency.
- (25) "complaint" means an oral or written expression of dissatisfaction made by, or on behalf of, a consumer, alleging that the consumer has suffered or is likely to suffer an inconvenience or loss on account of a financial product provided, or a financial service rendered, by a financial service provider or its financial representative.
- 35 (26) "compounding order" means an order referred to in section 413.
- (27) "conduct" includes any act or omission.
- 40 (28) "consumer" means a person who has availed, avails, or intends to avail of a financial service or has a right or interest in a financial product.
- (29) "Consumer Advisory Council" means the advisory council on consumer protection established under section 129.

- (30) "contract of insurance" means a contract under which a financial service provider, for consideration, assumes the risk of one or more persons, and distributes it across a class of similarly situated persons, each of whose risks has been assumed in a similar transaction, and includes any instrument that may be prescribed by the Central Government to be a contract of insurance. 5
- (31) "control" means the right to control, individually or in concert with other persons, directly or indirectly, whether by virtue of ownership or management rights, by agreement or in any other manner, –
- (a) the management or policy decisions of a person; or
 - (b) the appointment or removal of the majority of the members of the body responsible for the oversight of the affairs of a person. 10
- (32) "Corporation" means the Resolution Corporation established under section 16.
- (33) "Corporation Board" means the board of the Corporation.
- (34) "Corporation Chairperson" means the chairperson of the Corporation.
- (35) "Corporation insurance" means the contract of insurance issued by the Corporation to a covered service provider under section 262. 15
- (36) "Council" means the Financial Stability and Development Council established under section 20.
- (37) "Council Board" means the board of the Council.
- (38) "Council Chairperson" means the chairperson of the Council. 20
- (39) "Council Chief Executive" means the chief executive of the Council.
- (40) "counterparty" means a party to a trade in the market for securities.
- (41) "covered service provider" means a financial service provider that has obtained Corporation insurance under section 262.
- (42) "covered service provider under resolution" means a covered service provider that the Corporation resolves under a resolution order. 25
- (43) "credit arrangement" does not include an arrangement, irrespective of its form, which is a contract of insurance or credit extended by an insurer solely to maintain the payment of premiums on a contract of insurance, but means an arrangement that is – 30
- (a) a credit facility;
 - (b) a credit transaction;
 - (c) a credit guarantee; or
 - (d) combination of any of the above.
- (44) "credit facility" means an arrangement, irrespective of its form but not including a credit transaction, in terms of which – 35
- (a) a creditor undertakes to supply goods or services or to pay any amount, with or without collateral or guarantee, to the borrower or on behalf of, or at the direction of, the borrower; and
 - (b) any charge, fee or interest is payable by the borrower or on behalf of or at the direction of the borrower to the creditor in lieu of the arrangement referred to in clause (a). 40

- (45) "credit guarantee" means an arrangement, irrespective of its form but not including a credit facility, in terms of which a person undertakes or promises to satisfy upon demand any obligation of another consumer in respect of a credit facility or a credit transaction to which this Act applies.
- 5 (46) "credit transaction" means an arrangement, irrespective of its form, which is –
- (a) a lease;
 - (b) a mortgage agreement or secured loan;
 - (c) an instalment agreement; or
 - 10 (d) any other agreement other than a credit facility or credit guarantee, in terms of which payment of an amount owed by one person to another is deferred thereby attracting a liability to pay a charge, fee or interest to the credit provider in respect of –
 - (i) the agreement; or
 - (ii) the amount that has been deferred.
- 15 (47) "current account transaction" means a transaction that is not a capital account transaction, and includes –
- (a) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business;
 - 20 (b) payments due as interest on loans and as net income from investments;
 - (c) remittances towards living expenses of relatives or dependents; or
 - (d) travel expenses, medical expenses, insurance, or education expenses of relatives or dependents.
- 25 (48) "Data Centre" means the Financial Data Management Centre established under section 294.
- (49) "Data Centre Director" means the director of the Data Centre.
- (50) "debenture" means any instrument evidencing debt, whether or not secured by a charge on assets.
- 30 (51) "Debt Agency" means the Public Debt Management Agency established under section 24.
- (52) "Debt Agency Advisory Council" means the advisory council of the Debt Agency established under section 378.
- (53) "Debt Agency Chief Executive" means the chief executive of the Debt Agency.
- 35 (54) "Debt Agency Management Committee" means the Management Committee of the Debt Agency.
- (55) "decision order" means an order as described in section 402.
- (56) "deposit" means a contribution of money, made other than for the purpose of acquiring a security, made by a person which may be repayable at the demand of that person.
- 40 (57) "depository" means a person engaged in the business of providing depository service.

- (58) “depository service” means the service provided by a person to another person where beneficial ownership in a financial product is held by such provider in trust for, or on behalf of, the beneficial owner or any other person nominated by the beneficial owner.
- (59) “derivative” means any transferable instrument – 5
- (a) giving the right but not the obligation to acquire any security;
 - (b) giving the right but not the obligation to sell any security;
 - (c) giving the right to exchange any security;
 - (d) providing for exchange of one or more payments based on value of one or more securities, currencies, interest rates, yields, other derivatives, financial indices, credit ratings, or financial measures; 10
 - (e) giving rise to a settlement determined by reference to value of securities, currencies, interest rates, yields, other derivatives, financial indices, credit ratings, or financial measures; or
 - (f) giving rise to a settlement determined by reference to commodities, other than when – 15
 - (i) such instrument is not traded on an exchange;
 - (ii) the transaction is in ordinary course of business;
 - (iii) the transaction is not subject to clearing and settlement through an Infrastructure Institution or subject to regular margin calls; and 20
 - (iv) neither of the parties to the transaction is a financial service provider or an authorised dealer.
- (60) “direct participant” means a financial service provider through which consumers use the services of an Infrastructure Institution.
- (61) “eligible enterprise” means a person, other than an individual, which at the relevant time has a net asset value of not more than a specified amount or has a turnover of not more than a specified amount, but excludes a financial service provider who is a consumer of a financial product or financial service that is identical to, or substantially similar to, the financial product or financial service that such person provides. 25 30
- (62) “examiner” means an examiner appointed under section 224(3).
- (63) “exchange” means any person that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities.
- (64) “Executive Committee” means the Executive Committee of the Council established under section 292. 35
- (65) “executive member” means a member of the board of a Financial Agency, not being a nominee member, who is responsible for the day-to-day management and functioning of the Financial Agency.
- (66) “executive remuneration” means the remuneration paid or payable by a regulated person to – 40
- (a) persons exercising significant functions;
 - (b) persons who have a specified connection with the regulated person, which may include, persons providing specified services to the regulated person or their officers and employees; and
 - (c) officers and employees of a description specified by the Regulator. 45

- (67) "Financial Agency" means –
- (a) the Corporation;
 - (b) the Council;
 - (c) the Debt Agency;
 - 5 (d) the Financial Authority;
 - (e) the Redress Agency; and
 - (f) the Reserve Bank.
- (68) "Financial Authority" means the Unified Financial Authority as established under section 3.
- 10 (69) "Financial Authority Board" means the board of the Financial Authority.
- (70) "Financial Authority Chairperson" means the chairperson of the Financial Authority.
- (71) "financial contract" means a contract for the provision of a financial product or financial service.
- 15 (72) "financial product" means –
- (a) securities;
 - (b) contracts of insurance;
 - (c) deposits;
 - (d) credit arrangements;
 - 20 (e) retirement benefit plans;
 - (f) small savings instruments;
 - (g) foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another that are to be settled immediately; and
 - 25 (h) any other instrument that may be prescribed under section 150(1).
- (73) "financial regulatory data" means all information that a financial service provider or an authorised dealer is obligated to submit to a Financial Agency under law.
- (74) "financial representative" means any person acting on behalf of a financial service provider, as an agent or otherwise, in connection with the provision of a financial product or financial service.
- 30 (75) "financial service" means –
- (a) buying, selling, or subscribing to a financial product or agreeing to do so;
 - (b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
 - 35 (c) effecting contracts of insurance;
 - (d) managing, or offering or agreeing to manage, assets consisting of financial products belonging to another person;
 - (e) rendering or agreeing to render advice on, for consideration, or soliciting for the purposes of –
 - 40 (i) buying, selling, or subscribing to, a financial product;
 - (ii) availing a financial service; or
 - (iii) exercising any right associated with a financial product or financial service;

- (f) establishing or operating an investment scheme;
 - (g) maintaining or transferring records of ownership of a financial product;
 - (h) underwriting the issuance or subscription of a financial product;
 - (i) providing information about a person's financial standing or creditworthiness; 5
 - (j) selling, providing, or issuing stored value or payment instruments or providing payment services;
 - (k) making arrangements for the carrying on of any of the financial services in clauses (a) to (j);
 - (l) rendering or agreeing to render advice on, or soliciting for the purposes of – 10
 - (i) buying, selling, or subscribing to, a financial product;
 - (ii) availing any of the financial services in clauses (a) to (j); or
 - (iii) exercising any right associated with a financial product or any of the financial services in clauses (a) to (j); 15
 - (m) any service carried out by an Infrastructure Institution; and
 - (n) any other service that may be prescribed under section 150(2).
- (76) "financial service provider" means a person engaged in the business of providing a financial service.
- (77) "financial system" means the aggregation of all financial service providers in India, along with – 20
- (a) the financial markets in which they operate;
 - (b) their financial products and financial services; and
 - (c) the financial contracts entered into by them.
- (78) "financial system crisis" means a state of the financial system where there is a large-scale disruption to the provision of financial services due to an impairment of all or parts of the financial system that has the potential to have serious negative consequences for India. 25
- (79) "financial system database" means the database of financial regulatory data.
- (80) "fit and proper persons" means persons who – 30
- (a) possess sufficient relevant professional qualifications, knowledge, skills, expertise and experience to carry out the functions required to be performed by them;
 - (b) are of good repute and integrity;
 - (c) have not been convicted of an offence under this Act; and 35
 - (d) for the purposes of Part V, satisfy such other requirements as may be specified by the Regulator.
- (81) "foreign currency" means any currency other than Indian currency.
- (82) "foreign currency contract" means a contract –
- (a) to buy or sell any foreign currency; or 40
 - (b) to exchange any one currency for another.
- (83) "foreign exchange" means foreign currency and includes –

- (a) deposits, credits and balances payable in foreign currency;
- (b) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in foreign currency; or
- (c) drafts, travellers cheques, letter of credit or bills of exchange, expressed or drawn by persons outside India but payable in Indian currency.
- (84) "government security" means a security that is created and issued by the Central Government, a State Government or a public authority for the purpose of raising debt.
- (85) "group" means a person and any number of persons –
- (a) that control, are controlled by, or are under common control with that person;
- (b) that have the capacity to exercise a significant influence over the financial decisions of that person due to the existence of an arrangement or relationship between them; and
- (c) over whose financial decisions that person has the capacity to exercise a significant influence, due to the existence of an arrangement or relationship between them.
- (86) "Indian currency" means any currency which is legal tender in India.
- (87) "Infrastructure Institution" means an Infrastructure Institution referred to in section 183.
- (88) "insurer" means a financial service provider carrying on the business of effecting contracts of insurance in India.
- (89) "investment contract" means an investment in any person, other than an individual, with reasonable expectation of profit or return to be derived from entrepreneurial or managerial efforts.
- (90) "investment scheme" means any arrangement with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it or otherwise, to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income, where –
- (a) persons participating in such schemes do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions; and
- (b) the arrangement has either or both of the following characteristics –
- (i) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
- (ii) the property is managed as a whole by or on behalf of the operator of the scheme.
- (91) "inward flow" means a capital account transaction which alters the assets in India of non-residents.
- (92) "Issue Department" means the department of the Reserve Bank referred to under section 351.
- (93) "issuer" means –
- (a) a body corporate that issues or proposes to issue any security; or

(b) any person, other than a body corporate under clause (a), performing the acts and assuming the duties of an issuer, depositor or manager pursuant to the relevant documentation or instrument.

- (94) "Monetary Policy Committee" means the Monetary Policy Committee of the Reserve Bank established under section 333. 5
- (95) "negotiable instrument" has the meaning assigned to it under Negotiable Instruments Act, 1881 (26 of 1881).
- (96) "netting" means the process by which the obligations from and to a particular counterparty may be set-off, reducing the number and value of payments or deliveries needed to settle a set of transactions. 10
- (97) "nominee member" means a member of the board of a Financial Agency, nominated by persons identified under Part II.
- (98) "non-executive member" means a member of the board of a Financial Agency other than an executive member and a nominee member.
- (99) "non-resident" means a person other than a resident. 15
- (100) "notification" means a notification published in the Official Gazette, and the terms "notified" and "notify" will be construed accordingly.
- (101) "outward flow" means a capital account transaction which alters assets outside India of residents.
- (102) "payment instruction" means any instrument, authorisation or order in any form, including electronic means, to effect a payment – 20
- (a) by any person to a system participant; or
- (b) by a system participant to another system participant.
- (103) "payment obligation" means an obligation of one system participant to pay another system participant such amounts that are due as a result of clearing or settlement of payment instructions relating to funds or financial products. 25
- (104) "payment system" means a system that enables payment of funds to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them and includes –
- (a) money transfer mechanisms like debit cards, credit cards, electronic money; 30
- (b) systems to connect a payer and a beneficiary operated by a person who is neither the payer nor the beneficiary; or
- (c) creating substitutes for legal tender with the promise of converting them into legal tender freely.
- (105) "person" includes – 35
- (a) an individual;
- (b) a Hindu undivided family;
- (c) a company;
- (d) a trust;
- (e) a partnership; 40
- (f) a limited partnership;
- (g) a sole proprietorship.

- (h) an association of persons or body of individuals, whether incorporated or not;
- (i) every body corporate, artificial juridical person not falling within clauses (a) to (h); or
- 5 (j) any agency, office or branch owned or controlled by any of the persons mentioned in clauses (a) to (h).
- (106) "policy-holder" includes a person to whom the whole of the interest of the policy-holder in the contract of insurance is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition.
- 10 (107) "premia" means the premia payable by a covered service provider to the Corporation under Chapter 50.
- (108) "prescribed" means prescribed by rules made by Central Government under this Act, and the term "prescribe" will be construed accordingly.
- 15 (109) "Presiding Officer" means the presiding officer of the Tribunal.
- (110) "pro-cyclical effects" means the extent to which prudential requirements imposed under this Act are positively correlated with changes in overall economic conditions.
- (111) "professional diligence" has the meaning assigned to it in section 85(2).
- 20 (112) "public authority" means any authority or body or institution of self-government established or constituted, including any body owned, controlled or substantially financed, directly or indirectly with the funds provided by the Government, by or under –
- (a) the Constitution of India;
- 25 (b) any law made by the Parliament or the legislature of any State; or
- (c) any notification issued or order made by the Government.
- (113) "public debt" means the obligation arising from borrowings, whether internal or external, upon the Central Government.
- (114) "public servant" has the meaning assigned to it under section 2(21) of the Indian Penal Code, 1860 (45 of 1860).
- 30 (115) "publish" means publishing of information in a manner best suited to bring it to the attention of the persons which are affected by the information and to the public at large, including by way of electronic means, as soon as may be practicable, unless otherwise provided or specified.
- 35 (116) "qualified foreign investor" means a non-resident that fulfils the customer due diligence criteria prescribed by the Central Government.
- (117) "real time gross settlement" means the real time settlement of payments, transfer instructions, or other obligations individually on a transaction-by-transaction basis.
- 40 (118) "Redress Agency" means the Financial Redress Agency established under section 12.
- (119) "Redress Agency Board" means the board of the Redress Agency.
- (120) "Redress Agency Chairperson" means the chairperson of the Redress Agency.

- (121) "registered owner" means a depository whose name is entered as such in the register of members or equivalent register of the issuer.
- (122) "regulated activity" has the meaning assigned to it in section 151.
- (123) "regulated person" means a financial service provider that –
- (a) is engaged in the business of carrying on a regulated activity; or
 - (b) has been designated as a Systemically Important Financial Institution.
- (124) "regulations" means the regulations made under this Act.
- (125) "Regulator" means the Reserve Bank or the Financial Authority, as applicable, in accordance with the allocation of responsibilities under section 11 and "Regulators" means both the Regulators, as the context may require.
- (126) "regulatory inconsistency" means any inconsistency in the regulation of financial services that may be similar in nature, or pose similar risks to the fulfilment of the objectives of a Financial Agency.
- (127) "related persons" in relation to a person means –
- (a) persons belonging to the same group as that person; and
 - (b) persons responsible for the oversight and strategic management of that person; or
 - (c) relatives of the persons under clause (b), as may be specified by the Regulator.
- (128) "related person transaction" includes the following transactions between related persons –
- (a) any arrangement for the provision of a financial product or financial service;
 - (b) transfer of any assets or liabilities;
 - (c) making of any advances or loans;
 - (d) entrusting assets or money;
 - (e) any explicit or implicit guarantees;
 - (f) donations of any kind; and
 - (g) any other transaction specified by the Regulator.
- (129) "relevant personal circumstances" mean the objectives, financial situation and needs of a retail consumer, as would reasonably be considered to be relevant for the purpose of giving advice to the retail consumer.
- (130) "Reserve Bank" means the Reserve Bank of India established under section 7.
- (131) "Reserve Bank Board" means the board of the Reserve Bank.
- (132) "Reserve Bank Chairperson" means the chairperson of the Reserve Bank.
- (133) "resident" means –
- (a) an individual whose domicile or habitual abode is in India, and includes
 - (i) a citizen of India, other than when such citizen stays outside India for the purposes of employment, business, vocation, or in circumstances as would indicate intention of such individual to stay outside India for an uncertain period; or

- (ii) an individual, not being a citizen of India, when such individual stays in India for the purposes of employment, business, vocation, or stays with spouse of such individual, such spouse being a resident, or in circumstances as would indicate intention of such individual to stay in India for an uncertain period; or
- (b) a person, other than an individual, the control and management of whose affairs is substantially located in India.
- (134) "resolution" means and includes any of the following measures, or a combination thereof, undertaken by the Corporation or the Regulator, as the case may be –
- (a) "prompt corrective action" under Chapter 45;
- (b) "purchase" under Chapter 47;
- (c) "bridge service provider" under Chapter 48; or
- (d) "temporary public ownership" under Chapter 49.
- (135) "Resolution Fund" means the Resolution Fund established under section 264.
- (136) "Resolution order" means an order of the Corporation issued under section 243.
- (137) "resolution transferee" means a person identified by the Corporation to which the assets or liabilities of a covered service provider under resolution are transferred, in whole or in part.
- (138) "respondent" means a financial service provider against whom a complaint has been filed with the Redress Agency.
- (139) "retail advisor" means a financial service provider or financial representative that gives advice to a retail consumer.
- (140) "retail consumer" means a consumer who is an individual or an eligible enterprise where the value of the financial product or of the financial service rendered, does not exceed such amount as may be specified.
- (141) "retirement benefit plan" means any arrangement or scheme that –
- (a) is established or maintained for the purposes of providing benefits in old-age to the beneficiaries of the arrangement or scheme; and
- (b) restricts withdrawals of contributions or accumulations until the maturity of the arrangement or scheme, in accordance with its terms.
- (142) "rules" means the rules made by the Central Government under this Act.
- (143) "Secretariat" means the Secretariat of the Council established under section 293.
- (144) "security" means a transferable financial interest which is not a negotiable instrument but includes –
- (a) shares and instruments equivalent to shares in the capital of any person other than an individual;
- (b) debentures;
- (c) any form of secured debt as defined under section 2(ze) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) depository receipts in respect of securities;

- (e) derivatives;
 - (f) government securities;
 - (g) transferable warehouse receipts;
 - (h) rights or interest in securities;
 - (i) instruments admitted to trading on an exchange; 5
 - (j) any investment contract which is not a deposit or a contract of insurance, unless exempted by the Central Government; or
 - (k) such other instruments as may be prescribed by the Central Government to be securities.
- (145) "settlement" means the completion of delivery of funds or a financial product against payment of funds, in order to settle obligations. 10
- (146) "show cause notice" means a notice as described in section 400.
- (147) "significant function" means a function that enables or is likely to enable the person responsible for its performance to exercise a significant influence over the conduct of a financial service provider's affairs and includes the functions of oversight, strategic management and effective control over the financial service provider. 15
- (148) "small savings instruments" means –
- (a) a deposit as defined under section 3 of the Government Savings Bank Act, 1873 (5 of 1873); 20
 - (b) a savings certificate as defined under section 2(c) of the Government Savings Certificates Act, 1959 (46 of 1959); or
 - (c) any subscription to the public provident fund issued under section 4 of the Public Provident Fund Act, 1968 (23 of 1968).
- (149) "specified" means specified by regulations made under this Act and the term "specify" will be construed accordingly. 25
- (150) "system participant" means a banking service provider or any other person participating in a payment system and includes the system provider.
- (151) "system provider" means a person who is engaged in the business of operating a payment system. 30
- (152) "system-wide measure" means a measure that seeks to mitigate systemic risk in the financial system and may be applicable to the entire financial system or one or more parts of the financial system.
- (153) "systemic indicator" means an indicator so determined by the Council under section 299 to designate financial service providers as Systemically Important Financial Institutions. 35
- (154) "systemic risk" means a risk, arising either in India or elsewhere, of large-scale disruption to financial services due to an impairment of all or parts of the financial system, that has the potential to have serious negative consequences for India. 40
- (155) "Systemically Important Financial Institution" means a financial service provider so designated under section 300.
- (156) "trade repository" means a financial service provider that maintains a centralised electronic record or database of transaction data.

(157) "transactional decision" means a decision taken by a consumer concerning –

(a) whether, how, and on what terms, to avail of a financial product or financial service; or

(b) whether, how, and on what terms, to exercise a right in relation to a financial product or financial service or to demand the discharge of a duty owed to the consumer in terms of such product or service.

(158) "Tribunal" means the Financial Sector Appellate Tribunal established under section 28.

(159) "unpublished price sensitive information" means information which is not publicly available and which would, if publicly available, be likely to have a significant effect on the price of securities.

(160) "warehouse receipt" has the meaning assigned to it under section 2(u) of the Warehousing (Development and Regulation) Act, 2007 (37 of 2007).

PART II

ESTABLISHMENT OF FINANCIAL REGULATORY
AGENCIES

CHAPTER 3

ESTABLISHMENT OF THE UNIFIED FINANCIAL AUTHORITY

5

Establishment and
incorporation of
the Financial
Authority.

3. (1) A body by the name of the Unified Financial Authority is established under this Act to exercise the powers and carry out the functions designated to the Financial Authority under this Act.

(2) The Financial Authority will be a body corporate having –

- (a) perpetual succession; 10
- (b) a common seal;
- (c) the power to sue and be sued;
- (d) the power to enter into and execute contracts;
- (e) the power to acquire, hold and dispose of property, both movable and immovable; and 15
- (f) the power to employ persons to discharge its duties.

(3) The Financial Authority will have its head office at Mumbai, and it may establish offices at any other place in or outside India.

Composition of the
Financial Authority
Board.

4. (1) The Financial Authority Board will consist of executive, non-executive and nominee members, to be appointed by the Central Government, where at all times – 20

- (a) the total number of members must not be more than twelve;
- (b) the total number of executive members must not be greater than half of the total number of members; and
- (c) up to two members will be nominee members. 25

(2) The executive members will include –

- (a) the Financial Authority Chairperson; and
- (b) an administrative law member.

(3) The nominee members under sub-section (1)(c) will be nominated by the Central Government. 30

(4) The Financial Authority Board will appoint a senior officer of the Financial Authority to act as its secretary.

Eligibility of
members of
Financial Authority
Board.

5. Members of the Financial Authority Board must be fit and proper persons having expertise in dealing with matters relating to finance, economics, law or public policy. 35

Financial Authority
Board.

6. (1) The general superintendence, direction and management of the affairs and business of the Financial Authority will vest in the Financial Authority Board, which may exercise all powers that may be exercised and do all acts that may be done by the Financial Authority.

- (2) The Financial Authority Board must keep under constant review the performance of the Financial Authority in giving effect to its objects, carrying out its functions and utilising its resources.

CHAPTER 4

ESTABLISHMENT OF THE RESERVE BANK OF INDIA

7. (1) The body corporate by the name of "Reserve Bank of India" established under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934), will continue as if it were established under this Act, and will exercise the powers and carry out the functions designated to the Reserve Bank under this Act. Establishment of the Reserve Bank.
- (2) The Reserve Bank will have –
- (a) perpetual succession;
 - (b) a common seal;
 - (c) the power to sue and be sued;
 - (d) the power to enter into and execute contracts;
 - (e) the power to acquire, hold and dispose of property, both movable and immovable; and
 - (f) the power to employ persons to discharge its duties.
- (3) The Reserve Bank will have its head office at Mumbai, and it may establish offices at any place in or outside India.
8. (1) The Reserve Bank Board will consist of executive, non-executive and nominee members, to be appointed by the Central Government, where at all times – Composition of the Reserve Bank Board.
- (a) the total number of members must not be more than twelve;
 - (b) the total number of executive members must not be greater than half of the total number of members; and
 - (c) up to two members will be nominee members.
- (2) The executive members will include –
- (a) the Reserve Bank Chairperson; and
 - (b) an administrative law member.
- (3) The nominee members under sub-section (1)(c) will be nominated by the Central Government.
- (4) The Reserve Bank Board will appoint a senior officer of the Reserve Bank to act as its secretary.
9. (1) Members of the Reserve Bank Board must be fit and proper persons, having expertise in dealing with matters relating to banking, payments and monetary policy. Eligibility of members of the Reserve Bank Board.
- (2) A person cannot be appointed as a member on the Reserve Bank Board if such –
- (a) is an employee of the Central Government, except in case of the nominee members;

- (b) is a member of Parliament or a state legislature;
- (c) is a director, employee or officer of any banking service provider;
- (d) is a director, employee or officer of any system provider;
- (e) is a member of an advisory council of the Reserve Bank; or
- (f) is a member of the Monetary Policy Committee, other than –
 - (i) the Reserve Bank Chairperson; or
 - (ii) the executive member designated by the Reserve Bank Board to serve on the Monetary Policy Committee.

Reserve Bank Board.

10. (1) The general superintendence, direction and management of the affairs and business of the Reserve Bank, other than the formulation of monetary policy, will vest in the Reserve Bank Board, which may exercise all powers that may be exercised and do all acts that may be done by the Reserve Bank. 10
- (2) The Reserve Bank Board must keep under constant review the performance of the Reserve Bank in giving effect to its objects, carrying out its functions and utilising its resources. 15

CHAPTER 5

ALLOCATION OF DUTIES

Allocation of duties between the Financial Authority and the Reserve Bank.

11. (1) The Reserve Bank will be the Regulator for banking and payment systems.
- (2) The Financial Authority will be the Regulator for all financial services other than banking and payment systems. 20
- (3) All references to the Regulator in this Act will mean the Regulator under sub-section (1) or sub-section (2), as the case may be.

CHAPTER 6

ESTABLISHMENT OF THE FINANCIAL REDRESS AGENCY

Establishment and incorporation of the Redress Agency.

12. (1) A body by the name of the Financial Redress Agency is established under this Act to exercise the powers and carry out the functions designated to the Redress Agency under this Act. 25
- (2) The Redress Agency will be a body corporate having –
- (a) perpetual succession;
 - (b) a common seal; 30
 - (c) the power to sue and be sued;
 - (d) the power to enter into and execute contracts;
 - (e) the power to acquire, hold and dispose of property, both movable and immovable; and
 - (f) the power to employ persons to discharge its duties. 35
- (3) The Redress Agency will have its head office at Mumbai and it may establish offices at any other place in or outside India.

Composition of the Redress Agency Board.

13. (1) The Redress Agency Board will consist of executive, non-executive and nominee members, to be appointed by the Regulators, where at all times –

- (a) the total number of members must not be more than seven;
- (b) the total number of executive members must not be greater than half of the total number of members; and
- (c) two members will be nominee members.
- 5 (2) The executive members will include the Redress Agency Chairperson, who will be appointed by the Regulators, in consultation with the Central Government.
- (3) The nominee members under sub-section (1)(c) will be nominated by the Regulators, and will consist of one official from each of the Regulators.
- 10 (4) The Redress Agency Board will appoint a senior officer of the Redress Agency to act as its secretary.
14. Members of the Redress Agency Board must be fit and proper persons having expertise in dealing with matters relating to consumer protection, including redress of consumer disputes.
- 15 (1) The general superintendence, direction and management of the affairs and business of the Redress Agency will vest in the Redress Agency Board, which may exercise all powers that may be exercised and do all acts that may be done by the Redress Agency.
- 20 (2) The Redress Agency Board must keep under constant review the performance of the Redress Agency in giving effect to its objects, carrying out its functions and utilising its resources.

Eligibility of members of the Redress Agency Board.

Redress Agency Board.

CHAPTER 7

ESTABLISHMENT OF THE RESOLUTION CORPORATION

- 25 16. (1) A body by the name of the Resolution Corporation is established under this Act to exercise the powers and carry out the functions designated to the Corporation under this Act.
- (2) The Corporation will be a body corporate having –
- (a) perpetual succession;
- (b) a common seal;
- (c) the power to sue and be sued;
- 30 (d) the power to enter into and execute contracts;
- (e) the power to acquire, hold and dispose of property, both movable and immovable; and
- (f) the power to employ persons to discharge its duties.
- 35 (3) The Corporation will have its head office at Mumbai and it may establish offices at any other place in or outside India.
17. (1) The Corporation Board will consist of the following executive, non-executive and nominee members, to be appointed by the Central Government, where at all times –
- (a) the total number of members must not be more than nine;

Establishment and incorporation of the Corporation.

Composition of the Corporation Board.

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- (b) the total number of executive members must not be greater than half of the total number of members; and
- (c) three members will be nominee members.

(2) The executive members will include –

- (a) the Corporation Chairperson; and
- (b) an administrative law member.

5

(3) The nominee members under sub-section (1)(c) will consist of –

- (a) one nominee of the Reserve Bank;
- (b) one nominee of the Financial Authority; and
- (c) one nominee of the Central Government.

10

(4) The Corporation Board will appoint a senior officer of the Corporation to act as its secretary.

Eligibility of members of the Corporation Board.

18. Members of the Corporation Board must be fit and proper persons having expertise in dealing with matters relating to the regulation, supervision, or resolution of financial service providers.

15

Corporation Board.

19. (1) The general superintendence, direction and management of the affairs and business of the Corporation will vest in the Corporation Board, which may exercise all powers that may be exercised and do all acts that may be done by the Corporation.

(2) The Corporation Board must keep under constant review the performance of the Corporation in giving effect to its objects, carrying out its functions and utilising its resources.

20

CHAPTER 8

ESTABLISHMENT OF THE FINANCIAL STABILITY AND DEVELOPMENT COUNCIL

Establishment and incorporation of the Council.

20. (1) A body by the name of the Financial Stability and Development Council is established under this Act to exercise the powers and carry out the functions designated to the Council under this Act.

25

(2) The Council will be a body corporate having –

- (a) perpetual succession;
- (b) a common seal;
- (c) the power to sue and be sued;
- (d) the power to enter into and execute contracts;
- (e) the power to acquire, hold and dispose of property, both movable and immovable; and
- (f) the power to employ persons to discharge its duties.

30

(3) The Council will have its head office at Mumbai and it may establish offices at any other place in or outside India.

35

Composition of the Council Board.

21. (1) The Council Board will consist of the following executive and nominee members –

- (a) two executive members; and
 (b) four nominee members.
- (2) The executive members will consist of—
 (a) the Council Chief Executive; and
 (b) an administrative law member.
- (3) The nominee members under sub-section (1)(b) will consist of—
 (a) the Minister of Finance, as a nominee of the Central Government;
 (b) the Reserve Bank Chairperson, as a nominee of the Reserve Bank;
 (c) the Financial Authority Chairperson, as a nominee of the Financial Authority; and
 (d) the Corporation Chairperson, as a nominee of the Corporation.
- (4) The nominee of the Central Government under sub-section (3)(a) will be the Council Chairperson.
- (5) The Council Board will appoint a senior officer of the Council to act as its secretary.
22. (1) The general superintendence, direction and management of the affairs and business of the Council will vest in the Executive Committee of the Council, which may exercise all powers that may be exercised and do all acts that may be done by the Council. Executive Committee of the Council.
- (2) All references in this Act to the Council Board, or the board of a Financial Agency, where relevant to the Council, will be read as references to the Executive Committee, except as provided under sub-section (3).
- (3) All references to the Council, or to the Council Board in sections 291, 301, 302, and 305 will be read as references to the Council Board.
- (4) Where there is any disagreement, or lack of consensus in the Executive Committee regarding any proposed decision or proposed action of the Executive Committee, the Executive Committee must request the Council Board to make a decision regarding such proposed decision or proposed action.
- (5) The Executive Committee must keep under constant review the performance of the Council in giving effect to its objects, carrying out its functions and utilising its resources.
23. The Council Chief Executive must be a fit and proper person, having expertise on matters relating to systemic risk. Eligibility of Council Chief Executive.

CHAPTER 9

ESTABLISHMENT OF THE PUBLIC DEBT MANAGEMENT AGENCY

24. (1) A body by the name of the Public Debt Management Agency is established under this Act to exercise the powers and carry out the functions designated to the Debt Agency under this Act. Establishment and incorporation of the Debt Agency.
- (2) The Debt Agency will be a body corporate having—

- (a) perpetual succession;
- (b) a common seal;
- (c) the power to sue and be sued;
- (d) the power to enter into and execute contracts;
- (e) the power to acquire, hold and dispose of property, both movable and immovable; and
- (f) the power to employ persons to discharge its duties.

(3) The Debt Agency will have its head office at Mumbai and it may establish offices at any other place in or outside India.

Composition of the Debt Agency Management Committee.

25. (1) The board of the Debt Agency, referred to as the Debt Agency Management Committee will consist of executive, non-executive and nominee members, to be appointed by the Central Government, where at all times – 10
- (a) the total number of members must not be more than eight;
 - (b) the total number of executive members must not be greater than half of the total number of members; and 15
 - (c) at least two members will be nominee members, under sub-sections (3)(a) and (3)(b).
- (2) The executive members will include the Debt Agency Chief Executive, who will also be the chairperson of the Debt Agency Management Committee.
- (3) The nominee members under sub-section (1)(c) will consist of – 20
- (a) a nominee of the Central Government;
 - (b) a nominee of the Reserve Bank; and
 - (c) if the Debt Agency borrows on behalf of more than one State Governments, one nominee on behalf of all such State Governments.
- (4) The nominee member under sub-section (3)(c) will, – 25
- (a) if the Debt Agency borrows on behalf of one State Government, be appointed in accordance with rules made by the Central Government; or
 - (b) if the Debt Agency borrows on behalf of one or more State Governments, be appointed by rotation from such State Governments, and in accordance with rules made by the Central Government. 30
- (5) The Debt Agency Management Committee will appoint a senior officer of the Debt Agency to act as its secretary.

Eligibility of members of Debt Agency Management Committee.

26. Members of the Debt Agency Management Committee must be fit and proper persons having expertise in dealing with matters relating to public debt, public finance or financial markets. 35

Debt Agency Management Committee.

27. (1) The general superintendence, direction and management of the affairs and business of the Debt Agency will vest in the Debt Agency Management Committee, which may exercise all powers that may be exercised and do all acts that may be done by the Debt Agency Management Committee.

- (2) The Debt Agency Management Committee must keep under constant review the performance of the Debt Agency in giving effect to its objects, carrying out its functions and utilising its resources.

CHAPTER 10

5

ESTABLISHMENT OF THE FINANCIAL SECTOR APPELLATE TRIBUNAL

28. (1) A tribunal by the name of the Financial Sector Appellate Tribunal is established under this Act to exercise the jurisdiction, powers and authority conferred upon the Tribunal under this Act.

Establishment of the Tribunal.

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(2) The Tribunal will have its main bench at Mumbai and may establish benches at any other place in India.

29. (1) The Tribunal will consist of the Presiding Officer and at least two other members.

Composition of the Tribunal.

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(2) The Central Government may notify a higher number of members of the Tribunal in consultation with the Presiding Officer.

(3) The Presiding Officer and all members of the Tribunal will be appointed by the Central Government in accordance with the provisions of Chapter 83.

20

(4) In the event of a temporary vacancy in the office of the Presiding Officer, the Central Government may nominate one of the members of the Tribunal as an officiating Presiding Officer for a period not exceeding one hundred and eighty days, having regard to suitability for effective oversight and administration of the Tribunal's adjudicating functions.

PART III
REGULATORY GOVERNANCE

CHAPTER 11
FINANCIAL AGENCIES

Selection of certain members of the board of a Financial Agency.

30. (1) Except for nominee members, all members of the board of a Financial Agency must be appointed by the Central Government from a list of persons short-listed by a selection committee. 5
- (2) The selection committee must be constituted by the Central Government in accordance with the First Schedule and must follow the procedure laid down in that Schedule. 10
- (3) For any vacancy in the board of a Financial Agency, the selection committee must not consider any person –
- (a) who has been appointed twice as a member of the board of that Financial Agency;
 - (b) who has served as the chairperson of any Financial Agency; 15
 - (c) whose age would not permit such person to serve a term of at least three years; or
 - (d) who is a non-executive member of any Financial Agency, for the position of non-executive member. 20
- (4) The selection committee must consider the following principles when selecting persons –
- (a) merit;
 - (b) independence;
 - (c) balance of the board; and
 - (d) conflict of interest. 25
- (5) For the purposes of sub-section (4) –
- (a) “merit” means qualifications, experience, past achievement and reputation;
 - (b) “independence” means the ability to maintain and exercise independent judgment in the discharge of duties; 30
 - (c) “balance of the board” means that the board of a Financial Agency represent expertise in fields of law, finance, governance, economics or such other fields as may be identified, in a fair proportion; and
 - (d) “conflict of interest” means that persons appointed do not have interests which may conflict with the duties of such member. 35
- (6) If any vacancy in the board of a Financial Agency is not filled within a period of one hundred and eighty days from the date such vacancy arises, the Central Government must make a report on the reasons for the delay in the appointment within ninety days from the date on which the period of one hundred and eighty days expires, and lay such report before both Houses of Parliament. 40

31. (1) Executive members of the board of a Financial Agency must contribute their entire time to the oversight and management of the Financial Agency. Executive members.
- (2) The board of a Financial Agency may permit, by writing, executive members to undertake such honorary work as is not likely to interfere with their duty as executive members. Nominee members.
32. (1) The Central Government must make rules to govern the nomination of persons as nominee members to the board of a Financial Agency. Administrative law member.
- (2) While nominating persons as nominee members under this Act, due regard must be given to the qualifications, experience, past achievement and reputation of such persons.
33. (1) The administrative law member is a member of the board of a Financial Agency who will be responsible for –
- (a) the assessment and review of the performance of administrative law officers of that Financial Agency;
- (b) the review of decisions taken by administrative law officers of that Financial Agency under section 403; and
- (c) other functions as provided by this Act.
- (2) The administrative law member must ensure that the allocation of duties, review of performance, and general service conditions of administrative law officers is carried out in a manner which maintains their independence and accountability.
- (3) The administrative law member will not be involved in any functions of the Financial Agency that conflict with the independence and neutrality of such member.
- (4) The provisions of this section will not apply to the Redress Agency or the Debt Agency.
34. (1) The meetings of the board of a Financial Agency will be held in compliance with the requirements of the Second Schedule. Meetings of the board of a Financial Agency.
- (2) The board of the Financial Agency must make bye-laws to govern the proceedings of its meetings.
- (3) The bye-laws governing the proceedings of the meetings of the board of the Financial Agency must be consistent with the best practices of governance and transparency for deliberative bodies.
35. (1) The board of every Financial Agency must discharge its duties by taking decisions through a majority vote of the members present at a meeting of the board of the Financial Agency. Decisions of the board of a Financial Agency.
- (2) Each member of the board of a Financial Agency will have one vote.
- (3) If there is an equality of votes, the person chairing the meeting will, unless otherwise provided, have a casting vote.

- Conduct of members of the board of a Financial Agency.
- (4) The board of a Financial Agency must make bye-laws to provide for the process of making decisions without the physical presence of the members of the board of the Financial Agency.
36. (1) Members of the board of a Financial Agency must, at all times, act honestly, and use reasonable diligence in the discharge of their duties. 5
- (2) Any member who has any direct or indirect interest in any matter coming up for the consideration at a meeting of the board of a Financial Agency will, as soon as possible after relevant circumstances have come to that member's knowledge, disclose the nature of interest at such meeting.
- (3) A disclosure made by a member of the board of a Financial Agency will be recorded in the proceedings of the meeting of the board of the Financial Agency, and such member must recuse from any deliberation or decision of the board of the Financial Agency with respect to that matter. 10
- Validity of proceedings not affected.
37. No act or proceeding of the board of a Financial Agency will be invalid merely by reason of – 15
- (a) any vacancy in, or any defect in the constitution of, the board of the Financial Agency;
- (b) any defect in the appointment of a person as a member; or
- (c) any procedural irregularity not affecting the merits of the case.
- Conditions of service of members of the board of a Financial Agency.
38. (1) Members of the board of a Financial Agency will hold office for a term of five years or until the age of retirement under sub-section (2), whichever is earlier. 20
- (2) The age of retirement for executive members and nominee members will be the same as that for a Secretary to the Central Government.
- (3) The Central Government must make rules governing the terms of appointment of members of the board including – 25
- (a) salary;
- (b) leave;
- (c) medical benefits; and
- (d) any other aspect of employment.
- (4) When making rules under sub-section (3), the Central Government must consider the requirements of – 30
- (a) maintaining independence of the board of the Financial Agency; and
- (b) attracting requisite talent and expertise to the board of the Financial Agency.
- (5) The terms of appointment of any existing chairperson or member must not be varied, to their disadvantage, after their appointment. 35
- (6) The Central Government may make separate rules governing the terms of appointment for –
- (a) non-executive members;
- (b) nominee members; 40
- (c) executive members; and

(d) executive members acting as chairpersons.

(7) Nominee members will serve on the board of a Financial Agency at the pleasure of the person nominating such member.

(8) In this section—

(a) in case of the Council, all references to the chairperson will include references to the Council Chairperson and the Council Chief Executive; and

(b) in case of the Redress Agency, all references to rules made by the Central Government will be replaced by bye-laws made by Regulators.

39. (1) Any member of the board of a Financial Agency may resign by giving a signed notice of resignation to the Central Government. Resignation.

(2) A member, after providing a notice of resignation, will continue to hold office until the earlier of—

(a) the date the Central Government appoints a person to the post vacated by such resignation; or

(b) the expiry of ninety days from the date the notice of resignation was provided to the Central Government.

(3) In relation to the Council Board, this section will apply only to the Council Chief Executive and the administrative law member of the Council Board.

40. A member of the board of a Financial Agency may be removed from office if such member has— Grounds for removal of members.

(a) been adjudged to be insolvent;

(b) been sentenced to imprisonment for one hundred and eighty days or more;

(c) been convicted of an offence involving moral turpitude;

(d) engaged in any employment during the tenure of appointment, in violation of the terms and conditions of service;

(e) acquired any financial or other interest contrary to their terms and conditions of service that is likely to prejudice their functions;

(f) failed to adequately disclose any direct or indirect pecuniary interest under section 36(2);

(g) made any material misrepresentation to the selection committee;

(h) abused their position so as to render their continuance in office prejudicial to the objectives of that Financial Agency; or

(i) has become physically or mentally incapable of discharging their duties.

41. (1) A member of the board of a Financial Agency may not be removed from office unless— Process for removal of members.

(a) such member has been given a reasonable opportunity of being heard; and

(b) a notification under sub-section (3) is made.

(2) If the Central Government proposes to remove a member of the board of a Financial Agency on any grounds under section 40, the Central Government must follow the following procedure—

- (a) the Central Government must establish a committee, chaired by a nominee of the Chief Justice of India, to inquire if the grounds for removal have been met;
- (b) the committee must have at least one retired judge of a High Court;
- (c) the committee must inform the Central Government, in writing, whether one or more grounds for removal has been met; and 5
- (d) if the committee has informed the Central Government that one or more grounds for removal has been met, then the Central Government must remove such member by publishing a notification in accordance with sub-section (3). 10

(3) A notification under this section must contain –

- (a) the grounds for the removal of such member under section 40; and
- (b) the facts that were considered by the Central Government to arrive at its decision.

(4) The member of the board of the Financial Agency will cease to hold office from the date of the notification under sub-section (3). 15

Casual vacancies.

42. (1) If a vacancy arises on the board of a Financial Agency for any reason other than under sections 39 or 40, the chairperson of the Financial Agency must immediately inform the Central Government.

(2) The Central Government may appoint any person on the board of a Financial Agency to fill the vacancy on a temporary basis for a period not exceeding one hundred and eighty days, or until a person is appointed or nominated as the case may be, whichever is earlier. 20

Review committee.

43. (1) The members of the board of a Financial Agency must appoint at least two non-executive members from the board of the Financial Agency to constitute a review committee to review whether – 25

- (a) the Financial Agency is in compliance with applicable laws;
- (b) the bye-laws of the board of the Financial Agency promote transparency and best practices of governance;
- (c) the Financial Agency is in compliance with the decisions of the board of the Financial Agency; and 30
- (d) the Financial Agency is managing risks to its functioning in a reasonable manner.

(2) No member of the review committee may serve continuously for more than five years on such committee. 35

(3) The provisions of this section will not be in derogation of the general powers of the board of the Financial Agency to constitute committees for other functions.

(4) The review committee must maintain a system by which any person may communicate to the review committee, any incidence of –

- (a) violation of laws by the Financial Agency; 40
- (b) theft or misappropriation of resources of the Financial Agency by any person;
- (c) abuse of powers of the Financial Agency by any officer, employee or agent within the Financial Agency; or

- (d) violation of any decision of the board of the Financial Agency by any officer, employee or agent of the Financial Agency.
- (5) The board of the Financial Agency must make bye-laws governing information to be provided to the review committee.
- 5 (6) The review committee will make a report, at least once every financial year, of its findings under sub-sections (1) and (4) to the board of the Financial Agency and the report will be attached with the annual report of the Financial Agency.
- (7) In this section, in case of the Council, the review committee will comprise nominee members.
- 10 44. (1) Unless provided otherwise, the board of a Financial Agency may, by order in writing, allocate functions of the Financial Agency under this Act to the chairperson of the Financial Agency or any other member or officer or employee of the Financial Agency, subject to any conditions that may be provided in the order. Administrative powers and assignment of functions.
- 15 (2) Unless provided otherwise, the chairperson of a Financial Agency is the chief executive officer of the Financial Agency having powers of the general superintendence, direction and control in respect of all administrative matters of that Financial Agency.
- 20 (3) In this section, in case of the Council, reference to "chairperson of the Financial Agency" will be replaced by the "Council Chief Executive".
45. (1) A Financial Agency may appoint such officers and employees as are necessary for the efficient discharge of its functions. Officers and employees of a Financial Agency.
- 25 (2) The Financial Agency must make bye-laws to determine the procedure of selection, terms, compensation and conditions of the appointment and service of persons appointed under this section.
46. (1) Each Financial Agency must designate an appropriate number of employees as administrative law officers exclusively. Administrative law officers.
- 30 (2) Each Financial Agency must ensure the independence and neutrality of administrative law officers by making bye-laws governing the terms of appointment of administrative law officers.
- (3) The performance of the administrative law officer will only be appraised by the administrative law member of the board of the Financial Agency.
- (4) The provisions of this section will not apply to the Redress Agency or the Debt Agency.

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CHAPTER 12

ADVISORY COUNCILS

47. Unless provided otherwise, the provisions of this Chapter will govern the matters in relation to functioning of the advisory council of the board of a Financial Agency. Interpretation of this Chapter.

Advisory councils
to the board of a
Financial Agency.

48. (1) The board of a Financial Agency may set up advisory councils to advise the board with regard to any of the following –
- (a) sectors of the financial system which require particular skill, information or expertise;
 - (b) specified classes of financial service providers regulated by the Financial Agency; or
 - (c) any other matter as the board of the Financial Agency may require.
- (2) The board of the Financial Agency must set up advisory councils if either of the following conditions is met –
- (a) this Act or any other law enforced by the Financial Agency requires an advisory council to be constituted; or
 - (b) the board of the Financial Agency finds that it is expedient, necessary or relevant for the discharge of its functions to set up such advisory council.
- (3) Each advisory council must comprise experts in the issues for which the advisory council has been constituted.
- (4) No expert will serve as a member of an advisory council for a period longer than ten years.

Functions of the
advisory council.

49. (1) The functions of an advisory council include –
- (a) making representations to the board of the Financial Agency, in the form of advice, comments or recommendations, on the policies and practices of the Financial Agency;
 - (b) preparing and submitting reports advising the board of the Financial Agency on all draft regulations, prior to the expiry of the period for receiving comments from the public on such draft regulations;
 - (c) interacting with financial service providers and the public, as may be necessary to discharge its functions;
 - (d) on the request of any member of the board of the Financial Agency, providing advice to the board of the Financial Agency on any matter; and
 - (e) any other matter related to areas for which it has been constituted.
- (2) The functions mentioned in sub-section (1) will be limited to the issues for which the advisory council was constituted.
- (3) The advisory council will discharge its functions under this section by making reports to the board of the Financial Agency.
- (4) The Financial Agency must publish all reports received from the advisory council in accordance with the following –
- (a) reports under sub-section (1)(b) must be published with the regulations; and
 - (b) all other reports must be published within a period of one hundred and eighty days of being submitted to the board of the Financial Agency.

Bye-laws governing
advisory councils.

50. (1) The board of the Financial Agency must make bye-laws governing the functioning of advisory councils.
- (2) The bye-laws must include –

- (a) the process of selecting experts to be members of advisory councils;
- (b) the resources to be allocated to the advisory councils to discharge their functions;
- (c) the terms, compensation and conditions of appointment of members of the advisory council; and
- (d) any other provision required for the efficient functioning of the advisory council.

CHAPTER 13
REGULATIONS AND GUIDANCE

- 10 51. A Financial Agency may, by notification, make regulations, where required, consistent with this Act and any rules made thereunder to carry out the purposes of this Act. Power of a Financial Agency to make regulations.
- 15 52. (1) If a Financial Agency proposes to make any regulations, it must, acting through its board, publish a draft of the proposed regulations. Process of making regulations.
- (2) Every draft of the proposed regulations which is published under this section must be accompanied by a statement setting out –
- (a) the objectives of the proposed regulations;
 - (b) the problem that the proposed regulations seeks to address;
 - (c) the underlying principles under this Act, relevant to the proposed regulations, and the expected outcome of the proposed regulations;
 - (d) how the draft regulations fulfil the provision of this Act under which the regulations are made;
 - (e) an analysis of costs and an analysis of benefits of the proposed regulations; and
 - (f) the process by which any person may make a representation in relation to the proposed regulations.
- (3) If the Financial Agency prefers one principle over any other it must issue a statement of reasons for such preference with the proposed regulations.
- (4) Before making the regulations, the Financial Agency must have regard to any representations made to it in accordance with sub-section (2)(f).
- (5) To make the regulations –
- (a) the board of the Financial Agency must approve the regulations; and
 - (b) the Financial Agency must publish –
 - (i) all the representations received by it under sub-section (2)(f); and
 - (ii) unless specified otherwise, at least a general account of the response of the Financial Agency to the representations.
- (6) If the regulations substantially differ from the proposed regulations published by the Financial Agency, the Financial Agency, in addition to complying with sub-section (5), must publish –
- (a) the details and reasons for such difference; and

(b) an analysis of costs and an analysis of benefits of the differing provisions.

Emergency
regulation making.

53. (1) A Financial Agency may dispense with the procedure under section 52, if the time taken to comply with such provision has the potential to cause considerable losses for consumers or financial service providers. 5
- (2) If a Financial Agency makes regulations under this section, it must –
- (a) publish the reasons for invoking this section; and
- (b) submit a report to the Central Government within reasonable time.
- (3) The regulations must be accompanied by the documents under sections 52(2)(a) to 52(2)(d). 10
- (4) Regulations made under this section will cease to have effect after a period of one hundred and eighty days from the date on which the regulations are notified under this section.

Standard of
analysis of costs
and analysis of
benefits.

54. (1) When carrying out an analysis of costs and an analysis of benefits under this Chapter, the Financial Agency must consider the probable costs that will be borne by – 15
- (a) financial service providers in complying with the regulations;
- (b) consumers, both directly and indirectly;
- (c) the Financial Agency in enforcing the regulations; and
- (d) any other persons affected by the regulations. 20
- (2) The Financial Agency must consider the probable benefits that will accrue to the consumers and other persons as a result of the regulations.
- (3) The Financial Agency must use –
- (a) the best available data, and wherever not available, reasonable estimates, to carry out the analysis; and 25
- (b) the best scientific method available to carry out the analysis when data is available to the Financial Agency.

Prospective
application of
regulations.

55. Except for regulations made under section 53, all regulations made by a Financial Agency must apply from an identified prospective date that is set out in such regulations, with due regard to the time necessary for persons impacted to arrange to comply with such regulations. 30

General guidance.

56. (1) A Financial Agency may publish general guidance with respect to –
- (a) the operation of this Act and any regulations made under it;
- (b) any matters relating to functions of the Financial Agency;
- (c) meeting the objectives of the Financial Agency; or 35
- (d) any other matter about which the Financial Agency finds it appropriate to provide information or advice.
- (2) All requirements of section 52 apply to the process of making general guidance, except the requirements of –

- (a) section 52(2)(e); and
 - (b) sub-section 52(6)(b).
- (3) Violations of general guidance alone will not amount to violation of any provision of law or regulation enforced by the Financial Agency.
- 5 (4) A general guidance issued under this Act will be binding on the Financial Agency.
- (5) The Financial Agency may withdraw or amend any general guidance issued by it at any time for reasons to be recorded in writing and published.
- 10 57. (1) Any person may make an application to a Financial Agency seeking special guidance on transactions or activities governed by this Act. Special guidance.
- (2) The special guidance will be limited to the interpretation or applicability of laws or regulations enforced by the Financial Agency.
- (3) The Financial Agency may specify the manner in which it may charge fees proportional to the cost of providing special guidance.
- 15 (4) The Financial Agency may require the person seeking the special guidance to provide information relevant to the issue or transaction for which the special guidance is sought.
- (5) The Financial Agency must publish the application and special guidance provided by it.
- 20 (6) If the information provided by the person seeking special guidance, or if the nature of the special guidance is commercially sensitive, and the applicant makes a request to such effect, the Financial Agency may decide –
- (a) not to publish an application or special guidance for until such time the information remains commercially sensitive, subject to a maximum period of two years; or
 - 25 (b) to withhold the identities of applicants or parties involved.
- (7) No person has recourse to the Tribunal –
- (a) against the refusal of the Financial Agency to provide special guidance; or
 - (b) against the special guidance provided by the Financial Agency.
- 30 (8) Violation of a special guidance alone will not constitute a violation of any laws or regulations enforced by the Financial Agency.
- (9) A special guidance issued by a Financial Agency will be binding on such Financial Agency.
- 35 58. (1) Any person aggrieved by any regulations or general guidance issued by the Financial Agency may prefer an appeal to the Tribunal on the ground of being contrary to this Act, including that – Review by the Tribunal.
- (a) they were made without complying with the requirements of this Part;
 - (b) they exceeded the limits of the provision under which they were made;
 - (c) in the case of regulations, there was a material and substantial error in the analysis of costs or the analysis of benefits;
 - 40 (d) the conditions under section 53 did not exist for regulations made under that section;

- (e) the regulations were in gross disregard of the principles that Financial Agency was required to follow while making the relevant regulations; or
- (f) the substantial provisions of the regulations did not address the stated objects of the regulations.

(2) The Tribunal must set aside the regulations or general guidance if it determines that any of the grounds under sub-section (1) are met. 5

Review of regulations.

59. (1) All regulations made under this Act must be reviewed by the Financial Agency within three years of such regulations being issued.

(2) The review must consist of –

- (a) an analysis of costs and an analysis of benefits of the regulations; 10
- (b) an analysis of all interpretations of the regulations made by the Financial Agency, the Tribunal, any High Court or the Supreme Court; and
- (c) an analysis of the applicability of the regulations to any changes in circumstances since such regulation was issued.

(3) Every review under this section must be tabled before the board of the Financial Agency as soon as possible. 15

(4) The Financial Agency must publish the review within one hundred and twenty days of being tabled before the board of the Financial Agency.

Bye-laws of Financial Agencies.

60. (1) If a Financial Agency is required to make bye-laws under any provision of this Act it must make such bye-laws in compliance of this section. 20

(2) All proposals for making bye-laws by a Financial Agency, must be submitted to the chairperson of the Financial Agency.

(3) On receipt of a proposal under sub-section (2), the chairperson must introduce the proposal in the form of an agenda in the next meeting of the board of the Financial Agency. 25

(4) If the board of the Financial Agency approves the proposal in principle, the draft bye-laws must be made available to the public for comments for a period of thirty days.

(5) The draft bye-laws must clearly state –

- (a) the provisions of the Act under which it is proposed to be issued; 30
- (b) its objectives; and
- (c) the issue it seeks to address.

(6) The Financial Agency must publish all the comments received on the draft bye-laws and consider them before publishing the final bye-laws.

Process for making bye-laws in exigency.

61. (1) The procedure laid down in section 60 may not be adhered to by a Financial Agency in making bye-laws only if the circumstances so require. 35

(2) The existence and details of such circumstances must be set out in writing by the Financial Agency and published.

(3) Bye-laws made under sub-section (1) must clearly state the requirements contained in section 60(5). 40

- (4) Bye-laws made under this section will remain in force for a period as may be identified by the Financial Agency, which may not exceed one hundred and eighty days.
- 5 62. The Central Government may, by notification, make rules where required for carrying out the purposes of this Act. Power of Central Government to make rules.
63. (1) The Central Government may make rules under this Act in accordance with the procedure laid down in this section. Process for making rules.
- (2) The draft rules must be made available to the public for comment for thirty days.
- 10 (3) All comments received from the public must be published and considered by the Central Government before notifying the rules.
- (4) If no date is identified in the notification of the rules, they will come into effect from the date of their publication.
- 15 64. (1) All regulations made by a Financial Agency, all bye-laws made by a Financial Agency and all rules made by the Central Government must be laid before each House of Parliament for a period of thirty days starting from the day on which the regulations, bye-laws, or rules are issued. Regulations, bye-laws and rules to be laid before Parliament.
- (2) In calculating the thirty day period, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- 20 (3) The regulations, bye-laws, or rules, will be deemed to be approved by Parliament at the expiry of the thirty day period unless, before the end of that period, both Houses of Parliament agree that the regulations, bye-laws or rules –
- (a) should not be made, in which case the regulations, bye-laws or rules will be of no effect; or
- 25 (b) should be made with certain modifications, in which case the regulations, bye-laws or rules will come into effect in the modified form.
- (4) The annulment or modification of the regulations, bye-laws or rules by Parliament will not affect the validity of anything already done under the regulations, bye-laws or rules.
- 30 65. (1) A Financial Agency must refer a matter to the Council, if the Financial Agency is unable to arrive at an agreement with another Financial Agency, within one hundred and eighty days of commencing the process on any issue that requires such Financial Agencies to – Joint action by Financial Agencies.
- (a) issue joint regulations under this Act; or
- 35 (b) agree on any action required to be taken under this Act.
- (2) The Council must resolve any issue in accordance with the provisions under section 305.
- 40 66. (1) Each Financial Agency must enter into a memorandum of understanding with each Financial Agency in respect of obligations under this Act to co-ordinate with one another or to undertake joint action. Co-ordination between Financial Agencies.

- (2) The memorandum of understanding under this section may relate to –
- (a) co-operation in making regulations, including joint regulations;
 - (b) co-operation for harmonising regulations governing similar matters;
 - (c) access to and sharing of information;
 - (d) cross-staffing of employees; or
 - (e) consultation regarding any important changes that may have been proposed by any party to the memorandum of understanding.
- (3) Every Financial Agency must publish a report of compliance with this section in its annual report.

CHAPTER 14

DISPOSAL OF APPLICATIONS

Applications generally.

67. (1) All applications required to be made to a Financial Agency under this Act must be disposed in accordance with this Chapter.
- (2) In this Chapter, an “applicant” means the person who makes an application to a Financial Agency.

Procedure for making applications.

68. (1) All applications under this Act must be made in the manner specified.
- (2) The Financial Agency must acknowledge the receipt of all applications, whether complete or not, within thirty days from receipt.
- (3) An applicant may, at any time, before the Financial Agency conveys its decision, by a second application to the Financial Agency –
- (a) modify an existing application; or
 - (b) withdraw an application for variation and re-apply.
- (4) If an applicant withdraws an application for variation and re-applies, the Financial Agency must process the application afresh.

Additional information.

69. (1) The Financial Agency may require the applicant to provide additional information as it reasonably considers necessary to enable it to determine the application.
- (2) While requesting additional information, the Financial Agency must state the relevance of the additional information so sought.

Procedure for determination of applications.

70. (1) Where an application received by a Financial Agency is incomplete, the Financial Agency must inform the applicant in this regard within thirty days from the date of the receipt of the application.
- (2) The Financial Agency must decide all applications in accordance with the provisions and regulations governing the matter to which the application pertains.
- (3) The Financial Agency must not reject any application merely on the grounds that no regulations governing the subject matter of the application are in effect.

- (4) The Financial Agency must ensure that all applications are determined within a period of one hundred and eighty days from the date the application was received by the Financial Agency.
- 5 (5) If the Financial Agency does not reject an application within one hundred and eighty days from the date such application has been made, then that application will be deemed to have been accepted.
- (6) The period mentioned under sub-section (4) may be extended by the Tribunal on an application by the Financial Agency.
- 10 (7) If the Financial Agency proposes to reject an application, it must issue a show cause notice to the applicant.
- (8) If the Financial Agency decides to reject an application, it must issue a decision order to the applicant.
- (9) If the Financial Agency decides to accept an application, it must inform the applicant by issuing an approval order.
- 15 (10) The approval order, consistent with applicable regulations, must state –
- (a) the scope of approval;
 - (b) the time-period for which the approval is effective;
 - (c) the provisions under which the approval is granted; and
 - 20 (d) any conditions, limitations or requirements subject to which the approval is granted.
71. (1) If a Financial Agency proposes to cancel any permission or approval granted in pursuance of an application otherwise than at the request of the person who made the application, then it must issue a show cause notice to such person. Procedure for cancellation of any approval.
- 25 (2) If the Financial Agency decides to cancel any permission or approval granted in pursuance of an application other than the request of the person who made the application, then it must give issue a decision order to such person.

CHAPTER 15

INFORMATION AND INSPECTION

- 30 72. (1) This section applies only to information and documents reasonably required by a Financial Agency in connection with the pursuit of its objectives or the exercise of functions conferred upon it by this Act or any other law enforced by the Financial Agency. Power to gather information.
- (2) The Financial Agency may make regulations requiring financial service providers to make reports in a particular form, manner and frequency.
- 35 (3) The Financial Agency may, by notice in writing given to any financial service provider, its financial representatives or related persons, require such person –
- (a) to provide specified information; or
 - (b) to produce specified documents.
- 40 (4) The information or documents requested by the Financial Agency must be provided or produced –

- (a) before the end of such reasonable period as may be specified;
- (b) at such place as may be specified; and
- (c) in such form or manner as may be specified.

(5) The Financial Agency may require –

- (a) any information provided, whether in a document or otherwise, to be verified in such manner, or 5
- (b) any document produced to be authenticated in such manner, as it may reasonably require.

Regular inspections.

73. (1) A Financial Agency may carry out inspection of financial service providers at regular intervals. 10
- (2) The Financial Agency will record documents inspected and the finding of such inspections in a specified form.
- (3) The Financial Agency will publish regulations governing –
- (a) the intervals at which a financial service provider may be inspected;
 - (b) notice of inspection by the Financial Agency; 15
 - (c) the steps the financial service provider has to carry out to enable the inspection; and
 - (d) such other conditions as to enable the Financial Agency to collect accurate information about the financial service provider.
- (4) The regulations mentioned in sub-section (3) must balance the requirement of the Financial Agency with the requirement to prevent disruption in the business of financial service providers or impose unreasonable burden upon financial service providers. 20

CHAPTER 16

FUNCTIONING OF THE FINANCIAL AGENCY

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Minimum standard for publication of information.

74. (1) A Financial Agency must maintain a website or any other universally accessible repository of electronic information to –
- (a) record and publish all information that the Financial Agency is obligated to record or publish;
 - (b) provide a copy of all rules, regulations, bye-laws enforced and all guidance issued by the Financial Agency, including all amendments to such rules, regulations, bye-laws and guidance; 30
 - (c) provide information about the process and manner in which applications under this Act are to be made; and
 - (d) provide material information about the functions of the Financial Agency. 35
- (2) All information published on the website or other repository of the Financial Agency must be in an easily accessible and text-searchable format.
- (3) The board of the Financial Agency must review the quality of the website or other repository, based on international best practices, at least once every three years. 40

- (4) The board of the Financial Agency must publish the findings of the review under sub-section (3) with the annual report of the Financial Agency.
- (5) The Financial Agency may make regulations supplementing the requirements of this section.
- 5 (6) Any information not recorded or published on the website or other repository of the Financial Agency will be presumed to not have been recorded or published for the purposes of this Act.

75. (1) Each Financial Agency is bound by the requirements of this section in its allocation and use of resources.

Allocation and use of resources by a Financial Agency.

10 (2) Each Financial Agency must prepare a report of expenditure with respect to each of its duties and objectives for each financial year.

(3) Each Financial Agency must maintain a transparent system of allocation of resources to carry out its duties and meet its objectives as stated in its report of expenditure under sub-section (2).

15 (4) The Central Government may make rules requiring the Financial Agency to make additional reports of its expenditure.

(5) At least once every three years, the board of the Financial Agency must review the quality of the report of the Financial Agency with the requirements of this section.

20 (6) The reports under this section must be published with the annual report of the Financial Agency.

76. (1) If any law requires the Financial Agency to carry out any function, the Financial Agency must develop a system to measure the efficiency with which that function was discharged.

Performance and efficiency of a Financial Agency.

25 (2) The Financial Agency must measure its efficiency in relation to its functions, in accordance with the system developed under sub-section (1), in a reasonable and objective manner, for each financial year.

(3) The Financial Agency must determine goals for the discharge of each function for which it has developed a system under sub-section (1) for the financial year.

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(4) The Financial Agency must, at the end of each financial year, prepare a report comparing information from sub-section (2) with the goals that were set for the financial year under sub-section (3).

35 (5) The Central Government may make rules requiring the Financial Agency to make additional reports of its performance and discharge of functions.

(6) At least once every three years, the board of the Financial Agency must review the quality of the report of the Financial Agency with the requirements of this section.

40 (7) The reports under this section must be published with the annual report of the Financial Agency.

(8) In this section, "reasonable and objective manner", in relation to the measurement of a system, includes –

- (a) a system of measurement that best represents any function being measured;
- (b) a standardised system that allows comparison where possible; and
- (c) where possible, numerical systems of measurement.

Returns and reports.

77. (1) Each Financial Agency must furnish to the Central Government, at such time and in such manner and form as may be prescribed, or as the Central Government may direct, such returns and statements, and such particulars in regard to any proposed or existing operations of the Council as the Central Government may, from time to time, require. 5
- (2) The board of the Financial Agency must prepare and submit to the Central Government an annual report within ninety days from the end of a financial year. 10
- (3) The annual report must be in such manner and form as may be prescribed, and must give a true and full account of the performance of the Financial Agency in the previous financial year, including – 15
- (a) a review of the Financial Agency's activities in relation to the discharge of its functions and the achievement of its objectives;
 - (b) all information that is necessary to understand the discharge of functions and the achievement of the objectives of the Financial Agency, that has been published by the Financial Agency; 20
 - (c) all information that the Financial Agency is required to publish along with the annual report under this Act;
 - (d) a statement of the deliberations of the Financial Agency, accompanied by the records of meetings of the Financial Agency;
 - (e) a statement indicating any statutory obligation that the Financial Agency or the board of the Financial Agency has not complied with, and reasons for such non-compliance; 25
 - (f) a statement by the chairperson of the Financial Agency, in relation to the activities and performance of the Financial Agency;
 - (g) a statement of major activities the Financial Agency will undertake in the subsequent financial year; and 30
 - (h) a statement which any member of the board may wish to include.
- (4) A copy of the report received under sub-section (2) must be laid, as soon as possible after its receipt, before each House of Parliament.

Accounts and audit.

78. (1) Each Financial Agency must maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. 35
- (2) The accounts of a Financial Agency must be audited annually by the government auditor. 40
- (3) The audit by the government auditor will not include an audit of performance of the Financial Agency.
- (4) The government auditor must –
- (a) certify the accounts of the Financial Agency; and

- (b) make an audit report.
- (5) The certified accounts and the audit report must be placed before the board of the Financial Agency and the board of the Financial Agency must record its observations on the audit report.
- 5 (6) The annual report of the Financial Agency must include –
- (a) certified accounts and audit report as provided under sub-section (4); and
- (b) the observations of the board of the Financial Agency under sub-section (5).
- 10 (7) In relation to sub-section (1), the Reserve Bank, while preparing its financial statements, must comply with accounting standards to the extent that it is, in the opinion of the Reserve Bank Board, appropriate to do so, having regard to the objects and functions of the Reserve Bank.
- (8) In relation to the audit of the accounts of the Reserve Bank, the government auditor, will not audit –
- 15 (a) the deliberations, decisions or minutes of the Monetary Policy Committee under section 335, and the actions of the Reserve Bank under section 343 in relation to implementing monetary policy decisions;
- (b) the transactions by the Reserve Bank under sections 345 and 346; and
- 20 (c) any part of a discussion or communication between members of the Reserve Bank Board, members of the Monetary Policy Committee, and officers and employees of the Reserve Bank related to clauses (a) and (b).
- (9) In this section, "government auditor" means the Comptroller and Auditor-General of India, or any other person appointed by the Comptroller and Auditor-General of India in this regard.
- 25 **79.** (1) Every Financial Agency must arrange for a review of its performance and operations by a team of experts external to that Financial Agency. Review by external experts.
- (2) The review must take place once every three financial years.
- (3) Every Financial Agency must make bye-laws in relation to the following matters regarding the team of external experts –
- 30 (a) the required composition of the team;
- (b) the process of selection;
- (c) the process of appointment;
- (d) the terms of service; and
- (e) the duration and terms of the review.
- 35 (4) The Financial Agency must ensure that –
- (a) the team of external experts include experts in the same field as that of the Financial Agency; and
- (b) there is no conflict of interest between the team of external experts and the Financial Agency.
- 40 (5) The review under this section must –
- (a) be based on international best principles, as relevant;

- (b) give an opinion on whether the Financial Agency is suitably designed and operating effectively; and
 - (c) identify good practices and make proposals for the Financial Agency to consider.
- (6) The Financial Agency must ensure that the team of external experts has access to relevant information and resources as necessary to carry out the review. 5
- (7) The board of the Financial Agency must, within one hundred and eighty days of the review –
- (a) determine a programme of action to implement the report of the review, as appropriate; 10
 - (b) publish the report of the review, including all opinions and proposals made by the team of external experts; and
 - (c) publish the programme of action.

Grants and loans
by Central
Government.

80. The Central Government may make to a Financial Agency, grants or loans of such sums of money as it thinks fit for being utilised for the purposes of this Act. 15

Levy and collection
of fees by a
Financial Agency.

81. (1) A Financial Agency may levy and collect fees, as required for the discharge of its functions under this Act, in the relevant manner specified under this Act.
- (2) In levying fees, the Financial Agency must take into consideration one or more of the following factors, as may be relevant –
- (a) the nature, scope and size of business carried out by the financial service provider; 20
 - (b) the requirement that the levy of fees does not constrain competition;
 - (c) the requirement that the levy of fees is not disproportionate to the costs likely to be incurred by the Financial Agency in discharging the functions for the fees will be levied; and 25
 - (d) the financial requirements of the Financial Agency.

Confidentiality.

82. (1) Each Financial Agency, and every member of board of a Financial Agency, officer, and employee of a Financial Agency must maintain the confidentiality of any financial regulatory data and other commercially sensitive information that is obtained or produced in the discharge of any of its functions under this Act, unless – 30
- (a) any provision of this Act permits or requires its publication or disclosure;
 - (b) any other law or any agreement in force permits or requires its publication or disclosure;
 - (c) the person from whom it was obtained, and, if different, the person to whom it relates, consents; 35
 - (d) it is already available to the public from other sources;
 - (e) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person; or 40
 - (f) it enables or assists the Financial Agency or the Central Government to discharge its functions under this Act.

- (2) The obligation under sub-section (1) extends to every member appointed to an advisory council to the board of a Financial Agency.
- (3) No violation under this section is committed if the information is disclosed –
- (a) in accordance with the exceptions contained in sub-section (1); or
 - 5 (b) for the purpose of any legal proceedings, as may be directed by a body having appropriate jurisdiction.
- (4) Nothing in this section will be taken to be a restriction of the power of a public authority to exempt the disclosure of information under section 8 of the Right to Information Act, 2005 (22 of 2005).

PART IV

FINANCIAL CONSUMER PROTECTION

CHAPTER 17

OBJECTIVES AND PRINCIPLES

Objectives..

83. The Regulator must discharge its functions and exercise its powers under this Part with the objective of – 5

- (a) protecting and furthering the interests of consumers; and
- (b) promoting public awareness of matters relating to financial products and financial services.

Principles of consumer protection.

84. (1) The Regulator must have regard to the following principles while discharging its functions and exercising its powers under this Part – 10

- (a) the level of protection required by a consumer and the level of care required from a financial service provider, which may vary depending on –
 - (i) the level of knowledge, experience and expertise of the consumer; 15
 - (ii) the nature and degree of risk embodied in the financial product or financial service being availed by the consumer;
 - (iii) the appropriateness of a financial product or financial service for different classes of consumers; and
 - (iv) the extent of dependence of the consumer on the financial service provider; 20
- (b) consumers must ordinarily take responsibility for their transactional decisions;
- (c) any obligation imposed on a financial service provider should be reasonably commensurate with the benefits for consumers, considered in general terms, which are expected to result from the imposition of that obligation; 25
- (d) competition in the markets for financial products and financial services is desirable in the interests of consumers and therefore –
 - (i) barriers to competition owing to adverse effects of regulatory actions should be minimised; and 30
 - (ii) there should be competitive neutrality in the treatment of financial service providers;
- (e) facilitating access to financial products and financial services is desirable in the interests of consumers; and
- (f) innovation in financial products and financial services is desirable in the interests of consumers. 35

(2) In interpreting this Part and in discharging its functions or exercising its powers under this Part, if the Regulator perceives a conflict between any of the principles contained in sub-section (1), or if more than one interpretation is possible, the Regulator must reconcile and manage the conflict giving preference to the principle which would be the most relevant for furthering its objectives under this Part. 40

- (3) The Regulator must also take into account information received from the Regress Agency under section 123 while discharging its functions and exercising its powers under this Part.

CHAPTER 18

PROTECTION OF CONSUMERS

5

85. (1) A financial service provider must exercise professional diligence while entering into a financial contract or discharging any obligations under it.

Requirement of professional diligence.

- (2) In this section, "professional diligence" means the standard of skill and care that a financial service provider would be reasonably expected to exercise towards a consumer, commensurate with –

10

- (a) honest market practice;
- (b) the principle of good faith;
- (c) the level of knowledge, experience and expertise of the consumer;
- (d) the nature and degree of risk embodied in the financial product or financial service being availed by the consumer; and
- (e) the extent of dependence of the consumer on the financial service provider.

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86. (1) An unfair term of a non-negotiated contract will be void.

Unfair terms in financial contracts.

- (2) A term is unfair if it –

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- (a) causes a significant imbalance in the rights and obligations of the parties under the financial contract, to the detriment of the consumer; and
- (b) is not reasonably necessary to protect the legitimate interests of the financial service provider.

- (3) The factors to be taken into account while determining whether a term is unfair, include –

25

- (a) the nature of the financial product or financial service dealt with under the financial contract;
- (b) the extent of transparency of the term;
- (c) the extent to which the term allows a consumer to compare it with other financial contracts for similar financial products or financial services; and
- (d) the financial contract as a whole and the terms of any other contract on which it is dependent.

30

- (4) The Regulator may specify an illustrative list of terms that are considered to be unfair terms under this section.

- (5) A term is transparent if it –

35

- (a) is expressed in reasonably plain language that is likely to be understood by the consumer;
- (b) is legible and presented clearly; and
- (c) is readily available to the consumer affected by the term.

40

- (6) If a term of a financial contract is determined to be unfair under sub-section (3), the parties will continue to be bound by the remaining terms of the financial contract to the extent that the financial contract is capable of enforcement without the unfair term.

Non-negotiated
contracts.

87. (1) In this Chapter, “non-negotiated contract” means a contract whose terms, other than the terms contained in section 88, are not negotiated between the parties to the financial contract and includes –
- (a) a financial contract in which, relative to the consumer, the financial service provider has a substantially greater bargaining power in determining the terms of the financial contract; and 5
 - (b) a standard form contract.
- (2) In this section, “standard form contract” means a financial contract that is substantially not negotiable for the consumer, except for the terms contained in section 88. 10
- (3) Even if some terms of a financial contract are negotiated in form, the financial contract may be regarded as a non-negotiated contract if so indicated by –
- (a) an overall and substantial assessment of the financial contract; and
 - (b) the substantial circumstances surrounding the financial contract.
- (4) In a claim that a financial contract is a non-negotiated contract, the onus of demonstrating otherwise will be on the financial service provider. 15

Terms that are
unaffected.

88. (1) Section 86 does not apply to a term of a financial contract if it –
- (a) defines the subject matter of the financial contract;
 - (b) sets the price that is paid, or payable, for the provision of the financial product or financial service under the financial contract and has been clearly disclosed to the consumer; or 20
 - (c) is required, or expressly permitted, under any law or regulations.
- (2) The exemption under sub-section (1)(b) does not apply to a term that deals with the payment of an amount which is contingent on the occurrence or non-occurrence of any particular event. 25

Unfair conduct
prohibited.

89. (1) Unfair conduct in relation to financial products or financial services is prohibited.
- (2) In this Chapter, “unfair conduct” means an act or omission by a financial service provider or its financial representative that significantly impairs, or is likely to significantly impair, the ability of a consumer to make an informed transactional decision and includes – 30
- (a) misleading conduct under section 90;
 - (b) abusive conduct under section 91; and
 - (c) such other conduct as may be specified.

Misleading
conduct.

90. (1) Conduct of a financial service provider or its financial representative in relation to a determinative factor is misleading if it is likely to cause the consumer to take a transactional decision that the consumer would not have taken otherwise, and the conduct involves – 35
- (a) providing the consumer with inaccurate information or information that the financial service provider or financial representative does not believe to be true; or 40

- (b) providing accurate information to the consumer in a manner that is deceptive.
- (2) In determining whether a conduct is misleading under sub-section (1), the following factors must be considered to be “determinative factors” –
- (a) the main characteristics of a financial product or financial service, including its features, benefits and risks to the consumer;
 - (b) the consumer’s need for a particular financial product or financial service or its suitability for the consumer;
 - (c) the consideration to be paid for the financial product or financial service or the manner in which the consideration is calculated;
 - (d) the existence, exclusion or effect of any term in a financial contract, which is material term in the context of that financial contract;
 - (e) the nature, attributes and rights of the financial service provider, including its identity, regulatory status and affiliations; and
 - (f) the rights of the consumer under any law or regulations.
91. (1) A conduct of a financial service provider or its financial representative in relation to a financial product or financial service is abusive if it – Abusive conduct.
- (a) involves the use of coercion or undue influence; and
 - (b) causes or is likely to cause the consumer to take a transactional decision that the consumer would not have taken otherwise.
- (2) In determining whether a conduct uses coercion or undue influence, the following must be considered –
- (a) the timing, location, nature or persistence of the conduct;
 - (b) the use of threatening or abusive language or behaviour;
 - (c) the exploitation of any particular misfortune or circumstance of the consumer, of which the financial service provider is aware, to influence the consumer’s decision with regard to a financial product or financial service;
 - (d) any non-contractual barriers imposed by the financial service provider where the consumer wishes to exercise rights under a financial contract, including –
 - (i) the right to terminate the financial contract;
 - (ii) the right to switch to another financial product or another financial service provider; and
 - (e) a threat to take any action, depending on the circumstances in which the threat is made.

CHAPTER 19

PROTECTION OF PERSONAL INFORMATION

92. In this Chapter, “personal information” means any information that relates to a consumer or allows a consumer’s identity to be inferred, directly or indirectly, and includes – Meaning of personal information.
- (a) name and contact information;
 - (b) biometric information, in case of individuals;

- (c) information relating to transactions in, or holdings of, financial products;
- (d) information relating to the use of financial services; or
- (e) such other information as may be specified.

Principles governing use of personal information.

93. (1) A financial service provider must –

- (a) not collect personal information relating to a consumer in excess of what is required for the provision of a financial product or financial service; 5
- (b) maintain the confidentiality of personal information relating to consumers and not disclose it to a third party, except in a manner expressly permitted under sub-section (2);
- (c) make best efforts to ensure that any personal information relating to a consumer that it holds is accurate, up to date and complete; 10
- (d) ensure that consumers can obtain reasonable access to their personal information, subject to any exceptions that the Regulator may specify; and
- (e) allow consumers an effective opportunity to seek modifications to their personal information to ensure that the personal information held by the financial service provider is accurate, up to date and complete. 15

(2) A financial service provider may disclose personal information relating to a consumer to a third party only if –

- (a) it has obtained prior written informed consent of the consumer for the disclosure, after giving the consumer an effective opportunity to refuse consent; 20
- (b) the consumer has directed the disclosure to be made;
- (c) the Regulator has approved or ordered the disclosure, and unless prohibited by the relevant law or regulations, the consumer is given an opportunity to represent under such law or regulations against such disclosure; 25
- (d) the disclosure is required under any law or regulations, and unless prohibited by such law or regulations, the consumer is given an opportunity to represent under such law or regulations against such disclosure;
- (e) the disclosure is directly related to the provision of a financial product or financial service to the consumer, if the financial service provider – 30
 - (i) informs the consumer in advance that the personal information may be shared with a third party; and
 - (ii) makes arrangements to ensure that the third party maintains the confidentiality of the personal information in the same manner as required under this Part; or 35
- (f) the disclosure is made to protect against or prevent actual or potential fraud, unauthorised transactions or claims, if the financial service provider arranges with the third party to maintain the confidentiality of the personal information in the manner required under this Part.

(3) In this section, “third party” means any person other than the concerned financial service provider, including a person belonging to the same group as the financial service provider. 40

Regulations regarding personal information.

94. The Regulator may make regulations to –

- (a) provide additional requirements for the collection, storage, modification and protection of personal information by financial service providers, including – 45

- (i) the manner of maintenance of records of personal information and the time-periods for which the records are to be maintained; and
 - (ii) the manner in which records of personal information should be dealt with after the expiry of the specified period;
- 5 (b) exempt a class of financial service providers from the application of all or any portion of this Chapter or modify the manner in, or extent to which, all or any portion of the Chapter applies to them, subject to any specified conditions; or
- 10 (c) establish mechanisms to ensure that consumers have access to, and are given an effective opportunity to seek modifications to, their personal information.

CHAPTER 20

REQUIREMENT OF FAIR DISCLOSURE

- 15 95. (1) A financial service provider must ensure fair disclosure of information that is likely to be required by a consumer to make an informed transactional decision. Initial disclosures.
- (2) In order to constitute fair disclosure, the information must be provided –
- (a) sufficiently before the consumer enters into a financial contract, so as to allow the consumer reasonable time to understand the information;
 - 20 (b) in writing and in a manner that is likely to be understood by a consumer belonging to a particular category; and
 - (c) in a manner that enables the consumer to make reasonable comparison of the financial product or financial service with other similar financial products or financial services.
- 25 (3) The Regulator may specify the types of information that must be disclosed to a consumer in relation to a financial product or financial service, which may include information regarding –
- (a) main characteristics of the financial product or financial service, including its features, benefits and risks to the consumer;
 - 30 (b) consideration to be paid for the financial product or financial service or the manner in which the consideration is calculated;
 - (c) existence, exclusion or effect of any term in the financial product or financial contract;
 - (d) nature, attributes and rights of the financial service provider, including its identity, regulatory status and affiliations;
 - 35 (e) contact details of the financial service provider and the methods of communication to be used between the financial service provider and the consumer;
 - (f) rights of the consumer to rescind a financial contract within a specified period; or
 - 40 (g) rights of the consumer under any law or regulations.
96. (1) A financial service provider must provide a consumer that is availing a financial product or financial service provided by it, with the following continuing disclosures. Continuing disclosures.
- disclosures –

- (a) any material change to the information that was required to be disclosed under section 95 at the time when the consumer initially availed the financial product or financial service;
 - (b) information relating to the status or performance of a financial product held by the consumer, as may be required to assess the rights or interests in the financial product or financial service; and
 - (c) any other information that may be specified.
- (2) A continuing disclosure must be made –
- (a) within a reasonable time-period from the occurrence of any material change or at reasonable periodic intervals, as applicable; and
 - (b) in writing and in a manner that is likely to be understood by a consumer belonging to that category.
- (3) The Regulator may specify –
- (a) the nature of information that must be disclosed on a continuing basis to a consumer that has availed of a specified financial product or financial service;
 - (b) the time-period within which continuing disclosures of information are to be made for a specified financial product or financial service; or
 - (c) circumstances in which the consumer will have a right to terminate the financial contract upon a continuing disclosure being made.
97. The Regulator may make regulations to –
- (a) provide for the manner in which a disclosure of information relating to a financial product or financial service has to be made to a consumer; or
 - (b) exempt a class of financial service providers from the application of all or any portion of this Chapter or modify the manner in, or extent to which, all or any portion of the Chapter applies to them, subject to any specified conditions.

Regulations regarding disclosure requirements.

Responsibility of financial service providers.

Regulations regarding redress of complaints.

CHAPTER 21

REDRESS OF COMPLAINTS

98. (1) A financial service provider must have in place an effective mechanism to receive and redress complaints from its consumers in relation to financial products or financial services provided by it, or on its behalf, in a prompt and fair manner.
- (2) A financial service provider must inform a consumer, at the commencement of relationship with the consumer and at such other time when the information is likely to be required by the consumer, of –
- (a) the consumer's right to seek redress for any complaints, including through the Redress Agency; and
 - (b) the processes followed by the financial service provider to receive and redress complaints from its consumers.
99. (1) The Regulator must make regulations on the processes to be followed by a financial service provider to receive and redress complaints from its consumers in an effective manner.

(2) The regulations must provide for –

- (a) the process to be followed by a consumer to file a complaint with a financial service provider and the time-period within which the complaint must be filed; and
- (b) the process to be followed by a financial service provider to receive and redress complaints and the time limits for each step of the process.

(3) The regulations may, in addition, provide for –

- (a) the time-periods and intervals at which information under section 98(2) has to be provided;
- (b) the form and manner in which information under section 98(2) has to be provided, including a requirement to make the information available on a financial service provider's website;
- (c) a requirement to maintain records of each complaint received by a financial service provider and the measures taken for its redress;
- (d) a requirement to submit periodic reports to the Regulator about the receipt and redress of complaints in the specified manner;
- (e) an alternate dispute resolution mechanism for complaints in relation to specified financial products or financial services to be followed after, or in place of, the financial service provider's redress process;
- (f) the process to be followed where two or more financial service providers may be jointly responsible for the redress of a complaint; or
- (g) any other matter relevant to the redress of complaints.

CHAPTER 22

SUITABILITY OF ADVICE FOR RETAIL CONSUMERS

100. (1) A retail advisor must –

Assessment of suitability.

- (a) make all efforts to obtain correct and adequate information about the relevant personal circumstances of a retail consumer; and
- (b) ensure that the advice given is suitable for the retail consumer after due consideration of the relevant personal circumstances of the retail consumer.

(2) If it is reasonably apparent to the retail advisor that the available information regarding the relevant personal circumstances of a retail consumer is incomplete or inaccurate, the advisor must warn the retail consumer of the consequences of proceeding on the basis of incomplete or inaccurate information.

(3) If a retail consumer intends to avail of a financial product or financial service that the retail advisor determines unsuitable for the retail consumer, the retail advisor –

- (a) must clearly communicate its advice to the retail consumer in writing and in a manner that is likely to be understood by the retail consumer; and
- (b) may provide the financial product or financial service requested by the retail consumer only after complying with clause (a) and obtaining a written acknowledgement from the retail consumer.

Regulations regarding suitability of advice.

101. (1) The Regulator must specify the financial products or financial services which may be provided to retail consumers or a class of retail consumers, only after advice has been given to them under section 100.

(2) The Regulator may specify –

(a) the type of enquiries that need to be made to determine the relevant personal circumstances of retail consumers for a financial product or financial service; or 5

(b) that certain types of communications issued by a financial service provider to a retail consumer would not constitute advice for the purposes of section 100. 10

(3) The Regulator must take into account the following factors while making regulations under sub-section (1) –

(a) the extent to which the cost of seeking information about the relevant personal circumstances of retail consumers might restrict the access of retail consumers to the financial product or financial service; and 15

(b) sufficiency of the disclosures made under sections 95 to 97 to allow retail consumers to assess the suitability of the financial product or financial service for their purposes.

Dealing with conflict of interests.

102. (1) A retail advisor must –

(a) provide a retail consumer with information regarding any conflict of interests, including any conflicted remuneration that the retail advisor has received or expects to receive for making the advice to the retail consumer; and 20

(b) give priority to the interests of the retail consumer if the advisor knows, or reasonably ought to know, of a conflict between – 25

(i) its own interests and the interests of the retail consumer; or

(ii) the interests of the concerned financial service provider and interests of the retail consumer, in cases where the advisor is a financial representative.

(2) The information under sub-section (1)(a) must be given to the retail consumer in writing and in a manner that is likely to be understood by the retail consumer and a written acknowledgement of the receipt of the information should be obtained from the retail consumer. 30

(3) The Regulator may specify –

(a) the circumstances in which a benefit received by a retail advisor would, or would not, be considered to be a conflicted remuneration; or 35

(b) the nature, type and structure of benefits permitted to be received by a retail advisor for a financial product or financial service.

(4) In this section, “conflicted remuneration” means any benefit, whether monetary or non-monetary, derived by a retail advisor from persons other than retail consumers, that could, under the circumstances, reasonably be expected to influence the advice given by the retail advisor to a retail consumer. 40

CHAPTER 23

OTHER POWERS AND FUNCTIONS OF THE REGULATOR

103. (1) The Regulator must – General functions
of the Regulator.
- (a) make regulations to carry out the purposes of this Part;
 - 5 (b) issue guidance to financial service providers in respect of any matter referred to in this Part or the regulations made under it, whether or not –
 - (i) the Part expressly requires or enables the Regulator to make regulations on such matter; or
 - 10 (ii) a formal application seeking guidance has been made to it;
 - (c) supervise, or cause to be supervised, financial service providers to ensure compliance with the provisions of this Part and the regulations made under it;
 - 15 (d) take appropriate enforcement actions to deal with the violation of the provisions of this Part or the regulations made under it; and
 - (e) carry out financial awareness programmes.
- (2) The Regulator must make regulations within six months from the commencement of this Part to provide –
- 20 (a) the amount under section 2(140) for the purposes of determining whether a consumer is a retail consumer, which may vary for different financial products or financial services;
 - (b) the manner of determining if the value of a financial product or of a financial service rendered meets the value of the amount specified for the purposes of section 2(140); and
 - 25 (c) the net asset value and turnover for the purposes of section 2(61).
- (3) The Regulator may from time to time modify the regulations made under subsection (2).
104. (1) A financial service provider must ensure that no individual deals with consumers in connection with the provision of a financial product or financial service by it or on its behalf, including as an employee or financial representative, unless that individual is registered with the Regulator. Registration of
individuals dealing
with consumers.
- (2) The Regulator may specify –
- 35 (a) the situations in which an individual would, or would not, be considered to be worthy of dealing with consumers;
 - (b) the eligibility requirements to be satisfied by an individual in order to be registered in respect of specified financial products or financial services; or
 - (c) a code of conduct expected to be followed by an individual who is registered in respect of specified financial products or financial services.
- 40 105. (1) A financial service provider must file specified information with the Regulator in relation to – File and use
process for
financial products.
- (a) any financial product that it proposes to offer to consumers; or

- (b) any material variation to a financial product already offered to consumers.
- (2) A financial service provider must not offer a financial product referred to in sub-section (1) to consumers unless –
 - (a) it has filed the specified information with the Regulator in respect of the financial product; and 5
 - (b) a period of sixty days has elapsed from the date of filing of the specified information with the Regulator. 6
- (3) The Regulator may seek any additional information or clarifications in relation to the product from the financial service provider during the period of sixty days and the financial service provider must provide the same. 10
- (4) If the Regulator does not seek any additional information or clarifications, the financial service provider can commence offering the product to consumers after the expiry of the period of sixty days.
- (5) The Regulator must specify –
 - (a) the information required to be filed with it in relation to any financial product or a material variation to a financial product; and 15
 - (b) what would, or would not, constitute a material variation to a financial product.

Restrictions on financial contracts.

- 106. (1) The Regulator may specify –
 - (a) the terms and conditions that are to be, or are not to be, included in financial contracts with specified consumers for specified financial products or financial services; or 20
 - (b) restrictions on invitations or inducements to enter into financial contracts with specified consumers for specified financial products or financial services. 25
- (2) Any regulations made under sub-section (1) must be accompanied by a statement explaining –
 - (a) the other interventions made or considered by the Regulator to address the concerns sought to be addressed through the regulations; and
 - (b) the reasons why such other interventions were or would be insufficient, in the view of the Regulator, to address the concerns sought to be addressed through the regulations. 30

Responsibility of financial service providers for financial representatives.

- 107. (1) Any act or omission by a financial representative of a financial service provider, in connection with the provision of a financial product or financial service on behalf of the financial service provider, will also be deemed to be an act or omission by the financial service provider. 35
- (2) Nothing contained in sub-section (1) will make a financial service provider responsible for an offence committed by a financial representative.

CHAPTER 24

REDRESS AGENCY

40

Functions of the Redress Agency.

- 108. (1) The Redress Agency will redress the complaints of retail consumers, received directly or forwarded by the Regulator, in cases where –

- (a) the complainant has already made a complaint to the respondent and –
- (i) the respondent has failed to resolve the complaint within the time-period specified by the Regulators; or
 - (ii) the complainant is not satisfied with the resolution of the complaint by the respondent;
- (b) proceedings concerning the subject-matter of the complaint are not pending before any other competent court, tribunal or other authority set up by or under any other law for the time being in force; and
- (c) a final order on the subject-matter of the complaint has not been made by any other court, tribunal or other authority.
- (2) The Redress Agency may in exceptional circumstances accept a complaint even if the conditions under section (1)(a) have not been satisfied.
- (3) The Redress Agency must discharge its function in a fair, informal, economical and expeditious manner, through –
- (a) mediation between the complainant and respondent to arrive at a voluntary settlement of the complaint; and
 - (b) if a complaint is not redressed through mediation, adjudication of the complaint.
- (4) The Redress Agency must put in place adequate systems, processes and infrastructure to enable it to discharge its functions in an efficient and effective manner.

109. (1) The following powers must be exercised by the Redress Agency Board and cannot be delegated to any other person –

Restrictions on the power to delegate.

- (a) making the bye-laws of the Redress Agency and regulations under section 117;
- (b) appointing adjudicators under section 110;
- (c) adopting the annual budget of the Redress Agency under section 122(1)(a); and
- (d) adopting the annual report on the discharge of the Redress Agency's functions under section 123.

110. (1) The Redress Agency must appoint adjudicators having appropriate qualifications and experience, in accordance with its bye-laws.

Appointment of adjudicators.

- (2) Adjudicators appointed by the Redress Agency must be persons of ability, integrity and standing who have –
- (a) shown capacity in dealing with consumer protection issues, including redress of consumer disputes; or
 - (b) knowledge and expertise in the fields of law or finance.
- (3) The terms of appointment of a person as an adjudicator must ensure the independence of the person appointed.
- (4) The powers and functions of adjudicators under this Part may not be delegated to any other person.

CHAPTER 25

PROCEEDINGS BEFORE THE REDRESS AGENCY

Screening of
complaints.

111. (1) A complaint that is received directly by the Redress Agency or forwarded by the Regulator must be screened before it is referred for mediation.
- (2) The Redress Agency may dismiss a complaint upon screening, or at any later time when the relevant information comes to its knowledge, on any of the following grounds –
- (a) the complaint does not satisfy the conditions contained in section 108(1);
or
- (b) the complaint is *prima facie* frivolous, malicious or vexatious.
- (3) A dismissal of a complaint by the Redress Agency must be accompanied by a statement in writing giving the reasons and grounds for the dismissal.
- (4) A complaint that is not dismissed under this section must be referred to a mediator for mediation.
- (5) If a complaint is allowed to proceed for mediation under sub-section (4) no legal proceedings concerning the subject-matter of the complaint can be brought before any other court, tribunal or other authority while the matter is pending before the Redress Agency.

Mediation and
settlement process.

112. (1) The mediator must assist the complainant and respondent to arrive at a voluntary settlement of the complaint.
- (2) If the complainant and the respondent arrive at a settlement through mediation, the mediator must record the settlement in writing in the form of a settlement agreement to be signed by the complainant, respondent and the mediator.
- (3) A complainant may challenge the settlement agreement before an adjudicator only on the ground that the consent to the settlement agreement was obtained by coercion, undue influence, misrepresentation or fraud.
- (4) The settlement agreement, unless it is determined to be invalid by the adjudicator, will be binding on the complainant and respondent and will be enforceable as though it were a decree of a civil court.
- (5) A complaint will be referred to an adjudicator for determination if any of the following events occurs and the complainant has not withdrawn the complaint –
- (a) a settlement agreement has not been arrived at within the time limit set out under the regulations;
- (b) the mediator is of the view that a settlement is not possible in the facts and circumstances of the case and informs the complainant and the respondent in writing of the decision along with reasons; or
- (c) a settlement agreement is found by an adjudicator to be invalid under sub-section (4).

Determination by
adjudicator.

113. (1) An adjudicator to whom a complaint has been referred must –
- (a) examine the complaint, in accordance with the regulations made in this regard;

- (b) determine the complaint with reference to what is equitable in the circumstances, with due regard to –
- (i) the provisions of this Act and the regulations, bye-laws and guidance under it;
 - (ii) the terms of the financial contract between the complainant and the respondent, which forms the basis of the complaint;
 - (iii) any code of conduct applicable to the respondent; and
 - (iv) past determinations made by the Redress Agency in similar cases; and
- (c) communicate the determination made by the adjudicator to the complainant and the respondent, in writing, in the form of an adjudication order.
- (2) The adjudication order must –
- (a) set out the reasons for the determination;
 - (b) be signed by the adjudicator; and
 - (c) inform the complainant and the respondent of their right to appeal against the adjudication order before the Tribunal.
- (3) If the adjudicator determines a complaint in favour of the complainant, the adjudication order may –
- (a) make an award against the respondent of such amount as the adjudicator considers fair compensation, subject to the limits provided in the regulations for any –
 - (i) financial loss suffered by the complainant; or
 - (ii) loss or damage caused on account of material distress or material inconvenience suffered by the complainant; or
 - (b) direct that the respondent take such steps in relation to the complainant as the adjudicator considers just and appropriate.
- (4) An adjudication order providing for compensation may also provide for the amount payable under the award to bear interest at such rate and from such date as set out in the award.
- (5) An adjudication order is enforceable in the same manner as though it were a decree of a civil court.

114. Any person aggrieved by an adjudication order may challenge it in appeal before the Tribunal.

Appeal to the Tribunal.

115. No court, tribunal or other authority will hear a claim on an issue that relates directly and substantially to the subject-matter of a complaint on which an adjudication order has been made under section 113, except an appeal under section 114.

Finality of orders.

116. Any wilful contravention of an adjudication order made by the Redress Agency is punishable as a Class B offence under this Act.

Offence.

CHAPTER 26

REDRESS AGENCY'S PROCEDURES

117. (1) The Regulators must make regulations to provide for –

Regulations relating to Redress Agency's procedures.

- (a) the time limit within which a complainant has to submit a complaint to the Redress Agency or to the Regulator and the circumstances in which the time limit may be extended by the Redress Agency; and
 - (b) the monetary limit on the award of compensation that may be made by the Redress Agency, which may contain –
 - (i) different limits for different kinds of complaints; or
 - (ii) lower sub-limits for compensation awarded on the grounds of distress or inconvenience suffered by a complainant.
- (2) Except as contained in sub-section (1), the Redress Agency must make regulations to provide for the procedure to be followed for receiving, screening, mediation and adjudication of complaints.
- (3) Regulations made under sub-section (2) may, among other things –
- (a) fix the time-periods for the internal proceedings of the Redress Agency;
 - (b) provide for the circumstances in which a complaint would be accepted by the Redress Agency even if the condition under section 108(1)(a) has not been satisfied;
 - (c) provide for the reference of a complaint, in identified circumstances and with the consent of the complainant, to another body, as may be provided in the bye-laws, with a view to its being determined by that body instead of the Redress Agency;
 - (d) provide a list of matters which are to be taken into account by adjudicators in determining whether an act or omission was fair and reasonable;
 - (e) make provision as to the evidence which may be required or admitted, the extent to which it should be oral or written and the consequences of a person's failure to produce any information or document which that person has been required to produce;
 - (f) provide for the circumstances and the manner in which an adjudicator may award costs;
 - (g) provide for the fees to be levied from financial service providers under section 122(1)(b) for the establishment and operation of the Redress Agency; and
 - (h) provide for the fees payable by respondents to the Redress Agency under section 122(1)(c), which may vary for different kinds of complaints.

Adjudicators vested with powers of civil court.

118. The adjudicators are not bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but have the same powers as a civil court does under the Code of Civil Procedure, 1908 (5 of 1908) in respect of –
- (a) summoning and enforcing the attendance of any person and examining them on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examination of witnesses or documents;
 - (e) reviewing its decisions;
 - (f) dismissing an application for default or deciding it *ex parte*;
 - (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and
 - (h) any other matter that may be specified by the Regulators.

119. (1) The Redress Agency must make use of modern technology to improve access to the Redress Agency and to enable it to discharge its functions in an efficient manner. Use of technology.
- (2) The use of modern technology will include use of mechanisms that allow –
- (a) parties to submit documents and information to the Redress Agency through electronic means;
 - (b) parties and other concerned persons to participate in the processes of the Redress Agency from remote locations without being physically present;
 - (c) electronic filing and management of complaints;
 - (d) use of automated systems for scheduling the hearing of complaints; and
 - (e) providing of electronic access to complaint-related information to the parties to a complaint.
- (3) If a complainant accesses the Redress Agency using a mechanism that allows parties to participate in the processes of the Redress Agency from remote locations without being physically present, the respondent must also access the Redress Agency in the same manner.

CHAPTER 27

OTHER PROVISIONS GOVERNING THE REDRESS AGENCY

120. (1) The adjudicator has the power to award reasonable costs against the respondent and in favour of the complainant or the Redress Agency, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the adjudicator, the respondent's conduct was improper or led to an unreasonable burden on the complainant or the Redress Agency. Costs.
- (2) The adjudicator has the power to award reasonable costs against the complainant and in favour of the Redress Agency, for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the opinion of the adjudicator, the complaint is found to be without foundation or merit or the complainant's conduct was improper or led to an unreasonable burden on the respondent or the Redress Agency.
- (3) The adjudicator may, while making an award of costs, order that the amount payable under the award bears interest at a rate and as from a date stated in the adjudication order.
- (4) An amount due under an award made in favour of the Redress Agency is recoverable as a debt due to the Redress Agency.
121. (1) The Redress Agency may, by notice in writing given to any person who is a party to a complaint, require that person to provide any required information or documents which the Redress Agency considers necessary for the determination of the complaint. Power to call for information.
- (2) The information or documents must be provided or produced –
- (a) before the end of such reasonable period as may be required by the Redress Agency; and
 - (b) in the case of information, in such manner or form as may be required by the Redress Agency.

Funding.

122. (1) Funds for the establishment and operation of the Redress Agency will consist of –
- (a) allocations made by the Central Government of such sums of money as it thinks fit, based on the annual budget to be prepared by the Redress Agency and submitted to the Central Government before the start of each financial year; 5
 - (b) fees collected from financial service providers, in the manner provided under regulations made by the Redress Agency;
 - (c) fees collected from respondents, in the manner provided under regulations made by the Redress Agency; and 10
 - (d) costs imposed on the parties under section 120.
- (2) The Redress Agency must take into account the expenditure expected to be incurred by it in carrying out its functions and the funds available from other sources while determining the amount of fees payable by financial service providers for funding the Redress Agency. 15
- (3) The Redress Agency may collect the fees under sub-section (1)(b) through the Regulator.

Sharing of information with the Regulators.

123. The Redress Agency must, through the Data Centre, share information on complaints received, considered, settled and determined by it, with the Regulator on an ongoing basis, in order to facilitate the Regulator in effectively carrying out its functions. 20

Performance of the Redress Agency.

124. (1) Prior to the commencement of each year, the Regulators must, in consultation with the Redress Agency, determine –
- (a) the productivity, timeliness and service quality targets expected to be achieved by the Redress Agency in that year; 25
 - (b) the acceptable level of deviation from the targets determined under sub-section (a); and
 - (c) the systems to be used to accurately measure the functioning of the Agency.
- (2) The targets and systems determined under sub-section (1) must – 30
- (a) promote transparency;
 - (b) provide an accurate representation of functioning of the Redress Agency;
 - (c) consider the requirements of persons appearing before the Redress Agency;
 - (d) provide objective methods of measurement where possible;
 - (e) provide subjective methods of measurement where objective measurements are not possible; and 35
 - (f) incorporate global best practices in the measurement of functioning of bodies set up to address consumer complaints.
- (3) The targets under sub-section (1)(a) may include targets relating to –
- (a) the average cost per complaint expected to be incurred by complainants, respondents or the Redress Agency; 40
 - (b) the number of complaints expected to be processed by the Redress Agency within a given time-period; or

- (c) the average time expected to be taken by the Redress Agency for processing a complaint.
- (4) The Redress Agency must publish –
- (a) the targets and systems determined under sub-section (1); and
- 5 (b) details of the Redress Agency's performance against the targets and systems determined under sub-section (1).
125. (1) In addition to the requirements contained in section 77, the annual report of the Redress Agency must contain – Annual report of the Redress Agency.
- 10 (a) a review of the Redress Agency's performance against the targets and systems determined under section 124; and
- (b) any other requirements specified by the Regulators.
- (2) If the Redress Agency fails to achieve a target determined under section 124 and the extent of deviation exceeds the acceptable level determined under that section, the annual report must include an explanation containing reasons for
- 15 the failure to achieve the target and the actions intended to be taken by the Redress Agency to remedy the situation.

CHAPTER 28

FINANCIAL AWARENESS

126. (1) The Regulator must undertake measures to promote financial awareness. Duty to promote financial awareness.
- 20 (2) In this Part, "financial awareness" means the understanding and knowledge of members of the public regarding financial matters, including, the –
- (a) benefits of financial planning;
- (b) rights and protections available to consumers of financial products and financial services; and
- 25 (c) features, costs, risks and benefits of different financial products and financial services.
- (3) The Regulator may, in discharge of the financial awareness function, make regulations to –
- (a) support the doing by other persons of anything that it considers would enhance financial awareness; or
- 30 (b) arrange for other persons to do anything that it considers would enhance financial awareness.
127. (1) The Regulator may establish a separate body corporate to carry out the promotion of financial awareness. Power to establish a financial awareness body.
- 35 (2) If the Regulator decides to establish a financial awareness body, it must –
- (a) take such steps as are necessary to ensure that the financial awareness body is, at all times, capable of discharging the function of promoting financial awareness; and
- (b) provide services to the financial awareness body which the Regulator considers would facilitate the promotion of financial awareness.
- 40

Mechanisms to achieve and monitor financial awareness.

128. (1) The Regulator must ensure that it has in place appropriate mechanisms to achieve and monitor the achievement of the financial awareness objective, which include –
- (a) the inclusion of a budget relating to financial awareness in its annual budget; and 5
 - (b) the inclusion of an annual plan relating to financial awareness in its financial plan, which must set out –
 - (i) the targets of financial awareness for the year, which should, to the extent possible, be in the form of quantifiable targets;
 - (ii) relative priorities of each of the targets; 10
 - (iii) measures planned to achieve the targets;
 - (iv) the manner in which the extent of achievement of each of the targets is to be determined and monitored; and
 - (v) the allocation of resources towards implementing each of the targets. 15
- (2) In addition to the requirements contained in section 77, the annual report of the Regulator must include –
- (a) details of the extent to which the targets for the year, as mentioned in the annual plan, have been met;
 - (b) an explanation containing reasons for any failure to achieve the targets stated in the annual plan and the actions intended to be taken to remedy the situation; and 20
 - (c) details of its latest accounts relating to the cost of pursuing the financial awareness function.
- (3) The Regulator must publish details of its performance against the financial awareness targets determined under sub-section (1)(b)(i). 25

CHAPTER 29

ADVISORY COUNCIL ON CONSUMER PROTECTION

Establishment of advisory council on consumer protection.

129. (1) The Regulator must establish and maintain a Consumer Advisory Council to carry out the functions under section 49 while representing the interests of consumers. 30
- (2) The functioning of this advisory council will be in accordance with Chapter 12, other than in the aspects provided here.
- (3) The Consumer Advisory Council will consist of a minimum of five and a maximum of nine members who are consumers or persons representing the interests of consumers, to be appointed by the Regulator. 35
- (4) The Regulator must ensure that the membership of the Consumer Advisory Council gives a fair degree of representation to experts in the fields of personal finance and consumer rights.
- (5) While appointing the members of the Consumer Advisory Council the Regulator must also take into account the need to ensure proper geographical representation from across the country. 40

- (6) The Regulator must appoint one of the members of the Consumer Advisory Council to be the chairperson of the Consumer Advisory Council of the Consumer Advisory Council.

- 5 130. (1) The Regulator must take into account any representations or reports that are made to it by the Consumer Advisory Council in discharge of its functions.
- (2) If the Regulator disagrees with a view expressed, or proposal made, in the representation or report, it must give the Consumer Advisory Council a statement in writing of its reasons for disagreeing.

Role of the
Consumer Advisory
Council.

CHAPTER 30

10 INTERACTION BETWEEN THE COMPETITION COMMISSION AND THE REGULATOR

131. (1) The Competition Commission may submit its comments on draft regulations issued by the Regulator for public consultation under Part III.
- (2) The Regulator must take into account any comments that are submitted to it by the Competition Commission.
- 15 (3) If the Regulator disagrees with any comments made by the Competition Commission, it must give the Competition Commission a statement in writing with its reasons for disagreeing.

Consultation for
draft regulations.

132. (1) This section applies where the Competition Commission is of the opinion that a negative effect has been created, or is likely to be created, on account of –
- 20 (a) a regulatory provision or practice of a Regulator or a combination of regulatory provisions or practices; or
- (b) a feature, or a combination of features, of a market that could be dealt with by regulatory provisions or practices.
- (2) In this section –
- 25 (a) “negative effect” means the prevention, restriction or distortion of competition in a market for financial products or financial services;
- (b) “regulatory provision” means any regulations, guidance or code issued by the Regulator under this Act; and
- (c) “feature of a market” means –
- 30 (i) the structure of a market for financial products or financial services or any aspect of that structure; and
- (ii) the conduct, whether or not in the market for the concerned financial products or financial services, of financial service providers or consumers.
- 35 (3) If the conditions contained in sub-section (1) are satisfied, the Competition Commission must submit a report to the Regulator stating –
- (a) details of the Competition Commission’s findings on the negative effect; and
- (b) its recommendation on actions to be taken by the Regulator.

Report by the
Competition
Commission.

Response by
Regulator.

- 133.** (1) The Regulator must, within the period agreed to between the Regulator and the Competition Commission, provide a response to the Competition Commission stating how it proposes to deal with the Competition Commissions report.
- (2) The response must state –
- (a) whether it has decided to take any action, or to take no action; 5
 - (b) if it has decided to take action, what action it proposes to take; and
 - (c) reasons for its decisions.
- (3) The factors to be taken into account by the Regulator while deciding its response must include –
- (a) its principles, objectives and functions under the relevant Part to which the matter relates; 10
 - (b) representations made to the Regulator in connection with the matter by any person appearing to the Regulator to have a substantial interest in the matter; and
 - (c) any cost benefit analysis prepared by the Regulator in relation to the regulatory provision or practice that is the subject of the Competition Commission's report. 15
- (4) The response must be –
- (a) submitted to the Competition Commission; and
 - (b) published by the Regulator, along with the Competition Commission's report. 20

Competition
Commission's
power to issue
directions.

- 134.** (1) If after the Competition Commission has made a report under section 132 and the Regulator has submitted its response under section 133, the Competition Commission continues to remain of the opinion that a negative effect is created under section 132(1), the Competition Commission may issue directions to the Regulator requiring it to take particular actions to remedy the negative effect. 25
- (2) If the Competition Commission issues a direction to the Regulator under this section, it must publish a statement containing details of the direction issued with reasons and submit a copy of it to the Central Government.
- (3) The Central Government must have a copy of the directions issued by the Competition Commission laid before the Parliament. 30

Reference by the
Competition
Commission.

- 135.** (1) The Competition Commission must make a reference to the Regulator when it undertakes any proceedings under the Competition Act in which at least one of the parties is a financial service provider.
- (2) The reference must contain – 35
- (a) details of the circumstances relating to which proceedings are being undertaken by the Competition Commission;
 - (b) any particular issue relating to the proceedings on which the Competition Commission requires the Regulator's inputs; and
 - (c) any other matter agreed to between the Regulator and the Competition Commission. 40

- (3) The Regulator must assess the reference and respond to the Competition Commission, within the period agreed to between the Regulator and the Competition Commission, with a report on the referred matter.
- (4) The report must contain –
- 5 (a) the Regulator's response, with reasons, to any particular issues referred by the Competition Commission for its inputs;
 - (b) the Regulator's recommendations on factors that should be considered by the Competition Commission in relation to the proceedings, if any; and
 - 10 (c) information about the Regulator's decision to nominate a non voting member under section 136.
- (5) The Competition Commission must take into to account the Regulator's report while making its decision on the referred matter.
136. (1) The Regulator may nominate a person as a non-voting member of the Competition Commission in any proceedings under the Competition Act if – Appointment of non-voting member.
- 15 (a) at least one of the parties to the proceedings is a financial service provider; and
 - (b) it appears to the Regulator that a decision taken, or likely to be taken, by the Competition Commission may have a significant negative impact on the pursuance of the Regulator's objectives under this Act or any other law.
 - 20
- (2) The person nominated by the Regulator –
- (a) must be a member on the board of the Regulator or a senior official; and
 - (b) must have knowledge of the subject matter to which the referred matter relates.
- 25 (3) The person nominated by the Regulator will be entitled to attend and participate in the Competition Commission's proceedings on the referred matter but will not entitled to vote on it.
137. (1) The Regulator must make a reference to the Competition Commission to report any conduct of a financial service provider that appears to the Regulator to be a suspected violation of the Competition Act. Reference by the Regulator.
- 30 (2) The reference must contain details of –
- (a) the circumstances in respect of which the reference is being made; and
 - (b) the Regulator's reasons for suspecting a violation of the Competition Act.
- 35 (3) The Competition Commission must assess the reference and respond to the Regulator, within the period agreed to between the Regulator and the Competition Commission, with a report on the referred matter.
- (4) The report must contain the Competition Commission's decision, with reasons, on whether or not is initiating proceedings under the Competition Act in relation to the referred matter.
- 40 138. (1) The Competition Commission and the Regulator must enter into a memorandum of understanding to establish the procedures for co-operation between them, within six months from the commencement of this Act. Memorandum of understanding.

- (2) The memorandum of understanding must provide for –
- (a) the period within which the Regulator must submit its response to the Competition Commission under section 133;
 - (b) the detailed process for references to be made by the Competition Commission to the Regulator and by the Regulator to the Competition Commission under sections 135 and 137; 5
 - (c) the process for appointment of a nominee by the Regulator as non-voting member of the Competition Commission under section 136;
 - (d) process for co-ordination between the Competition Commission and the Regulator in relation to the review of any combination involving a financial service provider, under this Act; 10
 - (e) exchange of information between the Competition Commission and the Regulator;
 - (f) the manner in which a market will be identified for the purposes of this Act; and 15
 - (g) any other matter that may be agreed to between the Regulator and the Competition Commission.
- (3) The Regulator and the Competition Commission may agree to revise the terms of the memorandum of understanding from time to time.

CHAPTER 31

20

EFFECT ON OTHER LAWS

Power to exclude application of the Consumer Protection Act, 1986.

139. (1) The Central Government may, by notification, provide that nothing contained in the Consumer Protection Act, 1986 (68 of 1986) will apply to a retail consumer in respect of any complaint covered under this Act, in such parts of India, as considered necessary, from such date as may be notified by the Central Government. 25
- (2) A notification under this section may be issued by the Central Government if it is satisfied that –
- (a) the number of complaints being referred to the Redress Agency under this Act are significantly higher than the complaints referred to the consumer courts established under the Consumer Protection Act, 1986 (68 of 1986); 30
 - (b) the Redress Agency is effectively discharging its functions under this Act; and
 - (c) the issuance of the notification will not cause a significant detriment to the interests of retail consumers. 35

PART V

PRUDENTIAL REGULATION

CHAPTER 32

OBJECTIVES AND PRINCIPLES

5 140. (1) The Regulator must discharge its functions and exercise its powers under this Part with the objective of— Objectives.

- (a) promoting the safety and soundness of regulated persons; and
- (b) contributing to the stability and resilience of the financial system.

10 (2) The objective of promoting the safety and soundness of regulated persons must be advanced in a manner that seeks to —

- (a) ensure that the affairs of regulated persons are organised, overseen and managed in a manner that enables them to discharge the obligations owed to their consumers; and
- (b) maintain the probability of failure of regulated persons within a level acceptable to the Regulator.

15

(3) In this section, “failure of a regulated person” means —

- (a) the regulated person being unable to meet liabilities as they fall due; or
- (b) an action being initiated under Part VII to address a risk to the viability of the regulated person.

20 141. (1) The Regulator must take into account the following principles while discharging its functions and exercising its powers under this Part — Principles of prudential regulation.

(a) any obligation imposed on regulated persons should be proportionate to —

25

- (i) the nature, scale and complexity of the risks inherent in the regulated activity being carried on by the regulated person;
- (ii) the manner in which the regulated activity ranks on the factors contained in section 151(1)(b); and
- (iii) in case of regulated persons that are Systemically Important Financial Institutions, the relevance of the regulated person for the stability and resilience of the financial system;

30

(b) the feasibility of supervision by the Regulator and implementation of regulatory actions by regulated persons;

35

(c) persons who control, oversee and manage the affairs of regulated persons must share the responsibility of ensuring the safety and soundness of the regulated persons;

(d) minimisation of inconsistencies in the regulatory approach towards regulated activities that are similar in nature or pose similar risks to the fulfilment of the Regulator’s objectives under this Part;

40

(e) any obligation imposed on regulated persons should be consistent with the benefits, considered in general terms, which are expected to result from the imposition of that obligation;

- (f) competition in the markets for financial products and financial services is desirable in the interests of consumers and therefore –
- (i) barriers to competition owing to adverse effects of regulatory actions should be minimised; and
 - (ii) there should be competitive neutrality in the treatment of financial service providers; 5
- (g) facilitating access to financial products and financial services is desirable in the interests of consumers;
- (h) innovation in financial products and financial services is desirable in the interests of consumers; 10
- (i) regulatory actions should be carried out in a manner that is least detrimental to the global competitiveness of the financial system;
- (j) the effects of regulatory actions over a continuing period of time, which means a period of at least five years after a regulatory action is taken, should be considered; and 15
- (k) the effects of regulatory actions on the stability and resilience of the financial system, in particular, the need to minimise pro-cyclical effects, should be considered.
- (2) In interpreting this Part and in discharging its functions or exercising its powers under this Part, if the Regulator perceives a conflict between any of the principles contained in sub-section (1), or if more than one interpretation is possible, the Regulator must reconcile and manage the conflict giving preference to the principle which would be the most relevant for furthering its objectives under this Part. 20

CHAPTER 33

25

AUTHORISATION TO CARRY ON THE BUSINESS OF PROVIDING FINANCIAL SERVICES

Prohibition on carrying on the business of financial services without authorisation.

142. (1) No person should carry on the business of providing a financial service in India, or purport to do so, whether on its own behalf or on behalf of any other person, unless the person has obtained an authorisation from the Regulator to carry on the business of providing that financial service in accordance with the provisions of this Part. 30
- (2) In this section, “providing a financial service in India” includes providing financial services to consumers in India, whether from within the territory of India or outside.
- (3) A person purports to provide a financial service in India if, whether or not intended, the person – 35
- (a) adopts the description of being authorised, or exempt from the requirement of being authorised, to provide the financial service; or
 - (b) conducts itself in a manner that indicates or is likely to indicate that the person is authorised, or exempt from the requirement of being authorised, to provide the financial service. 40

Offence.

143. Any contravention of section 142 is punishable as a Class B offence under this Act, except in cases where the contravention is found to be wilful, in which case it will be punishable as a Class A offence under this Act.

144. (1) The requirement to obtain authorisation under section 142(1) will not apply to –
- Exemption from requirement to obtain authorisation.
- (a) an individual registered with the Regulator under section 104;
 - (b) a financial representative of a financial service provider, if –
 - 5 (i) the financial representative is carrying on an activity that is connected with the provision of a financial service for which the concerned financial service provider is authorised;
 - (ii) the concerned financial service provider has accepted responsibility in writing for the activities of the financial representative; and
 - 10 (iii) the financial representative complies with such other requirements as may be specified.
 - (c) the Central Government or a State Government while carrying out specified financial services, if so provided under regulations made by the Regulator in this regard.
- 15 (2) In this section, “concerned financial service provider” means the financial service provider on whose behalf a financial representative is acting.
145. (1) A request for authorisation to carry on a financial service must be made to the Regulator in the form of an application.
- Grant of authorisation.
- 20 (2) The Regulator may issue an approval order granting authorisation for the carrying on of any or all the financial services in respect of which an application is made after being satisfied that the person making the application –
- (a) satisfies the authorisation criteria specified by the Regulator under subsection (3), if any such authorisation criteria is specified; or
 - 25 (b) shows sufficient evidence of being in a position to comply with the provisions of this Act.
- (3) The specified authorisation criteria in relation to a financial service may include requirements in relation to one or more of the following matters –
- (a) the capital structure of the applicant, including the minimum capital required to be held by it;
 - 30 (b) the legal and organisational structure of the applicant;
 - (c) the ownership structure of the applicant, including restrictions on ownership of the applicant by specified persons or class of persons;
 - (d) the systems of governance required to be put in place by the applicant;
 - 35 (e) fit and proper person criteria for persons engaged in the oversight or strategic management of the applicant;
 - (f) conditions to be satisfied in case the applicant is a member of a specified type of group;
 - (g) evidence of being in a position to comply with the relevant prudential requirements under Chapter 34, if, and to the extent, applicable; and
 - 40 (h) any other criteria that the Regulator may specify.
146. (1) The Regulator must specify the categories of financial service providers that will be entitled to obtain authorisation through self-registration, subject to such conditions as may be specified.
- Authorisation through self-registration.

Variation,
suspension or
cancellation of
authorisation.

- (2) The acknowledgment of an application for authorisation made by a person specified under sub-section (1) will constitute the grant of an authorisation under section 145 and the provisions of section 70 will not be applicable in such cases.
- (3) The self-registration process will not apply to any person that proposes to carry out a financial service – 5
- (a) that is specified to be a regulated activity; or
- (b) in respect of which any authorisation criteria has been specified.

147. (1) The Regulator may vary, suspend or cancel the authorisation of a financial service provider, either on the application of the concerned financial service provider or acting on its own. 10
- (2) The authorisation may be varied under sub-section (1) by –
- (a) adding or removing a financial service from the list of financial services for which the authorisation was granted;
- (b) varying the description of a financial service for which the authorisation was granted; or 15
- (c) varying the conditions on which the authorisation was granted.
- (3) The Regulator may vary, suspend or cancel an authorisation, acting on its own, if –
- (a) the financial service provider has failed, or is likely to fail, to satisfy the authorisation criteria under section 145, if applicable; 20
- (b) the financial service provider has failed to carry on a regulated activity for which the authorisation was granted for a continuous period of eighteen months; or
- (c) the action is required to be taken in order to meet any of the Regulator's objectives. 25
- (4) If the Regulator decides to vary, suspend or cancel an authorisation issued to a financial service provider acting on its own, it must issue a show-cause notice to the concerned financial service provider followed by a decision order.
- (5) The variation, suspension or cancellation of an authorisation under this section will not affect the validity of any financial contract entered into or made before the date of notification of the variation, suspension or cancellation by the Regulator. 30

Database of
authorisations and
exemptions.

148. (1) The Regulator will issue a unique identification number to each person permitted to carry out a financial service under this Act, whether by grant of an authorisation under section 145 or by virtue of an exemption under section 144. 35
- (2) The Regulator must maintain and keep updated at all times a publicly accessible database of –
- (a) persons authorised under section 145 to carry out a financial service; and 40
- (b) persons exempted under section 144 from the requirement to obtain authorisation.
- (3) If the Regulator varies, suspends or cancels an authorisation under section 147 it must maintain a record of the same on the financial system database.

149. A financial service provider may offer financial products to consumers in the manner provided under section 105. File and use process for financial products.
150. (1) The Central Government may prescribe any facility or instrument, in addition to those listed in section 2(72), to be a financial product if it allows a person to – Power to vary the meaning of financial products and financial services.
- (a) make a contribution of money or securities, where the person making the contribution does not have any day-to-day control over the use of the contribution, and the contribution is made with the objective of –
- (i) getting a financial return or any benefit; or
- (ii) safekeeping of the contribution;
- (b) manage, avoid or limit the financial consequences arising from –
- (i) the happening or not happening of a particular event; or
- (ii) fluctuations in receipts or costs, including prices, currency exchange rates and interest rates;
- (c) make payments, or cause payments to be made, otherwise than by the physical delivery of Indian currency; or
- (d) borrow money.
- (2) The Central Government may prescribe any service, other than those listed in section 2(75), to be a financial service.
- (3) The Regulator may specify any service or class of services, rendered by specified persons, to be excluded from the list of financial services under section 2(75), subject to such conditions as may be specified.

CHAPTER 34

PRUDENTIAL REQUIREMENTS

151. (1) In this Act, "regulated activity" means a financial service that is specified by the Regulator to be a regulated activity for the purposes of this Act, taking into account the following factors – Regulations regarding regulated activities.
- (a) the inherent difficulties that may be faced by financial service providers carrying on the financial service in fulfilling the obligations owed by them to their consumers; and
- (b) the nature of the relationship between financial service providers carrying on the financial service and their consumers, including –
- (i) the nature and extent of detriment that may be caused to consumers in case of non-fulfilment of obligations owed to them by the financial service providers;
- (ii) the ability of consumers to access and process information relating to the safety and soundness of the financial service providers; and
- (iii) the ability of consumers to co-ordinate among themselves to monitor the safety and soundness of the financial service providers.
- (2) While specifying a regulated activity under sub-section (1), the Regulator must also specify the manner in which a category or sub-category of financial service ranks on the basis of the factors stated in section (1)(b).

- (3) The regulations under this section must be made within six months from the commencement of this Part and may be modified from time to time.

Capital resource requirements.

152. (1) A regulated person must at all times –
- (a) maintain adequate capital resources that ensure that there is no significant risk that its liabilities cannot be met; 5
 - (b) ensure that its capital resources are equal to or in excess of the capital resource requirements specified by the Regulator under sub-section (2)(b); and
 - (c) monitor its compliance with the capital resource requirements on an ongoing basis and inform the Regulator of any actual or potential breach of the capital resource requirements. 10
- (2) The Regulator must specify –
- (a) the manner in which the provisions of this section apply to different categories of regulated persons;
 - (b) the capital resource requirements, both as to amount and quality, for different categories of regulated persons and the duration within which the requirements are to be met; 15
 - (c) the manner in which the amounts or values of assets and liabilities are to be calculated for the purpose of meeting capital resource requirements;
 - (d) the manner in which change in the value of assets and liabilities is to be recognised and calculated; 20
 - (e) the financial resources that will not be taken into account as capital resources for the purposes of assessing compliance with the capital resource requirements;
 - (f) the process to be followed by the regulated person in case of any actual or potential breach of its capital resource requirements; 25
 - (g) circumstances that may constitute an actual or potential breach of the capital resource requirements; and
 - (h) the consequences of non-compliance with the regulations made under this section. 30
- (3) While making regulations under sub-section (2)(b), the regulator may provide for –
- (a) the manner in which capital instruments are to be classified into different tiers of capital resources;
 - (b) limits on the use of different tiers of capital resources by regulated persons to meet the capital resource requirements; or 35
 - (c) a requirement that a specified portion of the capital resources must be held in the form of specified capital instruments, which, in the opinion of the Regulator, would facilitate enhanced assessment of the regulated person by specified persons. 40
- (4) If the Regulator makes regulations under sub-section (3)(a), it must take into account –
- (a) the extent to which a capital instrument is likely to absorb losses;
 - (b) the permanence of the capital instrument and the extent of its availability, when required, including the extent of variation in its loss absorption capacity upon variation of time, context and circumstances; 45

- (c) the manner in which the capital instrument ranks for repayment, compared to other debts and liabilities, upon winding up, dissolution or similar procedure involving the regulated person; and
- (d) the extent of fixed costs, including obligation to pay dividends or interest, associated with the capital instrument.

(5) In this section –

- (a) “capital resources” means financial resources held by a regulated person that are capable of absorbing unexpected losses; and
- (b) “capital instrument” means an instrument for making an investment in, or contribution to, the capital resources of the regulated person, including any security issued by or loan made to the regulated person.

153. (1) A regulated person must notify the Regulator, in writing, of its intention to issue a capital instrument which it intends to include within its capital resources.

Notice of issuance
of capital
instruments.

(2) The notice must be given at least one month before the intended date of issue, unless there are exceptional circumstances which make it impracticable to give notice of such period, in which event the regulated person must give such notice as is practicable in those circumstances.

(3) When giving notice, a regulated person must –

- (a) provide details of the amount of capital resources that the regulated person is seeking to raise through the intended issue and the person to whom the capital instrument is intended to be issued;
- (b) identify the tier of capital resources that the capital instrument is intended to fall within; and
- (c) provide details of any features of the capital instrument which are novel, unusual or different from a capital instrument of a similar nature previously issued by the regulated person or widely available in the market.

(4) The Regulator must specify –

- (a) capital instruments to which this section does not apply, which may be determined taking into account factors including, the extent to which capital instruments of a similar nature are widely available in the market or have been previously issued by the regulated person; and
- (b) circumstances that will be considered to be exceptional under sub-section (2), which may include situations where there is a risk of a regulated person’s capital resources falling below its capital resources requirements if the notice period under that sub-section is observed.

154. (1) A regulated person must at all times maintain adequate liquidity resources, and should satisfy the liquidity requirements specified by the Regulator.

Liquidity
requirements.

(2) A regulated person must manage and monitor its compliance with the liquidity requirements on an ongoing basis, including to ensure that –

- (a) its liquidity resources contain an adequate buffer of high quality, unencumbered assets; and
- (b) it maintains a prudent funding profile, including assets that are of appropriate maturities, taking account of the expected timing of its liabilities.

(3) The Regulator must specify –

- (a) the manner in which the provisions of this section apply to different categories of regulated persons;
 - (b) the liquidity requirements, both as to amount and quality, for different categories of regulated persons and the duration within which the requirements are to be met; 5
 - (c) the resources that will not be taken into account as liquidity resources for the purposes of assessing compliance with the liquidity requirements;
 - (d) requirements relating to the maintenance of a prudent funding profile for different categories of regulated persons;
 - (e) the process to be followed by regulated persons in case of any actual or potential breach of liquidity requirements; and 10
 - (f) the consequences of non-compliance with the regulations made under this section.
- (4) While making regulations under sub-section (3)(b), the Regulator may provide for – 15
- (a) the conditions that must be satisfied for a resource to be regarded as being a satisfactory liquidity resource for the purposes of meeting the liquidity requirements;
 - (b) requirements to maintain specified ratios or reserves to meet liquidity requirements; and 20
 - (c) limits on the use of different financial resources to meet the liquidity requirements taking into account the liquidity of such financial resources, as noted by the Regulator over a period of time.
- (5) In this section, “liquidity resources” mean the financial resources to be held by a regulated person in order to ensure that there is no significant risk that its liabilities cannot be met as they fall due. 25

Investment.

155. (1) A regulated person must invest its assets and the assets of its consumers in a prudent manner, taking into account the following principles –
- (a) investments must be made in assets whose risks can be properly identified, measured, monitored, managed, controlled and reported by the regulated person; 30
 - (b) investments must be made in a manner that ensures the security, quality, liquidity and profitability of the assets of the regulated person, taken as a whole;
 - (c) investments must be made taking into account the nature and duration of the regulated person’s liabilities; 35
 - (d) in case of any conflict of interest, investments must be made in the best interests of the consumers of the regulated person; and
 - (e) assets must be properly diversified in order to avoid excessive exposure to any particular person, asset, sector or group, or geographical area and excessive accumulation of risk in the assets of the regulated person, taken as a whole. 40
- (2) The Regulator must specify –
- (a) the manner in which the provisions of this section apply to different categories of regulated persons; 45
 - (b) any investment restrictions applicable to a regulated activity; and

- (c) the consequences of non-compliance with the regulations made under this section.
- (3) While making regulations under sub-section (2)(b), the Regulator must take into account the need –
- 5 (a) to ensure the security, quality, liquidity and profitability of the assets of the regulated person, taken as a whole;
- (b) to ensure the protection of funds of consumers, which may be done through –
- 10 (i) a requirement to segregate the funds or assets of consumers from the other funds or assets of the regulated person; or
- (ii) any other prohibition or restriction on the disposal of, or other dealing with, funds or assets belonging to consumers.
- (4) The power to make regulations under sub-section (2)(b) must not be used by the Regulator to provide for quantitative restrictions on the composition of the assets of a regulated person, taken as a whole.
- 15 (5) In this section, “quantitative restrictions” include the imposition of maximum or minimum limits on the holding of any particular asset or category of assets.
156. (1) A regulated person must –
- 20 (a) have in place effective systems of governance which provide for sound and prudent management of its affairs; and
- (b) ensure that the systems of governance adopted by it are implemented, reviewed and updated on a regular basis.
- (2) A regulated person must take into account the following factors while determining its systems of governance for the purposes of sections 156 to 160 –
- 25 (a) the nature, scale and complexity of its business;
- (b) the diversity of its operations, including geographical diversity;
- (c) the volume and size of transactions carried out by it;
- (d) the degree of risk associated with each area of its operation; and
- (e) its group-wide risks.
- 30 (3) The systems of governance must include policies and procedures on –
- (a) governance and controls;
- (b) risk management;
- (c) internal audit; and
- (d) where relevant, outsourcing.
- 35 (4) The Regulator must specify –
- (a) the manner in which the provisions of sections 156 to 160 apply to different categories of regulated persons; and
- (b) the consequences of non-compliance with the regulations made under sections 156 to 160.
- 40 (5) The Regulator may also specify that –
- (a) regulated persons must put in place a written policy on any aspect of its systems of governance, including matters under sections 156 to 160; and

Systems of
governance.

Governance and
controls.

- (b) the policies required to be put in place under clause (a) must be reviewed and revised periodically.
157. (1) A regulated person must have in place an appropriate organisational and governance structure with efficient policies and procedures to ensure that –
- (a) persons carrying on significant functions on its behalf are fit and proper persons; 5
 - (b) there is a clear allocation and appropriate segregation of responsibilities within its organisation;
 - (c) there are adequate systems for reporting, communication and co-operation within its organisation; 10
 - (d) the performance of multiple tasks by individuals does not, and is not likely to, prevent the sound performance of their duties;
 - (e) its executive remuneration policy is –
 - (i) consistent with its available resources and risk profile; and
 - (ii) minimises any potential conflict of interest; 15
 - (f) it has in place appropriate administrative, accounting and internal monitoring procedures; and
 - (g) it maintains adequate and orderly books and records, in the manner and for the periods specified by the Regulator.
- (2) The Regulator must specify requirements relating to – 20
- (a) the appointment of persons, who are fit and proper persons, for the implementation of any of the systems of governance under sections 157 to 160;
 - (b) preventing conflict of interest of persons responsible for carrying on significant functions in relation to regulated persons; and 25
 - (c) the circumstances and manner in which the Regulator may replace the body responsible for the oversight of the regulated person's affairs or the members of such body.
- (3) The Regulator may also specify requirements relating to –
- (a) appointment, responsibilities and process of appointment of persons carrying on significant functions, including a requirement to obtain approval before a person can carry on specified significant functions; 30
 - (b) the size and composition of the bodies responsible for the oversight or strategic management of regulated persons;
 - (c) the establishment of specified committees or groups for carrying out specified functions; 35
 - (d) the processes to be followed by the bodies, committees and groups mentioned in clauses (b) and (c);
 - (e) the structure or form of executive remuneration;
 - (f) control and ownership structure of regulated persons; 40
 - (g) systems and processes required to be put in place by regulated persons to ensure effective compliance with applicable laws and regulations and internal policies; and
 - (h) restrictions on capital distributions by regulated persons under specified circumstances. 45

158. (1) A regulated person must have in place an effective risk management system comprising of policies and processes necessary to properly identify, measure, prioritise, monitor, manage and report on a continuous basis, the risks to which the regulated person is or could be exposed.

Risk management.

- 5 (2) The risk management system put in place by the regulated person must –
- (a) be effective and well integrated into its organisational structure and decision making processes;
 - (b) enable it to properly identify and assess the risks to which it is, or could be, exposed in the short, medium and long-term;
 - 10 (c) take into account inter-dependencies of risks, concentration of a particular risk and overall risk tolerance levels;
 - (d) provide for the reporting of risk exposures to the bodies responsible for its oversight and strategic management;
 - (e) implement risk mitigation techniques that are appropriate according to the nature of the risks assumed by it; and
 - 15 (f) ensure that its affairs are conducted in a manner that enable it to cover its expected losses.

(3) The Regulator may specify –

- 20 (a) the types of risks that need to be taken into account in relation to a regulated activity, which may include business risks, investment risks, operational risks, credit risks, concentration risks and liquidity risks;
- (b) the types of risk management and risk mitigation techniques required to be followed in respect of a regulated activity;
- (c) methods to be used for identifying, measuring and monitoring risks; and
- 25 (d) reporting requirements to be complied with by a regulated person when it undertakes specified types of risks.

159. (1) A regulated person must have in place an effective internal audit system to –

Internal audit.

- (a) examine and evaluate the adequacy and effectiveness of its systems of governance; and
- 30 (b) issue recommendations based on the result of examinations and evaluations carried out in accordance with clause (a) and verify compliance with those recommendations.

(2) The internal audit system must be designed in a manner that –

- 35 (a) ensures the independence and impartiality of the persons carrying out the internal audit function; and
- (b) allows persons carrying out the internal audit function to –
 - (i) express their findings and recommendations to the bodies responsible for the oversight and strategic management of the regulated person; and
 - 40 (ii) communicate directly with any officer or employee of the regulated person and have complete and unrestricted access to all information and records, as they consider necessary for the discharge of their functions, subject to confidentiality requirements.

(3) The Regulator may specify –

- (a) the procedures that must be followed by persons performing the internal audit function; and
- (b) requirements that certain findings that are made in exercise of the internal audit function must be notified to the body responsible for the oversight of the regulated person or to the Regulator.

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Outsourcing.

160. (1) In this section –

- (a) “outsourcing” means an arrangement between a regulated person and any other person by which the person performs a function or activity, whether directly or by sub-outsourcing, which would otherwise be performed by the regulated person itself; and
- (b) “service provider” means a person who performs a function or activity under an outsourcing arrangement with a regulated person.

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(2) This section will apply to the outsourcing of a function or activity to a service provider, whether or not the service provider is a financial service provider and irrespective of the service provider’s place of business.

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(3) If a regulated person proposes to outsource any function or activity to a service provider, the regulated person must –

- (a) obtain the prior permission of the Regulator if the function or activity being outsourced is a critical function or activity specified by the Regulator under sub-section (6)(a);
- (b) remain fully responsible for discharging all of its obligations under this Act and regulations made under it in respect of that function or activity; and
- (c) ensure that the outsourcing of that function or activity does not –
 - (i) impair the quality of its systems of governance or impede the ability of the Regulator to monitor the compliance of its obligations by the regulated person;
 - (ii) cause an excessive increase in the risks faced by the regulated person; or
 - (iii) undermine the continuous and satisfactory provision of financial services to the consumers of the regulated person.

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(4) While choosing a service provider for outsourcing any function or activity, a regulated person must ensure that –

- (a) a detailed review is performed of the potential service provider’s ability to deliver the required functions or activities satisfactorily;
- (b) there are no actual or potential conflicts of interest that may impair the service provider’s ability to deliver to the required standard;
- (c) the service provider applies equivalent provisions to those that the regulated person would have to apply in respect of the confidentiality of consumer data, if applicable;
- (d) the outsourcing arrangement is not in breach of any law; and
- (e) the service provider is required to disclose any developments that may have a material impact on its ability to carry out the outsourced function or activity.

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- (5) The Regulator will continue to have the power to supervise outsourced functions and activities and the service provider to whom a function or activity is outsourced must co-operate with the Regulator in connection with the outsourced function or activity.
- 5 (6) The Regulator must specify –
- (a) the particular functions or activities that are considered to be critical functions or activities in relation to a regulated activity and which must not be outsourced without obtaining the Regulator's prior permission;
 - 10 (b) the conditions under which outsourcing of any function or activity may be performed, including any particular undertakings that the service provider may be required to provide; and
 - (c) continuous disclosure requirements in relation to the outsourced functions or activities.

161. (1) The Regulator may specify restrictions on –

- 15 (a) the activities, including categories of financial services, permitted to be carried out by –
 - (i) regulated persons engaged in specified regulated activities; or
 - (ii) subsidiaries or other persons under the control of regulated persons engaged in specified regulated activities; and
- 20 (b) the creation of encumbrances on assets belonging to the regulated person or its consumers.

Restrictions on business and operations.

(2) The Regulator must specify –

- (a) the manner in which the provisions of this section apply to different categories of regulated persons; and
- 25 (b) the consequences of non-compliance with the regulations made under this section.

162. The Regulator may specify that certain classes of regulated activities are permitted to be carried out only if Corporation insurance has been obtained under Part VII.

Requirement to obtain Corporation insurance.

CHAPTER 35

AUDITORS AND ACTUARIES

30 163. (1) A regulated person must appoint an auditor, actuary or any other person performing a similar function, as may be specified by the Regulator, to exercise the powers and functions under section 164.

Appointment of auditors and actuaries.

(2) The Regulator must specify –

- 35 (a) the categories of financial services that are regulated activities for the purposes of this section;
- (b) requirements as to qualifications and experience to be satisfied by auditors and actuaries of regulated persons; and
- 40 (c) the powers, functions and responsibilities of auditors and actuaries acting for regulated persons, in addition to those specified in this Act.

(3) The regulations made under sub-section (2) may provide for –

- (a) the manner and time within which an auditor or actuary is to be appointed;
 - (b) a requirement for the Regulator to be informed of such appointment;
 - (c) provisions that enable the Regulator to make an appointment if no appointment has been made or information about such information has not been provided to the Regulator; and 5
 - (d) conditions relating to the term of office, remuneration, removal or resignation of an auditor or actuary.
- (4) An auditor or actuary appointed under this section must act in accordance with the regulations specified by the Regulator. 10

Powers and functions of auditors and actuaries.

164. (1) An auditor or actuary appointed under this Act to act for a regulated person –
- (a) will have the right to access the books and records of the regulated person at all times; and
 - (b) will be entitled to require such information and explanations from the regulated person or its officers, as it reasonably considers necessary for the performance of its duties as an auditor or actuary. 15
- (2) The Regulator may make regulations to specify that an auditor or actuary must communicate specified information or opinions to the Regulator on any matter that the Regulator reasonably believes to be relevant for the exercise of any of its functions. 20
- (3) The matters to be communicated to the Regulator under sub-section (2) may include matters relating to persons other than the concerned regulated person.
- (4) If the Regulator specifies that this section applies to any person other than auditors or actuaries it must also specify the manner and extent to which the section applies to them. 25

Disqualification.

165. (1) If it appears to the Regulator that an auditor or actuary appointed under this Act to act for a regulated person has failed to comply with the requirements imposed on it under this Act or regulations made under it, it may disqualify the person from acting as the auditor or actuary, as the case may be, for any regulated person or any particular category of regulated persons. 30
- (2) If the Regulator proposes to disqualify an auditor or actuary under this section it must give the person a show-cause notice after which if it makes a decision to disqualify the person it must issue a decision order.
- (3) The Regulator may cancel a decision notice imposing a disqualification imposed under this section if satisfied that the disqualified person will in future comply with the duty in question. 35
- (4) A person who has been issued a decision order under this section may appeal to the Tribunal.

Offence.

166. Any contravention of this Chapter is punishable as a Class C offence under this Act. 40

CHAPTER 36

PROVISIONS GOVERNING PARTICULAR TRANSACTIONS

Actions involving regulated persons.

167. (1) No person should carry out any of the following actions without complying with the provisions of this Act –

- (a) a merger, amalgamation or restructuring involving a regulated person;
 - (b) the transfer or acquisition of control of, or significant interest in, a regulated person;
 - (c) sale, disposal or acquisition of the whole, or substantially the whole, of the undertaking of a regulated person or a significant portion of its assets or liabilities; or
 - (d) voluntary winding up, dissolution or similar action involving a regulated person or discontinuation of its business in any other manner.
- (2) A person that proposes to take an action under sub-section (1) must make an application to the Regulator.
- (3) The assessment of the application by the Regulator must be done taking into account, among others, the following factors –
- (a) the interests of consumers of financial products or financial services provided by the regulated person and any other persons who may be affected by the action envisaged under sub-section (1);
 - (b) the suitability and financial soundness of the person who will carry out the regulated activity if the action envisaged under sub-section (1) is effected; and
 - (c) the likelihood of compliance with the provisions applicable to the regulated activity under this Act, if the action envisaged under sub-section (1) is effected.
- (4) The Regulator must specify –
- (a) the manner in which the provisions of this section apply to different categories of regulated persons;
 - (b) the scope of the terms “significant interest” and “significant portion of assets or liabilities” in respect of each regulated activity governed by this section; and
 - (c) the information required to be submitted by any person that seeks to carry out an action under sub-section (1).
- 30 168. (1) A regulated person must ensure that transactions with related persons are entered into on an arms-length basis and the terms of such transactions are no more favourable than the terms contained in, or likely to be contained in, corresponding transactions with persons other than related persons. Transactions with related persons.
- (2) The Regulator must specify –
- (a) the manner in which the provisions of this section apply to different categories of regulated persons;
 - (b) the categories of related person transactions that must be reported to the Regulator;
 - (c) any limits on the permissible value, frequency or proportion of related person transactions;
 - (d) the categories of related person transactions that are prohibited in relation to specified regulated activities; and
 - (e) the meaning of “relatives” for the purposes of sub-section 2(127)(c).
- (3) While making regulations under sub-section (2)(d), the Regulator must take into account –

- (a) the risks arising from the related person transaction to the safety and soundness of the regulated person;
- (b) the conflict of interest that may arise on account of the related person transaction; and
- (c) the manner in which the related party transaction may affect the ability of the regulated person to effectively discharge its obligations towards its consumers. 5

CHAPTER 37

FUNCTIONS AND POWERS OF THE REGULATOR

General functions of the Regulator.

- 169.** The Regulator must – 10
- (a) make regulations to carry out the purposes of this Part;
 - (b) issue guidance to financial service providers in respect of any matter referred to in this Part or the regulations made under it, whether or not –
 - (i) the Part expressly requires or enables the Regulator to make regulations on such matter; or 15
 - (ii) a formal application seeking guidance has been made to it;
 - (c) supervise financial service providers to ensure compliance with the provisions of this Part and the regulations made under it; and
 - (d) take appropriate enforcement action to deal with the violation of the provisions of this Part or the regulations made under it. 20

Conduct of stress tests.

- 170.** (1) In this section, “stress tests” means tests to assess the ability of regulated persons to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing.
- (2) The Regulator may specify – 25
- (a) the requirement that regulated persons must conduct stress tests; and
 - (b) quantitative tools and methods for the conduct of stress tests by regulated persons.
- (3) If the Regulator makes regulations under sub-section (2), it must provide for the categories of regulated persons covered by those regulations. 30

Orders issued in exercise of supervisory functions.

- 171.** (1) The Regulator may, in exercise of its supervisory functions, issue a show-cause notice, followed by a decision order to a regulated person if the Regulator concludes that the affairs of the regulated person are being conducted in a manner that contravenes, or is likely to contravene the requirements contained in section 158 or the regulations made under it. 35
- (2) The Regulator must specify –
- (a) the circumstances in which a decision order may be issued under sub-section (1); and
 - (b) the types of restrictions or requirements that may be imposed under the decision order, which must be appropriate for the purposes of addressing the deficiencies leading to their imposition. 40

- (3) The regulations made under sub-section (2)(b) may provide that decision orders issued under this section may impose –
- (a) restrictions on the manner in which the regulated person conducts its business; or
 - 5 (b) restrictions on the liabilities and financial obligations that may be undertaken by the regulated person.
- (4) The Regulator must –
- (a) review compliance by the regulated person with the decision order issued to it under sub-section (1);
 - 10 (b) review the effectiveness of the decision order in addressing the deficiencies which led to the imposition of the restrictions or requirements; and
 - (c) remove the restrictions or requirements when the regulated person has remedied the deficiencies, which led to their imposition, to the satisfaction of the Regulator.
- 15 172. (1) The Regulator may, under exceptional circumstances, issue a decision order to a regulated person setting additional capital resources requirements to be satisfied by the regulated person, if the Regulator finds that –
- Additional capital
resources
requirements.
- 20 (a) the risks undertaken by the regulated person deviate significantly from the basis on which the capital resources requirements under section 152 were determined by the Regulator;
 - (b) the systems of governance of the regulated person deviate significantly from the standards contained in sections 156 to 160 or the regulations made under those sections, where –
 - 25 (i) those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to; and
 - (ii) the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe; or
 - 30 (c) the regulated person is a Systemically Important Financial Institution and contributes disproportionately, as compared to other Systemically Important Financial Institutions, to the risk to the stability and resilience of the financial system.
- (2) The regulated person must make every effort to remedy the deficiencies that led to the imposition of the additional capital resources requirement under sub-section (1).
- 35 (3) The Regulator must –
- (a) periodically review the additional capital resources requirement imposed on a regulated person; and
 - 40 (b) remove the requirement when the regulated person has remedied the deficiencies which led to its imposition to the satisfaction of the Regulator.
- (4) The Regulator must specify the circumstances in which an additional capital resources requirement may be imposed and the manner in which it will be calculated.

- (5) In this section, "additional capital resources requirement" means a requirement to maintain additional capital resources over and above those required to be maintained as per the capital requirements contained in section 152(2)(b) or the regulations made under it.

Supervision of groups.

173. (1) The Regulator may specify the following requirements in cases where persons belonging to a group are engaged in carrying out more than one category of regulated activities – 5
- (a) group-wide requirements to supplement any of the requirements contained in Chapter 34; or
 - (b) group-wide supervisory review and reporting procedures and intervention measures to ensure compliance with the group-wide requirements specified under clause (a). 10
- (2) The Regulator must specify the manner in which the provisions of this section apply to groups consisting of persons engaged in carrying out different categories of regulated activities. 15
- (3) While making regulations under sub-section (1), the Regulator must take into account the risk exposures inherent in groups carrying on specified regulated activities.

Responsibility of Regulators to co-operate.

174. The Regulators must enter into arrangements to co-operate with each other in connection with the authorisation, regulation and supervision of – 20
- (a) financial service providers that are engaged in carrying out more than one financial service, and such financial services are regulated by different Regulators; and
 - (b) financial service providers belonging to groups where the members of the group are engaged in carrying out more than one financial service, and such financial services are regulated by different Regulators. 25

PART VI

CONTRACTS, TRADING AND MARKET ABUSE

CHAPTER 38

PRINCIPLES RELATING TO CERTAIN CONTRACTS

- 5 175. (1) The provisions of this Part will govern contracts of insurance or contracts regarding securities, as the case may be. Scope of this Part.
- (2) The provisions of sections 176 to 180 will govern only contracts of insurance.
176. (1) The policy-holder has a duty of utmost good faith towards the insurer in relation to a contract of insurance, including while entering into such a contract. Utmost good faith.
- 10 (2) The Regulator may specify the meaning and scope of utmost good faith in relation to specified contracts of insurance.
177. (1) Unless specified, insurable interest will not be required to constitute a valid insurance contract. Insurable interest.
- 15 (2) The Regulator may specify the types of contracts of insurance that may require insurable interest.
178. (1) No insurer may refuse to record an assignment of a contract of insurance made in accordance with regulations. Assignment of insurance policies.
- (2) The Regulator may make regulations to restrict assignment in relation to specified classes of contracts of insurance.
- 20 179. The Regulator may make regulations to protect interests of policy-holders in the event of lapse of contracts of life insurance. Lapse of contracts of life insurance.
180. (1) Where an insurer is liable under a contract of insurance in respect of an act of a third party, the insured must disclose to the insurer, at the time of making the claim, if it has received any amount from the third party towards indemnification of the losses. Subrogation.
- 25 (2) If the insured has not received any amount from the third party before making the claim but receives such amount after the insurer has fully and finally settled the insured, the insurer has a lien on such amount up to the sum so indemnified.
- 30 (3) Subject to any contract to the contrary, the insurer will have a right of action against the third party only after it has fully and finally indemnified the insured.
181. (1) Every individual owner of financial product or beneficiary of a financial service may, at any time, nominate any individual to whom such financial product or benefit of financial service must be transmitted in the event of death of such individual owner. Nomination.
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- (2) Where a financial product or benefits of a financial service are held jointly by more than one individual, the joint holders may together nominate any individual to whom all the rights in the financial product or benefits of the financial service will be transmitted to in the event of death of all the joint holders. 5
- (3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of a financial product or financial service, where a nomination made in the specified manner purports to confer on any individual the right to vest the financial product or financial service, the nominee will, on the death of the owner of the financial product or beneficiary of the financial service or, as the case may be, on the death of the joint holders, become entitled to all the rights in the financial product or financial service, of the owner of the financial product or beneficiary of the financial service, or as the case may be, of all the joint holders, in relation to such financial product or financial service, to the exclusion of all other persons, unless the nomination is varied or cancelled in the specified manner. 10 15
- (4) Where the nominee is a minor, it will be lawful for the owner of a financial product or beneficiary of a financial service making the nomination, to appoint any individual to become entitled to the financial product or benefit of the financial service, in the event of the death of the nominee during minority. 20
- (5) Nominations under this section must be made in the manner as may be specified.
- (6) If the nature of the financial product or financial service is such that it is only applicable to the owner or beneficiary and no rights subsist on the death of such owner or beneficiary, then the provisions of this section will not create any such right. 25

Enforceability of derivatives.

182. (1) Derivative contracts traded over an exchange and non-exchange traded derivative contracts between sophisticated counterparties are not void notwithstanding anything contained in section 30 of the Indian Contract Act, 1872 (9 of 1872). 30
- (2) Under this section, "sophisticated counterparties" means any person other than a retail consumer under this Act.

CHAPTER 39

INFRASTRUCTURE INSTITUTIONS

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Infrastructure Institution.

183. (1) Infrastructure Institutions include any person which act as – 40
- (a) exchange;
 - (b) depository;
 - (c) trade repository;
 - (d) central counterparty; or
 - (e) settlement system including a settlement system in a payment system.
- (2) The Central Government may include any other person under sub-section (1) by notification in the Official Gazette.

184. All Infrastructure Institutions are financial service providers and the provisions of this Act apply to Infrastructure Institutions in addition to any requirement provided in this Chapter. Additional requirements.
185. (1) An Infrastructure Institution must make bye-laws to govern – Requirement for Infrastructure Institutions to make bye-laws.
- 5 (a) the financial services provided by it;
- (b) the direct participants dealing with it, to the extent required for the proper functioning of the financial service provided; and
- (c) anything incidental to clauses (a) and (b).
- 10 (2) No condition may be placed on persons using the financial services provided by the Infrastructure Institution unless provided in the bye-laws of the Infrastructure Institution.
- (3) No bye-laws of the Infrastructure Institution will be applicable unless approved by the Regulator.
- 15 186. (1) If an Infrastructure Institution proposes to make or amend any bye-laws, it must make an application to the Regulator. Procedure for making bye-laws.
- (2) The application must contain a copy of the proposed bye-laws.
- (3) If the Regulator considers it appropriate, it may specify the Infrastructure Institution to publish the proposed bye-laws, invite comments on the bye-laws from the public and submit the comments received to the Regulator.
- 20 (4) The Regulator may reject an application under this section if any proposed bye-laws undermine the requirements contained in section 187(1).
- (5) The Regulator must decide the application under sub-section (1) in accordance with this Act.
- 25 187. (1) Whenever an Infrastructure Institution makes bye-laws it must ensure that the bye-laws – Principles governing bye-laws.
- (a) promote the objectives and take into consideration the principles as the Regulator as contained in sections 83, 84, 140, and 141;
- (b) provide non-discriminatory access to all persons using its financial services;
- 30 (c) promote the objective that the Council is required to pursue as contained in section 290;
- (d) minimise market abuse; and
- (e) foster transparency.
- (2) In this section –
- 35 (a) “non-discriminatory access” includes –
- (i) not creating differential obligations for similarly placed parties availing any financial services provided by the Infrastructure Institution; and
- (ii) not preventing similarly placed parties from availing any financial services provided by the Infrastructure Institution; and
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- (b) "transparency" means that adequate information about the functions and transactions carried out on the Infrastructure Institution are available to persons using the financial services provided by the Infrastructure Institution to make informed decisions about their transactions.
- (3) In relation to exchanges, "transparency", in addition to the provisions contained in sub-section (2)(b), includes the requirement that an exchange must freely provide information about the issuer, price, volume and liquidity of all securities traded. 5
- Requirement for governance and monitoring mechanisms.**
- 188.** (1) All Infrastructure Institutions must have adequate governance and monitoring mechanisms to identify and minimise market abuse. 10
- (2) The Regulator may make regulations requiring Infrastructure Institutions to take measures to meet the requirements of this section.
- Liability.**
- 189.** (1) An Infrastructure Institution and its officers and staff are not to be liable in damages for anything done or omitted in the discharge of regulatory functions of such Infrastructure Institution unless it is shown that the act or omission was in bad faith. 15
- (2) "Regulatory functions" in this section means the functions of the Infrastructure Institution so far as relating to, or to matters arising out of, the obligations to which the Infrastructure Institution is subject under, or by virtue of, this Act.
- Power of Regulator to give directions to an Infrastructure Institution.**
- 190.** (1) The Regulator may give directions to an Infrastructure Institution, if it appears to the Regulator that an Infrastructure Institution – 20
- (a) has failed, or is likely to fail, to satisfy the authorisation requirements; or
- (b) has failed to comply with any other obligation imposed on it by or under this Act.
- (2) If the Regulator proposes to give directions under this section, it must issue a show cause notice. 25
- (3) If the Regulator decides to give directions under this section, it must issue an decision order.
- (4) Directions under this section must be limited to taking remedial measures relevant to preventing the Infrastructure Institution from failing to provide financial services. 30
- Requirement of Infrastructure Institution to publish information.**
- 191.** (1) An Infrastructure Institution must publish information of its activities which –
- (a) protect the interests of persons availing financial services from the Infrastructure Institution; and
- (b) allow the Regulator and the Council to make informed decisions. 35
- (2) The Regulator may make regulations specifying –
- (a) the information which satisfies the conditions contained in sub-section (1);
- (b) the form and manner in which information has to be published; and
- (c) the frequency of the publication. 40

192. (1) While performing functions and exercising powers under this Chapter, the Regulator must ensure that appropriate balance is maintained between – Competition for Infrastructure Institution.
- (a) the requirements placed on the Infrastructure Institution under this Act; and
 - 5 (b) the costs of setting up new Infrastructure Institutions and the costs to persons using financial services provided by Infrastructure Institutions.
- (2) The Regulator must publish a report every five years –
- (a) reviewing its conduct in relation to its functioning and exercise of powers contained in sub-section (1); and
 - 10 (b) explaining the manner in which the balance contained in sub-section (1) has been achieved.

CHAPTER 40

CONTRACTUAL ISSUES PERTAINING TO INFRASTRUCTURE INSTITUTIONS

193. (1) When a transaction carried out using the services of an Infrastructure Institution attains finality, – Finality of transactions.
- 15 (a) such transactions must not be reversed; or
 - (b) no court, tribunal or authority in an insolvency, dissolution or winding up proceeding must reverse the transaction.
- (2) The Regulator may specify the conditions under which a transaction attains finality.
- 20 (3) The Regulator may specify different conditions for different transactions or different Infrastructure Institutions.
- (4) The provisions of this section applies notwithstanding any other provision of any other law for the time being in force.
- 25 (5) Sub-section (4) does not bar any person from making a claim for compensation of any loss arising out of any transaction under any other law, subject to section 189.

194. (1) This section applies if all the following conditions are met – Lien of an Infrastructure Institution.
- 30 (a) an Infrastructure Institution acts as a settlement system;
 - (b) a person uses the services provided by such Infrastructure Institution; and
 - (c) such person has deposited or placed in the possession of the Infrastructure Institution any asset or collateral for completion of any transactions.
- (2) The Infrastructure Institution will have lien over such asset or collateral until all transactions initiated or carried out by such person are completed.
- 35 (3) The Infrastructure Institution may use such asset or collateral to settle any claims arising out of any transaction carried out by the person using the services provided by the Infrastructure Institution.
- (4) The provisions of this section applies notwithstanding –
- 40 (a) any decision made in an insolvency, dissolution or winding up proceeding; or

(b) operation of any law for the time being in force.

Registration of transfer of financial product with depository.

195. (1) A depository must, on receipt of information, register the transfer of a security or other financial product in the name of the transferee.
- (2) Where a person opts to hold a security with a depository, the issuer must intimate such depository the details of allotment of the security and on receipt of such information the depository must enter in its records the name of the allottee as the beneficial owner of that security.
- (3) The Regulator may make regulations determining the form and content of information to be provided under this section.

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Options to receive security certificate or hold securities with depository.

196. (1) Every person subscribing to securities offered by an issuer must have the option either to receive the security certificates or hold securities with a depository unless the securities are issued by way of public offering.
- (2) Every person subscribing to financial products, other than securities, must have the option either to receive such financial products in physical form or in dematerialised form with a depository.

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Securities in depositories to be in fungible form.

197. (1) All securities or other financial products held by a depository must be dematerialised and must be in a fungible form.
- (2) Nothing contained in section 153 of the Companies Act, 1956 (1 of 1956) will apply to a depository in respect of securities held by it on behalf of beneficial owners.

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Rights of depositories and beneficial owners.

198. (1) Notwithstanding anything contained in any other law for the time being in force, a depository will be the registered owner for the purposes of effecting and recording transfer of beneficial ownership of securities or other financial products on behalf of a beneficial owner.
- (2) The beneficial owner will be entitled to all the rights and benefits and be subjected to all the liabilities in respect of the securities or other financial products held by a depository.
- (3) The depository as a registered owner will have no voting rights or any other rights in respect of securities held by it except to the extent contained in sub-section (1).

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Register of beneficial owners.

199. A depository must maintain a register and an index of beneficial owners of the security or other financial products in the manner provided in sections 150 to 152 of the Companies Act, 1956 (1 of 1956) to the extent specified.

Pledge or hypothecation of financial products held in a depository.

200. (1) A beneficial owner may create a pledge or hypothecation in respect of a security or other financial product owned by such beneficial owner, subject to any regulations.
- (2) The Regulator may specify a requirement of approval from the depository before creation of any pledge or hypothecation under sub-section (1).
- (3) Every beneficial owner must give intimation of such pledge or hypothecation to the depository and such depository must then make entries in its records accordingly.

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- (4) An entry in the records of a depository under sub-section (3) will be evidence of a pledge or hypothecation.
201. (1) A depository must furnish to the issuer or concerned financial service provider, information about the transfer of securities or other financial products in the name of beneficial owners at such intervals and in such manner as may be specified.
- (2) The issuer or financial service provider must make available to the depository copies of the relevant records in respect of securities or other financial products held by such depository as may be specified.
202. (1) If a beneficial owner seeks to opt out of a depository in respect of any security or other financial product, such beneficial owner must inform the depository accordingly.
- (2) The depository must on receipt of intimation under sub-section (1) make appropriate entries in its records and must inform the issuer or the concerned financial service provider.
- (3) The issuer or financial service provider must issue the certificate of security or other financial product to the beneficial owner or the transferee, as the case may be, within thirty days of the receipt of intimation from the depository.
- (4) The Regulator must make regulations regarding the mode and manner of intimation, fees and other incidental issues.
- (5) The duty on the issuer or financial service provider under sub-section (3) is subject to compliance with appropriate regulations under sub-section (4).
203. The Bankers' Books Evidence Act, 1891 (18 of 1891) applies in relation to a depository as if it were a bank as defined in section 2 of that Act.
204. (1) A depository must indemnify a beneficial owner for any loss caused to the beneficial owner due to the negligence of the depository or any direct participant of the depository.
- (2) Sub-section (1) is subject to any other law to the contrary.
- (3) Where the loss due to the negligence of any direct participant of the depository under sub-section (1) is indemnified by the depository, the depository has the right to recover the same from such direct participant.
205. (1) An Infrastructure Institution acting as a settlement system may lend securities to persons that use such services.
- (2) The Regulator may make regulations governing the lending of securities by Infrastructure Institutions.

Furnishing of information and records by depository and issuer.

Option to opt out in respect of any security.

The Bankers' Books Evidence Act, 1891 to apply to depositories.

Depositories to indemnify loss in certain cases.

Securities lending.

CHAPTER 41

ISSUE AND LISTING OF SECURITIES

206. (1) A public offering of securities must be pursuant to filing of a statement providing adequate information about the issuer and the security being issued, with the Regulator.

Public offering.

- (2) The Regulator may specify –
- (a) what constitutes public offering;
 - (b) what constitutes adequate information; and
 - (c) the form and content of the information to be provided.
- (3) The Regulator may impose different conditions on public offering, for – 5
- (a) different classes of securities; and
 - (b) different classes of issuers.
- (4) The Regulator may make regulations exempting specified issuers from complying with the provisions of this section.
- Violations. 207. If any person makes a public offering in violation of this Act, then such person is liable to pay a penalty as may be specified. 10
- Obligation in public offering. 208. (1) Every issuer making a public offering has an obligation to –
- (a) provide adequate information, before a public offering is made, about the issuer and the security to allow persons to make adequately informed decision to subscribe to such public offering; 15
 - (b) provide adequate information, on a regular basis, about the issuer and the securities to allow persons to make adequately informed decisions about dealing in such securities; and
 - (c) have in place systems of governance and processes to ensure that the functions of the issuer do not discriminate between owners of a class of securities of the issuer. 20
- (2) If the public offering is made by a person other than the issuer, then the person must provide information which is relevant for a potential subscriber of the issue to make an informed decision.
- (3) The Regulator must make regulations to enforce the provisions of this section including – 25
- (a) the information that must be provided under this section;
 - (b) the form, manner and frequency with which such information must be provided; and
 - (c) the systems of governance and processes the issuer must undertake. 30
- Listing of securities on an exchange. 209. (1) Any security with respect to which a public offering has been made must be listed on an exchange.
- (2) If any class of securities is listed on an exchange, further issue of the same class of securities of the same issuer must be listed.
- Application for listing of securities on an exchange. 210. (1) Any person seeking to list any security on an exchange must make an application to such exchange. 35
- (2) No such application to an exchange may be entertained unless it has been made –
- (a) with the consent of the issuer of the securities concerned; and

(b) in the form and manner provided by the bye-laws of the exchange.

(3) The exchange must inform the applicant of its decision on an application for listing within thirty days from the date on which the complete application is received.

5 (4) If the exchange rejects the application for listing it must give an decision order.

(5) A person aggrieved by the order of the exchange contained in (4) may appeal to the Tribunal.

211. (1) An exchange must make bye-laws in relation to –

Duties of an exchange.

10 (a) disclosure by the issuer of material information regarding the issuer or the security listed on the exchange within a definite time;

(b) the form and manner of application for listing; and

(c) the conditions for approval for listing.

(2) The exchange must monitor the compliance of the issuer with its bye-laws.

15 (3) In addition to imposition of any penalty for violation of any bye-laws by the issuer, the exchange must inform the Regulator of any violation of the bye-laws by the issuer.

212. (1) Securities listed may be de-listed if any of the following conditions are met –

De-listing.

(a) the issuer of the security makes an application for de-listing; or

20 (b) the security does not have enough liquidity and may be used for market abuse.

(2) In deciding an application under clause (1)(a), the exchange must consider the effect the de-listing will have on all persons owning the securities.

(3) The Regulator must make regulations governing the de-listing of securities.

25 (4) The Regulator and the exchange must ensure that de-listing process protects the interests of the persons who have purchased securities prior to such de-listing.

(5) An exchange must de-list securities, if so directed by the Regulator, in accordance with regulations.

30 (6) If the Regulator proposes to make an order for de-listing it must issue a show cause notice to the issuer of the securities.

(7) If the Regulator decides to make an order for de-listing it must issue an decision order to the issuer of the securities.

(8) In case an exchange de-lists a security other than on a direction by the Regulator or application of the issuer, it must make a reasoned order.

35 (9) A person aggrieved by the order of the exchange contained in sub-section (8) may appeal to the Tribunal.

213. (1) Owners of securities listed on an exchange must be provided with the opportunity to sell their securities at a fair price in the event of an actual or potential change in the control of the issuer.

Takeover.

- (2) The regulator must make regulations to –
- (a) determine the criteria of change in control;
 - (b) ensure all owners of listed securities have adequate information to make informed decisions;
 - (c) the process for determining the fair price; and
 - (d) prevent any action which may prevent the determination of the fair price.

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(3) The Regulator –

- (a) must, in consultation with the Corporation, specify the conditions under which specified transactions may be exempted from compliance with regulations under sub-section (2) for the purpose of carrying out transactions under Part VII; and
- (b) may, in consultation with the Corporation, exempt a transaction from compliance with regulations under sub-section (2), by a reasoned order, for the purpose of carrying out transactions under Part VII.

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Buy Back.

214. (1) The issuer must ensure that any buy back of securities by the issuer is carried out in a manner which –

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- (a) does not discriminate between owners of the securities;
- (b) provides a fair value to persons from whom the securities are bought back; and
- (c) is equitable to those who choose to sell their securities.

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(2) The Regulator must make regulations governing the buy back of securities by the issuer.

(3) The regulations under sub-section (2) must specify:

- (a) conditions of buy back;
- (b) procedure of buy back;
- (c) general obligations of issuer; and
- (d) penalties for violation.

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CHAPTER 42

MARKET ABUSE

Market abuse.

215. (1) A person is prohibited from committing market abuse.

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(2) A person commits market abuse if the conduct of such person is intended to interfere with free and fair operation of the securities market by, hampering the ability of persons to make informed decisions in relation to dealing in securities, and is carried out to make a financial gain and includes criminal market abuse.

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(3) Criminal market abuse consists of –

- (a) abuse of information as described in section 216;
- (b) insider trading as described in section 217; or
- (c) securities market abuse as described in section 218.

216. (1) A person commits abuse of information, if that person, for the purpose of making a financial gain, – Abuse of information.
- (a) fails to disclose material information about a security when there is a legal obligation to disclose such information; or
 - 5 (b) publishes information that the person knows is false, misleading, deceptive or will result in misrepresentation.
- (2) In this section, “publishes” include dissemination of information in any form which may be reasonably used by any person.
217. A person commits insider trading if that person, while in possession of unpublished price sensitive information, in breach of a fiduciary duty or other relationship of trust or confidence, for the purpose of making a financial gain – Insider trading.
- 10 (a) deals, directly or indirectly, in securities; or
 - (b) discloses, actively or otherwise, unpublished price sensitive information to any other person likely to engage in insider trading.
218. (1) A person commits securities market abuse if such person, with the intention of making a financial gain, attempts to achieve or succeeds in achieving, results contained in sub-section (2), by – Securities market abuse.
- 15 (a) dealing in securities, directly or indirectly; or
 - 20 (b) using or employing fictitious, manipulative, deceptive or artificial devices or any other form of deception, scheme, artifice or contrivance.
- (2) Results intended by securities market abuse may be any of the following –
- 25 (a) artificially creating, maintaining or affecting the price, liquidity, demand, supply, trading or market for securities; or
 - (b) giving false or misleading impression about the price, liquidity, demand, supply, trading or market for securities.
- (3) In this section, “conduct” includes any act, expression, omission or concealment, whether committed in a deceitful manner or not, and whether or not resulting in any wrongful gain or avoidance of loss, by –
- 30 (a) any person;
 - (b) any other person with connivance of such person; or
 - (c) by agent of such person.
219. (1) The Regulator may make regulations specifying conduct which amounts to market abuse. Duties of the Regulator.
- (2) The regulations may require persons transacting in securities –
- 35 (a) to refrain from taking specified actions; or
 - (b) to report transactions in securities.
- (3) The Regulator may make different regulations for different securities or different classes of persons.
- (4) The Regulator may exempt specified securities or specified classes of persons.

- (5) The Regulator may take enforcement actions, as applicable, against any person who commits, attempts to commit, or abets market abuse.
- (6) If the Regulator proposes to take any enforcement action against a person under this section it must give the person a show cause notice.
- (7) If the Regulator decides to take any enforcement action against a person under this section it must give the person an decision order. 5
- (8) Any enforcement action by the Regulator does not bar the Regulator from prosecuting such person for criminal market abuse, but any fine required to be paid as a result of a conviction for criminal market abuse may be set off against any amount paid for an enforcement action for the same cause of action. 10

Punishment for criminal market abuse.

- 220. (1) A person who commits or abets criminal market abuse, is punishable with Class A offence under this Act.
- (2) A person who attempts to engage in market abuse, is punishable with Class C offence under this Act.

PART VII

RESOLUTION OF FINANCIAL SERVICE PROVIDERS

CHAPTER 43

OBJECTIVES AND FUNCTIONING OF THE CORPORATION

5 221. The Corporation will be guided by the following objectives in carrying out its functions under this Part – Objectives.

(a) to protect and enhance the stability and resilience of the financial system;

(b) to enhance financial market efficiency through the efficient pricing and allocation of risk;

10 (c) to protect consumers of covered obligations up to a reasonable limit; and

(d) to protect public funds.

222. The role of the Corporation is to carry out the resolution of covered service providers in accordance with its objectives and the provisions of this Part. Role of the Corporation.

15 223. (1) The Corporation Board may provide an opinion to the Corporation on any matter relating to resolution as it finds relevant. Functions of the Corporation Board.

(2) The Corporation Board must disseminate information to the public relating to its functions in a transparent and accountable manner.

20 224. (1) The Corporation must ensure that the persons appointed as officers and employees have knowledge and experience in the regulation, supervision or resolution of financial service providers, including of Systemically Important Financial Institutions, bankruptcy and liquidation, or have knowledge of finance, economics, accountancy and law. Officers and employees of the Corporation.

25 (2) Each person appointed as an officer or employee will, before entering into any duties with the Corporation, take an oath of fidelity and secrecy in the form provided by bye-laws.

(3) The officers and employees of the Corporation may include such examiners as are necessary to carry out the functions under section 225.

CHAPTER 44

REGULAR AND SPECIAL EVALUATIONS

30 225. (1) An examiner must conduct such regular and special evaluations, in accordance with the provisions of this Chapter, as may be necessary to – Functions of examiners.

(a) provide by way of a rating, or any other means, an assessment of the safety and soundness of the covered service provider, including its financial condition;

35 (b) initiate any necessary contingency planning for the resolution of a covered service provider;

(c) enable the Corporation to make a decision order regarding whether a covered service provider should be placed in the receivership of the Corporation; and

(d) pay compensation relating to, and apply for the winding up of, a covered service provider. 5

(2) Every examiner must submit reports to the Corporation at such frequency and in such form and manner as may be specified.

Regular evaluations.

226. (1) An examiner will have the power, on behalf of the Corporation, to conduct the regular evaluation of –

(a) a financial service provider that applies to the Corporation to become a covered service provider; and 10

(b) a covered service provider, whenever the Corporation Board makes a decision order that an evaluation of such covered service provider is necessary.

(2) An examiner must conduct the regular evaluation under sub-section (1) in such form, manner and frequency as may be specified. 15

Special evaluations.

227. (1) An examiner will have the power, on behalf of the Corporation, to conduct a special evaluation of any covered service provider if the Corporation makes a decision order that –

(a) a covered service provider is at a risk other than “low risk to viability” under the framework for prompt corrective action under Chapter 45; or 20

(b) the special evaluation is necessary for the Corporation to exercise its authority for the resolution of a covered service provider.

(2) Before conducting a special evaluation, the Corporation must review the resolution plan submitted by the covered service provider.

(3) Where a special evaluation is carried out, the Corporation may – 25

(a) bear the costs; or

(b) charge the costs to the covered service provider in respect of which they were incurred.

(4) If the covered service provider is unable, or refuses, to pay the costs under sub-section (3)(b), the Corporation may recover such costs from the covered service provider as a debt due and payable to the Corporation. 30

Power to call for information.

228. (1) The Corporation, and any examiner appointed and acting on behalf of the Corporation, for the purposes of any actions undertaken under sections 225, 226, and 227 will have the power to access records of a covered service provider, whether in the course of conducting a regular or special evaluation, regarding the affairs of the covered service provider, or a person belonging to the same group, or its related person. 35

(2) The examiner must, without delay, inform the Corporation, in the specified form and manner, if, at any time, there comes to the attention of the examiner any change in the circumstances of the covered service provider that might have material consequences on the position of the Corporation. 40

Summoning witnesses and calling for information.

229. (1) For the purposes of this section, “agency” –

(a) means the Corporation, the Regulator, or the Tribunal, as the case may be; and

(b) includes any designated representative of a body under clause (a), including examiners.

5 (2) An agency conducting or carrying out any proceedings, evaluation, investigation, assessment, consideration or determination under this Part, may, by an order in writing, do any of the following –

(a) call for such information or material from a covered service provider, or its related persons, as the agency determines necessary; or

10 (b) summon such covered service provider, or its related persons, to depose before the agency as it determines necessary.

(3) The information or material received under this section must be disseminated to the public only to the extent required under the Right to Information Act, 2005 (22 of 2005).

15 (4) An agency may apply to the Tribunal to enforce an order made under subsection (2), and the Tribunal will have the power to require compliance with such order.

20 (5) Where an agency conducts or carries out a proceeding, evaluation, investigation, assessment, consideration or determination under this Part at the instance of a covered service provider –

(a) the agency may bear such reasonable expenses and fees as it determines appropriate; or

(b) require such expenses and fees to be paid by the covered service provider, or recover such expenses and fees from its assets.

25 (6) The recipient of a request under sub-section (2) is bound to –

(a) produce the information or material, if available with it, to the agency in a timely manner; or

(b) attend the proceedings at a time and location as specified by the agency.

30 230. (1) While undertaking an enforcement action and imposing a monetary penalty under sections 225, 226, and 227 against a covered service provider, the Corporation may take into consideration the following factors –

Enforcement action
under this Chapter.

(a) the number of days that the covered service provider fails to permit an examiner to conduct a regular or special evaluation; or

35 (b) the number of days that the covered service provider fails to provide any information required to be disclosed in the course of the regular or special evaluation.

(2) While undertaking an enforcement action and imposing a monetary penalty under section 227(3), the Corporation may take into consideration the following factors –

40 (a) the number of days it fails to pay the costs; or

(b) the number of days it fails to repay the cost due as debt to the Corporation.

CHAPTER 45

PROMPT CORRECTIVE ACTION

Framework for
prompt corrective
action.

231. (1) The Corporation and the Regulator must make joint regulations to establish a framework for prompt corrective action for all covered service providers.
- (2) The Corporation and the Regulator, in establishing a framework for prompt corrective action, must take into account the following factors –
- (a) the ability of a covered service provider to access additional capital;
 - (b) the ability of a covered service provider to promptly address supervisory concerns that may arise from time to time;
 - (c) the likelihood of the viability of the covered service provider deteriorating further if problems are not addressed within reasonable time; and
 - (d) the proportionality of any measures identified and specified by the framework to the risk to the viability of the covered service provider.
- (3) The framework for prompt corrective action must seek to –
- (a) identify the risks to the viability of a covered service provider at an early stage;
 - (b) identify the remedial measures that may be taken by the Corporation, the Regulator, and any other public authority, in a manner that is timely and proactive; and
 - (c) identify the remedial measures that must be taken by covered service providers to reduce the probability of failure, and ensure that the measures are taken in a manner that is timely and proactive.

Risk assessment
measure.

232. (1) "Risk assessment measure" means the risk assessment measures specified by the Regulator to assess the risk to viability of a financial service provider and includes a risk-based capital requirement.
- (2) The Regulator may make regulations to provide for the imposition or withdrawal of a risk assessment measure.
- (3) The Regulator must make regulations to provide, for each risk assessment measure, the levels at which a covered service provider has a low risk to viability, moderate risk to viability, material risk to viability, imminent risk to viability and critical risk to viability.
- (4) The Regulator must on a regular and periodic basis, review the risk assessment measures specified under sub-section (2) to determine whether the risk assessment measures are sufficient to –
- (a) facilitate prompt corrective action; and
 - (b) prevent or minimise loss to the Resolution Fund.
- (5) While determining risk assessment measures, the Regulator must take into account standard business cycle conditions.
- (6) Regulations under this section must be issued only after consultation with the Corporation.

Low risk to
viability.

233. (1) There is "low risk to viability" of a covered service provider if the Regulator makes a decision order that the covered service provider –

- (a) significantly exceeds the required minimum level for each relevant risk assessment measure; and
- (b) is resilient to most normal adverse business and economic conditions.
- (2) Consequent to the decision order that there is low risk to viability of a covered service provider, the actions to be taken by the Corporation and the Regulator are provided in the Fourth Schedule.
234. (1) There is "moderate risk to viability" of a covered service provider if the Regulator makes a decision order that the covered service provider –
- Moderate risk to viability.
- (a) meets the required minimum level for each relevant risk assessment measure;
- (b) is vulnerable to normal adverse business and economic conditions in a manner that could cause the covered service provider to be at material risk to viability if its concerns are not promptly addressed; and
- (c) may recover if prompt corrective action is undertaken.
- (2) Consequent to the decision order that there is moderate risk to viability of a covered service provider, the actions to be taken by the Corporation and the Regulator are provided in the Fourth Schedule.
235. (1) There is "material risk to viability" of a covered service provider if the Regulator makes a decision order that the covered service provider –
- Material risk to viability.
- (a) fails to meet the required minimum level for any relevant risk assessment measure; and
- (b) may recover if prompt corrective action is undertaken.
- (2) Consequent to the decision order that there is material risk to viability of a covered service provider, the actions to be taken by the Corporation and the Regulator are provided in the Fourth Schedule.
236. (1) There is "imminent risk to viability" of a covered service provider if the Regulator makes a decision order that the covered service provider –
- Imminent risk to viability.
- (a) is significantly below the required minimum level for any relevant risk assessment measure; and
- (b) may recover if prompt corrective action is undertaken.
- (2) Consequent to the decision order that there is imminent risk to viability of a covered service provider, the actions to be taken by the Corporation and the Regulator are provided in the Fourth Schedule.
237. (1) There is "critical risk to viability" of a covered service provider if the Regulator makes a decision order that the covered service provider –
- Critical risk to viability.
- (a) is significantly below the required minimum level for any relevant risk assessment measure; and
- (b) will not recover even if prompt corrective action is undertaken.
- (2) Consequent to the decision order that there is critical risk to viability of a covered service provider, the actions to be taken by the Corporation and the Regulator are provided in the Fourth Schedule.

Capital distribution
and executive
remuneration.

238. (1) The Regulator may, by decision order, provide for the limits within which a covered service provider may make capital distribution or executive remuneration if the Regulator makes a decision order that, after doing so, the covered service provider is likely to be at greater risk to viability than it is before making such capital distribution or executive remuneration. 5
- (2) No covered service provider will make any capital distributions while it remains in default with regard to the payment of any assessment due to the Corporation.
- (3) This section will not apply if –
- (a) there is a dispute between the covered service provider and the Corporation over the amount of such assessment; and 10
 - (b) if, pending final determination of the dispute, the covered service provider deposits with the Corporation a security for the disputed amount as the Corporation determines to be satisfactory.

Restoration plan.

239. (1) Every covered service provider must prepare a restoration plan and get it approved from the Regulator as soon as the Regulator makes a decision order that the covered service provider has moderate risk to viability. 15
- (2) The restoration plan must contain, in the event of specified circumstances affecting the viability of a covered service provider, the measures to be taken – 20
- (a) to restore the covered service provider to low risk to viability; and
 - (b) to continue the carrying on of the whole or part of the business of the covered service provider by itself, or by any other person.
- (3) The Regulator must make regulations to provide for –
- (a) the contents of the restoration plan other than what is contained in subsection (2); 25
 - (b) the manner by which a covered service provider may update its restoration plan; and
 - (c) the manner by which a covered service provider may get its restoration plan approved. 30
- (4) If the Regulator determines that a restoration plan fails to make satisfactory provision in relation to the matters required, the Regulator must take steps as it considers appropriate.
- (5) The steps that the Regulator may take include requiring the restoration plan to be revised. 35
- (6) The Regulator must submit a copy of every restoration plan approved by the Regulator to the Corporation, as soon as may be practicable after the approval is granted.
- (7) Regulations for restoration plans must have regard to the relevant international standards, if any. 40
- (8) Regulations under this section must be issued only after consultation with the Corporation.

240. (1) A covered service provider must prepare a resolution plan and get it approved from the Corporation as soon as the Regulator makes a decision order that the covered service provider has material risk to viability. Resolution plan.
- (2) The Corporation must make regulations to provide for the form, manner and frequency by which a covered service provider must prepare and update a resolution plan.
- (3) A covered service provider, in preparing or updating the resolution plan, must –
- (a) minimise the potential loss from resolution;
 - (b) ensure that the resolution plan can be implemented without recourse to public funds;
 - (c) minimise the impact on financial stability;
 - (d) minimise detrimental effects on consumers; and
 - (e) allow decisions and actions to be taken and executed in a short span of time.
- (4) The resolution plan must identify –
- (a) the core business activities of the covered service provider;
 - (b) the parts of the business of the covered service provider which must be continued, either by that covered service provider or otherwise, or be allowed to fail; and
 - (c) the manner of such continuation or failure.
- (5) The resolution plan, with respect to the economic functions that may be critical to the functioning of the financial system, must –
- (a) identify functions that need to continue because the availability of those functions is critical to the financial system, or would need to be wound up in an orderly fashion so as to avoid financial instability;
 - (b) identify and consider ways of removing barriers that would prevent critical economic functions being resolved successfully; and
 - (c) isolate and identify critical economic functions from non-critical activities which could be allowed to fail.
- (6) The resolution plan must provide for one or more of the measures identified to be taken by the covered service provider, the Corporation, the Regulator, and any other public authority, as the case may be.
- (7) The Corporation must submit a copy of the resolution plan, including the modified resolution plan, as and when it is prepared or updated, to the Regulator, as soon as may be practicable after it is finalised.
- (8) Regulations for resolution plans must have regard to the relevant international standards, if any.

CHAPTER 46

POWERS AND DUTIES AS RECEIVER

241. The Regulator has the power to appoint the Corporation as receiver of a covered service provider in accordance with the provisions of this Part. Power of Regulator to appoint Corporation as receiver.

Appointment as receiver.

242. (1) The Corporation may apply to the Regulator, in the form and manner prescribed, for appointment as receiver of a covered service provider only if at least one of the following conditions is met –
- (a) there is any concealment of the books, records or assets of the covered service provider, or any refusal to submit the covered service provider's books, records or affairs for evaluation or inspection to any examiner; 5
 - (b) the Corporation terminates or cancels all Corporation insurance that the covered service provider may have acquired in accordance with Chapter 50;
 - (c) the covered service provider materially fails to submit and implement a restoration plan within the time specified under section 239; or 10
 - (d) there is "imminent risk to viability" of a covered service provider under the framework for prompt corrective action contained in Chapter 45. 15
- (2) Upon receiving an application from the Corporation under sub-section (1), the Regulator, by order, must appoint the Corporation as receiver of the covered service provider. 15
- (3) Upon appointment as receiver of the covered service provider, the Corporation may, by decision order, direct –
- (a) the vesting of shares and subordinate debt of the covered service provider in the Corporation; or 20
 - (b) the incorporation of a bridge service provider in accordance with the provisions contained in Chapter 48. 25
- (4) The Corporation will, upon appointment as receiver of the covered service provider, succeed to all rights, titles, powers, and privileges of the covered service provider, and of any shareholder, member, consumer, officer, or director of such covered service provider with respect to the covered service provider and the assets of the covered service provider. 25
253. (1) 25
- (2) 29
- Resolution order.
243. (1) Upon appointment as receiver of a covered service provider, the Corporation may, by a resolution order, resolve the covered service provider, in one, or a combination, of the following modes of resolution – 30
254. (1) 30
- (a) purchase in accordance with the provisions contained in Chapter 47; 35
 - (b) the incorporation of bridge service provider in accordance with the provisions contained in Chapter 48; or
 - (c) temporary public ownership in accordance with the provisions contained in Chapter 49. 35
- (2) The resolution order may provide for an exemption from compliance with certain regulations, in accordance with section 213(3). 40
- (3) The Corporation may exercise any of its powers as a receiver contained in this Chapter under the resolution order. 40
- (4) The Corporation may modify the resolution order any time before any actions are taken in connection with it, as may be necessary. 40
- (5) The resolution order must provide for the actions that will be taken by the Corporation with regard to the covered service provider, including any process for compensation under Chapter 51. 40

Confidentiality and disclosures.

Resolution order.

Provisions of Competition Act not applicable.

Provisions of Competition Act not applicable.

(6) The Corporation must provide a copy of the resolution order to the covered service provider and the Regulator as soon as may be practicable after the resolution order is issued.

244. Upon appointment as receiver of a covered service provider, the Corporation may, in accordance with any regulations made under this Part, take the following actions –
- 5
- 234
- (a) take possession and control of the assets and undertaking of the covered service provider;
- (b) take over the management of the covered service provider;
- 10 (c) require any person related to the covered service provider to account for and deliver to the Corporation the possession and control of the assets of the covered service provider;
- (d) sell or otherwise dispose of the assets and undertaking in such other manner and on such terms and conditions as the Corporation determines to be appropriate;
- 15 (e) arrange for the assumption by any person of all or part of the liabilities of the covered service provider;
- (f) conduct the business of the covered service provider to the extent that it deems necessary or beneficial to the receivership;
- 20 235 (g) sue, defend, compromise and settle, in the name of the covered service provider, any claim made by or against it;
- (h) execute documents under the seal of the covered service provider;
- (i) do all such other things as may be necessary or incidental to the exercise of the Corporation's rights, powers, privileges and immunities as receiver;
- 25 or
- (j) recover from the assets of the covered service provider all costs incurred in the receivership in priority over all other claims.
245. The Corporation may make regulations to provide for the performance of any function by any member or shareholder, director, partner, trustee or officer of any covered service provider for which the Corporation has been appointed receiver.
- 30
- 236
- (a) is significantly below the required minimum level for any relevant risk
246. (1) Upon the Corporation being appointed as receiver of a covered service provider, there will be a stay on other proceedings involving the covered service provider to the extent provided for in this section.
- (2) No action or other civil proceedings including any execution or enforcement proceedings may be commenced or continued against the covered service provider or in respect of its assets or liabilities.
- 35
- 237
- (3) No action or other civil proceedings may be commenced or continued against any third party for the recovery of money, or for the enforcement of any security including any guarantee provided for the benefit of any covered service provider in respect of any liabilities of the covered service provider.
- 40
- assessment measure, and
247. Nothing contained in the Indian Stamp Act, 1899 (2 of 1899) will affect the power of the Corporation to recommend that any document relating to a transfer of assets or liabilities of a covered service provider under this Part will not attract stamp duty, and such recommendation will ordinarily be followed by the Central Government.
- 45
- Power to manage covered service provider.
- Functions of the officers, directors and shareholders of a covered service provider.
- Stay of proceedings.
- Transfer not covered under Indian Stamp Act, 1899.

No termination or amendment of agreement.

248. No person may terminate or amend any agreement with a covered service provider or claim an accelerated payment by reason only of –
- (a) the covered service provider being placed in receivership; or
 - (b) the agreement being assigned to or assumed by the bridge service provider.

Agreements suspended.

249. Where an order appointing the Corporation as receiver is made under section 242, any provision in any agreement contrary to the provisions in that section is void. 5

CHAPTER 47

RESOLUTION BY PURCHASE.

Process for purchase.

250. (1) The Corporation must estimate the net worth of a covered service provider under resolution using industry accepted best practices of valuation, as specified. 10
- (2) Any estimation of the net worth of a covered service provider under resolution made by the Corporation under this section is confidential, and must not be disclosed to any person, including any potential purchaser.
- (3) The Corporation must prepare and issue a bid package, which must contain all the initial information which a potential purchaser needs to be provided with before placing a bid. 15
- (4) The mode and manner of issuance of a bid package will be as specified.
- (5) Potential purchasers may submit an intention to bid to the Corporation in the manner and form, and within such time, as may be specified.
- (6) Based on the intentions to bid, the Corporation may approve or reject potential purchasers, in a manner as specified. 20
- (7) The Corporation must permit every approved potential purchaser to conduct due diligence of the covered service provider under resolution.
- (8) The Corporation must provide an opportunity for negotiations between the potential purchaser and the covered service provider before the submission of final bid. 25
- (9) The approved potential purchasers must submit a final bid after conducting the due diligence in such manner and form, and within such time, as may be specified.
- (10) Within such time-period after all approved potential purchasers submit their final bids, as may be specified in the bid package, the Corporation must inform one or more identified purchasers, in a manner specified. 30
- (11) When carrying out the process under this section, the Corporation must take into consideration –
- (a) the composition of assets and liabilities of the covered service provider under resolution; 35
 - (b) the competitive and economic conditions prevalent in the financial system; and
 - (c) the need for expeditious resolution.

(12) When carrying out the process under this section, the Corporation must seek to –

- (a) maximise the number of potential purchasers;
- (b) explore multiple transaction structures;
- (c) give accurate and ample information to potential purchasers;
- (d) conduct thorough due diligence of potential purchasers;
- (e) minimise disruption to consumers of the covered service provider under resolution; and
- (f) minimise disruption to financial services provided by the covered service provider under resolution.

(13) In this section –

- (a) “bid package” means the set of documents necessary to invite bids to purchase the underlying assets or liabilities of a covered service provider under resolution;
- (b) “intention to bid” means a communication, in the form and manner specified, submitted by a potential purchaser to the Corporation, in response to a bid package, indicating an intention to bid for a covered service provider under resolution; and
- (c) “potential purchaser” means a person who has submitted an intention to bid.

251. The resolution order issued under section 243 for resolving a covered service provider by purchase may provide for all or any of the following –

Resolution order:
Purchase.

- (a) the identification of one or more purchasers;
- (b) the merger of the covered service provider under resolution with one or more of the purchasers; and
- (c) the transfer of the assets, liabilities and qualified financial contracts of the covered service provider under resolution to one or more of the purchasers.

252. (1) Where a resolution order directs the transfer of assets or liabilities of a covered service provider under resolution, which includes any qualified financial contracts, the Corporation must do either of the following –

Transfer of assets,
liabilities and
qualified financial
contracts.

- (a) transfer all the assets, liabilities and qualified financial contracts to a purchaser; or
- (b) transfer some of the assets, liabilities and qualified financial contracts to one or more purchasers.

(2) The Corporation must inform all persons who are parties to qualified financial contracts under transfer under this section, if any, within twenty-four hours of the transfer.

(3) A person who is a party to a qualified financial contract under transfer under this section cannot exercise any right under such contract by virtue of any provision in such contract, solely by reason of or incidental to the issuance of a resolution order against the covered service provider.

- (4) A resolution order under sub-section (1) may direct the transfer of assets or liabilities of a covered service provider under resolution, which includes any qualified financial contracts, to a foreign financial service provider only if the contractual rights of parties to such qualified financial contracts, are enforceable substantially to the same extent as permitted under this section. 5
- (5) In this section –
- (a) “foreign financial service provider” means a financial service provider which is not an Indian financial service provider and any branch or agency of such financial service provider;
 - (b) “qualified financial contract” means any financial contract as may be specified by the Corporation; and 10
 - (c) “transfer of qualified financial contracts” includes the transfer to a purchaser of all of the following –
 - (i) all qualified financial contracts between any person and the covered service provider under resolution; 15
 - (ii) all claims of the person against the covered service provider under resolution under such contract, other than any claim which, under the terms of the contract, is subordinated to the claims of general unsecured creditors of the covered service provider under resolution; 20
 - (iii) all claims of the covered service provider under resolution against the person under such contract; and
 - (iv) all property securing or any other credit enhancement for such contract or any claim under such contract.
- (6) For the purpose of this section, parties to qualified financial contracts do not include the covered service provider under resolution. 25

Confidentiality and disclosure.

253. (1) Any bid package provided under section 250 is confidential, and may not be disclosed to any person other than those identified by the Corporation, until the purchase by a covered service provider is concluded.
- (2) The Corporation must, after the purchase is concluded, publish the relevant details about the transaction to the public in a transparent and accountable manner. 30

Provisions of Competition Act not applicable.

254. (1) The provisions of section 43A of the Competition Act will not apply to any party to the purchase of the assets and liabilities of a covered service provider under resolution by a purchaser under this Chapter. 35
- (2) In this section, “party” includes –
- (a) the Corporation;
 - (b) the Regulator;
 - (c) the covered service provider under resolution; or
 - (d) the purchaser. 40

CHAPTER 48

RESOLUTION BY BRIDGE SERVICE PROVIDER

Establishment of bridge service provider.

255. (1) The Corporation may establish one or more wholly owned subsidiaries as appropriate to be referred to as “bridge service provider”.

- (2) The general superintendence, direction and management of the affairs of the bridge service provider will vest in the board of the bridge service provider, which may exercise all powers and do all acts that may be exercised and done by the bridge service provider.
- 5 (3) The Corporation must appoint the board of directors of the bridge service provider.
- (4) The board of a bridge service provider must elect a chairperson who may also serve in the position of chief executive officer of the bridge service provider.
- (5) The Corporation may –
- 10 (a) remove the directors of the board of a bridge service provider;
- (b) fix the compensation of directors of the board of the bridge service provider and its senior management; and
- (c) indemnify directors, officers, employees, and agents of a bridge service provider on such terms as the Corporation determines to be appropriate.
- 15 (6) The Corporation may, on its own, or whenever the board of the bridge service provider determines to be necessary, make available to the bridge service provider, upon such terms and conditions and in such form and amounts as the Corporation may determine, funds for the operation of the bridge service provider.
- 20 (7) The funds for the operation of the bridge service provider under sub-section (6) may be in addition to any portion of the share capital of the bridge service provider that may be purchased or retained by the Corporation.
- (8) Whenever the board of a bridge service provider, with the approval of the Corporation, determines it is advisable to do so, the board of the bridge service provider will cause capital stock of the bridge service provider to be issued and offered for sale in such amounts as it may determine.
- 25
256. (1) The resolution order issued under section 243 for resolving a covered service provider by a bridge service provider may direct all or any of the following –
- Resolution order:
Bridge service
provider.
- 30 (a) the transfer of some or all of the assets or liabilities of the covered service provider under resolution to the bridge service provider; or
- (b) the performance of any other temporary function by the bridge service provider which the Corporation may specify.
- (2) The transfer of any assets or liabilities under this section will be effective without any further approval under law.
- 35 (3) When issuing a resolution order under this section, the Corporation must keep in consideration the following factors –
- (a) the extent to which the continued operation of the covered service provider is essential to provide adequate financial services in the community where such covered service provider is located;
- 40 (b) the inability to effect a resolution by purchase under Chapter 47 immediately;
- (c) the necessity to create conditions to enable the carrying out of a purchase under Chapter 47; and

- (d) the amount reasonably necessary to operate such bridge service provider, which should not exceed the amount reasonably necessary to liquidate the covered service provider under resolution.
- (4) The resolution order under this section must be implemented fully within two years from the date of the issuance of the order. 5
- (5) The Corporation Board may extend the period under sub-section (4) for one year at a time, not more than three times.

Termination and dissolution of bridge service provider.

257. (1) The status of a bridge service provider must terminate at the earliest of the following circumstances –
- (a) the bridge service provider is merged or consolidated with an entity other than the Corporation and other than another bridge service provider; 10
 - (b) the liabilities of the bridge service provider are assumed by an entity other than the Corporation and other than another bridge service provider;
 - (c) the assets of the bridge service provider are acquired by an entity other than the Corporation and other than another bridge service provider; or 15
 - (d) the expiration of the period under sub-section 256(4).
- (2) If the status of a bridge service provider has not been terminated under sub-section (1), the Corporation must liquidate the bridge service provider upon the full implementation of the resolution order under section 256.
- (3) The liquidation of a bridge service provider must be in accordance with the provisions laid down under Chapter 51. 20

CHAPTER 49

RESOLUTION BY TEMPORARY PUBLIC OWNERSHIP

Resolution order: Temporary public ownership.

258. (1) The resolution order issued under section 243 for resolving a covered service provider by temporary public ownership may provide for – 25
- (a) the identification of a designated service provider; and
 - (b) the transfer of all or parts of the assets and liabilities of the covered service provider under resolution to the designated service provider.
- (2) The resolution order may direct a designated service provider to –
- (a) exercise normal shareholder rights in the covered service provider under resolution; 30
 - (b) manage the covered service provider under resolution; or
 - (c) exercise any other powers as may be specified in the resolution order.
- (3) The designated service provider must introduce corporate governance arrangements in the covered service provider under resolution in line with best practice as soon as is reasonably practicable. 35
- (4) The designated service provider may, subject to the approval of the Corporation, design, and implement a business plan, to operate the covered service provider.
- (5) The Corporation may specify the requirements for a business plan under sub-section (4). 40

- (6) The Corporation must monitor the implementation of the business plan to ensure that it continues to meet its objectives.
- (7) When issuing a resolution order under this section, the Corporation must keep in consideration the following factors –
- 5 (a) the exercise of the power is necessary to resolve or reduce a serious threat to the stability of the financial system;
 - (b) the exercise of the power seeks to create and protect value for public funds, taking account of risk;
 - 10 (c) the exercise of the power is subsequent to the Corporation having considered and eliminated the exercise of the power under Chapters 47 and 48; and
 - 15 (d) the exercise of the power requires the Central Government to provide financial assistance in respect of the covered service provider for the purpose of resolving or reducing a serious threat to the stability of the financial system.
- (8) Before issuing a resolution order under this section, the Corporation must consult the Council, in accordance with the provisions under section 287.
- (9) In this section –
- 20 (a) “designated service provider” means a financial service provider that is a nominee of the Corporation, and may include a wholly owned subsidiary of the Corporation; and
 - (b) “financial assistance” means providing guarantees or indemnities, or any other kind of financial assistance, whether actual or contingent, as may be notified by the Central Government.
- 25 259. (1) The Corporation must terminate the resolution order under section 258 when it makes a decision order that the factors under section 258(7) are no longer met.
- (2) If necessary, the Corporation must liquidate the covered service provider under resolution after its decision order under this section.
- 30 (3) The liquidation of the covered service provider under resolution under this section must be in accordance with the provisions laid down under Chapter 51.

Termination of temporary public ownership and liquidation of covered service provider.

CHAPTER 50 RESOLUTION FUND

- 35 260. (1) The Corporation has the duty to insure –
- (a) each consumer of a specified category of covered obligations with a covered service provider to the extent of a specified limit; and
 - (b) each covered service provider to the extent of a specified limit.
- (2) The Corporation must specify –
- 40 (a) the limits under this section; and
 - (b) the specified categories of consumers under sub-section (1)(a).

Duty to insure.

- (3) The Corporation, in determining the limits under this section, must take into consideration its objectives under Chapter 43.
- (4) The Regulator, in consultation with the Corporation, will determine the specified categories of covered obligations under this section, and in doing so, must take into consideration the following factors –
- (a) the nature and extent of detriment that may be caused to consumers in case of non-fulfilment of obligations owed to them by the covered service provider;
 - (b) the lack of ability of consumers to access and process information relating to the safety and soundness of the covered service provider; and
 - (c) the inherent difficulties that may arise for financial service providers in fulfilling those obligations.

Eligibility for Corporation insurance.

261. (1) The following financial service providers are eligible to obtain Corporation insurance under this Part –
- (a) each financial service provider that makes covered obligations for the purpose of this Part; and
 - (b) each financial service provider designated by the Council as a Systemically Important Financial Institution.
- (2) No financial service provider that is not eligible under sub-section (1) can obtain Corporation insurance under this Part.

Application process for Corporation insurance.

262. (1) Every financial service provider that is eligible under section 261 must apply to the Corporation for Corporation insurance, in the manner and form specified by the Corporation.
- (2) For every financial service provider that is eligible and applies to the Corporation under sub-section (1), the Corporation must carry out an assessment within sixty days of that financial service provider making an application to the Corporation.
- (3) If the Corporation, upon carrying out an assessment, makes a decision order that a financial service provider can be a covered service provider, the Corporation will issue Corporation insurance to that financial service provider under such terms and conditions as may be specified by the Corporation.

Assessment by Corporation.

263. (1) The Corporation must carry out an assessment of a financial service provider, in the specified form and manner, to make a decision order whether that financial service provider can be a covered service provider.
- (2) A financial service provider may not obtain Corporation insurance if the Corporation has not carried out an assessment of that financial service provider.

Resolution Fund.

264. (1) There will be constituted a fund, established and maintained by the Corporation, called the Resolution Fund, to which will be credited all amounts received as premium from covered service providers, towards –
- (a) insuring each consumer of specified categories of covered obligations under section 260(1)(a); and
 - (b) insuring against the resolution of each covered service provider under section 260(1)(b).

- (2) The Resolution Fund will be applied for meeting –
- (a) the costs of compensation as may be incurred by the Corporation in the exercise of its duty under section 260; and
 - (b) the costs of resolution and any administrative costs and expenses as may be incurred by the Corporation in the exercise of its duty under section 260.
265. The Corporation may invest the amounts credited to the Resolution Fund, when not required by the Corporation, in promissory notes and securities of the Central Government and money market mutual funds. Conditions for the use of the Resolution Fund.
- 10 266. (1) The Corporation may specify revisions to the limits of Corporation insurance from time to time. Revision of Corporation insurance limits.
- (2) The revision of Corporation insurance limits must be guided by the principle of proportionality to the risk to viability of the covered service provider.
- 15 267. (1) The Corporation must specify, for the purposes of calculating premia, to undertake the following – Calculation of premia.
- (a) the manner of classification of covered service providers into different categories;
 - (b) the manner and methodology of assessment of premia payable by different categories of covered service providers;
 - 20 (c) the process of collection of premia from covered service providers; and
 - (d) the manner and mode of payment of premia by covered service providers to the Corporation.
- (2) The premia under this section will be collected by the Corporation once every six months.
- 25 (3) The regulations under sub-section (1)(a) will take into consideration the following factors –
- (a) the probability of failure of the covered service provider; and
 - (b) the consequences presented to the Corporation by the probability of failure of the covered service provider.
- 30 (4) No covered service provider may, without prior agreement with the Corporation, change a premium amount, interest or any other payment to be made to the Corporation by reason of a set-off or claim by the covered service provider against the Corporation.
- 35 268. (1) The premium under section 264(1)(b) will include administrative costs, which must be specified by the Corporation, and must include the following – Calculation of administrative costs.
- (a) the costs for a particular function or service, including the cost for making an application to the Corporation for Corporation insurance;
 - (b) any exemptions from or reductions in costs; or
 - (c) any remission of costs in whole or in part.
- 40 (2) In specifying costs under this section, the Corporation must take into account –

- (a) adequacy in meeting the financial requirements and present and projected expenditures of the Corporation; and
- (b) fairness in comparison to the costs incurred by the Corporation for which the costs are payable.

Obligations of the Corporation.

- 269.** (1) The Corporation must make pay-outs from the Resolution Fund when a resolution order under section 243 provides for the payment of a specified amount to specified consumers of a covered service provider, on the date on which the resolution order comes into force. 5
- (2) The Central Government must, in consultation with the Corporation, prescribe the maximum amount that may be made as pay-outs. 10
- (3) The Corporation may make pay-outs in instalments, if it is appropriate and necessary to do so.
- (4) The Corporation must make regulations to provide for the process of making pay-outs, which must include the following –
- (a) the notice period to be given by the Corporation to the consumers with respect to the pay-out; 15
 - (b) representations, if any, to be made by the covered service provider, or the consumers, to the Corporation in relation to the pay-out;
 - (c) any extension of the notice period; and
 - (d) alternate provisions for making payments to consumers who are not found or readily traceable, at the time of making pay-outs. 20
- (5) If a covered service provider makes a claim for compensation over and above its specified insured amount, such claim will be referred to the Corporation under the provisions of Chapter 51.
- (6) Any amount paid by the Corporation under this Chapter in respect of a covered obligation will, to the extent of the amount paid, discharge the Corporation from its liability in respect of that covered obligation. 25

Grounds for termination of Corporation insurance.

- 270.** The Corporation retains the right to terminate the Corporation insurance of a covered service provider in any of the following circumstances –
- (a) if the covered service provider fails to pay premia for two consecutive periods; 30
 - (b) if the covered service provider has, by a decision order, been determined to be at critical risk to viability under section 237;
 - (c) the covered service provider or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business or continuing the operations of the covered service provider; 35
 - (d) the covered service providers or its directors or its trustees have violated any applicable law, regulations or condition imposed by the Corporation or Corporation insurance or written agreement entered into between the covered service provider and the Corporation; 40
 - (e) the Regulator makes a decision order that the covered service provider is not engaged in the activity it is registered to carry on; or
 - (f) the Regulator withdraws any authorisation that it may have granted to the covered service provider.

271. (1) If any of the circumstances under section 270 are met, the Corporation may, by a decision order, terminate the Corporation insurance of a covered service provider. Process for termination of Corporation insurance.
- (2) Before issuing an order under this section, the Corporation must –
- 5 (a) inform the covered service provider of its intended actions;
- (b) provide the time-period within which a representation may be made by the covered service provider to the Corporation, which may not be more than ninety days; and
- 10 (c) consider representations from the covered service provider, if such representation is made within the notice period provided.
- (3) The Corporation may extend the time-period for submitting representation, upon the request of the covered service provider, for a period of not more than ninety days, if it is satisfied that such a request is reasonable.
- 15 (4) If no representation is received by the Corporation from a covered service provider with the time-period provided, the Corporation must terminate the Corporation insurance of that covered service provider.
- (5) If the Corporation insurance of a covered service provider is terminated, the Corporation must, without delay –
- 20 (a) inform the covered service provider of such termination; and
- (b) require the covered service provider to inform its consumers and the public at large of such termination, in the form and manner as may be specified.
272. (1) The Corporation may revoke the termination of the Corporation insurance of a covered service provider if it is satisfied that the reasons for termination have been suitably remedied or the risk to consumers or any other person has been averted or substantially reduced, to the satisfaction of the Corporation. Revocation of termination of Corporation insurance.
- 25 (2) If the termination of Corporation insurance of a covered service provider takes place under section 270(6)(a), the Corporation may revoke the said termination and restore the Corporation insurance if that covered service provider pays all the amounts due by way of premia from the date of default till the date of payment, together with interest due on the date of payment.
- 30
273. (1) The Corporation may avail of a line of credit from the Central Government for a period of five years from the date of establishment of the Resolution Fund, in such form and manner as prescribed. Line of credit.
- 35 (2) The Central Government may extend the line of credit upon a request by the Corporation, in the form and manner prescribed, as it thinks fit.
- (3) The terms of the line of credit must include the following –
- 40 (a) the amount that may be borrowed by the Corporation under this section;
- (b) the repayment schedule according to which the amount must be returned to the Central Government;
- (c) the interest rate that the Corporation is obliged to pay on the amount availed under the line of credit; and

- (d) the nature of investments the Corporation can make with the amount availed under the line of credit.
- (4) The Central Government will determine and review the terms of the line of credit, in accordance with this section.
- (5) The Corporation may, during the period that it avails the line of credit, apply to the Central Government, in the form and manner prescribed, for extension, renewal or temporary increase of credit. 5
- (6) Each request by the Corporation to the Central Government for extension, renewal or increase of credit under this section must be accompanied by a detailed report stating the reasons and need for such additional borrowing and its intended uses. 10
- (7) The Central Government may, upon a request by the Corporation under subsection (5), extend, renew, or temporarily increase the line of credit, for such period as it thinks fit.
- (8) The Corporation may use the amount availed under the line of credit for investment purposes, subject to section 265. 15
- (9) If the Corporation avails the line of credit for the resolution of an identified covered service provider, the Corporation may meet its repayment obligations against that line of credit by claiming to be a creditor of the first priority of that identified covered service provider, in accordance with section 280, if that covered service provider is liquidated or dissolved. 20

Advertisement of
Corporation
insurance.

274. (1) The Corporation must make regulations to provide for the form and manner in which a covered service provider must advertise to the public at large about its Corporation insurance.
- (2) No financial service provider, or a person belonging to the same group, or its related person, may represent or imply that the financial service provider, or any obligation or amount credited to the Corporation, is insured or guaranteed by the Corporation, if such obligation or amount is not insured or guaranteed by the Corporation, including by – 25
- (a) the use of the terms “Resolution Corporation” , the “Corporation”, “Corporation insurance”, “Resolution Fund”, the “Fund” or any other term that gives the impression that it is associated with the Corporation or the Resolution Fund, as part of the business name, or firm name, of any person, including any corporation, partnership, trust or any other entity; or 30
- (b) the use of any other terms, signs or symbols as part of an advertisement or any other representation. 35

CHAPTER 51

COMPENSATION AND LIQUIDATION

Initiation of
compensation.

275. (1) A resolution order issued under section 243 must provide for compensation in connection with the covered service provider under resolution. 40
- (2) Under this section, the Corporation must specify the categories of persons who are entitled to compensation from the resolution of the covered service provider under the resolution order.

- (3) The Corporation may specify the categories of persons who may be entitled to compensation from the resolution of a covered service provider under a resolution order, and the time-period within which the determination under sub-section (2) must be made.

5 276. (1) After a determination under section 275(2), the Corporation must issue, within a specified time-period – Compensation notice.

- (a) a general notice to the public; and
(b) special notices to individuals who fall within the specified categories.

10 (2) The notices under sub-section (1) must be issued in a manner best suited to bring it to the attention of the public or the individuals, as the case may be.

(3) The notice under sub-section (1)(b) to every individual who falls within the specified categories must –

- 15 (a) state the amount of entitlement to compensation of that individual;
(b) state the proof of entitlement to compensation that that individual must provide to the Corporation; and
(c) provide the form, manner and reasonable time-period within which individuals must respond to the notice.

(4) The Corporation may specify –

- 20 (a) under sub-section (1)(a) and sub-section (1)(b), the form and the time period within which such notice must be issued; and
(b) the proof of entitlement that specified categories of persons may provide under sub-section (3)(b).

(5) Every individual to whom a notice has been issued by the Corporation must respond in the form, manner and time-period provided.

25 (6) The Corporation may reject the entitlement to compensation of an individual if section (5) is not complied with.

(7) Regulations under this section must be issued only after consultation with the Regulator.

30 (8) In this section, “proof of entitlement to compensation” means all information or documentation, as may be specified, that an individual must present to the Corporation under section 276, to prove that that individual is entitled to the compensation.

35 277. (1) Any person, including an individual under sub-section 275(2), may object to the notices under sections 276(1)(a) and 276(1)(b), in connection with the resolution of a covered service provider under a resolution order, on one of the following grounds – Objections to compensation notice.

- 40 (a) that person has not been identified as an individual under sub-section 275(2) but is entitled to compensation;
(b) that individual has complied with section 276(5) but has been rejected under section 276(6); or
(c) that individual has been offered compensation of an amount less than their entitlement to compensation.

(2) The form, manner and reasonable time-period within which objections to the notices under this section may be made must be in accordance with regulations made by the Corporation.

(3) The Corporation must consider the objections to the notices received under this section, and determine whether the person making the objection is entitled to compensation, and the amount of such entitlement to compensation, from the resolution of the covered service provider under the resolution order. 5

Compensation order.

278. (1) The Corporation must issue a compensation order in accordance with the provisions of this section.

(2) A compensation order must be issued within reasonable time, as may be specified, after issuing compensation notices under section 276, but not before the objections to the compensation notices have been received under section 277. 10

(3) The compensation order must –

(a) adhere to industry accepted best practices of valuation, as may be specified; 15

(b) after due consideration of sections 276(5), 276(6) and 277(3) –

(i) identify the persons or individuals who are to be given compensation;

(ii) identify the persons or individuals who will not be given compensation; 20

(c) identify the final amount of such compensation that is to be given, which may be different from the amount of entitlement to compensation under section 276(3)(a); and

(d) provide details of the mode, manner and time-period within which such compensation will be given. 25

(4) The Corporation must specify –

(a) the form and manner of issuing a compensation order;

(b) the valuation methods to be followed by the Corporation for the purposes of valuing compensation; and

(c) the mode, manner and time-period within which any compensation under a compensation order must be given. 30

(5) An affected person under a compensation order has the right to appeal such order before the Tribunal in accordance with the provisions of section 282.

Payment of compensation.

279. (1) Any compensation to be given under a compensation order must be given by the Corporation in accordance with section 264(2). 35

(2) Any amount given by the Corporation under this Chapter in respect of compensation to a person will, to the extent of the amount paid, discharge the Corporation from its liability in respect of that compensation to that person.

Liquidation of a covered service provider.

280. (1) The Corporation must only apply for liquidation or dissolution of a covered service provider under resolution – 40

(a) under section 257;

(b) if it so determines under section 259; or

- (c) if a covered service provider has, by decision order, been determined to be at critical risk to viability under section 237, and the Corporation determines that it is necessary to liquidate or dissolve that covered service provider.
- 5 (2) The Corporation must apply for liquidation or dissolution of the covered service provider under the law applicable to that covered service provider for liquidation or dissolution, within –
- (a) the duration specified in the resolution order; or
- 10 (b) if the resolution order does not provide for a duration for such application, within a period of thirty days from the date of the order.
- (3) Where the law applicable to the covered service provider for liquidation or dissolution provides for the appointment of a liquidator or such other person, as the case maybe, the Corporation is deemed to be the liquidator or such other person, as the case may be.
- 15 (4) Where a covered service provider is being liquidated or dissolved under the applicable law and where the Corporation has utilised proceeds from the Resolution Fund towards such covered service provider, the Corporation –
- (a) is deemed to be a creditor of the first priority of the covered service provider; and
- 20 (b) will be reimbursed by the liquidator or such other person as the case maybe, to the extent and in the manner provided under the applicable law.
- 25 (5) Where the Corporation had availed a line of credit under section 273 to resolve the covered service provider being liquidated or dissolved, such amount must be repaid first out of the proceeds of liquidation or dissolution.

CHAPTER 52

APPEALS

281. A resolution order issued by the Corporation under this Part is for all purposes final and conclusive and may not be questioned or reviewed by the Tribunal. No review of resolution order.
- 30 282. (1) An affected person under a compensation order issued under section 278 has the right to appeal against that compensation order before the Tribunal. Appeal against compensation order.
- (2) The form, manner and time-period within which such appeal must be made will be in accordance with this Act.
- 35 (3) A person is an affected person under a compensation order if that person, under that compensation order –
- (a) has been identified and offered compensation, but of an amount less than that person's entitlement to compensation; or
- (b) has been refused compensation, but is entitled to compensation.
- 40 283. (1) The Tribunal may, having regard to an appeal under section 282, order the payment of interest on the reassessed compensation amount, along with the reassessed compensation amount, if it determines that the such payment is just and reasonable. Payment of interest.

- (2) The payment of interest under this section may be calculated at a rate and from a time that the Tribunal determines to be just and reasonable.

Review of decisions taken by the Corporation.

284. (1) A decision or determination of the Corporation may be reviewed by the Tribunal only if one of the following conditions are met –
- (a) the Corporation, in making the decision or determination, has made an error apparent on the face of record; 5
 - (b) the Corporation, in making the decision or determination, has not considered all relevant material, or has relied on irrelevant material, in making a decision or determination; or
 - (c) the Corporation, in making the decision or determination, has violated the principles of natural justice. 10

CHAPTER 53

INTERACTION WITH OTHER AGENCIES

Interaction between Corporation and Competition Commission.

285. (1) Prior to exercising any powers under Chapter 46, the Corporation must prepare a report detailing the effect that any action it is likely to take may have on competition in the relevant market. 15
- (2) Prior to exercising any powers under Chapter 46, the Corporation must –
- (a) consult with the Competition Commission regarding the effect of the Corporation's proposed action on competition in the relevant market, including by way of providing the report prepared under sub-section (1); and 20
 - (b) make available any data, information or material in the possession of the Corporation relating to the action it is likely to take, as may be required by the Competition Commission under the Competition Act.
- (3) For the purpose of sub-section (2), sections 21 and 43A of the Competition Act will not apply. 25
- (4) Any data, information or material obtained by the Competition Commission from the Corporation under sub-section (2)(b) will be treated as confidential in accordance with the provisions of section 57 of the Competition Act.
- (5) The Competition Commission, in carrying out any evaluation or making any determination in relation to a matter on which a report has been provided by the Corporation under sub-section (2), must give due regard to section 20(4)(k) of the Competition Act. 30
- (6) Sub-section (2) will not apply if the Corporation determines that –
- (a) it must act immediately in order to prevent the probable failure of a covered service provider; or 35
 - (b) the exercise of its powers relates to a combination involving a covered service provider and one or more persons belonging to the same group as the covered service provider.
- (7) Except the proviso to section 20(1) of the Competition Act, the provisions of section 20 of the Competition Act will not apply to a determination under sub-section (6) until the completion of an action taken by the Corporation under Chapter 46. 40

- (8) Nothing contained in sub-section (7) will prevent the Competition Commission from reviewing a combination and suggesting modifications to the terms of a combination effected as a result of the exercise by the Corporation of its powers under Chapter 46 if the Competition Commission determines that the combination causes or is likely to cause an appreciable adverse effect on competition within the relevant market.
- (9) In this section, "relevant market" has the meaning assigned to it under section 2(r) of the Competition Act, as may be determined jointly by the Competition Commission and the Corporation for the purposes of this Part.
- 10 286. (1) The Corporation and each Regulator must seek to –
- (a) consult on a regular and frequent basis;
 - (b) co-ordinate on a regular and frequent basis;
 - (c) ensure and achieve harmonisation of regulatory action;
 - (d) issue regulations jointly and in a timely manner on the matters under sub-section (3), and any other matter as may be provided under this Act;
 - (e) make relevant information available to each other in a timely manner; and
 - (f) achieve all of the above in any other area considered relevant under this Part.
- 15
- (2) The frequency of interaction with respect to a covered service provider should take into account the stage of risk to viability of the covered service provider.
- (3) The Corporation and the Regulator must make regulations jointly in a timely manner, on all the following –
- (a) the framework for prompt corrective action;
 - (b) the risk assessment of covered service providers;
 - (c) the actions to be taken with respect to a covered service provider at different stages of risk to the covered service provider; and
 - (d) the identification of emerging risks, their assessment, quantification and impact upon the financial sector.
- 20
- (4) The Corporation must inform the Regulator if the Corporation considers taking any action with respect to a covered service provider under sections 234, 235, 236 or 237 under the framework for prompt corrective action.
- (5) The Regulator must provide the Corporation with the summary of risk assessment carried out by it in connection with covered service providers, on a regular basis, and in a timely fashion.
- 25
- (6) The Regulator must inform the Corporation of its determination, with respect to a covered service provider, with regard to –
- (a) the risk to viability of the covered service provider;
 - (b) the reasons for such determination; and
 - (c) the measures that the Regulator proposes to take.
- 30
- (7) The Regulator must provide the Corporation with copies of its intervention, if any, with respect to a covered service provider.
- 35
- 40

Interaction
between
Corporation and
Regulator.

Interaction between Corporation and Council.

287. (1) If there is a difference of opinion with regard to the issuance of regulations between the Corporation and the Regulator, the dispute will be resolved by the Council in accordance with the provisions under section 305;
- (2) Prior to initiating any measure in respect of a Systemically Important Financial Institution, the Corporation must –
- (a) inform the Council of the measures that the Corporation proposes to take; and
 - (b) take such measures only with the approval of the Council.

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CHAPTER 54

OTHER PROVISIONS GOVERNING THE CORPORATION

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Returns and reports.

288. In addition to anything contained in this Act with regard to the annual report, the Corporation must submit to the Central Government the following additional information –
- (a) a statement setting out the value of the Resolution Fund;
 - (b) a statement mentioning the use of the Resolution Fund;
 - (c) a statement including details on actions taken against covered service providers; and
 - (d) any other statement that is necessary to give an accurate assessment of its functioning.

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Application of other laws.

289. Nothing contained in any other law creating a body corporate carrying out a financial service will affect the applicability of the provisions of this Part against such body corporate.

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PART VIII

FINANCIAL STABILITY AND DEVELOPMENT COUNCIL

CHAPTER 55

OBJECTIVE AND FUNCTIONING OF THE FINANCIAL STABILITY AND DEVELOPMENT
COUNCIL

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290. (1) The Council will pursue the objective of fostering the stability and resilience of the financial system, by – Objective.
- (a) identifying and monitoring systemic risk; and
- (b) taking all required action to eliminate or mitigate systemic risk.
- 10 (2) The Council must have regard to India's international obligations, as relevant, in the process of achieving its objective.
291. (1) The office of the Council will consist of the Council Board, an Executive Committee, a Secretariat, and a Data Centre. Functioning of the Council.
- 15 (2) The Council Board must publish a report within thirty days of the beginning of every financial year to disclose all delegations to the office of the Council, or by the office of the Council for the previous financial year.
292. (1) There will be established, for the purposes of this Act, an Executive Committee which will have administrative and managerial control over the affairs of the Council. Establishment of the Executive Committee.
- 20 (2) The Executive Committee will comprise –
- (a) the Reserve Bank Chairperson as the chairperson of the Executive Committee;
- (b) a nominee of the member mentioned under section 21(3)(a);
- (c) the Financial Authority Chairperson;
- 25 (d) the Corporation Chairperson;
- (e) an administrative law member; and
- (f) the Council Chief Executive.
293. (1) There will be established, for the purposes of this Act, a Secretariat which will assist the Council in the performance of its functions under this Act. Establishment of the Secretariat.
- 30 (2) The Secretariat will be headed by the Council Chief Executive.
294. (1) There will be established, for the purposes of this Act, a Data Centre by the name of the Financial Data Management Centre to perform the functions laid down in Chapter 57. Establishment of the Financial Data Management Centre.

- (2) The Data Centre will be headed by a Data Centre Director who will be appointed by the Council Board in accordance with section 45.

CHAPTER 56

FUNCTIONS OF THE COUNCIL

- Functions of the Council. 295. The Council must – 5
- (a) conduct data analysis and research;
 - (b) designate financial service providers as Systemically Important Financial Institutions;
 - (c) formulate and implement the application of system-wide measures to the financial system; 10
 - (d) promote co-operation and co-ordination among members and Financial Agencies;
 - (e) assist the members and Financial Agencies in the performance of their functions;
 - (f) assist the Central Government, members and Financial Agencies during a financial system crisis; and 15
 - (g) ensure the performance of all other actions that are required to be undertaken by the Council under this Act.
- Principles. 296. (1) The Council must, while discharging its functions and exercising its powers under this Act, ensure that its actions – 20
- (a) take into account the principles of proportionality between the costs imposed and the benefits expected to be achieved;
 - (b) seek to reduce the potential for regulatory inconsistencies;
 - (c) do not cause a significant adverse effect on the competitiveness of the financial system; 25
 - (d) do not cause a significant adverse effect on the growth of the financial system in the medium or long-term; and
 - (e) lead to greater transparency and sharing of material information in relation to the financial system.
- (2) If a proposed action of the Council is likely to conflict with any principle under sub-section (1), the Council has a duty to explain before it can continue with the proposed action. 30
- (3) In sub-section (2), a “duty to explain” means that the Council must publish – 35
- (a) the principles that are likely to conflict with the proposed action, and the extent of such conflict;
 - (b) the efforts taken by the Council to reconcile its proposed action with the principles; and
 - (c) a justification of the proposed action in relation to the achievement of its objective.
- Data analysis and research. 297. (1) The Council must monitor and analyse all accessible data, and conduct such research, as is relevant to the achievement of its objective. 40

- (2) The functions of the Council relating to the monitoring and analysis of accessible data and conducting research include –
- (a) developing expertise and information systems to monitor and conduct statistical, mathematical, financial and related analysis of accessible data;
 - 5 (b) identifying trends in the financial system that assist in the identification, measurement, and monitoring of systemic risk in the financial system;
 - (c) developing system-wide measures, systemic indicators for designating Systemically Important Financial Institutions, and other tools that may be used to eliminate or mitigate systemic risk in the financial system;
 - 10 (d) studying the impact on the financial system of any measures, systemic indicators, or tools that have been developed under clause (c) on the financial system; and
 - (e) analysing international best practices for the efficient discharge of its functions.
- 15 (3) The Council must publish the results of its data monitoring, data analysis and research frequently, and at least once every one hundred and eighty days.

298. The Council may specify the collection of financial regulatory data where –

Council's access to data.

- (a) such data is relevant to the achievement of its objective; and
- 20 (b) the relevant Financial Agency has not specified the submission of such data.

299. (1) The Council must specify, the systemic indicators for designating financial service providers as Systemically Important Financial Institutions.

Determination of systemic indicators.

- (2) The Council must review regulations under sub-section (1) every financial year.
- 25 (3) The Council, in determining the systemic indicators, must consider all of the following factors –
- (a) the nature of the financial service or financial product provided, if any, by the financial service provider;
 - (b) the size of the financial service provider;
 - 30 (c) the interconnectedness of the financial service provider with the financial system, and other parts of the economy;
 - (d) the substitutability of the financial service, the financial product or the financial service provider in the financial system; and
 - (e) any additional factors as may be specified.
- 35 (4) In addition to the requirements under section 52(2), the following documents must accompany the draft regulations –
- (a) a statement explaining the application of the systemic indicators to the data of various categories or classes of financial services, financial products and financial service providers;
 - 40 (b) the time-period within which the Council will designate financial service providers as Systemically Important Financial Institutions;
 - (c) the conditions and process of deciding requests for exemption from such designation; and
 - (d) the time-period within which the Council will convey its decision in relation to any requests for exemption from such designation.

Application of systemic indicators to financial service providers.

300. (1) The Council must review as frequently as required, and at least once every financial year, the applicability of the systemic indicators contained in regulations made under section 299(1) to financial service providers to identify which financial service providers are to be designated as Systemically Important Financial Institution. 5
- (2) If the Council proposes to designate a financial service provider as a Systemically Important Financial Institution it must issue a show cause notice to such financial service provider.
- (3) If the Council decides to designate a financial service provider as a Systemically Important Financial Institution it must issue a decision order. 10
- (4) If any Systemically Important Financial Institution carries out a financial service that is not allocated to a Regulator under section 11, the Council must, through the decision order mentioned in sub-section (3), identify the Regulator who will regulate such Systemically Important Financial Institution.

Formulation of system-wide measures.

301. (1) The Council may, for the purpose of implementation under section 302, specify the formulation of any system-wide measure specified in the Third Schedule. 15
- (2) In its formulation of the system-wide measure, the Council should consider the following factors –
- (a) that the system-wide measure applies to the entire financial system; or
- (b) that the system-wide measure applies to a substantial part of the financial system that is exposed to, or is contributing to, a similar source of systemic risk. 20
- (3) In addition to the requirements under section 52(2), the following documents must accompany the draft regulations –
- (a) the scope of implementation of the system-wide measure; 25
- (b) an explanation of the possible implementation of the system-wide measure to specified types of financial services, financial products, or financial service providers; and
- (c) the parameters of discretion that will be provided to the Financial Agencies in the implementation of the system-wide measure. 30
- (4) The formulation of the system-wide measure, as specified under sub-section (1) will be implemented by the Financial Agencies, as appropriate, in accordance with section 302.
- (5) Any action to be taken by the Council under this section must only be taken by the Council Board. 35

Implementation of system-wide measures.

302. (1) The Council may, by order in writing, direct the implementation of a system-wide measure, if it determines that such implementation is required to achieve the Council's objective.
- (2) The order under sub-section (1) must –
- (a) identify the parameters of application of the system-wide measure; 40
- (b) identify the Financial Agencies that will implement such system-wide measure;

- (c) direct the Financial Agencies to exercise their powers to ensure the implementation of such system-wide measure;
- (d) allocate specific implementation to specific Financial Agencies, if the measure requires implementation by more than one Financial Agency; and
- 5 (e) direct the Financial Agencies to monitor and review the implementation of the system-wide measure and report to the Council as frequently, and in such form and manner, as may be provided for in the order.

(3) The existence of the order is relevant to the exercise of any discretion conferred on the Financial Agencies.

10 (4) The Council must regularly, and at least once every financial year, review the effectiveness of all orders issued under this section.

(5) If the Council determines that a specific system-wide measure no longer contributes to its objective, then it must –

15 (a) revoke the implementation of such system-wide measure, through an order in writing, to the Financial Agencies directed to implement the system-wide measure under sub-section (2)(c); or

(b) suitably modify such system-wide measure in accordance with the procedure in section 301, before ordering the implementation of the modified system-wide measure under sub-section (1).

20 (6) The Council must conduct an analysis of the impact of any revoked, or modified system-wide measure within one year of such revocation or modification.

(7) Any action to be taken by the Council under this section must only be taken by the Council Board.

25 303. (1) The Council must facilitate co-ordination and co-operation among Financial Agencies.

Facilitating
co-ordination and
co-operation.

(2) The functions of the Council relating to the facilitation of co-ordination and co-operation include –

(a) the review and examination of concerns of regulatory inconsistencies;

30 (b) the identification of gaps in actions of the Financial Agencies in dealing with similar matters; and

(c) the facilitation of knowledge-sharing and cross-staffing.

304. The Council may, upon direction from, or in consultation with, the Central Government –

Co-ordination and
co-operation at
international
forums.

35 (a) co-ordinate and co-operate with, and represent India at, specified international forums and foreign regulatory bodies, as may be necessary to achieve its objective;

(b) seek to initiate knowledge-sharing and cross-staffing with international forums and foreign regulatory bodies, as may be necessary to achieve its objective; and

40 (c) undertake actions that are required to be taken as a result of India's international obligations, as may be necessary to achieve its objective.

Resolution of
disputes.

305. (1) The Council Board must resolve any dispute between two or more of its members or between any of its members and other Financial Agencies, or between Financial Agencies.
- (2) The Council Board must resolve a dispute under this section only if at least one of the following conditions is met –
- (a) a member or a Financial Agency submits a written request to the Council Board for the determination of such dispute; or
 - (b) in the opinion of the Council Board, a dispute exists between two or more of its members, or between any of its members and other Financial Agencies, or between Financial Agencies, that has the potential to cause regulatory uncertainty and adversely impact the stability of the financial system.
- (3) Before resolving any dispute under this section, the Council Board must, as soon as practicable, and within ninety days of receiving such written request, or coming to an opinion that a dispute exists –
- (a) determine that the parties involved in the dispute have failed to resolve the dispute in good faith;
 - (b) provide a copy of the written request, or a statement of its opinion, to all parties to the dispute;
 - (c) undertake to seek the agreement of all parties to the dispute in relation to the resolution of such dispute by the Council Board; and
 - (d) publish the procedure of dispute resolution that the Council Board intends to follow, as described in sub-section (4).
- (4) The Council Board must follow a procedure of dispute resolution that is necessary to resolve the dispute fairly and expeditiously and is in conformity with the principles of natural justice.
- (5) The Council Board must resolve all disputes as soon as possible, and at least within one year of publishing the procedure of dispute resolution.
- (6) In resolving a dispute under sub-section (4), the Council Board must ensure that, where a dispute relates to any action taken by a Financial Agency including the extent of jurisdiction of a Financial Agency in taking such action, the decision of the Council Board does not –
- (a) exempt the statutory duties of a party to the dispute; or
 - (b) divest a party to the dispute of any authority derived from this Act, or any other law currently in force.
- (7) A decision made by the Council Board under this section must be in writing, and published immediately.

Role of the Council
during a financial
system crisis.

306. (1) The Council must specify, as frequently as appropriate, the parameters for the identification and determination of a financial system crisis.
- (2) The Council must specify, in preparation for assistance during a financial system crisis, a statement of action in relation to potential financial system crises.
- (3) The statement of action under sub-section (2) must –
- (a) be updated every financial year;
 - (b) take into account international best practices in relation to assistance during various types of financial system crises;

- (c) contain a statement of policy in relation to the provision of fiscal assistance or other extraordinary assistance by the Central Government; and
- (d) describe, in general terms, the manner in which the Council may provide assistance to the Central Government and Financial Agencies for various types of financial system crises.
- (4) If the Central Government, on its own, or upon advice from the Council, determines that there is a financial system crisis, the Council must assist the Central Government, and Financial Agencies as required, and particularly as mentioned in sub-section (5).
- (5) The Council must –
- (a) provide and conduct such data analysis and research as may be necessary to understand and resolve the financial system crisis;
- (b) assist Financial Agencies in their efforts relating to resolving the financial system crisis;
- (c) provide advice to the Central Government in relation to the provision of fiscal assistance or other extraordinary assistance;
- (d) initiate an audit of all actions leading up to, and taken during, the financial system crisis, and publish the results of the audit within a period of one year after the commencement of the financial system crisis; and
- (e) where the financial system crisis continues for a period beyond one year, initiate an audit as described in this sub-section for every year of the financial system crisis, until such financial system crisis has ended.

CHAPTER 57

FINANCIAL DATA MANAGEMENT CENTRE

307. (1) The Council must make bye-laws to provide for the creation of a financial system database, including the process of upgrading the capabilities of the financial system database.
- (2) The Data Centre must administer and supervise the functioning financial system database.
- (3) The Data Centre must have regard to international best practices in the administration and supervision of the financial system database.
- (4) The Data Centre must publish reports in relation to the functioning of the financial system database frequently, and at least once every ninety days.
- (5) The Data Centre may enter into agreements with any person for the purpose of administration of the financial system database.
308. (1) The Data Centre must ensure that its actions –
- (a) lead to efficient and accurate means of accessing financial regulatory data;
- (b) reduce the costs of reporting of financial regulatory data;
- (c) actions seek to protect the confidentiality, privacy and security of financial regulatory data; and
- (d) increase access to material information about the financial system.

Creation, administration and supervision of the financial system database.

Principles to be followed by the Data Centre.

Submission of financial regulatory data to the financial system database.

- (2) The principles to be followed by the Data Centre under this section are in addition to the principles to be followed by the Council under section 296.
309. (1) Every Financial Agency must submit financial regulatory data –
- (a) only in electronic form; and
 - (b) only through the financial system database at the first instance. 5
- (2) Nothing in this section restricts the power of a Financial Agency under law to seek the submission of financial regulatory data in any form other than electronic form, where such data cannot be adequately converted to electronic form, provided that the Data Centre is informed.
- (3) Nothing in this section restricts the power of a Financial Agency to seek the submission of data other than financial regulatory data to any person other than the financial system database, where such data may be required for the purposes of an investigation by such Financial Agency. 10
- (4) Nothing in this section restricts the power of a Financial Agency under law to specify the content and nature of financial regulatory data that must be submitted by a financial service provider. 15
- (5) Nothing in this section prevents a Financial Agency from maintaining a separate database of financial regulatory data that may be transmitted to it by the financial system database. 5

Access to financial regulatory data by a Financial Agency or Central Government.

310. (1) The Council must enter into a memorandum of understanding with a Financial Agency that seeks the submission of regulatory financial data, or the Central Government, as required. 20
- (2) The Council must enter into a memorandum of understanding with a Financial Agency that seeks to share financial regulatory data, or other data, with one or more Financial Agencies. 25
- (3) The memoranda of understanding described under sub-sections (1) and (2) must clearly set out the terms and conditions of access and use by the recipient Financial Agency for such financial regulatory data, or other data.

Access to financial regulatory data by the Council.

311. (1) The Council must specify the terms and conditions of the Council's access to the financial system database. 30
- (2) The Council must receive such access to the financial system database as may be required to achieve its objective.

Access to financial regulatory data by the public.

312. The Council must, in consultation with relevant Financial Agencies, specify a statement of policy regarding the access to financial regulatory data in the financial system database, by members of the public, which includes – 35
- (a) the terms and conditions of access to financial regulatory data in the financial system database by members of the public, including the fees payable for such access;
 - (b) the categories of financial regulatory data that may be instantly accessed by members of the public; 40
 - (c) the categories of financial regulatory data that may be accessed by members of the public only after a particular time-period; and

(d) the categories of financial regulatory data that may never be available for access.

313. (1) Whoever wilfully commits any of the following acts in relation to the financial system database, commits a Class A offence –

Offences in relation to the financial system database.

5 (a) without being authorised to do so, accesses or secures access, or denies, or causes a denial of access, to the financial regulatory data in the financial system database;

10 (b) without being authorised to do so, downloads, extracts, copies, or reproduces in any form, financial regulatory data in the financial system database;

(c) knowingly introduces or causes to be introduced, any computer virus or other computer contaminant into the financial system database;

(d) knowingly damages or causes the damage of any financial regulatory data in the financial system database;

15 (e) without authorisation, disrupts or causes disruption to the functioning of the financial system database;

(f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the financial regulatory data in the financial system database; or

20 (g) knowingly provides any assistance to any person to do any of the acts mentioned above.

(2) In this section, the expressions "computer contaminant", "computer virus" and "damage" have the meanings respectively assigned to them under section 43 of the Information Technology Act, 2000 (21 of 2000).

25 CHAPTER 58

OTHER PROVISIONS GOVERNING THE COUNCIL

314. The provisions of section 35 will apply to the Council Board in the following manner –

Decision making in the Council Board.

30 (a) all provisions of the section will apply when there is a financial system crisis; and

(b) where there is no financial system crisis, the Council Chairperson must seek to secure all decisions that the Council is authorised or required to make only by arriving at a consensus.

315. (1) There will be constituted a fund, established and maintained by the Council, to which the following will be credited –

Fund.

35 (a) all grants, loans, and fees received by the Council; and

(b) all sums received by the Council from such other sources as may be decided upon by the Central Government.

(2) The fund will be applied for meeting –

40 (a) the salaries, allowances and other remuneration of the members, officers, and employees of the Council;

- (b) the expenses of the Council in performing its functions; and
- (c) any other costs and expenses as may be incurred by the Council in the performance of its functions under this Act.

Annual report.

316. In addition to the requirements under section 77, the Council must submit the following additional information in its annual report –

- (a) a statement setting out the value of the fund of the Council;
- (b) a statement mentioning the use of the fund by the Council for the previous financial year;
- (c) all significant trends identified in the financial system relevant to the objectives of the Council;
- (d) an assessment of the stability and resilience of the financial system;
- (e) an assessment of the functioning of the Council in relation to India's international obligations, as relevant; and
- (f) any other statement that is necessary to give an accurate assessment of the functioning of the Council.

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PART IX

DEVELOPMENT

CHAPTER 59

OBJECTIVE AND FUNCTIONS

5 317. (1) The Regulator must pursue the objective of fostering the development or im- Objective.
 10 plementation of market infrastructure or market process under this Part.

(2) In this section –

(a) “market infrastructure” means an infrastructure that is provided, operated
 10 or maintained by the Regulator, the Central Government or an Infrastruc-
 ture Institution; and

(b) “market process” means a process that is followed by any or all financial
 service providers.

15 318. The Regulator may, through regulations, adopt any of the following measures to Functions.
 pursue its objectives contained in section 317(1) –

(a) measures to modernise market infrastructure or market process, including
 in particular, the adoption of new technology;

(b) measures to provide for product differentiation, or enlarging consumer
 participation; or

(c) measures to align market infrastructure or market process with interna-
 20 tional best practices.

25 319. (1) The Central Government may notify, by an order in writing, a direction to a Power of Central
 Regulator to ensure the provision of any identified financial service, on such Government to
 conditions as may be contained in the order, – direct Regulators
 for provision of
 financial service.

(a) by any identified category of financial service providers; or

(b) to any identified consumers or classes of consumers.

(2) The directions under this section must be with a view to ensure effective and
 affordable access of financial services to persons who would ordinarily not have
 such access.

(3) The Central Government will reimburse the cost of granting such access by
 30 providing either cash or cash equivalents, or tax benefits to identified financial
 service providers.

35 320. The following principles must be taken into account by the Regulator when adopt- Principles.
 ing any measures under section 318, and by the Central Government when issuing
 any directions under section 319 –

(a) minimising any potential adverse impact on the objectives of –

(i) the Regulator under Part IV;

(ii) the Regulator under Part V; and

(iii) the Council under Part VIII;

- (b) minimising the adverse impact on the ability of the financial system to achieve an efficient allocation of resources;
- (c) minimising the impact on the ability of consumers to take responsibility for their transactional decisions; and
- (d) ensuring that any obligation imposed on a financial service provider is consistent with the benefits, considered in general terms, that are expected to result from the imposition of that obligation. 5

- Need for measures. 321. (1) A Regulator may adopt a measure under section 318 only after it has determined that in the absence of adopting such measure, the market infrastructure or market process will fail to – 10
- (a) develop or improve adequately; or
 - (b) function poorly.
- (2) A Regulator must consult and co-ordinate with every other Regulator on a regular and frequent basis to identify instances where the adoption of such measures may be required or justified, and assess whether such intervention would develop or improve market infrastructure or market process. 15

CHAPTER 60

PROVISIONS FOR REVIEW

Review of
measures and
directions.

322. (1) There must be a review of – 20
- (a) every measure that has been adopted under section 318; and
 - (b) every direction that has been issued under section 319.
- (2) A review under this section must be carried out at least once every twelve months after the adoption of the measure, or the issuance of the directions, as the case may be.
- (3) A review under this section must – 25
- (a) examine the efficacy and the impact of the measure or direction under review;
 - (b) estimate the cost of having introduced such a measure or direction in the financial system; and
 - (c) seek to identify best practices and make proposals to the Regulator or the Central Government, as the case may be, for any modifications that may be required in respect of such measure. 30
- (4) The findings of the review must be submitted to the Agency as a report of recommendations.
- (5) There must be no conflict of interest between the team of experts and the Agency under review. 35
- (6) The Agency must ensure that the team of experts has access to relevant information and material as necessary to carry out the review.
- (7) The Agency must publish –
- (a) every review submitted under sub-section (4); and 40

(b) all information or data collected for the purpose of the review in a manner that does not allow information relating to any particular person to be ascertained from it.

(8) In this section, "Agency" means the Central Government or the Regulator, as the case may be.

323. A review under section 322 must be arranged –

Obligation to arrange for review of measures and directions.

(a) by a Regulator if a measure under section 318 is implemented by only that Regulator;

(b) by the Central Government if a direction under section 319 is issued to not more than one Regulator; or

(c) by the Council if –

(i) a measure under section 318 is implemented by more than one Regulator; or

(ii) a direction under section 319 is issued to more than one Regulator.

324. (1) The Council must collect and analyse all accessible data, and conduct research, that is relevant to the achievement of the objectives under this Act.

Research and analysis by the Council.

(2) The Council must –

(a) review and analyse the design and implementation of a measure or direction under sections 318 and 319; and

(b) seek to facilitate co-ordination between the Regulators and identify areas where action needs to be taken by the Regulators to achieve the objectives under this Act, if –

(i) a measure under section 318 is implemented by more than one Regulator; or

(ii) a direction under section 319 is issued to more than one Regulator.

(3) The findings of the Council must be –

(a) submitted to the Central Government and each Regulator; and

(b) published.

325. (1) The Council may call for such information or material as it determines necessary from the Regulator, Central Government, or financial service provider to carry out its functions under this Act.

Collection of information or material by the Council.

(2) The recipient of a request under sub-section (1) is bound to provide the information or material, if available with it, to the Council in a timely manner.

(3) The Central Government must prescribe the procedure to be followed by the Council to requisition information under this section.

PART X

RESERVE BANK OF INDIA

CHAPTER 61

OBJECTIVES AND FUNCTIONING OF THE RESERVE BANK

- Objectives.**
- 326.** The objectives of the Reserve Bank under this Part, are to – 5
- (a) formulate and implement monetary policy; and
 - (b) carry on other activities of a central bank, including –
 - (i) to issue currency of India;
 - (ii) to transact certain business of the Central Government and the State Government, as contained in section 348 and section 349 respectively; and 10
 - (iii) to act as banker to banking service providers.
- Capital of the Reserve Bank.**
- 327.** (1) The capital of the Reserve Bank may be increased by –
- (a) payment of additional amounts to the Reserve Bank by the Central Government; and 15
 - (b) subscription to additional capital of the Reserve Bank by the Central Government.
- (2) Any increase in capital of the Reserve Bank must be notified in the Official Gazette.
- Reserve Bank Board.**
- 328.** The Reserve Bank Board will – 20
- (a) approve the budget and operating plan of the Reserve Bank; and
 - (b) be responsible for such other matters as provided under this Act, or any other Act.
- Quorum for the meetings of Reserve Bank Board.**
- 329.** The quorum of a meeting of the Reserve Bank Board will be at least half of the members of the Reserve Bank Board, at least one of whom must be the Reserve Bank Chairperson, or, in the absence of the Reserve Bank Chairperson, the executive member designated by the Reserve Bank Board to act in such capacity. 25
- Advisory council on banking and payment.**
- 330.** (1) The Reserve Bank Board will be supported by advisory councils in the following areas –
- (a) banking; and 30
 - (b) payments.
- (2) The advisory councils on banking and on payments must, in addition to the matters contained in section 49, prepare and submit to the Reserve Bank Board an annual statement on the material developments in their respective fields and recommendations in relation to such developments. 35

CHAPTER 62

MONETARY POLICY FUNCTION

- 5 331. (1) The objectives of the Reserve Bank in the discharge of its monetary policy function must be provided by the Central Government, in consultation with the Reserve Bank Chairperson, by way of a written statement, which identifies and provides –
- Statement on objectives of monetary policy.
- (a) an explanation of the predominant objective of the Reserve Bank in discharge of its monetary policy function; and
- (b) an explanation of any additional objectives, if relevant, and the order of priority in which the additional objectives must be achieved.
- 10 (2) The statement under sub-section (1) must –
- (a) provide quantified medium-term targets in respect of each objective;
- (b) enumerate the circumstances under which the Central Government may determine that the Reserve Bank has failed to achieve the provided targets; and
- 15 (c) elaborate the manner in which the Reserve Bank will communicate to the Central Government –
- (i) the reasons for its failure to achieve the provided targets under clause (a);
- (ii) any remedial action proposed to be taken by the Reserve Bank; and
- 20 (iii) an estimate of the time-period within which the provided targets would be achieved pursuant to such remedial actions.
332. (1) The Central Government must issue the statement under section 331 within one week from the day on which this Act comes into force.
- Issue and publication of statement on objectives.
- 25 (2) The Central Government must, at least once every two years beginning on the day on which this Part comes into force, review the statement issued under sub-section 331(1), in consultation with the Reserve Bank Chairperson.
- (3) The Central Government must –
- (a) publish the statement under section 331;
- (b) place a copy of the statement before Parliament; and
- 30 (c) provide a copy of the statement to the Reserve Bank.
333. (1) There will be a committee known as the Monetary Policy Committee, which will be responsible for formulating the monetary policy of the Reserve Bank.
- Monetary Policy Committee.
- (2) The Monetary Policy Committee will consist of –
- 35 (a) the Reserve Bank Chairperson, as chairperson of the Monetary Policy Committee;
- (b) one executive member of the Board of the Reserve Bank, as designated by the Reserve Bank Board;
- (c) two members, appointed by the Central Government, in consultation with the Reserve Bank Chairperson; and
- 40 (d) three members appointed by the Central Government.
- (3) The Central Government may nominate a representative to attend any meeting of the Monetary Policy Committee.

- (4) All members appointed under sub-sections (2)(c) and (2)(d) must possess adequate knowledge and experience in the field of economics or finance which would be relevant for the discharge of the functions of the Monetary Policy Committee.
- (5) A person must not be appointed as a member of the Monetary Policy Committee under sub-sections (2)(c) and (2)(d), if such person – 5
- (a) is a member of the Reserve Bank Board or any advisory council of the Reserve Bank;
 - (b) is a public servant; or
 - (c) is a member of Parliament or state legislature. 10
- (6) The administrative law member of the Reserve Bank Board cannot be appointed to the Monetary Policy Committee under sub-section (2)(b).
- (7) No person may be appointed as a member of the Monetary Policy Committee, if such person –
- (a) has any financial or other interest that is likely to prejudicially affect their functions as a member of the Monetary Policy Committee; or 15
 - (b) attracts any of the grounds for removal of members of the Monetary Policy Committee mentioned in the Fifth Schedule. 5
- (8) The Reserve Bank must, by way of bye-laws, define what constitutes an interest under sub-section (7)(a). 20

Meetings of the
Monetary Policy
Committee.

334. (1) The Monetary Policy Committee must meet at least every two months during a financial year.
- (2) The meeting schedule of the Monetary Policy Committee for a financial year must be published by the Reserve Bank at least one week before the first meeting in that financial year. 25
- (3) The meeting schedule may be changed only –
- (a) by way of a decision taken at a prior meeting of the Monetary Policy Committee; or
 - (b) if, in the opinion of the Reserve Bank Chairperson, a meeting is required and advance intimation has been provided to the members of the Monetary Policy Committee. 30
- (4) The decision to hold a meeting under sub-section (3)(b) must be published by the Reserve Bank as soon as practicable.
- (5) Prior to every meeting, the members of the Monetary Policy Committee must review – 35
- (a) the report issued by the Reserve Bank under section 341(1)(a); and
 - (b) any information which the Monetary Policy Committee has requisitioned and obtained under section 339.

Quorum and
decision making.

335. (1) The quorum of a meeting of the Monetary Policy Committee will be five members, at least one of whom must be the Reserve Bank Chairperson and in the absence of the Reserve Bank Chairperson, the executive member designated by the Reserve Bank Board to act in such capacity. 40

- (2) Each member of the Monetary Policy Committee will have one vote.
- (3) Decisions in a meeting will be taken by a majority of the votes of the members of the Monetary Policy Committee present.
- (4) The decisions of the Monetary Policy Committee will be binding on the Reserve Bank, unless such decision has been superseded by the Reserve Bank Chairperson under 336.

336. (1) In exceptional and unusual circumstances, if the Reserve Bank Chairperson disagrees with a decision taken at a meeting of the Monetary Policy Committee, the Reserve Bank Chairperson will have the right to supersede such decision.
- (2) The right under sub-section (1) will not be available to any person chairing the meetings of the Monetary Policy Committee, in place of the Reserve Bank Chairperson during the absence of the Reserve Bank Chairperson.
- (3) If the Reserve Bank Chairperson exercises the right under sub-section (1), an explanatory statement must be –
- (a) submitted by the Reserve Bank Chairperson to the Central Government on the same day when the meeting where such right was exercised is held; and
- (b) published along with the minutes of the meeting in which the right has been exercised by the Reserve Bank Chairperson.
- (4) The statement under sub-section (3) must include –
- (a) the details of the decision of the Monetary Policy Committee which has been superseded; and
- (b) the reasons resulting in the exercise of the right under this section.

Right of Reserve Bank Chairperson to supersede decision of Monetary Policy Committee.

337. The Monetary Policy Committee must ensure that the Reserve Bank publishes the decisions taken at the meeting of the Monetary Policy Committee on the day on which such decision is taken.

Publication of decisions.

338. (1) The Monetary Policy Committee must ensure that the Reserve Bank publishes the minutes of the meetings of the Monetary Policy Committee within three weeks after each meeting.
- (2) Minutes of the meeting must record, in relation to every decision of the Monetary Policy Committee, the voting preference and reasons for voting of each member of the Monetary Policy Committee, present in such meeting.

Publication of minutes.

339. (1) The Monetary Policy Committee may, by a statement in writing, require the Reserve Bank to provide such information that the Monetary Policy Committee considers necessary or expedient to discharge its duties under this Chapter.

Power to obtain information.

- (2) The statement must indicate –
- (a) the form or manner in which the information must be provided;
- (b) the time within which the information must be provided;
- (c) the entities, if any, in relation to which the information must be provided; and
- (d) the period in relation to which information must be provided.

- (3) If the Monetary Policy Committee requires information relating to a individual financial service provider, it must obtain the approval of the Reserve Bank Board before obtaining such information.

Power of the Reserve Bank Board to make bye-laws for procedure of Monetary Policy Committee.

340. The Reserve Bank Board must make bye-laws in relation to the procedures of the Monetary Policy Committee, including –

- (a) the manner of publication of schedule of meetings under section 334(2);
- (b) the manner of publication of decisions under section 337;
- (c) the manner of publication of minutes of meetings under section 338;
- (d) process for requisitioning information from the Reserve Bank under section 339 and the process for obtaining the approval of the Reserve Bank Board under sub-section 339(3);
- (e) the manner and process of recording and counting of votes at the meeting;
- (f) conduct of meetings, including provision for meetings to be held without the physical presence of a member;
- (g) the manner of noting of minutes of the meetings; and
- (h) any other matters in relation to activities of the Monetary Policy Committee.

Reports in relation to monetary policy.

341. (1) The Reserve Bank must –

- (a) submit a report to the Monetary Policy Committee, at least three days prior to each meeting of the Monetary Policy Committee, containing information relevant to the decisions to be made by the Monetary Policy Committee in that meeting; and
- (b) publish a quarterly report containing –
 - (i) a review of the monetary policy decisions published by the Reserve Bank during such quarter;
 - (ii) an assessment of the developments in relation to monetary policy in the economy during the period to which the report relates; and
 - (iii) an indication of the approach which may be adopted by the Reserve Bank to meet its objectives in relation to monetary policy.

(2) A report submitted to the Monetary Policy Committee under sub-section (1)(a) must be published simultaneously with the submission of the report to the Monetary Policy Committee.

(3) Any report under sub-section (1)(b) must be published after approval of the Monetary Policy Committee.

Reserve power of the Central Government.

342. (1) The Central Government may provide a recommendation in writing, on monetary policy, to the Reserve Bank, if it is satisfied that such recommendation is required on account of extreme economic circumstances.

(2) Upon the receipt of a recommendation from the Central Government under sub-section (1), the Reserve Bank Chairperson must provide a copy of such recommendation to the Monetary Policy Committee as soon as possible and at any rate, prior to the first meeting of the Monetary Policy Committee which is to be held after the date of receipt of such recommendation.

- (3) The Monetary Policy Committee must consider the recommendation of the Central Government provided under sub-section (1) in the first meeting of the Monetary Policy Committee held after the date of receipt of such recommendation.
- 5 (4) If the Monetary Policy Committee rejects the recommendation of the Central Government wholly or substantially, the Central Government may, by an order in writing, direct the Reserve Bank on matters with respect to monetary policy.
- (5) The order under sub-section (4) –
- (a) may be issued only after consultation with the Reserve Bank Chairperson;
- 10 (b) must be laid before both Houses of Parliament for approval; and
- (c) will cease to have effect at the end of the following period, whichever is earlier –
- (i) twenty-eight days from the date on which the order is made, unless it is approved by a resolution of each House of Parliament before the end of that period, in accordance with sub-section (6); or
- 15 (ii) ninety days from the date on which the order is made.
- (6) In calculating the period of twenty eight days for the purposes of sub-section (5)(c)(i), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House of Parliament is adjourned for a continuous period of more than four days.
- 20 (7) Any objectives provided to the Reserve Bank by the Central Government under section 331 will not have effect while an order under sub-section (4) is in force.

CHAPTER 63

OTHER CENTRAL BANK POWERS

- 25 343. (1) The Reserve Bank has such powers as are necessary to carry out its functions as a central bank under this Act.
- (2) Powers under sub-section (1) include the power to –
- (a) receive money on deposit and pay interest on the deposits;
- 30 (b) purchase, sell, discount and rediscount bills of exchange, promissory notes and treasury bills;
- (c) purchase and sell government securities;
- (d) hold, purchase and sell securities issued by foreign countries;
- (e) maintain deposits with other banks, including foreign banks;
- 35 (f) purchase and sell special drawing rights issued by the International Monetary Fund;
- (g) purchase, sell and otherwise deal in gold, specie and other precious metals;
- (h) establish credits and give guarantees;
- (i) open accounts in a central bank in any other country or in the Bank for International Settlements or any other international or regional bank, and to act as agent or mandatory or depository or correspondent for any of those banks or organisations and pay interest on any of those deposits;
- 40 (j) issue bills and drafts and effect transfers of money; and

General powers of the Reserve Bank.

(k) acquire, hold, lease or dispose immovable property.

(3) In this section "International Monetary Fund" has the meaning assigned to it under the International Monetary Fund and Bank Act, 1945 (47 of 1945).

Business which the Reserve Bank may not transact.

344. (1) Unless the Reserve Bank, in the pursuit of its objectives under this Part is acting in accordance with its powers, it must not – 5

(a) engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking, other than where such interest has been acquired for the satisfaction of any of its claims;

(b) purchase any capital, including any shares of any banking service provider, or, of any other person, or grant loans against such capital or shares; or 10

(c) advance money on the mortgage of, or otherwise against the collateral of, immovable property or documents of title relating to such immovable property, or become the owner of immovable property.

(2) Any interest of the nature under sub-section (1)(b), acquired by the Reserve Bank for the satisfaction of its claims, will be disposed of at the earliest. 15

(3) The provisions of sub-section (1)(c) will not prevent the Reserve Bank from acquiring or holding property necessary for its business or residential premises for its use.

Temporary liquidity assistance.

345. (1) The Reserve Bank may provide short-term funds against adequate collateral to system participants for which the Reserve Bank directly operates payment systems, in order to meet a shortage of funds of such system participants. 20

(2) The Reserve Bank must make regulations to provide for –

(a) the procedure for availing assistance under sub-section (1); and

(b) the manner in which relevant information in relation to the utilisation of assistance under this section, will be shared with relevant Financial Agency for regulatory purposes. 25

(3) In this section, short-term means overnight or any such other period as may be notified by the Reserve Bank for the purpose of this section.

Emergency liquidity assistance.

346. (1) The Reserve Bank may provide liquidity assistance against adequate collateral to a financial service provider, or, a class of financial service providers, in case of shortage of funds, including where such shortage arises on account of severe or unusual stress in the financial system. 30

(2) The Reserve Bank must make regulations to provide for –

(a) the nature of collateral to be provided by a financial service provider to avail liquidity assistance under this section; and 35

(b) additional criteria to receive assistance under this section.

(3) Prior to extending assistance under this section, the Reserve Bank must consult –

(a) the relevant Regulator, when assistance is sought to be provided to a financial service provider not regulated by the Reserve Bank under Part V; and 40

- (b) the Corporation, when assistance is sought to be provided to a covered service provider.
- (4) The Reserve Bank must make a determination with regard to the matters under sub-section (2) prior to extending assistance to a financial service provider under this section.
- (5) No person will have recourse to the Tribunal against the determination made by the Reserve Bank under sub-section (4).
- (6) The Reserve Bank must make regulations to provide for –
- (a) the procedure to be followed by a financial service provider for availing liquidity assistance under sub-section (1); and
- (b) the manner in which relevant information in relation to the utilisation of assistance under this section, will be shared with relevant Financial Agency for regulatory purposes.
- (7) The Reserve Bank will be guided by the following principles while extending liquidity assistance under this section –
- (a) confidentiality regarding the use of this assistance by financial service providers; and
- (b) expediency in making a decision to extend assistance under this section.
347. (1) In order to reduce risks relating to payments and settlement, arising from the failure of identified financial service providers, the Reserve Bank must maintain a real time gross settlement system for transferring payments of funds.
- (2) In this section –
- (a) “the payment system” means the real time gross settlement system under sub-section (1); and
- (b) “identified financial service providers” means –
- (i) banking service providers;
- (ii) Infrastructure Institutions which provide clearing and settlement services and have been designated Systemically Important Financial Institutions by the Council; and
- (iii) any other financial service provider notified by the Central Government, in consultation with the Reserve Bank.
- (3) The Reserve Bank must make regulations governing –
- (a) the mode of operation of the payment system;
- (b) the conditions under which the access to the payment system may be withdrawn; and
- (c) all other issues connected or related to the payment system.
- (4) If access of an identified financial service provider to the payment system is withdrawn under sub-section (3)(b), then the Regulator must cancel the authorisation of such identified financial service provider to act as a banking service provider, or, to act as an Infrastructure Institution which provides clearing and settlement services, where –
- (a) if the Reserve Bank proposes to withdraw the access to the payment system, it must issue a show cause notice to the identified financial service provider; and

Payment system of the Reserve Bank.

(b) if the Reserve Bank proceeds to withdraw the access to the payment system, it must issue a decision order to the identified financial service provider.

(5) The payment system will be an Infrastructure Institution for the purposes of section 193 and no other provision of this Act will apply to the payment systems. 5

Business of the
Central
Government.

348. (1) The Central Government must –

(a) entrust the Reserve Bank with all its money, remittance, exchange and banking transactions in India; and

(b) deposit, free of interest, all its cash balances with the Reserve Bank. 10

(2) The Reserve Bank will accept monies on account of the Central Government and will make payments up to the amount standing to the credit of its account.

(3) The Reserve Bank will carry out exchange, remittance and other banking operations for the Central Government.

(4) All actions under sub-section (1) will be in accordance with the conditions agreed between the Reserve Bank and the Central Government. 15

(5) Any agreement under sub-section (4) will be laid before Parliament, as soon as practicable and must be published by the Reserve Bank.

(6) Sub-section (1) does not prevent Central Government from carrying on money transactions or holding requisite balances at places where the Reserve Bank has no branches or agencies. 20

(7) The Reserve Bank will include a description of the business of Central Government carried on by the Reserve Bank in its annual report.

Business of State
Governments.

349. (1) The Reserve Bank, by agreement with a State Government, may –

(a) undertake all the money, remittance, exchange and banking transactions in India of such State; and 25

(b) maintain the deposit of all cash balances of the State with itself, free of interest.

(2) Any agreement under sub-section (1) will be laid before Parliament, as soon as practicable and must be published. 30

(3) The Reserve Bank must include details of the business of State Governments carried on by the Reserve Bank in its annual report.

Right to issue bank
notes.

350. (1) The Reserve Bank will have the sole right to issue bank notes in India.

(2) Every bank note issued by the Reserve Bank will be legal tender at any place in India in payment or on account for the amount expressed on it, and will be guaranteed by the Central Government. 35

(3) The Reserve Bank, after considering the recommendations of the Central Government, must notify –

(a) the denomination value of the bank notes to be issued by the Reserve Bank; and 40

(b) the form, design and material of the bank notes.

- (4) The Central Government, on the recommendation of the Reserve Bank, may by notification, direct –
- (a) the non-issue, or discontinuance of issue, of bank notes of certain denominational values; or
- (b) that any series of bank notes of any denomination will cease to be legal tender in accordance with the conditions mentioned in the notification.
- (5) The Reserve Bank will not reissue bank notes, which in its opinion are torn, defaced or excessively soiled.
- (6) No person will have the right to recover from the Central Government, or, the Reserve Bank, the value of any lost, stolen, mutilated or imperfect bank note.
- (7) The Reserve Bank, with the sanction of the Central Government, may by notification, provide conditions under which value of a note described under sub-section (6) may be refunded as of grace.
- (8) The Reserve Bank will not be liable for the payment of any stamp duty under the Indian Stamp Act, 1899 (2 of 1899), in respect of bank notes issued by it.
351. (1) The Reserve Bank will issue bank notes through a separate and wholly distinct department called the Issue Department.
- (2) The aggregate assets of the Issue Department must be an amount not less than the total liabilities of the Issue Department.
- (3) The Reserve Bank, in consultation with the Central Government, must make bye-laws in relation to the nature, minimum value and other aspects relating to the assets of the Issue Department.
- (4) The assets of the Issue Department will not be subject to any liability other than the liabilities of the Issue Department.
- (5) The liabilities of the Issue Department will be an amount equal to the total bank notes in circulation at that point of time.
- (6) The Issue Department will not issue bank notes to any person except in exchange for other bank notes or for such coin, bullion or securities as may be notified by the Reserve Bank in this regard.
352. (1) The Central Government will not put into circulation any rupee coins, except through the Reserve Bank.
- (2) The Reserve Bank will not dispose of rupee coins otherwise than for the purposes of circulation.
- (3) The Reserve Bank will, in exchange for bank notes, supply notes of lower value and rupee coins in such quantities, which in the opinion of the Reserve Bank, are required for circulation.
- (4) The Central Government will supply coins to the Reserve Bank on demand for the purpose of supply under sub-section (3).
- (5) If the Central Government fails to supply coins upon demand by the Reserve Bank, the Reserve Bank will be released from the obligation under sub-section (3).

Obligation to supply different forms of currency.

353. The Reserve Bank will issue rupee coins on demand in exchange for bank notes and will issue bank notes on demand in exchange for coins which is legal tender under the Indian Coinage Act, 2011 (11 of 2011).

Issue of demand bills and notes.

354. (1) No person, other than the Reserve Bank, or, the Central Government, where expressly authorised, will –

(a) draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of money payable to bearer on demand;

(b) borrow, owe or take up any sum or sums of money on the bills, hundis or notes payable to bearer on demand of any such person; or

(c) make or issue any promissory note expressed to be payable to the bearer of the instrument.

(2) Sub-section (1) does not prevent any cheque or drafts, including hundis, which may be payable to the bearer on demand, to be drawn on a person's account with a banker, shroff or agent.

(3) In this section, the phrases "bill of exchange", "promissory note", "cheque", "draft" and "banker" have the meaning assigned to them under the Negotiable Instruments Act, 1881 (26 of 1881).

Power of Reserve Bank to obtain information.

355. (1) The Reserve Bank must specify the procedure for the Reserve Bank to obtain information relevant for its functions under this Part.

(2) A person must comply with a request for providing information issued under sub-section (1) and provide the required information or documents, in its possession or power, to the Reserve Bank.

CHAPTER 64

ACCOUNTS OF THE RESERVE BANK

Statement of assets and liabilities.

356. (1) The Reserve Bank must prepare and publish a statement of its assets and liabilities on a weekly basis.

(2) The statement must relate to assets and liabilities as at the close of business of the day on which such statement is prepared.

(3) If a day on which a statement is to be prepared is a holiday, as notified by the Central Government, then the statement must be prepared and published on the last business day preceding that day.

(4) A copy of the statement must be submitted to the Central Government.

Allocation of surplus profits.

357. (1) The Reserve Bank Board must maintain a policy in relation to the payment of surplus profits to the Central Government.

(2) In accordance with its policy, the Reserve Bank must pay profits held by it to the Central Government, after making adequate provisions for –

(a) reserves to meet future contingencies; and

(b) bad and doubtful debts, depreciation in assets, contributions to staff and superannuation funds and for all other matters for which provision are usually provided for by a banking service provider.

Part X. 65. OTHER PROVISIONS IN RELATION TO THE RESERVE BANK

- (3) The Reserve Bank must publish the policy issued under sub-section (1) and any modifications made to such policy from time to time.
- (4) The annual financial statements prepared by the Reserve Bank must clearly explain the provisions made by the Reserve Bank, along with the reasons for every provision.

CHAPTER 65

OTHER PROVISIONS IN RELATION TO THE RESERVE BANK

358. The Reserve Bank's obligation to comply with the provisions relating to the manner of publication of information as contained in Part III, does not release the Reserve Bank from the obligation to comply with a higher standard of publication, if provided elsewhere under this Act or any other law.
- Manner of publication of information.

PART XI

CAPITAL CONTROLS

CHAPTER 66

OBJECTIVES AND PRINCIPLES

Objectives.

359. (1) The functions and powers under this Part must be discharged and exercised by the competent authority with the objectives of – 5
- (a) facilitating capital account transactions in a manner that encourages investment and economic growth in India;
 - (b) managing adverse short-term fluctuations in balance of international payments; and 10
 - (c) ensuring review of capital account transactions that could affect national security.
- (2) In this Part, “competent authority” means –
- (a) the Central Government for making rules under this Part; or
 - (b) the Reserve Bank for making regulations under this Part. 15

Principles.

360. The following principles must be taken into consideration while discharging functions and exercising powers by the competent authority under this Part –
- (a) similar investments made by residents and non-residents in India must be treated similarly, to the extent practicable;
 - (b) investment restrictions must be so designed that the benefits of policies relating to capital account transactions outweigh the potential impact of such restrictions; 20
 - (c) investment measures must be tailored to the particular risks posed by particular investment proposals; and
 - (d) policies that restrict capital account transactions on national security considerations must be used only when other policies cannot be used to eliminate such national security considerations. 25

CHAPTER 67

SCOPE AND CERTAIN OTHER MATTERS

Scope.

361. (1) Cross-border trade in goods, services, payment transactions or other current account transactions are not subject to any restrictions, conditions or prohibitions under this Part. 30
- (2) Capital account transactions are subject to restrictions, conditions or prohibitions, if any, contained in this Part, or as may be prescribed or specified under this Part. 35

Emergency circumstances.

362. The following circumstances or conditions will be considered emergency circumstances or conditions under this Part –
- (a) the outbreak of a natural calamity in India;

- (b) grave and sudden changes in domestic economic conditions;
- (c) grave and sudden changes in foreign economic conditions;
- (d) if international payments and international finance are facing or expected to face serious difficulties;
- 5 (e) the proclamation of national emergency under Article 352 of the Constitution of India; or
- (f) the proclamation of financial emergency under Article 360 of the Constitution of India.

CHAPTER 68

INWARD FLOWS

10

363. (1) For carrying out the purposes of this Part, the Central Government will make rules in accordance with this Chapter in relation to inward flows.

Power to make rules.

(2) The Central Government must prescribe criteria that qualified foreign investors must meet.

15 (3) The Central Government may prescribe –

- (a) the prohibition of one or more classes of inward flows; or
- (b) procedures, conditions, limits, restrictions or approval requirements in relation to –
 - (i) any class or classes of inward flows;
 - 20 (ii) the acquisition or transfer of immovable property situated in India, by a qualified foreign investor;
 - (iii) any borrowing by a resident from a non-resident; or
 - (iv) the giving of any guarantee or surety in respect of any borrowing, obligation or other liability, by a non-resident.

25 364. (1) Nothing contained in section 63 will apply to rule-making by the Central Government under this Part.

Rule making process.

(2) The Central Government may make rules for the implementation of this Part and must consult the Reserve Bank before making draft rules under this section.

30 (3) The consultation with the Reserve Bank must relate to –

- (a) the problem to be addressed and the goals sought to be achieved as well as the alternatives available for addressing the problem or achieving the goals;
- (b) the economic rationale, including the expected benefits and likely costs; and
- 35 (c) the effect on investment climate, efficiency, and balance of payments.

(4) Subsequent to consultations with the Reserve Bank, the Central Government must make rules in accordance with the process contained in section 52.

40 365. (1) Unless provided otherwise, nothing contained in Chapter 13 will apply to emergency rules made under this Part.

Emergency rule making.

- (2) The Central Government may make rules in accordance with this section, in any circumstance or condition contained in section 362 without complying with the process contained in section 364.
- (3) If any condition or circumstance contained in section 362 exists, the Central Government must consult the Reserve Bank prior to making rules under this section, within fifteen days from the day on which a condition or circumstance was determined by the Central Government to be an emergency condition or circumstance. 5
- (4) Upon consultation with the Reserve Bank, the Central Government may make rules, temporarily suspending – 10
- (a) any payments or receipts on account of any inward flow, or the whole or a part of any inward flow;
- (b) borrowings from any non-resident; or
- (c) any payment to non-resident or mandating prior approval or safe-keeping of part of any funds borrowed from any non-resident. 15
- (5) The rules made under this section must be accompanied by the documents contained in sections 52(2)(a) to 52(2)(d).
- (6) The rules made under this section must be laid before the Parliament.
- (7) Unless withdrawn earlier, the rules made under this section will cease to be in force on the expiry of ninety days from the date on which the rules come into effect. 20
- (8) If the Central Government determines that the rules made under this section are required to be in force for a period of more than ninety days, it must make the rules by following the procedure contained in section 364.

CHAPTER 69 25

OUTWARD FLOWS

Power to make regulations.

366. (1) For carrying out the purposes of this Part, the Reserve Bank will make regulations in accordance with this Chapter in relation to outward flows.
- (2) The Reserve Bank may specify procedures, conditions, limits, restrictions or approval requirements in relation to – 30
- (a) any class or classes of outward flows;
- (b) the acquisition or transfer of immovable property situated outside India, by a resident;
- (c) any borrowing by a non-resident from a resident; or
- (d) the giving of any guarantee or surety in respect of any borrowing, obligation or other liability, by a resident to a non-resident. 35

Process for making regulations.

367. (1) The Reserve Bank must consult the Central Government before making draft regulations under this section.
- (2) The consultation with the Central Government must relate to the matters contained in section 364(3). 40

368. (1) Unless provided otherwise, nothing contained in section 53 will apply to emergency regulations made under this Part. Emergency regulation making.
- (2) The Reserve Bank may make regulations in accordance with this section, in any of the circumstances or conditions contained in section 362 without complying with the process contained in section 367. 5
- (3) If any condition or circumstance contained in section 362 exists, the Reserve Bank must consult the Central Government prior to making regulations under this section, within fifteen days from the day on which a condition or circumstance was determined by the Reserve Bank to be an emergency condition or circumstance. 10
- (4) Upon consultation with the Central Government, the Reserve Bank may make regulations temporarily suspending –
- (a) any payments or receipts on account of any outward flow, or the whole or a part of any outward flow; or
- (b) borrowings by any non-resident from any resident. 15
- (5) The regulations made under this section must be accompanied by the documents contained in sections 52(2)(a) to 52(2)(d).
- (6) The regulations made under this section must be laid before the Parliament.
- (7) Unless withdrawn earlier, the regulations made under this section will cease to be in force on expiry of ninety days from the date on which the regulations come into effect. 20
- (8) If the Reserve Bank determines that the regulations made under this section are required to be in force for a period of more than ninety days, it must make the regulations by following the procedure contained in section 367.

25
CHAPTER 70

AUTHORISED DEALERS

369. (1) The Reserve Bank must specify the conditions or requirements to be satisfied by an authorised dealer. General.
- (2) The regulations must –
- (a) be neutral to the legal structure of a person; and
- (b) allow any person meeting the conditions or requirements to act as an authorised dealer. 30
- (3) The regulations may require any person to obtain authorisation from the Reserve Bank to act as authorised dealer.
370. (1) Only authorised dealers may, for capital account transactions, – Dealing in foreign exchange for capital account transactions.
- (a) deal in or transfer any foreign exchange to any person; or
- (b) receive, in any manner, any payment by order or on behalf of any non-resident. 35

Undertaking of transactions by authorised dealers.

- (2) Any person may sell or draw foreign exchange for a capital account transaction, to or from an authorised dealer, in accordance with the provisions of this Part or as may be specified.

371. (1) Prior to undertaking a transaction on behalf of any person, an authorised dealer must be reasonably satisfied that the transaction –

- (a) is genuine;
 (b) will not involve a contravention of the provisions of this Part or rules or regulations made under this Part; and
 (c) is not designed to contravene or evade provisions of this Part or rules or regulations made under this Part.

(2) In order to be reasonably satisfied, the authorised dealer –

- (a) must review and verify the documents and declarations made;
 (b) must ensure compliance with provisions of this Part and the rules or regulations made under this Part; and
 (c) may require any person on behalf of whom the transaction is to be undertaken, to make declarations and provide information as the authorised dealer may reasonably require under the circumstances.

(3) The authorised dealer must refuse, in writing, to undertake a transaction if it determines that a person refuses to comply, or unsatisfactorily complies, with any requirement of the authorised dealer contained in sub-section (2)(c).

(4) Any person aggrieved by a refusal of the authorised dealer under sub-section (3) may file a complaint, in such manner as may be specified, with the Reserve Bank.

(5) If the authorised dealer has a reason to believe that any contravention or evasion of this Part or rules or regulations made under this Part is contemplated under sub-section (3), it should report the matter to the Reserve Bank, as soon as possible.

CHAPTER 71

NATIONAL SECURITY AND REVIEW

Capital account transactions affecting national security.

372. (1) A capital account transaction affects national security if it involves any of the following –

- (a) ownership of critical infrastructure by a foreign investor;
 (b) ownership of critical technologies by a foreign investor;
 (c) control or ownership of assets in India by a foreign government;
 (d) a non-resident or a foreign government –
 (i) which presents a threat to the peaceful coexistence of India with other nations; or
 (ii) which presents a threat, or a major disruption, to foreign relations of India; or
 (e) any other matter as may be prescribed or specified, as the case may be.

(2) In this section –

- (a) "critical infrastructure" means systems and assets, whether physical or virtual, so vital to India that the incapacity or destruction of such systems or assets would have a debilitating impact on the Indian economy; and
- (b) "critical technologies" means technology, critical components, or items essential to national defence.

5

373. (1) Any person who has received a decision order or any approval order from the Central Government may apply to the senior officer of the Central Government for review of such order, within fourteen days from the date of receipt of such order.

Review by senior officers.

10 (2) If the senior officer finds that there is an apparent error in the order, the senior officer may amend or set aside such order.

(3) The senior officer must convey its decision within a period of one month from the receipt of the application under sub-section (1).

(4) The senior officer must give a reasoned decision.

15 (5) An appeal from the order of the senior officer will lie to the Tribunal.

(6) In this section, "senior officer" means an officer of the Central Government not below the rank of Secretary to the Government of India, having the competence necessary for dealing with applications under Chapter 14, and designated by the Central Government to act as senior officer for the purpose of this Part.

20 (7) An administrative law member reviewing the order of the Reserve Bank in relation to this Part, under section 403, must follow the procedure contained in this section.

CHAPTER 72

ANNUAL REPORTS AND MISCELLANEOUS

25 374. (1) The Central Government must publish an annual report within ninety days of the expiry of the year for which the report relates to.

Annual report of the Central Government.

(2) The annual report must contain –

(a) the rules and amendments to rules made by the Central Government under this Part;

30 (b) a summary of cost-benefit analysis for the rules made by the Central Government under this Part;

(c) an analysis of each inward flow affecting national security, including the nature of the acquisitions and potential impact on critical infrastructure or critical technologies;

35 (d) an analysis of effectiveness of the rules made by the Central Government under this Part; and

(e) such other matters as are necessary to give a complete disclosure and analysis of the performance of functions by the Central Government under this Part.

40 (3) In addition to the annual report under sub-section (1), the Central Government must publish a table showing –

(a) by sector, product and country of foreign ownership, the number of acquisitions reviewed by the Central Government;

- (b) the total number of approvals granted by the Central Government;
- (c) the total number of applications rejected by the Central Government;
- (d) the total number of decisions along with a summary of decisions of the senior officer;
- (e) the total number of decisions of the senior officer upheld by the Tribunal along with a summary of such decisions of the Tribunal; and 5
- (f) the total number of decisions of the senior officer struck down by the Tribunal along with a summary of such decisions of the Tribunal.

Annual report of
the Reserve Bank.

- 375. (1)** In addition to the requirements contained in section 77, the annual report of the Reserve Bank must contain – 10
- (a) the regulations and amendments to regulations made by the Reserve Bank under this Part;
 - (b) a summary of cost-benefit analysis for the regulations made by the Reserve Bank under this Part;
 - (c) an analysis of each outward flow affecting national security; 15
 - (d) an analysis of effectiveness of the regulations made by the Reserve Bank under this Part; and
 - (e) such other matters as are necessary to give a complete disclosure and analysis of the performance of functions by the Reserve Bank under this Part. 20
- (2)** In addition to the annual report under sub-section (1), the Reserve Bank must publish a table showing –
- (a) by sector and product, the number of acquisitions reviewed by the Reserve Bank;
 - (b) the total number of approvals granted by the Reserve Bank under this Part; 25
 - (c) the total number of applications rejected by the Reserve Bank in this Part;
 - (d) the total number of investigations conducted the Reserve Bank in this Part;
 - (e) the total number of decisions along with a summary of decisions of the administrative law member of the Reserve Bank under this Part; 30
 - (f) the total number of decisions of the administrative law member of the Reserve Bank under this Part upheld by the Tribunal along with a summary of such decisions of the Tribunal; and
 - (g) the total number of decisions of the administrative law member of the Reserve Bank under this Part struck down by the Tribunal along with a summary of such decisions of the Tribunal. 35

Modifications of
certain sections of
this Act.

- 376. (1)** For the purposes of the applicability of this Part, the provisions of certain sections in this Act will be modified to the extent provided in this section.
- (2)** The obligation on Financial Agencies in relation to review of regulations contained in section 59 will also be applicable to the Central Government for the rules made by it under this Part. 40
- (3)** All references to “Financial Agency” contained in Chapter 14 will be replaced with “competent authority”.

- (4) All references to "financial service provider" contained in Chapters 15 and 77 will be replaced with "authorised dealer or any person involved in a capital account transaction".
- (5) The words "or any rules made by the Central Government under Part XI" will be added after –
- 5
- (a) the word "Agency" contained in section 58(1); and
 - (b) the word "regulations" contained in sections 58(1)(c), 58(1)(e), 58(1)(f), 58(2), 426(4)(a) and 394(1).
- (6) The following clause will be added in section 58 –
- 10
- (a) the conditions contained in section 362 did not exist for rules or regulations, as the case may be, made under that section.
- (7) The word ", rules" will be added after the word "regulations" contained in section 436(1)(b).
- (8) The words "or prescribed" will be added after the word "specified" contained in section 68(1).
- 15
- (9) The following sub-section will be added after section 70(10) –
- (a) In relation to the applications made under Part XI, the requirement to give show cause notice contained in sub-section 70(7) will not apply if the competent authority provides in the decision order or the approval order, as the case may be, that such order is in the interest of national security considerations contained in section 372.
- 20
- (10) The following sub-section will be added after section 71(2) –
- (a) If the competent authority proposes to cancel any approval granted by it under Part XI, other than the approvals granted under Chapter 70, it must –
- 25
- (i) take into account the investment protection agreement entered into between the Central Government and the government of the country of which the non-resident is resident, if any;
 - (ii) provide for adequate compensation to the non-resident, or the resident, as the case may be; and
 - (iii) provide for reasonable time-period to divest to the non-resident or the resident, as the case may be.
- 30
- (11) The following sub-section will be added after section 394(1) –
- (a) Where the Central Government has information or reasonable grounds to suspect that any authorised dealer or any person involved in a capital account transaction is violating or has violated any provision of any law or rules made under Part XI, or any condition of any approval granted by the Central Government, the Central Government must share such information or the basis of such grounds, as the case may be, with the Reserve Bank and the Reserve Bank must investigate such authorised dealer or person involved in a capital account transaction.
- 35
- 40
- (12) The words "approval order under Part XI" will be added after the words "decision order" in section 403.
- (13) The following clause will be added after section 407(3)(c) –

(a) condition of any approval order granted by the competent authority under Part XI.

(14) The following sub-section will be added after section 407(3) –

(a) In relation to Part XI, enforcement action includes –

- (i) direction for reversal of transaction; 5
- (ii) direction to the qualified foreign investor to divest itself of control or of its investment in or transactions with the resident;
- (iii) direction to the resident to divest itself of control or of its investment in or transactions with the non-resident;
- (iv) declaration of annulment of transaction; 10
- (v) direction for amendment of the structure of the transaction; or
- (vi) direction to authorised dealer to undertake a transaction.

(15) The following sub-section will be added after section 408(3) –

(a) In addition to the factors contained in sub-section 408(2), the Reserve Bank must take into account the investment protection agreement entered into between the Central Government and the government of the country of which the non-resident is resident, if any. 15

PART XII

PUBLIC DEBT MANAGEMENT AGENCY

CHAPTER 73

OBJECTIVE AND FUNCTIONING OF THE DEBT AGENCY

5 377. The Debt Agency has the objective of minimising the cost of raising and servicing public debt over the long-term within an acceptable level of risk at all times, under the general superintendence of the Central Government, as provided by this Part.

Objective.

378. (1) There will be a Debt Agency Advisory Council to advise the Debt Agency Management Committee under this Part.

Establishment of the Debt Agency advisory Council.

10 (2) The functioning of this advisory council will be in accordance with Chapter 12, other than in the aspects provided here.

(3) The Debt Agency Advisory Council will comprise –

- 15 (a) a member designated as chairperson;
 (b) an officer of the Central Government higher than the rank of its officer in the Debt Agency Management Committee as member;
 (c) an officer of the Reserve Bank higher than the rank of its officer in the Debt Agency Management Committee as member;
 (d) four experts as members; and
 (e) the Debt Agency Chief Executive as member.

20 (4) The members of the Debt Agency Advisory Council will be appointed by the Central Government.

(5) The members of the Debt Agency Advisory Council cannot be the same as the members of the Debt Agency Management Committee, except for the Debt Agency Chief Executive.

25 (6) Members of the Debt Agency Advisory Council must be persons who have shown capacity in dealing with problems relating to public debt, public finance or financial markets, or have knowledge and experience of accountancy, economics, finance or law.

30 (7) The Debt Agency Advisory Council must meet at least once in a quarter to review the borrowing programme for the upcoming quarter, and as and when it is called upon by the Debt Agency Management Committee to provide an opinion on any matter under this Part.

379. (1) The Debt Agency Advisory Council must provide its opinion on any matter referred to it by the Debt Agency Management Committee.

Functions of the Debt Agency Advisory Council.

35 (2) The Debt Agency Advisory Council may provide its opinion on any activity of the Debt Agency as it finds relevant.

(3) The Debt Agency Advisory Council must advise the Debt Agency Management Committee to disseminate information relating its functions to the public in a transparent, accountable and timely manner.

CHAPTER 74

FUNCTIONS OF THE DEBT AGENCY

Functions.

380. The Debt Agency will –

- (a) manage the public debt, cash and contingent liabilities of the Central Government; and
- (b) undertake other activities incidental to the functions under this section.

5

Public debt
management.**381.** (1) The Debt Agency must manage the public debt, in accordance with this Part, and any rules made thereunder.

(2) The Debt Agency must submit a draft annual public debt plan, in such form as may be prescribed, for the following financial year, to the Central Government, not later than 1st January of each year.

10

(3) Before the draft annual public debt plan is submitted to the Central Government, the Debt Agency must –

- (a) seek the opinion of the Debt Agency Advisory Council under section 379(1); and
- (b) if the Debt Agency disagrees with the opinion of the Debt Agency Advisory Council, publish a written opinion explaining why it so disagrees.

15

(4) The draft annual public debt plan must take into account –

- (a) the opinion of the Debt Agency Advisory Council under section 379(1);
- (b) the current public debt portfolio, including inherent risks and vulnerabilities, of the Central Government;
- (c) the forecasts of revenue and expenditure of the Central Government;
- (d) the prevailing and evolving market conditions for government securities;
- (e) aspects of efficiency such as costs, risks and phasing of borrowing and repayments; and
- (f) such other factors as the Debt Agency considers appropriate.

20

25

(5) The draft annual public debt plan must advise on –

- (a) the composition of the borrowing and repayment of public debt, including the amount, structure, maturity, currency, indexing, and mode of issuance of public debt; and
- (b) the optimal annual calendar for the issuance of public debt.

30

(6) The draft annual public debt plan may advise on –

- (a) the medium-term and long-term debt strategy of the Central Government; and
- (b) the policy to mitigate risks to the debt portfolio, including any limits that may be placed for such risks.

35

(7) The Central Government must approve the draft annual public debt plan, with or without modifications, each year, for the following financial year, and communicate the same to the Debt Agency, as soon as may be practicable.

(8) The Central Government may modify the annual public debt plan any time during the year as may be necessary, in consultation with the Debt Agency.

40

- (9) The Debt Agency must implement, to the best of its abilities, the annual public debt plan as approved and modified by the Central Government from time to time.
- 5 (10) The Debt Agency must prepare a public debt management plan for the Central Government on daily, weekly or monthly basis, as the Debt Agency may determine to be practicable and necessary, in consultation with the Central Government.
- 10 (11) The Debt Agency must disseminate information relating to public debt management and the annual public debt plan to the public in a transparent, accountable and timely manner.
- (12) In this section –
- (a) “annual public debt plan” means the annual plan for managing public debt as approved by the Central Government; and
- 15 (b) “draft annual public debt plan” means the calendar of the Central Government for borrowing and repayment of public debt during the next financial year, as proposed by the Debt Agency to the Central Government.
382. (1) The Debt Agency must undertake cash management for the Central Govern- Cash management.
ment, in accordance with this Part, and any rules made thereunder.
- (2) The functions of the Debt Agency relating to cash management include –
- 20 (a) co-ordinating with the departments, ministries and agencies of the Central Government and the Reserve Bank to estimate the cash balances every day;
- (b) monitoring the cash balances of the departments, ministries and agencies of the Central Government;
- 25 (c) advising the Central Government on measures to promote efficient cash management practices and to deal with surpluses and deficits; and
- (d) managing cash balances of the Central Government.
- (3) The Debt Agency must prepare a cash management plan for the Central Govern-
ment on daily, weekly or monthly basis, as the Debt Agency may determine
30 to be practicable and necessary, in consultation with the Central Government.
- (4) The periodic cash management plan must take into consideration –
- (a) the forecasts of cash flows of the Central Government;
- (b) synchronisation of cash flows with public debt management; and
- 35 (c) aspects of efficiency such as costs and risks associated with cash flows and measures to deal with deficit and surplus.
- (5) The Central Government must approve the periodic cash management plan, with or without modifications, each year, and communicate the same to the Debt Agency, as soon as may be practicable.
- 40 (6) The Central Government may modify the periodic cash management plan at any time as may be necessary, in consultation with the Debt Agency.
- (7) The Debt Agency must implement, to the best of its abilities, the periodic cash management plans as approved and modified by the Central Government.
- (8) The Debt Agency must disseminate information relating to cash management to the public in a transparent, accountable and timely manner.

Contingent liabilities.

- 383.** (1) The Debt Agency must manage contingent liabilities for the Central Government, in accordance with this Part, and any rules made thereunder.
- (2) The functions of the Debt Agency relating to the management of contingent liabilities include –
- (a) developing, maintaining and managing a database of contingent liabilities; 5
 - (b) managing and monitoring contingent liabilities;
 - (c) undertaking risk assessments in relation to contingent liabilities; and
 - (d) advising the Central Government on the pricing and issuance of contingent liabilities, and the arrangement of contingent lines of credit. 10
- (3) The Debt Agency must undertake risk assessments in relation to contingent liabilities on an annual basis, and in accordance with international methodology and practice.
- (4) The Debt Agency must disseminate information relating to contingent liabilities to the public in a transparent, accountable and timely manner. 15

Research and information.

- 384.** The Debt Agency must –
- (a) develop, maintain and manage information systems that are necessary to carry out its functions efficiently;
 - (b) disseminate information and data relating to its functions to the public in a transparent, accountable and timely manner; and 20
 - (c) conduct and foster research relevant for the efficient discharge of its functions.

Fostering the market for government securities.

- 385.** (1) The Debt Agency must take steps to foster a liquid and efficient market for government securities.
- (2) In the discharge of its functions under this section, the Debt Agency will advise the Regulator, the Central Government or any public authority on the policy and design of the market for government securities. 25
- (3) In carrying out the functions under this section, the Debt Agency must seek to ensure –
- (a) equal access to the market for government securities; 30
 - (b) growth and diversity in the investor base for government securities;
 - (c) fair competition in the market for government securities; and
 - (d) transparency in the issuance and trading of government securities.

Services to others.

- 386.** (1) The Debt Agency may, on behalf of any public authority, as may be permitted by the Central Government, or any State Government – 35
- (a) carry out the functions under section 380; or
 - (b) provide technical assistance to enable the public authority or State Government, as the case may be, to carry out the functions under section 380.
- (2) The Debt Agency must not carry out any function under this section if there is a conflict of interest with the obligations of the Debt Agency under this Part. 40

- (3) The functions carried out under this section must be subject to a written agreement to this effect between the Debt Agency and the public authority or State Government concerned.
- (4) Unless excluded by the written agreement, provisions of this Part will apply, with the necessary modifications, to the functions carried out under this section.
- (5) For an agreement under this section to be valid, it must –
- (a) require the Debt Agency to carry out, or provide technical assistance to enable the carrying out of, at least one of the functions provided under sections 381, 382 or 383; and
 - (b) be published.
- (6) In this section, “technical assistance” means any advice, assistance or training pertaining to the functions under section 380.
- 387.** (1) The Debt Agency may, from time to time, in writing, call for such information or material as it determines necessary from the Central Government, any State Government, or any public authority, to carry out its functions under this Part.
- (2) The information or material that may be called for by the Debt Agency includes information or material relating to –
- (a) public debt;
 - (b) contingent liabilities;
 - (c) cash balances; and
 - (d) forecasts of daily cash flows and net cash requirements.
- (3) The information or material received under this section will be disseminated to the public only to the extent required under the Right to Information Act, 2005 (22 of 2005).
- (4) The recipient of a request under sub-section (1) is bound to provide the information or material, if available with it, to the Debt Agency in a timely manner.
- 388.** The Debt Agency must not raise funds or undertake transactions in financial markets on its own behalf.

Collection of information or material.

Bar on transactions.

CHAPTER 75

POWERS OF THE CENTRAL GOVERNMENT

- 389.** (1) The Central Government may issue to the Debt Agency, by an order in writing, directions on policy from time to time.
- (2) The decision of the Central Government as to whether a direction is one of policy or not is final.
- (3) Before issuing any directions under this section –
- (a) the Debt Agency must be given a reasonable opportunity to be heard to express its views; and
 - (b) the Central Government must publish any views expressed by the Debt Agency in a manner best suited to bring them to the attention of the public, and consider the same.

Power of Central Government to issue directions.

- (4) The Debt Agency is bound by any directions issued under this section in the exercise of its powers or the performance of its functions under this Part.

Power of Central Government to temporarily supersede Debt Agency in exigency.

390. (1) The Central Government may, by notification, temporarily supersede the Management Committee at any time, if the Central Government is of the opinion that –

- (a) on account of an emergency, the Debt Agency is unable to perform its functions; or
(b) the Debt Agency has persistently defaulted either in complying with any direction issued by the Central Government under this Part or in the performance of its functions.

- (2) The notification must provide for the period of supersession, which may not exceed a period of one hundred and eighty days.

- (3) Before issuing the notification, the Central Government must –

- (a) give a reasonable opportunity to the Debt Agency to make representations against the proposed supersession; and
(b) consider representations, if any, made by the Debt Agency.

- (4) Upon the publication of the notification –

- (a) all the members of the Management Committee will, as from the date of supersession, vacate their offices; and
(b) all the powers and functions which may be exercised or performed by or on behalf of the Debt Agency, will, until the Management Committee is reconstituted under section 24, be exercised and performed by such person or persons as the Central Government may direct.

- (5) Before the period of supersession expires, the Central Government must take action towards reconstituting the Management Committee.

- (6) The Central Government may reconstitute the Management Committee of the Debt Agency by fresh appointments, and no person who vacated office under sub-section (4)(a) will be deemed disqualified for appointment.

- (7) The Central Government must, at the earliest, lay before each House of Parliament, the notification and a report of the action taken under this section and the circumstances leading to such action.

CHAPTER 76

OTHER PROVISIONS GOVERNING THE DEBT AGENCY

Fees.

391. (1) The Debt Agency may, in consultation with the Central Government, make bye-laws to provide for fees payable in respect of its services rendered under this Part.

- (2) The bye-laws may levy the fees on the basis of the kind or scale of service rendered.

- (3) While levying fees, the bye-laws must take into account –

- (a) the financial requirements of the Debt Agency; and
(b) the costs associated with the service for which the fee is being levied.

- (4) For services provided under section 386, if the fees are not provided for by by-laws, the Debt Agency may provide for the fees through the agreement entered into under that section.

- 5 392. (1) There will be constituted a fund, established and maintained by the Debt Agency, to which the following will be credited – Fund.
- (a) all grants, loans, and fees received by the Debt Agency; and
 - (b) all sums received by the Debt Agency from such other sources as may be prescribed by the Central Government.
- (2) The fund will be applied for meeting –
- 10 (a) the salaries, allowances and other remuneration of the members, officers, and employees of the Debt Agency;
- (b) the expenses of the Debt Agency in performing its functions under this Part; and
- (c) the expenses on objects and for purposes authorised by the Act.
- 15 393. (1) The Central Government is liable to meet the obligations arising from – Liability for financial transactions.
- (a) any financial transaction authorised by the Central Government that is undertaken by the Debt Agency; or
 - (b) any funds that are raised on behalf of the Central Government by the Debt Agency.
- 20 (2) A State Government or public authority is liable to meet the obligations arising from –
- (a) any financial transaction authorised by that State Government or public authority that is undertaken by the Debt Agency; or
 - (b) any funds that are raised on behalf of that State Government or public authority by the Debt Agency.
- 25

PART XIII

INVESTIGATIONS, ENFORCEMENT ACTIONS AND
OFFENCES

CHAPTER 77

INVESTIGATIONS

5

Commencing
investigations.

394. (1) Where a Financial Agency has information or reasonable grounds to suspect that any person is violating, or has violated, any provisions of the Act or relevant regulations, the Financial Agency may investigate such violation.

(2) The Financial Agency must appoint one or more competent individuals to investigate the financial service provider and record such appointment. 10

(3) The record of appointment must provide for –

(a) the person who will be responsible for carrying out the investigation;

(b) reason for such appointment;

(c) scope of the investigation;

(d) the time for the investigation, which will not exceed one hundred and eighty days at the first instance; and 15

(e) the method of reporting of the investigation.

(4) The Financial Agency may modify the terms of appointment contained in sub-section (3)(e), if the circumstances of the investigation require such modification. 20

(5) In this Chapter, “investigator” means an individual appointed under sub-section (2).

Process of
investigation.

395. (1) An investigator may exercise powers contained in sub-section (3) over –

(a) any financial service provider;

(b) any person who is an employee or financial representative of any financial service provider; 25

(c) any person carrying out any activity subject to regulation by the Financial Agency under the authority of law, with or without the permission of the Financial Agency, and the person in control of such person;

(d) any related person of financial service provider; 30

(e) any other person who has been a party to any regulated activity or has information relevant or helpful to the investigation being carried out; and

(f) any person suspected of market abuse.

(2) The investigator may exercise the powers contained in this section only after – 35

(a) recording the reasons stating the relationship between the person over whom the power is being exercised and the scope of the investigation under section 394(3)(c); and

- (b) providing the reasons recorded to such person, along with any order exercising such powers.
- (3) The investigator may order a person under sub-section (1) to –
- (a) respond to the questions of the investigator, in person or any form of convenient communication; and
- (b) produce any document or information the investigator may require.
- (4) The investigator may make copies of any document produced.
- (5) The investigator will have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters –
- (a) summoning and enforcing the attendance of any individual including government officials;
- (b) requiring such individuals to produce relevant records and documents; and
- (c) recording their statements.
- (6) Any copy of a document or record made by the investigator will be presumed to be true and accurate unless evidence is produced to the contrary.

396. (1) An investigator may –
- (a) enter the premises of any person without prior notice; and
- (b) seize and retain custody of books, accounts, or any other records of the person.
- (2) If an investigator proposes to use the powers under sub-section (1), the investigator must make an application to a Judicial Magistrate of the first class of the district where the head office of the Financial Agency is situated.
- (3) The Judicial Magistrate may issue an order authorising the investigator to carry out the actions contained in sub-section (1) if the investigator satisfies the Judicial Magistrate that –
- (a) the person may not co-operate with the investigation; or
- (b) any direction to the person may lead to destruction of information or records which is required by the investigator.
- (4) The order of the Judicial Magistrate under sub-section (3) will have the same legal effect as a warrant issued by an appropriate court under the Code of Criminal Procedure, 1973 (2 of 1974).
- (5) The investigator may retain books, accounts or any other records seized under this section, for a period not exceeding thirty days.

Powers of the investigator.

397. After the conclusion of the investigation or lapse of time allocated in the appointment order, the investigator will make a final report to the Financial Agency.

Report of the investigator.

398. (1) This section applies if, pending investigation under section 395, the investigator has reasonable grounds to believe that any person mentioned in Section 395(1) is taking, or about to take, any action which –

Preventive measures during investigation.

- (a) constitutes a violation of any provision of law or regulations enforced by the Financial Agency; and
 - (b) may prevent the investigator from collecting information or evidence.
- (2) The investigator may apply to an administrative law member for a decision order requiring a person to take actions contained in sub-section (5). 5
- (3) An application under sub-section (2) must be accompanied with reasons for the investigator considering a decision order under this section to be necessary.
- (4) The administrative law member must issue a decision order under sub-section (2) only when the administrative law member has reasonable grounds to believe that – 10
 - (a) the actions of the person disclose apparent violation of laws and regulations enforced by the Financial Agency;
 - (b) if no order is passed, persons availing financial services from the financial service provider will suffer injury which may not be compensated adequately after the investigation is complete; 15
 - (c) if no order is passed, the investigator will not be able to effectively carry out the investigation; or
 - (d) if no order is passed, any eventual remedy or penalty that may be imposed by the Financial Agency, after the investigation is complete, will not be enforceable due to change of circumstances. 20
- (5) The administrative law member will have the power to issue a decision order against any financial service provider or person suspected of being involved in market abuse –
 - (a) to cease or desist from carrying out such specified activities as would meet the objectives contained in sub-section (4); 25
 - (b) to keep specified records in a manner and form specified by the investigator; and
 - (c) to keep any monies collected from consumers in a separate account or deposit such monies with the Financial Agency.
- (6) Before passing a decision order under this section, the administrative law member will consider the requirements contained in sub-section (4) and the requirement of causing least possible disruption to the person to whom such order applies. 30
- (7) In exceptional circumstances, a decision order under this section may be passed without hearing the person on whom such decision order is passed, but such person will be given a hearing at the earliest possible opportunity before an administrative law member. 35
- (8) After a hearing under sub-section (7), the administrative law member must make a new decision order modifying, confirming, recalling or setting aside the previous order. 40
- (9) A decision order passed under this section will remain in force for a period of ninety days.
- (10) Upon the expiry of ninety days, if the investigation under section 395 has not been completed, the decision order may be extended by the administrative law officer, upon an application by the investigator to extend the decision order for a further period of ninety days if – 45

- (a) the conditions contained in sub-section (4) have been met; and
- (b) the administrative law member, by a decision order, determines that a longer period is appropriate for completion of the investigation.

(11) Any person who wilfully violates a decision order passed under this section commits a Class A offence.

CHAPTER 78

NOTICES

399. (1) The Financial Agency must issue a show cause notice to a person against whom it proposes to undertake an enforcement action.

Show cause notice for enforcement action.

(2) The show cause notice must contain an assessment by the Financial Agency of the manner in which the factors under section 408 are applicable to the violation committed by the person.

(3) A person to whom a show cause notice is issued may produce evidence to disprove the existence or applicability of any of the factors under section 408 that are identified by the Financial Agency in the show cause notice.

400. (1) A show cause notice must –

Content and standard of show cause notices.

(a) be in writing;

(b) state the action which the Financial Agency proposes to take;

(c) give causes requiring the proposed action;

(d) comply with section 401; and

(e) if section 401 applies, describe its effect and state whether any material exists to which the person concerned must be allowed access under it.

(2) The show cause notice must provide for a reasonable period, which must not be less than twenty-eight days, within which the person to whom it is issued may make representations to the Financial Agency.

(3) The Financial Agency may extend the period provided for in the notice.

(4) After the period under sub-section (2), as may have been extended under sub-section (3), has expired, the Financial Agency must decide, within a reasonable period, whether to issue the person concerned a decision order.

(5) In sub-section (2), the opportunity to make representations must include a hearing before an administrative law officer, either in person or through electronic communication.

401. (1) When a Financial Agency issues any show cause notice or decision order, it must –

Access to material with regard to show cause notice and decision order.

(a) allow the noticee access to the material that was relied upon in taking the decision which gave rise to the obligation to issue the show cause notice or decision order; and

(b) allow the noticee access to any material that might undermine that decision.

- (2) The provisions of this section will not bar any court, tribunal or other authority from requiring any information in proceedings before such court, tribunal or other authority.
- (3) In this section, "noticee" means a person to whom a show cause notice or decision order applies. 5

Content and standard of decision orders.

402. (1) A decision order must –
- (a) be in writing;
 - (b) give the Financial Agency's reasons for the decision to take the action to which the order relates;
 - (c) state whether the Financial Agency has depended on any materials contained in section 401; and 10
 - (d) clearly state –
 - (i) any right to have the matter referred to the Tribunal which is given by this Act; and
 - (ii) the procedure for such a reference. 15
- (2) If the decision order was preceded by a show cause notice, the action to which the decision order relates must be the same action proposed in the show cause notice.
- (3) A decision order does not become effective until thirty days have elapsed from the date of issue of the decision order. 20
- (4) A decision order which requires a person to take certain identified actions must provide reasonable time to such person to perform such actions.

Procedure for review of decision orders.

403. (1) Any person who has received a decision order may make an application to the administrative law member of the board of the Financial Agency for review of the decision order, within fourteen days from the date of such order. 25
- (2) If the administrative law member finds that there is an apparent error in the decision order, the administrative law member may set aside the decision order.

Conclusion of proceedings through discontinuance notice.

404. (1) The Financial Agency must give a discontinuance notice to the concerned person if it decides not to take – 30
- (a) the action proposed in a show cause notice; or
 - (b) the action to which a decision order relates.
- (2) A discontinuance notice will not be given with respect to an application for an authorisation to carry on a financial service.
- (3) A discontinuance notice must identify the action or actions which are being discontinued. 35

Confidentiality of certain notices.

405. (1) The Financial Agency must not publish a show cause notice and must keep it confidential.
- (2) A discontinuance notice may be published by the Financial Agency if the person to whom such discontinuance notice requests such publication. 40

- (3) The Financial Agency must publish all decision orders unless they fall under the exception under sub-section (4).
- (4) A Financial Agency may not publish a decision order, if not publishing such notice is in the interests of the consumer, and the reasons for the same are recorded in writing by the Financial Agency.
- (5) The Financial Agency must publish a compounding order to the extent it refers to the proceedings and the terms of the order.

406. (1) The Financial Agency must make regulations governing the show cause notices and decision orders it issues.

Requirement to make regulations.

(2) The regulations must –

- (a) ensure that show cause notices and decision orders are issued by administrative law officers only;
- (b) ensure that responses to show cause notices are received and considered by administrative law officers only; and
- (c) state the procedure the Financial Agency will follow to issue decision orders.

(3) The Financial Agency must make a report of every violation of regulations made under this section and include such report as a part of the annual report of the Financial Agency.

CHAPTER 79

ENFORCEMENT ACTIONS

407. (1) Each of the following constitutes an “enforcement action” under this Act –

Types of enforcement actions.

- (a) issuance of a private warning;
- (b) issuance of a public statement;
- (c) issuance of a direction requiring the person to correct the violation;
- (d) imposition of a monetary penalty; and
- (e) variation, suspension, or cancellation of an authorisation, permission or registration granted by the Financial Agency to the person, which are related to the violation.

(2) When a Financial Agency issues a private warning, it must not publish such warning, but may provide copies of the warning to any other Financial Agency.

(3) The appropriate Financial Agency may undertake one or more enforcement actions against a person for violation of –

- (a) any applicable provision of this Act;
- (b) any applicable regulations made by the Financial Agency under this Act; or
- (c) any order or direction issued by the Financial Agency under this Act.

408. (1) Any enforcement action taken by a Financial Agency must be proportionate to the violation in respect of which the enforcement action is proposed to be undertaken.

Factors for determining appropriate enforcement action.

(2) The Financial Agency must consider the following factors while determining the enforcement action to be taken against a person –

(a) the nature and seriousness of the violation committed by the person, including whether the violation was –

(i) deliberately carried out by the person; 5

(ii) caused due to the recklessness of the person; or

(iii) caused due to negligence on the part of the person;

(b) the consequences and impact of the violation, including the extent of –

(i) benefit or unfair advantage gained by the person as a result of the violation; and 10

(ii) loss caused, or likely to be caused, to consumers or any other persons as a result of the violation;

(c) the conduct of the person after the occurrence of the violation; and

(d) prior violations or offences committed by the person.

(3) If the violation was due to a negligence under sub-section (2)(a)(iii) and did not cause any substantial loss to any person, the Financial Agency must not impose any enforcement as contained in section 407(1)(e). 15

Maximum amount
of monetary
penalties.

409. (1) The maximum monetary penalty that may be imposed by the Financial Agency under section 407(1)(d) will be determined in the following manner –

(a) if the Financial Agency determines that the violation under section 407(3) was committed deliberately by the person, the maximum monetary penalty that may be imposed will be higher of – 20

(i) three times the amount of the loss caused, or likely to have been caused, to consumers or any other persons as a result of the violation; or 25

(ii) three times the amount of the benefit or unfair advantage gained by the person as a result of the violation;

(b) if the Financial Agency determines that a violation under section 407(3) was caused due to the recklessness of the person, the maximum monetary penalty that may be imposed will be higher of – 30

(i) two times the amount of the loss caused, or likely to have been caused, to consumers or any other persons as a result of the violation; or

(ii) two times the amount of the benefit or unfair advantage gained by the person as a result of the violation; or 35

(c) if the Financial Agency determines that the violation under section 407(3) was caused due to the negligence of the person, the maximum penalty that may be imposed will be the higher of –

(i) one and a half times the amount of the loss caused, or likely to have been caused, to consumers or any other persons as a result of the violation; or 40

(ii) one and a half times the amount of the benefit or unfair advantage gained by the person as a result of the violation.

(2) The total amount of the monetary penalty must not be more than rupees one crore, or any amount that the Central Government may prescribe from time to time, if the amount of loss caused, or likely to have been caused, is – 45

(a) not substantial; or

(b) cannot be reasonably estimated.

410. (1) A Financial Agency may compensate persons who have been affected by a violation, under this section, if the following conditions are met –
- Compensation to persons affected by violation.
- (a) the loss suffered by the persons is directly attributable to the violation;
- 5 (b) the persons who have suffered loss due to the violation can be reasonably identified; and
- (c) the amount recovered by the Financial Agency is sufficient to provide some compensation to all similarly situated persons.
- (2) If the Financial Agency decides to pay compensation under this section, it must
- 10 make an notice stating the conditions a person has to meet to qualify for such compensation.
- (3) The Financial Agency must keep any amount collected as monetary penalties for this section for a period of two years.
- (4) A person must approach the Financial Agency for compensation under this
- 15 section within a period of two years from the date of the publication of the notice under sub-section (2).
- (5) After the expiry of the period of two years, the Financial Agency must transfer any amount kept for the purposes of this section to the Consolidated Fund of India.
- 20 (6) This section does not prevent any aggrieved person from pursuing any other legal remedies against a person who has committed a violation, provided that any amount payable by a person who has committed a violation to an aggrieved person must be reduced by any amount the aggrieved person has received under this section.
- 25 411. A Financial Agency must transfer all monies collected by it from the imposition of any penalties under section 407(1)(d), subject to any amount kept under section 410, to the Consolidated Fund of India.
- Transfer of penalties to the Consolidated Fund of India.

CHAPTER 80

COMPOUNDING ACTIONS AND NOTICE

- 30 412. (1) Any person may make an application to a Financial Agency requesting for a compounding action if –
- Application for compounding action.
- (a) such person apprehends enforcement action; or
- (b) such person has received a show cause notice.
- (2) An application for a compounding action may be made at any time before a
- 35 decision order concerning the same matter has been issued to the person by the Financial Agency.
- (3) The Financial Agency must dispose of an application for compounding action within ninety days from the receipt of the application.
- (4) The application for compounding action must be decided by an administrative
- 40 law officer.

Procedure for
making
compounding
order.

- (5) If the application for compounding action is rejected by the Financial Agency, it must issue a decision order to the person making the application.
413. (1) If an application for a compounding action is acceptable to the Financial Agency, it may issue a compounding order to the person making the application.
- (2) A compounding order must be issued by an administrative law officer. 5
- (3) In a compounding order, the Financial Agency may –
- (a) require the person to pay an amount towards settlement charges;
- (b) restrain the person from undertaking particular actions; or
- (c) impose a combination of any of the actions mentioned above.
- (4) The Financial Agency must not take any enforcement action against a person on an issue which constitutes a violation under section 407(3), if that issue is the subject matter of a compounding order. 10
- (5) The restriction under sub-section (4) will not be applicable if the person making the application for compounding action –
- (a) withholds any material fact regarding the compounding action from the Financial Agency; or 15
- (b) misleads the Financial Agency in any other manner in connection with the application for compounding action.
- (6) The Financial Agency must not initiate any criminal proceedings under this Act on a matter in relation to which a compounding order has been issued. 20
- (7) If the compounding order is issued after the institution of criminal proceedings, the Financial Agency or the noticee must make an application to the court before which such criminal proceedings are pending, to compound such offence in terms of the compounding order.
- (8) Before issuing a compounding order the Financial Agency must provide the concerned person with a statement containing the conditions or requirements it proposes to impose under sub-section (3). 25
- (9) If the person rejects the conditions contained in sub-section (8), then the Financial Agency must not issue any compounding order.
- (10) Any offer made by a person in proceedings under this section will not be to the prejudice of the person in any other proceedings or imposition of enforcement actions by a Financial Agency. 30
- (11) A person is presumed to have rejected the conditions contained in sub-section (8), if such person does not respond within fourteen days of the statement being issued. 35
- (12) A person who has received a compounding order has no right to approach the Tribunal against any content of the compounding order.
- (13) If the person with respect to whom a compounding order has been issued, wilfully violates any requirements or conditions of such compounding order, the person commits a Class A offence. 40
- (14) A compounding order under this section does not amount to the application of an enforcement action under this Act.

414. (1) Each Financial Agency must make regulations regarding the manner and process governing compounding orders so as to ensure that compounding is carried out in a transparent, consistent and impartial manner. Regulations concerning compounding.

(2) The regulations under sub-section (1) must provide for –

- 5 (a) the list of violations that cannot be compounded;
 (b) the list of violations that may be compounded;
 (c) the method of calculating any monetary penalty that may be imposed under a compounding order;
 10 (d) the considerations that the Financial Agency may take into account while issuing a compounding order; and
 (e) the process for making an application for compounding action.

CHAPTER 81

OFFENCES UNDER THIS ACT

415. (1) The punishment for –

- 15 (a) a Class A offence is a fine, or imprisonment not less than two years but up to ten years, or both;
 (b) a Class B offence is a fine, or imprisonment up to two years, or both; and
 (c) a Class C offence is a fine.

(2) All offences under this Act are non-cognisable and compoundable.

- 20 (3) If any act is punishable under provisions of any other law, the provisions of this Act will not be in derogation to such provisions.

416. (1) No criminal proceedings for any offence under this Act against any person may be initiated except by an application from the Financial Agency. Institution of proceedings for offences.

25 (2) Criminal proceedings for any offence under this Act must be instituted before a Court of Session.

(3) The Central Government may make a notification designating a particular Court of Session or establishing a Court of Session for trying offences under this Act.

30 (4) A Financial Agency may appoint an advocate to act as a public prosecutor for any offence committed under this Act.

(5) A prosecutor appointed by a Financial Agency under this section will be deemed to be a public prosecutor under the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The Central Government may make rules for the purpose of this section.

35 417. (1) The following factors are to be taken into account while determining the appropriate period of imprisonment and fine under for an offence – Factors to be considered for punishment.

- (a) the role of the person in the commission of the offence; and
 (b) the factors contained in sections 408(2)(b), 408(2)(c) and 408(2)(d).

- (2) The maximum amount of fine to be levied upon a person for an offence will be the higher of –
- (a) three times the loss caused by the person; or
 - (b) three times the gain made by the person.
- (3) If the loss caused or the gain made by the person cannot be reasonably determined, the maximum fine that may be imposed is rupees one crore. 5
- (4) The prosecution of a person for any offence under this Act will not bar any enforcement action imposed on such persons, but any fine imposed for an offence may be reduced by any penalty paid to a Financial Agency for the same violation. 10

Violations by
bodies corporate.

418. (1) If any violation under any this Act is found to have been committed by a body corporate, then an officer of the body corporate is liable, if –
- (a) the violation is shown to have been committed with the consent or connivance of the officer; or
 - (b) the violation is attributable to any wilful neglect on the part of the officer. 15
- (2) Any criminal proceedings or enforcement action against either the officer or the body corporate will not be a bar against proceedings against the other.
- (3) In this section, "officer" includes director, member of the managing committee, chief executive, manager, secretary, individuals in control, and persons who purport to be officers with knowledge of the body corporate. 20

CHAPTER 82

MISCELLANEOUS

Misleading a
Financial Agency.

419. (1) A person that, in purported compliance with any requirement imposed by or under this Act, knowingly gives a Financial Agency material information which is false or misleading, is guilty of a Class A offence. 25
- (2) Sub-section (1) applies only to a requirement in relation to which no other provision of any Act creates an offence in connection with the giving of information.

General
procedures.

420. (1) The Financial Agency must make regulations governing the process it will follow in implementing provisions of this chapter. 30
- (2) The Financial Agency must make general guidelines stating its –
- (a) interpretation of the provisions of this Chapter; and
 - (b) the method it will apply in determining the enforcement action and penalty to be imposed.
- (3) While taking an enforcement action under this Act, the Financial Agency may 35
impose a lower penalty after recording reasons for doing so.

PART XIV

FUNCTIONS, POWERS AND DUTIES OF THE
TRIBUNAL

CHAPTER 83

PRESIDING OFFICER AND MEMBERS

5

421. (1) A person will not be qualified for appointment as the Presiding Officer of the Tribunal unless such person –

Qualification of
Presiding Officer
and members.

(a) is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court; or

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(b) is a sitting or retired Judge of a High Court who has completed not less than seven years of service as a Judge in a High Court.

(2) A person will not be qualified for appointment as member of the Tribunal unless that person is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to finance and has qualification and experience of law, finance, economics or accountancy.

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(3) A person may not be appointed as member of the Tribunal within two years from retiring or resigning as a member of the board or employee of any Financial Agency.

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422. (1) The Central Government must constitute a selection committee in accordance with the First Schedule for selection of the persons for appointment as Presiding Officer or members of the Tribunal.

Selection of
Presiding Officer
and members of
the Tribunal.

(2) The selection committee must comply with the procedure laid down in the First Schedule.

25

(3) The Central Government must appoint the members of the Tribunal from the persons nominated by the selection committee in consultation with the Chief Justice of India.

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(4) In the event of a temporary vacancy in the office of the Presiding Officer, the Central Government may nominate one of the members of the Tribunal as an officiating Presiding Officer for a period not exceeding one hundred and eighty days, having regard to suitability for effective oversight and administration of the Tribunal's adjudicating functions.

(5) If any vacancy in the Tribunal is not filled within a period of one hundred and eighty days from the date such vacancy arises, the Central Government must make a report on the reasons for the delay in the appointment.

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(6) The report mentioned under sub-section (5) will be laid before both Houses of Parliament.

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423. (1) The Presiding Officer and members of the Tribunal will hold their respective offices till they reach the age of seventy years.

Conditions of
service of Presiding
Officer and
members.

(2) The salary and other entitlements of the Presiding Officer will be the same as the Chief Justice of a High Court.

- (3) The salary and other entitlements of the members will be the same as a Judge of a High Court.

Resignation.

424. (1) The Presiding Officer or any member of the Tribunal may resign by giving a signed notice of resignation to the Central Government.
- (2) On receipt of a notice of resignation, the Central Government must forward a copy of such notice to the Chief Justice of India. 5
- (3) The Presiding Officer or any member of the Tribunal, after providing the notice of resignation, will continue to hold office till the earlier of –
- (a) the date the Central Government appoints a person to the post vacated by such resignation; or 10
- (b) the expiry of one hundred and eighty days from the date of providing of the notice of resignation.

Removal of Presiding Officer or member of Tribunal.

425. (1) The Presiding Officer or any member of the Tribunal may be removed on the same grounds as a member of the board of the Financial Agency under section 40. 15
- (2) The procedure for removal of Presiding Officer or any member of the Tribunal must be the same as a member of the board of the Financial Agency under section 41, provided that no Presiding Officer or member of the Tribunal may be removed without consulting the Chief Justice of India.

CHAPTER 84 20

FUNCTIONING

Power of the Tribunal.

426. (1) The Tribunal will have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908).
- (2) Every proceeding before the Tribunal will be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, 1860 (45 of 1860). 25
- (3) The Tribunal will be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974) while trying a suit, in respect of the following matters –
- (a) summoning and enforcing the attendance of any person and examining the person on oath; 30
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) dismissing an application for default or deciding it *ex parte*; 35
- (f) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
- (g) ordering the attachment of any property; and
- (h) any other matter which may be notified by the Central Government.
- (4) The Tribunal may – 40

- (a) set aside any regulations;
- (b) modify, suspend or confirm any order, notice or direction of a Financial Agency or Central Government; or
- (c) instruct a Financial Agency to issue a new order, notice or direction.
- 5 (5) The Tribunal must attempt to dispose any appeal before it within a period of one hundred and eighty days from the date of receipt of any appeal.
- (6) If the Tribunal does not dispose any appeal within one hundred and eighty days it must record such incidence and publish it with its annual report.
- 10 427. (1) If a monetary penalty imposed on any person has been finally upheld and such person fails to deposit such penalty within a reasonable time, the Financial Agency may make an application to the Tribunal for attachment of the properties of the person for recovery of such penalties. Power of Tribunal to recover penalties.
- (2) If the Tribunal is satisfied that the person has defaulted in payment of penalty, it may issue an order attaching properties of the person.
- 15 (3) The order of the Tribunal attaching properties will have the same effect as a decree of a court under the Code of Civil Procedure, 1908 (5 of 1908).
- (4) In this section, "property" includes tangible and intangible property.
- 20 428. (1) The Presiding Officer will be responsible for the functioning of the Tribunal and have all powers incidental to the discharge of such duties. Functions of Presiding Officer.
- (2) A person appointed as a Presiding Officer must, in carrying out the functions of that office, have regard to –
- (a) the need for the Tribunal to be accessible;
- (b) the need for proceedings before the Tribunal –
- 25 (i) to be fair; and
- (ii) to be handled quickly and efficiently;
- (c) the need for members of any bench of the Tribunal to be experts in the subject matter of, or the law to be applied in, cases in which they decide matters; and
- 30 (d) the need to develop innovative methods of settling the types of disputes that may be brought before the Tribunal.
429. (1) The Presiding Officer may constitute benches composed of members of the Tribunal. Presiding Officer's power to constitute benches.
- (2) Benches may be created at any location, or for any type of proceeding.

CHAPTER 85

ADMINISTRATION

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430. (1) The Tribunal will be supported by a registry, which will be headed by a registrar. Registry of the Tribunal.
- (2) The registrar will be appointed by the Central Government in consultation with the Presiding Officer.

- (3) The registrar will be responsible for the following functions –
- (a) establishing an effective and efficient system to support the business of the Tribunal; and
 - (b) discharging administrative functions of the Tribunal, including in relation to matters dealing with all staff of the Tribunal.
- (4) The registrar will be subject to the supervision of the Presiding Officer in the discharge of such functions.

Requirement of the registry to provide computerised services.

431. (1) The registry must develop systems and procedures to ensure functions of the Tribunal are provided through computerised systems that are easily accessible.
- (2) The registry must develop systems to –
- (a) allow all parties to submit documents through electronic means;
 - (b) schedule hearings of the Tribunal in an efficient manner;
 - (c) provide systems for recording evidence of witnesses communication systems;
 - (d) enable parties to present their case without requiring their personal appearance at the Tribunal, through electronic means; and
 - (e) enable public viewing of proceedings, including by way of transmission of hearings by electronic means.
- (3) The Presiding Officer may direct the usage of electronic means enabled pursuant to this section in proceedings wherever appropriate.

Staff of the Tribunal.

432. (1) The Tribunal will have staff comprising such types, categories and number of officers and other employees as may be required to assist the Tribunal in the effective discharge of its functions, as determined by the Central Government.
- (2) If the Presiding Officer, based on the recommendation of the registrar, is of the opinion that more employees or different categories of employees are required to ensure the effective functioning of the Tribunal, then the Presiding Officer must make a requisition to the Central Government in this regard.
- (3) The officers and other employees of the Tribunal must discharge their functions under the general superintendence of the registrar.
- (4) The salaries and allowances and conditions of service of the officers and other employees of the Tribunal will be such as may be prescribed by the Central Government.

Finances of the Tribunal.

433. (1) The registrar must prepare a report, each financial year, stating the financial requirements of operating the Tribunal.
- (2) The report must be made in consultation with the Presiding Officer and the Central Government.
- (3) The registrar must forward the report to the Financial Authority and the Reserve Bank.
- (4) The Financial Authority and the Reserve Bank must provide the Tribunal with funds to meet the financial requirements set out in the report in accordance with the time schedule contained in the report.

(5) The Tribunal must make provision in its procedural rules to charge fees for appeals.

434. (1) The Presiding Officer, in consultation with the registrar, must formulate systems to accurately measure the functioning of the Tribunal and each member of the Tribunal.

Performance of the Tribunal.

(2) The Presiding Officer, in consultation with the registrar, must create targets for performance of each measure for each financial year.

(3) The systems and targets mentioned in the previous sub-sections must –

(a) promote transparency;

(b) provide an accurate representation of functioning of the Tribunal;

(c) consider the requirements of persons appearing before the Tribunal;

(d) provide objective methods of measurement where possible;

(e) provide subjective methods of measurement where objective measurements are not possible; and

(f) incorporate global best practices in measurement of functioning of other tribunals and courts.

(4) The Presiding Officer must review the systems created under sub-section (1) once every three years to –

(a) incorporate global best practices;

(b) update the systems of measurement; and

(c) include new metrics of measure of processes and functions.

435. (1) The registry of the Tribunal must publish a report within ninety days of the end of every financial year.

Annual report of the Tribunal.

(2) The report must contain –

(a) audited financial statements of the Tribunal;

(b) the details of measurement of the functioning of the Tribunal in accordance with section 434; and

(c) the targets for the following financial year in accordance with section 434.

CHAPTER 86

JURISDICTION AND APPEALS

436. (1) The Tribunal will have jurisdiction in the following instances –

Jurisdiction of the Tribunal.

(a) from any decision order;

(b) from any regulations or general guidance in accordance with section 58;

(c) from any adjudication order of the Redress Agency under section 114;

(d) from any decision of the Regulator to disqualify an auditor or actuary under section 165(4);

(e) from any order of the exchange under section 210;

(f) from any order of an exchange under section 212;

- (g) from any compensation order under section 282; and
- (h) from any order of the senior officer under section 373.

- (2) No appeal will lie against a show cause notice or compounding order issued by a Financial Agency.
- (3) All appeals to the Tribunal against any order of a Financial Agency must be made within sixty days of the date of the order. 5
- (4) The Tribunal may, if it is satisfied that such party was prevented by sufficient cause from filing the appeal within sixty days, allow an appeal to be filed within a further period not exceeding thirty days.
- (5) Sub-section (3) does not apply to appeals against regulations and guidance under section 58. 10
- (6) No civil court will have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal is empowered by or under this Act to determine, and no injunction will be granted by any court, tribunal or other authority in respect of any action taken, or to be taken, in pursuance of any power conferred by or under this Act or rules made hereunder. 15

Appeal to Supreme Court.

- 437. (1) An aggrieved party may appeal to the Supreme Court of India against the order of the Tribunal only on a question of law, within a period of ninety days from the receipt of the order of the Tribunal.
- (2) The Supreme Court may, if it is satisfied that such party was prevented by sufficient cause from filing the appeal within ninety days, allow an appeal to be filed within a further period not exceeding sixty days. 20

CHAPTER 87

PROCEDURE

Procedure of the Tribunal.

- 438. (1) The Tribunal will not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908). 25
- (2) The Tribunal will have a procedure committee which will be responsible for making the rules of procedure to be followed by the Tribunal
- (3) The Tribunal, acting through the procedure committee, may evolve its own procedure which will be guided by the following principles – 30
 - (a) that the principles of natural justice are followed;
 - (b) that the Tribunal system is accessible and fair;
 - (c) that the proceedings are handled quickly and efficiently;
 - (d) that the procedure allows for conduct of proceedings by electronic means, where possible; and 35
 - (e) that rules of procedure are simple and clear.
- (4) The Tribunal must ensure that the entire proceedings of the Tribunal are recorded and published.
- (5) The Presiding Officer, by recording reasons in writing, may prevent the publication of certain proceedings. 40

439. (1) The procedure committee of the Tribunal will comprise –

- (a) the Presiding Officer;
- (b) the registrar of the Tribunal; and
- (c) three experts in the field of law, nominated by the Presiding Officer.

Composition and
function of
procedure
committee of the
Tribunal.

5 (2) The procedure committee must undertake the following functions –

- (a) make rules governing proceedings of the Tribunal, which will come into effect upon being notified by the Central Government;
- (b) make rules governing payment of fees payable for filing appeals in the Tribunal, which may vary depending on the nature of the appeal preferred;
- 10 (c) identify measures or parameters for determining the performance of the registry; and
- (d) any other function which may be delegated to the procedure committee.

(3) The procedure committee will have the power to consult such persons as it considers appropriate in the discharge of its functions.

15 (4) The procedure committee must publish, including by electronic means, the rules made by it.

440. (1) Every order made by the Tribunal will be enforced by it in the same manner as if it were a decree made by a court, and it will be lawful for the Tribunal to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction –

Enforcement of
order of the
Tribunal.

- (a) in the case of an order against a company, the registered office of the company is situated; or
- (b) in the case of an order against any other person, place where the person concerned resides or carries on business or personally works for gain, is situated.

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(2) Nothing contained in sub-section (1) will affect the power of the Tribunal to transmit any order made by it to a civil court having local jurisdiction, and such civil court will execute the order as if it were a decree made by that court.

441. Any person may appear before the Tribunal in person, or authorise one or more –

Appearance before
the Tribunal.

- 30 (a) of its officers;
- (b) advocate;
- (c) chartered accountant;
- (d) company secretary; or
- (e) cost accountant.

35 442. The provisions of the Limitation Act, 1963 (36 of 1963), will, as far as may be, apply to an appeal made to the Tribunal.

Limitation.

PART XV

MISCELLANEOUS

- Members, officers, and employees of all Financial Agencies to be public servants. 443. The members, officers, and employees of all Financial Agencies, or any other person who has been delegated any function by any Financial Agency, or by the Central Government, will be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860). 5
- Protection of action taken in good faith. 444. No suit, prosecution or other legal proceedings will lie against the Central Government or any Financial Agency or their members, officers, employees, or delegate, for anything which is done, or intended to be done, in good faith done under this Act. 10
- Application of other laws not barred. 445. (1) The provisions of this Act are in addition to, and not in derogation of, the provisions of any other law for the time being in force.
(2) Unless provided otherwise, nothing contained in this Act will affect the application of any other law. 15
- Exemption from tax. 446. Nothing contained in any law or enactment in force, in relation to taxation, including the Wealth Tax Act, 1957 (27 of 1957) and the Income Tax Act, 1961 (43 of 1961), will make any Financial Agency liable to pay wealth tax, income tax, service tax, or any other tax or duty with respect to its wealth, income, services, profits or gains. 20
- Liquidation. 447. No Financial Agency will be placed in liquidation save by order of the Central Government, in such manner as it may direct.
- Prohibition on avoiding this Act. 448. (1) A person must not, either alone or with others, engage in any conduct that can be reasonably construed as being done for the purpose of avoiding, or abusing, the application of this Act, unless such conduct is justified by legitimate needs of a financial, economic or legal nature. 25
(2) Any person who violates sub-section (1) commits a Class C offence.
- Power of Central Government to remove difficulties. 449. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, in consultation with the concerned Financial Agency, or Tribunal, make provisions that appear to it to be necessary for removing the difficulty, through a notification. 30
(2) The Central Government must not notify any provision that is inconsistent with the provisions, intent or purpose of this Act.
(3) The power of the Central Government to remove difficulties, as described in sub-section (1) will not extend to the removal of difficulties in the regulations, or bye-laws of any Financial Agency. 35
(4) The Central Government's power to issue orders under this section may be exercised at any time prior to the expiry of three years from the commencement of this Act.
(5) The Central Government must lay every order made under this section before each House of Parliament. 40
- Repeals and savings. 450. The Central Government may notify the repeal of the legislations listed in the Sixth Schedule, in whole or in part, from time to time, in accordance with a schedule of giving effect to the provisions of various Parts of this Act.

PART XVI

SCHEDULES

Schedule 1: Selection committee

See section 30, Part III

5

Selection committee

(1) Constitution of selection committee

- (a) The Central Government will maintain a list of at least ten independent experts from the fields of finance, law, and economics who are available to serve as experts of the selection committee.
- 10 (b) The selection committee will consist of –
- (i) a chairperson of the selection committee;
 - (ii) three independent experts; and
 - (iii) a variable member as defined in item (e) of this Paragraph.
- (c) The chairperson of the selection committee will be –
- 15 (i) a nominee of the Chief Justice of India, for the selection of the Presiding Officer and members of the Tribunal; and
- (ii) a nominee of the Central Government, in all other circumstances.
- (d) The chairperson of the selection committee must select the three independent experts from the list maintained by the Central Government as
- 20 members of the selection committee.
- (e) The variable member will be –
- (i) a nominee of the Central Government for the selection of chairperson; or
 - (ii) the chairperson of the Financial Agency for selection of all other
- 25 members of the board of that Financial Agency.
- (f) The Central Government must provide the selection committee with adequate resources to advertise the vacancies in the board and carry out the selection in an efficient manner.

(2) Procedure to be followed by the selection committee

- 30 (a) The selection committee must make a document stating the procedure it will follow for selecting persons.
- (b) The procedure must be fair, transparent and efficient.
- (c) The selection committee must widely advertise the vacancy and the procedure for selecting person in the best possible way to attract attention of
- 35 suitable candidates.
- (d) Selection committees may consider persons who have not applied after recording reasons for considering such persons.
- (e) The selection committee may nominate up to three persons for every vacancy for which it has been constituted.
- 40 (f) The selection committee must complete its process within one hundred and twenty days of being constituted.

Schedule 2: Procedure of meetings of the board of the Financial Agency

See section 34, Part III

Procedure of meetings of the board of the Financial Agency

- (1) The board of a Financial Agency must meet as frequently, and at such place, as may be provided for by bye-laws. 5
- (2) The members may attend meetings of the board of a Financial Agency using mechanisms that allow members to participate in the meetings from remote locations without being physically present.
- (3) The quorum of a meeting of the board of a Financial Agency will be more than half of the number of members appointed to the board of the Financial Agency. 10
- (4) The chairperson of a board must convene a meeting within reasonable time, if two or more members of the board of the Financial Agency make a request in writing.
- (5) If the chairperson fails to convene a meeting within thirty days of a request in writing, the members may convene a meeting without the chairperson. 15
- (6) Each member of the board of the Financial Agency must be given at least seven days notice of a meeting, unless the circumstances require the meeting to be convened with shorter notice.
- (7) The chairperson of the Financial Agency will chair the meetings of the board of the Financial Agency. 20
- (8) If the chairperson of the Financial Agency is not present at a meeting, the person who has served as member for the longest period of time will chair the meeting, unless otherwise specified.
- (9) The secretary of the board of the Financial Agency will be responsible for keeping the records of every meeting of the board of the Financial Agency. 25
- (10) The records will be published by the Financial Agency within three weeks of each meeting.
- (11) Selected portions of records may not be published if such portions meet any of the following conditions –
 - (a) they relate exclusively to functions of individuals within the Financial Agency; 30
 - (b) they relate to information that has been obtained from a person in confidence, where such information is exempt from disclosure by that person under the Right to Information Act, 2005 (22 of 2005);
 - (c) they involve discussion of a particular instance of violation of laws or censuring any person; 35
 - (d) they disclose information about a particular investigation which is ongoing;
 - (e) they disclose techniques and procedures for investigation or inspection;
 - (f) they disclose information of a commercial nature relating to a financial service provider which has been obtained for regulatory purposes; or 40
 - (g) they deprive a person of a right to a fair and impartial adjudication.

- (12) The selected portions of records may be published with appropriate delay if such portions meet any of the following conditions –
- (a) they are likely to lead to major instability in the financial system;
 - 5 (b) they are likely to significantly frustrate implementation of an action proposed by the Financial Agency or its board, where such action has not been disclosed to the public; or
 - (c) they involve discussion of any particular legal proceeding before a tribunal, court or arbitrator.
- 10 (13) The publication of records relating to a particular meeting, may be delayed or prevented only if the board of the Financial Agency, in such meeting –
- (a) records the reason under items (11) or (12) of this Paragraph applicable in respect of each portion of the records;
 - (b) the majority of members present at the meeting, vote in favour of such action for each portion of the records separately; and
 - 15 (c) the vote of each member is recorded and published in accordance with item (10) of this Paragraph.
- (14) Portions of records delayed for publication must be published by the Financial Agency within six months, or as soon as the reasons for their delay cease to be applicable, whichever is earlier.
- 20 (15) In this section, “records” means the agenda, proposals, and decisions taken at the meeting, and includes the votes of each member of the Financial Agency.

Schedule 3: System-wide measures

See section 301, Part VIII

System-wide measures

(1) The following system-wide measures will be the subject of the decisions of the Council under section 301 –

5

(a) a counter-cyclical capital buffer seeking to address pro-cyclical effects in the financial system.

Schedule 4: Actions of Regulator and Corporation consequent to determining the risk to viability of covered service providers

See sections 233, 234, 235, 236 and 237, Part VII

5 Actions of Regulator and Corporation consequent to determining the risk to viability of covered service providers

(1) Actions consequent to low risk to viability of a covered service provider –

- 10 (a) Consequent to the determination that there is low risk to viability of a covered service provider, the Corporation may monitor the covered service provider based on regulatory data, reports from examinations and inspections, if any, and any other data that may be available to the Corporation.

(2) Actions consequent to moderate risk to viability of a covered service provider –

- 15 (a) Consequent to the determination that there is moderate risk to viability of a covered service provider, the Corporation may, in addition to the actions under Paragraph (1), conduct a special examination of the affairs of the covered service provider to assess its health, and communicate its concerns to the covered service provider.

(3) Actions consequent to material risk to viability of a covered service provider –

- 20 (a) Consequent to the determination that there is material risk to viability of a covered service provider, the Corporation may, in addition to the actions under Paragraph (2) –
- 25 (i) require the covered service provider to prepare a resolution plan; and
- (ii) intensify engagement on the resolution plan, including obtaining all the information related to the plan.

(4) Actions consequent to imminent risk to viability of a covered service provider –

- 30 (a) Consequent to the determination that there is imminent risk to viability of a covered service provider, the Corporation must within ninety days of determination, apply for receivership under Chapter 46.
- 35 (b) Consequent to the determination that there is imminent risk to viability of a covered service provider, the Corporation may, in addition to the actions under Paragraph (3), and upon appointment as receiver, exercise any powers under Chapter 46.

(5) Actions consequent to critical risk to viability of a covered service provider –

- 40 (a) Consequent to the determination that there is critical risk to viability of a covered service provider, the Regulator must withdraw any authorisation that it may have granted to the covered service provider.
- 45 (b) Consequent to the determination that there is critical risk to viability of a covered service provider, the Corporation must –
- (i) if the Corporation is of the opinion that the covered service provider is about to become insolvent, terminate or cancel all Corporation insurance that the covered service provider may have acquired, in accordance with Chapter 50; and

- (ii) apply for liquidation, in accordance with the provisions under Chapter 51.
- (c) Consequent to the determination that there is critical risk to viability of a covered service provider, the Corporation may carry out any actions under Paragraph (4).

Schedule 5: Members of the Monetary Policy Committee

See section 333, Part X

Members of the Monetary Policy Committee

- 5 (1) In this Schedule, the term "member of the Monetary Policy Committee" excludes the members appointed under section 333(2)(b) and the Reserve Bank Chairperson.
- (2) Every member of the Monetary Policy Committee will be appointed for a term of four years.
- 10 (3) A member of the Monetary Policy Committee may resign by giving a written notice of resignation of at least six weeks duration to the Central Government, with a copy to the Reserve Bank Chairperson.
- (4) The terms and conditions of service of the members of the Monetary Policy Committee including honorarium will be provided for by the Reserve Bank by way of bye-laws and published.
- 15 (5) The Reserve Bank Board may remove a member of the Monetary Policy Committee, if it is satisfied that such member has –
- (a) been absent from the Monetary Policy Committee's meetings for more than three consecutive meetings, without obtaining prior leave;
 - 20 (b) developed any interest under section 333(7)(a) of this Act or it is discovered that the member had failed to adequately disclose such interest prior to their appointment;
 - (c) been at any time, or is, adjudged insolvent;
 - (d) been convicted of an offence, where such an offence does not constitute a minor offence;
 - 25 (e) acted in a manner which amounts to abuse of position that such member holds or renders the member's continuance in office prejudicial to the objectives of the Monetary Policy Committee or the Reserve Bank; or
 - (f) become physically or mentally incapable of discharging a member's duties.
- 30 (6) The principles of natural justice must be observed in relation to the procedure followed by the Reserve Bank Board, for the removal of any member of the Monetary Policy Committee.

Schedule 6: Repeal of other laws

See section 450, Part XV

Repeal of other laws

- (1) The Securities Contracts (Regulation) Act, 1956 (42 of 1956)
- (2) The Securities and Exchange Board of India Act, 1992 (15 of 1992) 5
- (3) The Depositories Act, 1996 (22 of 1996)
- (4) The Public Debt Act, 1944 (18 of 1944)
- (5) The Government Securities Act, 2006 (38 of 2006)
- (6) The Reserve Bank of India Act, 1934 (2 of 1934)
- (7) The Insurance Act, 1938 (4 of 1938) 10
- (8) The Banking Regulation Act, 1949 (10 of 1949)
- (9) The Forward Contracts (Regulation) Act, 1952 (74 of 1952)
- (10) The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970)
- (11) The Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961) 15
- (12) The Foreign Exchange Management Act, 1999 (42 of 1999)
- (13) The Insurance Regulatory and Development Authority Act, 1999 (41 of 1999)
- (14) The Payment and Settlement Systems Act, 2007 (51 of 2007)
- (15) The Acts establishing bodies corporate involved in the financial sector (for example, The State Bank of India Act, 1955 (23 of 1955) and The Life Insurance Corporation Act, 1956 (31 of 1956)). 20