A GUIDE ON LAWS APPLICABLE TO INDIAN FINANCIAL MARKETS

Committee on Financial Markets
& Investors' Protection
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

© THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, electronic mechanical, photocopying, recording, or otherwise, without prior permission, in writing, from the publisher.

Edition : February, 2014

Website : www.icai.org, www.financialmarket.icai.org

Price : Rs. 225/-

ISBN : 978-81-8441-691-6

Published by : Committee on Financial Markets & Investors' Protection
ICAI Bhawan, A-29, Sector-62,
Administrative Wing, (8th Floor), Noida-201309
Telephone : +91-120-3045945
E-Mail-id : cfmip@icai.in

Printed by : Perfact Impression Pvt. Ltd.
2, Prem Nagar Market, Tyagraj Nagar,
New Delhi - 110003

Foreword

"Money is like manure. You have to spread it around or it smells."

- J. Paul Getty

India is one of the largest emerging markets in the world with enormous potential for growth in the coming years. The financial market is also expanding and attracting ever-increasing number of domestic and foreign investors. Efficient transfer of resources from those having idle resources to others who have a pressing need for them is achieved through financial markets.

The functioning of financial markets is regulated by several legislations that include Acts, Rules, Regulations, Guidelines, Circulars, etc. Understanding the legislations governing the financial markets in India will give the reader a fair idea of how the financial markets in India are regulated.

I am glad that the Committee on Financial markets and Investors' Protection of the Institute of Chartered Accountants of India is bringing out 'A Guide on Laws applicable to Indian Financial Markets'. It covers the various legislations governing the financial markets in India. It aims to provide substantive and useful information to both a professional and common man.

I take this opportunity to congratulate CA. Rajkumar S.Adukia, Chairman and the entire team of Committee on Financial Markets and Investors' Protection for their initiatives and endeavours.

CA. Subodh K. Agrawal
President
The Institute of Chartered Accountants of India

Preface

"Financial peace isn't the acquisition of stuff. It's learning to live on less than you make, so you can give money back and have money to invest. You can't win until you do this."

- Dave Ramsey

Normally, a business enterprise needs finance for two purposes - for buying capital equipment and fixed assets, such as machinery, tools and implements, power plant, construction of factory building and workshops, etc.; which are referred to as long-term capital requirements, and for buying raw materials, holding the stock of finished goods, for payment of wages, etc., which are referred to as short-term capital requirements. Thus, an industrial house has to borrow short-term funds as well as long-term funds. The money-market caters to the short-term needs only. The long-term capital needs are satisfied by the capital market. Thus the combination of both money market and capital market forms the financial market. The financial market covers the instruments and institutions which provide finance for short and long period.

Financial markets provide channels for allocation of savings to investment. It provides a variety of assets to savers as well as various forms in which the investors can raise funds and thereby combine the acts of saving and investment. The savers and investors are constrained not by their individual abilities, but by the economy's ability, to invest and save respectively. Thus, the financial markets contribute to economic development to the extent that the latter depends on the rates of savings and investment.

It has been argued that strong legal systems foster development of sophisticated financial markets and intermediaries, which enhances the economy's ability to manage risk and eventually lead to economic growth. The financial system of India which includes banking, capital, insurance, securities, foreign exchange etc. is characterized by several legislations for regulation and enforcement. Just like the developments and changes in financial markets are

closely monitored, the regular changes in the financial laws of our country also need to be followed. This book gives a broad view of the legislations regulating the financial markets in India.

I sincerely appreciate the efforts put in by Adv. Y. Rashmi Vinod in preparing the publication.

I would like to thank CA. Jay Ajit Chhaira, Vice-Chairman, CFMIP and all members of the CFMIP committee, CA Pankaj Inderchand Jain, CA Sanjeev Maheswari, CA S Santhana Krishnan, CA Anuj Goyal, CA Naveen N.D. Gupta, CA Sharad Kabra, Shri Sidharth K. Birla, Shri Sunil Kanoria, CA Vikas Jain, CA Murmuria Bijay, CA. Shyam Lal Agarwal who have extended their support and encouragement in all committee activities.

I would also like to thank all the persons who contributed towards finalizing this publication.

I firmly believe that the publication will be helpful to all concerned.

Date: 7th February, 2014
Place: New Delhi

CA. Rajkumar S. Adukia
Chairman
Committee for Financial Market and
Investors' Protection of ICAI

A GUIDE ON LAWS APPLICABLE TO INDIAN FINANCIAL MARKETS

Index

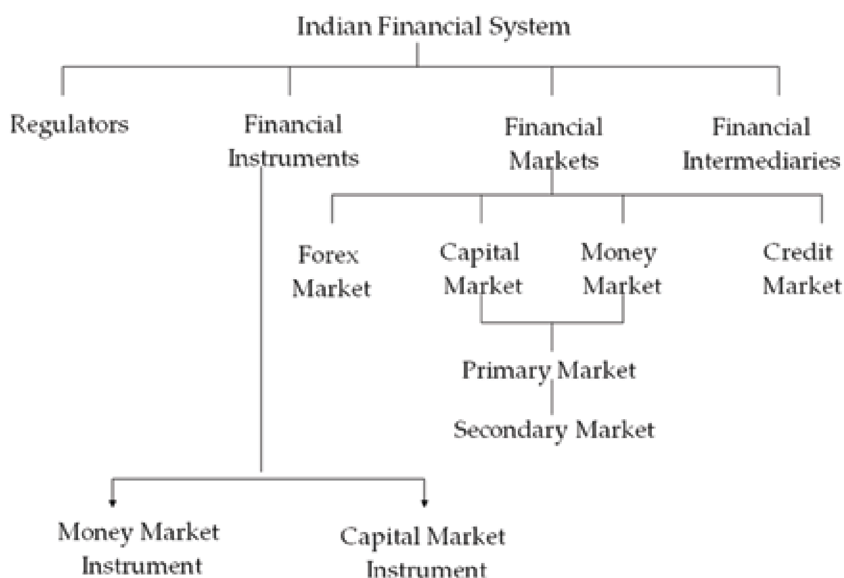
1.	Introduction	3
	1.1. What is a financial market?	3
	1.2. Basic functions of financial markets	4
	1.3. Types of financial markets	5
	1.4. Major players in financial markets	7
	1.5. Role and functions of financial market	8
	1.6. International scope of financial markets	10
2.	What is Capital Market?	11
	2.1. History of Capital Market in India	14
	2.2. Securities market in India	19
3.	Money Market	25
4.	Commodity Market	28
5.	Forward Market	30
	5.1. Forward Contracts (Regulation) Act, 1952	30
	5.2. Forward Markets Commission	32
6.	Derivative Market	35
7.	Financial sector reforms in India	38
8.	Financial Sector Legislative Reforms Commission (FSLRC)	42
	8.1. FSLRC Report – Volume I & II	44
	8.2. Draft Indian Financial Code, 2013	46
	8.3. Adoption of governance enhancing and non-legislative elements of the draft Indian Financial Code	50
9.	Regulatory Framework	56
10.	Laws applicable to Financial Market	59
	10.1. Negotiable Instruments Act, 1881	62
	10.2. Reserve Bank of India Act, 1934	64
	10.3. Banking Regulation Act, 1949	71

10.4. Securities Contracts (Regulation) Act, 1956 76
10.5. Securities and Exchange Board of India Act, 1992 80
10.6. Recovery of Debts Due to Banks and Financial Institutions Act, 1993 87
10.7. Depositories Act, 1996 89
10.8. Foreign Exchange Management Act, 1999 93
10.9. SARFAESI Act, 2002 98
10.10. Prevention of Money-Laundering Act, 2002 102
10.11. Credit Information Companies (Regulation) Act,2005 107
10.12. Government Securities Act, 2006 107
10.13. Payment and Settlement Systems Act, 2007 108
10.14. Foreign Contribution (Regulation) Act (FCRA), 2010 109
10.15. Companies Act, 2013 113
11. NBFCs 136
12. Insurance 143
13. Financial Planning 148
14. State Financial Corporations 153
15. Professional opportunities 156
16. Useful websites 158

1. INTRODUCTION

Financial system is basically a set of complex and closely interconnected financial institutions, markets, instruments, services, practices, and transactions. It is crucial to the system in a modern economy. They channel household savings to the corporate sector and allocate investment funds among firms; they allow inter temporal smoothing of consumption by households and expenditures by firms; and they enable households and firms to share risks. These functions are common to the financial systems of most developed economies.

The financial system in India comprises of financial institutions, financial markets, financial instruments and services.



1.1. What is a financial market?

Financial market is a broad term describing any marketplace where buyers and sellers participate in the trade of assets such as equities, bonds, currencies and derivatives. Financial market is typically defined by having transparent pricing, basic regulations on trading, costs and fees and market forces determining the prices of securities that trade.

A market is a location where buyers and sellers come into contact to exchange goods or services. Markets can exist in various forms depending on various factors.

The financial markets permit both business and government to raise the needed funds by selling securities. Simultaneously, investors with excess funds are able to invest and earn a return, enhancing their welfare. Financial markets are absolutely vital for the proper functioning of capitalistic economies, because they serve to channel funds from savers to borrowers.

Financial markets facilitate:

- The raising of capital (in the capital markets)
- The transfer of risk (in the derivatives markets)
- Price discovery
- Global transactions with integration of financial markets
- The transfer of liquidity (in the money markets)
- International trade (in the currency markets)
- and are used to match those who want capital to those who have it.

1.2. Basic functions of financial markets

Financial markets serve six basic functions. These functions are briefly listed below:

- Borrowing and Lending: Financial markets permit the transfer of funds (purchasing power) from one agent to another for either investment or consumption purposes.
- Price Determination: Financial markets provide vehicles by which prices are set both for newly issued financial assets and for the existing stock of financial assets.
- Information Aggregation and Coordination: Financial markets act as collectors and aggregators of information about financial asset values and the flow of funds from lenders to borrowers.
- Risk Sharing: Financial markets allow a transfer of risk from those who undertake investments to those who provide funds for those investments.
- Liquidity: Financial markets provide the holders of financial assets with a chance to resell or liquidate these assets.
- Efficiency: Financial markets reduce transaction costs and information costs.

1.3. Types of financial markets

Within the financial sector, the term “financial markets” is often used to refer just to the markets that are used to raise finance: for long term finance, the Capital markets; for short term finance, the Money markets. Another common use of the term is as a catchall for all the markets in the financial sector, as per examples in the breakdown below.

- Capital markets which consist of:
  - Stock markets, which provide financing through the issuance of shares or common stock, and enable the subsequent trading thereof.
  - Bond markets, which provide financing through the issuance of bonds, and enable the subsequent trading thereof.
- Commodity markets, which facilitate the trading of commodities.
- Money markets, which provide short term debt financing and investment.
- Derivatives markets, which provide instruments for the management of financial risk.
- Futures markets, which provide standardized forward contracts for trading products at some future date;
- Insurance markets, which facilitate the redistribution of various risks.
- Foreign exchange markets, which facilitate the trading of foreign exchange.

The Money market refers to the market where borrowers and lenders exchange short term funds to solve their liquidity needs. Money market instruments are generally financial claims that have low default risk, maturities under one year and high marketability.

The Capital market is a market for financial investments that are direct or indirect claims to capital. It is wider than the Securities Market and embraces all forms of lending and borrowing, whether or not evidenced by the creation of a negotiable financial instrument.

The Securities Market, however, refers to the markets for those financial instruments/ claims/obligations that are commonly and readily transferable by sale. It is a place where buyers and sellers of securities can enter into transactions to purchase and sell shares, bonds,

debentures etc. Further, it performs an important role of enabling corporate, entrepreneurs to raise resources for their companies and business ventures through public issues. Transfer of resources from those having idle resources (investors) to others who have a need for them (corporates) is most efficiently achieved through the securities market.

Debt Market - Debt instrument represents a contract whereby one party lends money to another on pre-determined terms with regards to rate and periodicity of interest, repayment of principal amount by the borrower to the lender. In the Indian securities markets, the term ‘bond’ is used for debt instruments issued by the Central and State governments and public sector organizations and the term ‘debenture’ is used for instruments issued by private corporate sector.

The National Stock Exchange of India started its trading operations in June 1994 by enabling the Wholesale Debt Market (WDM) segment of the Exchange. This segment provides a trading platform for a wide range of fixed income securities that includes central government securities, treasury bills (T-bills), state development loans (SDLs), bonds issued by public sector undertakings (PSUs), floating rate bonds (FRBs), zero coupon bonds (ZCBs), index bonds, commercial papers (CPs), certificates of deposit (CDs), corporate debentures, SLR and non-SLR bonds issued by financial institutions (FIs), bonds issued by foreign institutions and units of mutual funds (MFs).

The emergence of the Derivatives market, most notably forwards, futures and options, can be traced back to the willingness of risk-averse economic agents to guard themselves against uncertainties arising out of fluctuations in asset prices. By their very nature, the financial markets are marked by a very high degree of volatility. Through the use of derivative products, it is possible to partially or fully transfer price risks by locking–in asset prices. As instruments of risk management, these generally do not influence the fluctuations in the underlying asset prices. Derivative is a product whose value is derived from the value of one or more basic variables, called bases (underlying asset, index, or reference rate), in a contractual manner. The underlying asset can be equity, forex, commodity or any other asset.

A commodity market is a market that trades in primary rather than manufactured products. Soft commodities are agricultural products such as wheat, coffee, cocoa and sugar. Hard commodities are mined, such as (gold, rubber and oil). Investors access about 50 major commodity

markets worldwide with purely financial transactions increasingly outnumbering physical trades in which goods are delivered. Futures contracts are the oldest way of investing in commodities. Futures are secured by physical assets. Commodity markets can include physical trading and derivatives trading using spot prices, forwards, futures, and options on futures. Farmers have used a simple form of derivative trading in the commodity market for centuries for price risk management.

Mutual funds are investment companies that use the funds from investors to invest in other companies or investment alternatives. Mutual Fund Schemes may be classified on the Basis of its Structure and its Investment Objective. An open-ended mutual fund is the one whose units can be freely sold and repurchased by the investors. Closed-ended mutual funds have a fixed number of units, and a fixed tenure (3, 5, 10, or 15 years), after which their units are redeemed or they are made open-ended. These funds have various objectives: generating steady income by investing in debt instruments, capital appreciation by investing in equities, or both by making an equal allocation of the corpus in debt and equity instruments. Interval funds combine the features of open-ended and close-ended schemes. They are open for sale or redemption during pre-determined intervals at NAV related prices.

1.4. Major players in financial markets

i. Brokers

A broker is a commissioned agent of a buyer (or seller) who facilitates trade by locating a seller (or buyer) to complete the desired transaction. A broker does not take a position in the assets he or she trades - that is, the broker does not maintain inventories in these assets. The profits of brokers are determined by the commissions they charge to the users of their services (the buyers, the sellers, or both). Examples of brokers include real estate brokers and stock brokers.

ii. Dealers

Like brokers, dealers facilitate trade by matching buyers with sellers of assets; they do not engage in asset transformation. Unlike brokers, however, a dealer can and does "take positions" (i.e., maintain inventories) in the assets he or she trades that permit the dealer to sell out of inventory rather than always having to locate sellers to match every offer to buy. Also, unlike brokers, dealers do not receive sales commissions. Rather, dealers make profits by buying assets at

relatively low prices and reselling them at relatively high prices (buy low - sell high). Examples of dealers include dealers in government bonds and stock dealers.

iii. Investment Banks

An investment bank assists in the initial sale of newly issued securities (i.e., in IPOs = Initial Public Offerings) by engaging in a number of different activities like advice, underwriting, sales assistance etc.

iv. Financial Intermediaries

Unlike brokers, dealers, and investment banks, financial intermediaries are financial institutions that engage in financial asset transformation. That is, financial intermediaries purchase one kind of financial asset from borrowers - generally some kind of long-term loan contract whose terms are adapted to the specific circumstances of the borrower (e.g., a mortgage) and sell a different kind of financial asset to savers, generally some kind of relatively liquid claim against the financial intermediary (e.g., a deposit account). In addition, unlike brokers and dealers, financial intermediaries typically hold financial assets as part of an investment portfolio rather than as an inventory for resale. Types of financial intermediaries include commercial banks, Life insurance companies, pension funds, finance companies, mutual funds etc.

1.5. Role and functions of financial market

One of the important requisite for the accelerated development of an economy is the existence of a dynamic financial market. A financial market helps the economy in the following manner.

- Saving mobilization: Obtaining funds from the savers or surplus units such as household individuals, business firms, public sector units, central government, state governments etc. is an important role played by financial markets.
- Investment: Financial markets play a crucial role in arranging to invest funds thus collected in those units which are in need of the same.
- National Growth: An important role played by financial markets is that, they contribute to a nation’s growth by ensuring unfettered flow of surplus funds to deficit units. Flow of funds for productive purposes is also made possible.

- Entrepreneurship growth: Financial markets contribute to the development of the entrepreneurial class by making available the necessary financial resources.
- Industrial development: The different components of financial markets help an accelerated growth of industrial and economic development of a country, thus contributing to raising the standard of living and the society of well-being.

The functions of financial markets include the following:

- Transfer of Resources: Financial markets facilitate the transfer of real economic resources from lenders to ultimate borrowers.
- Enhancing income: Financial markets allow lenders to earn interest or dividend on their surplus invisible funds, thus contributing to the enhancement of the individual and the national income.
- Productive usage: Financial markets allow for the productive use of the funds borrowed.
- Capital Formation: Financial markets provide a channel through which new savings flow to aid capital formation of a country.
- Price determination: Financial markets allow for the determination of price of the traded financial assets through the interaction of buyers and sellers. They provide a sign for the allocation of funds in the economy based on the demand and supply through the mechanism called price discovery process.
- Sale Mechanism: Financial markets provide a mechanism for selling of a financial asset by an investor so as to offer the benefit of marketability and liquidity of such assets.
- Information: The activities of the participants in the financial market result in the generation and the consequent dissemination of information to the various segments of the market.

Financial Functions –

- Providing the borrower with funds so as to enable them to carry out their investment plans.
- Providing the lenders with earning assets so as to enable them to earn wealth by deploying the assets in production debentures.
- Providing liquidity in the market so as to facilitate trading of funds.
- it provides liquidity to commercial bank

- it facilitates credit creation
- it promotes savings
- it promotes investment
- it facilitates balance economic growth
- it improves trading floors

1.6. International scope of financial markets

Financial markets are increasingly becoming international in scope. Integration of transatlantic financial markets began early in the nineteenth century and accelerated after the mid-nineteenth-century introduction of the transoceanic telegraph systems. The process reversed early in the twentieth century due to World Wars I and II and the cold war; the demise of the gold standard; and the rise of the Bretton Woods system of fixed exchange rates, discretionary monetary policy, and capital immobility. With the end of the Bretton Woods arrangement in the early 1970s and the cold war in the late 1980s/early 1990s, financial globalization reversed course once again. Today, governments, corporations, and other securities issuers (borrowers) can sell bonds, called foreign bonds, in a foreign country denominated in that foreign country's currency. (For example, the Mexican government can sell dollar-denominated bonds in U.S. markets.) Issuers can also sell Eurobonds or Eurocurrencies, bonds issued (created and sold) in foreign countries but denominated in the home country's currency. For example, U.S. companies can sell dollar denominated bonds in London and U.S. dollars can be deposited in non-U.S. banks. It now also quite easy to invest in foreign stock exchanges, many of which have grown in size and importance in the last few years.

2. WHAT IS CAPITAL MARKET?

Capital market is one of the most important segments of the Indian financial system. It is the market available to the companies for meeting their requirements of the long-term funds.

The term capital market means institutional arrangements for facilitating the borrowing and lending of long term funds. In other words, it consists of a series of channels through which the savings of the community are made available for industrial and commercial enterprises.

Capital market is the market for long term funds, just as the money market is the market for short term funds. It refers to all the facilities and the institutional arrangements for borrowing and lending term funds (medium-term and long-term funds). It does not deal in capital goods but is concerned with the raising of money capital for purposes of investment.

The market consists of a number of individuals and institutions (including the Government) that canalize the supply and demand for long -term capital and claims on it. The demand for long term capital comes predominantly from private sector manufacturing industries, agriculture sector, trade and the Government agencies. While, the supply of funds for the capital market comes largely from individual and corporate savings, banks, insurance companies, specialised financing agencies and the surplus of Governments.

Among the institutions, we may refer to the following:

(i) Commercial banks are important investors, but are largely interested in govt. securities and to a small extent, debentures of companies;

(ii) LIC and GIC are of growing importance in the Indian capital market, though their major interest is in government securities;

(iii) Provident funds constitute a major medium of savings but their investment too are mostly in govt. securities; and

(iv) Special institutions set up since independence, viz., IFCI, ICICI, IDBI, UTI, etc. –generally called development financial institutions (DFIs) –aim at supplying long term capital to the private sector.

(v) There are financial intermediaries in the capital market, such as merchant bankers, mutual funds leasing companies etc. which

help in mobilizing savings and supplying funds to investors.

Like all markets, the capital market is also composed of those who demand funds (borrowers) and those who supply funds (lenders). An ideal capital attempts to provide adequate capital at reasonable rate of return for any business which offers a prospective yield high enough to make borrowing worthwhile.

The size of a nation's capital markets is directly proportional to the size of its economy. The United States, the world's largest economy, has the biggest and deepest capital markets. Capital markets are increasingly interconnected in a globalized economy, which means that ripples in one corner can cause major waves elsewhere. The drawback of this interconnection is best illustrated by the global credit crisis of 2007-09, which was triggered by the collapse in U.S. mortgage-backed securities. The effects of this meltdown were globally transmitted by capital markets since banks and institutions in Europe and Asia held trillions of dollars of these securities.

Division of Capital Market -

- Financial institutions
- Securities market
  - Gilt-edged market
  - Corporate securities market
  - Primary market
  - Secondary market

The Indian capital market is broadly divided into the gilt-edged market and the securities market.

- The gilt-edged market refers to the market for Government and semi-government securities, backed by the Reserve Bank of India (RBI). Government securities are tradeable debt instruments issued by the Government for meeting its financial requirements. The term gilt-edged means 'of the best quality'. This is because the Government securities do not suffer from risk of default and are highly liquid (as they can be easily sold in the market at their current price). The open market operations of the RBI are also conducted in such securities.
- The securities market refers to the market which deals in equities and debentures of the corporates. It is further divided into primary

market and secondary market.

- Primary market (new issue market):- deals with 'new securities', that is, securities which were not previously available and are offered to the investing public for the first time.

  The issuer may be a new company or an existing company. These issues may be of new type or the security used in the past. In the primary market the issuer can be considered as a manufacturer. The issuing houses, investment bankers and brokers act as the channel of distribution for the new issues. They take the responsibility of selling the stocks to the public.

  The main service functions of the primary market are origination, under writing and distribution. Origination deals with the origin of the new issue. The proposal is analyzed in terms of the nature of the security, the size of the issue, timing of the issue and floatation method of the issue. Underwriting contract makes the share predictable and removes the element of uncertainty in the subscription. Distribution refers to the sale of securities to the investors. This is carried out with the help of the lead managers and brokers to the issue.

- Secondary market/ stock market (old issues market or stock exchange):- is the market for buying and selling securities of the existing companies. Under this, securities are traded after being initially offered to the public in the primary market and/or listed on the stock exchange. The stock exchanges are the exclusive centres for trading of securities. It is a sensitive barometer and reflects the trends in the economy through fluctuations in the prices of various securities. It has been defined as, "a body of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating and controlling the business of buying, selling and dealing in securities". Listing on stock exchanges enables the shareholders to monitor the movement of the share prices in an effective manner. This assists those to take prudent decisions on whether to retain their holdings or sell off or even accumulate further. However, to list the securities on a stock exchange, the issuing company has to go through set norms and procedures.

Features of Capital Market -

1. Link between Savers and Investment Opportunities:

   Capital market is a crucial link between saving and investment process. The capital market transfers money from savers to

entrepreneurial borrowers.

2. Deals in Long Term Investment:

   Capital market provides funds for long and medium term. It does not deal with channelizing saving for less than one year.

3. Utilizes Intermediaries:

   Capital market makes use of different intermediaries such as brokers, underwriters, depositories etc. These intermediaries act as working organs of capital market and are very important elements of capital market.

4. Determinant of Capital Formation:

   The activities of capital market determine the rate of capital formation in an economy. Capital market offers attractive opportunities to those who have surplus funds so that they invest more and more in capital market and are encouraged to save more for profitable opportunities.

5. Government Rules and Regulations:

   The capital market operates freely but under the guidance of government policies. These markets function within the framework of government rules and regulations, e.g., stock exchange works under the regulations of SEBI which is a government body.

An ideal capital market is one:

1. Where finance is available at reasonable cost.
2. Which facilitates economic growth.
3. Where market operations are free, fair, competitive and transparent.
4. Must provide sufficient information to investors.
5. Must allocate capital productively.

2.1. History of Capital Market in India

The history of capital market system in India could be divided into two eras – pre-independence era and post-independence era.

Pre-independence Era

Before independence, the capital market of India was ill developed. India during the British rule exhibited most of the fundamental characteristics

of an underdeveloped economy in a distinct manner. Before the arrival of British in India, the economy of India had lost momentum and was fast settling down to a semi-static equilibrium condition. Two basic characteristics were prominent in the period before British rule started in India - a high degree of income inequality and conspicuous consumption (i.e. consumption of luxury items) by the wealthy class. The tendency of wasting the potential surplus of the country in conspicuous consumption by the richer class in the form of gold and silver hoards instead of investing it for creating bigger surplus for economic development persisted even after the British came to India.

British were not keen in bringing out an all-round economic growth of India. Its main task was to make India complementary to Britain's own economy and the maintenance of political control. In short, India's lack of economic development must be attributed, in considerable measure, to her political subordinacy to Great Britain. With political subordinacy went economic subordinacy. From the beginning almost until the end of British ascendancy, India was regarded as a kind of economic complement to Britain. Accordingly, the development of an economically rounded and strong India was never a basic objective of British policy. The result was an automatic suppression of this stimulus to economic growth. A vast number of people were in a state of appalling poverty. The rate of savings in the economy was hopelessly low and the advances made in communications, trade and industry were scarcely enough to meet the pressure of population. The capital market in India suffered from certain defects in the pre-independence days –

- Agriculture, constituting the main occupation did not lend itself to the floatation of securities. Moreover, in the industrial sector itself production on small scale by sole trading and partnership firms did not leave much scope for the emergence of an organized securities market.
- The growth of securities market was hampered because the foreign business enterprises, which accounted for the greater part of industrial development in the past, depended on the London Capital Market rather than on the Indian market.
- The managing agency system, which was abolished after independence, to a large extent, was also responsible for the non-development of the capital market, for the managing agents acted both as promoting and marketing agencies and the capital market was characterized by an absence of special institutions to float new issues.

- Due to underdevelopment of industries the total number of securities which were traded in on stock exchanges was not large. Government securities accounted for nearly half the total volume of issues in the capital market. Ordinary shares were the predominant type of security, while debentures and preference shares, whose price movements usually showed a close correlation with those of government securities, occupied a limited place.
- The poor investment habits of the individuals and the restrictions imposed on the investment patterns of the various financial institutions circumscribed the capital market. The institutional investors primarily invested in Government and semi-Government securities. Further, the speculators were mostly interested in a short list of speculative shares. As a result, the class of investors to purchase industrial securities on a wide basis was small and there was absence of continuous dealings in a large range of securities.

In the unorganized sector of the capital market indigenous banking as different from the modern western banking had been organized in the form of family or individual business. The indigenous bankers have been variously called as Shroffs, Seths, Sahukars, Mahajans, Chettis etc. in different parts of the country. They vary in their size from petty moneylenders to substantial shroffs who carry on large and specialized business, which at times exceeds that of the scheduled banks. Despite the predominant role played by the indigenous bankers in India's economic life, they have always remained outside the pale of organized banking. In 1935, when Reserve Bank of India had started many attempts to bring the indigenous bankers under its orbit and issued a draft scheme for direct linking of these bankers, RBI suggested that the indigenous bankers should give-up their trading and commission business, switch over to western system of accounting, develop the deposit side of banking activities, have their accounts audited by certified accountants, submit to RBI periodical statements of their affairs etc. RBI desired that the ambiguous character of the Hundi should cease and that it should become a negotiable instrument representing a genuine trade transaction. RBI also desired that the indigenous bankers should act as discount houses, (to buy and sell bills of exchange etc) and against these obligations, RBI promised to provide them with all the privileges enjoyed by scheduled banks. They would then be allowed to borrow from or rediscount bills of exchange at RBI on similar terms and conditions as available to scheduled banks.

But the indigenous bankers, with their age-old traditions of independence,

declined to accept the restrictions as well as the compensating benefits of securing accommodation from RBI on favorable terms. They disagreed to give up their trading and commission business and accept deposits, thereby confining themselves to banking business only. They were also unwilling to give wide publicity to their accounts and their state of affairs. They did not consider that the privileges offered by RBI were adequate enough to compensate for the loss of their non-banking business. As a result, the scheme proposed by RBI to bring the indigenous bankers under its direct influence fell through.

In spite of all these defects, they occupy a very prominent position in the capital market in the country and at one time they were estimated to meet at least 90% of the financial requirements of the farmers and a substantial portion of the needs of the industry and trade.

Post-Independence Era In recent years since independence, the capital market of India has substantially changed and has been changing for the better. The concentrated efforts on the part of the government and the growth of investment-mindedness of the people have made this possible. Capital market in India till the recent past, had all the characteristics of an underdeveloped economy. It was characterized by the conspicuous absence of institutions like, professional promoters, investment or issue houses, underwriting agencies and financial intermediaries. As a result, free flow of savings to industrial investment was impeded resulting in the stagnant character of our economy. Thus, serious flaws existed in the structure of capital market in India. However, the achievement of independence in 1947 marked a trend towards an organized growth of capital market. After achieving political independence, government took over the responsibility of giving shape to those coveted ideals of our economy, which were enshrined in our Constitution by way of the Directive Principles of state policy. When the Constitution was framed, the government defined its basic economic and social goals that were later on summed up in the expression “socialist pattern of society”. These ideals directed the government to promote the welfare of the society by securing and promoting a social order in which justice, equality and fraternity could prevail. The resolution was adopted at the Avadhi Session of Congress in 1954 to build the society on the socialistic pattern. “Ever since then this has been the light house of our economic policy”, “Growth with social justice” and “Social Gain not private Profit”, have been the major planks of our plan policies. These basic objectives had a significant bearing on the organization of the Capital Market. But it required effective control on government over the distribution of credit and finance and thus it could not be isolated

from the strategy of economic development.

In the post independence days, the government had committed itself to reorganize the Indian Capital Market. The government's commitments towards industrialization also required the removal of basic deficiencies of the capital market. The existing financial institutions could only partly meet the financial requirements of industries. Priority now shifted from private ownership to public control. The first amongst these actions was the nationalization of RBI in 1948. The setting up of the SBI followed this, by taking over the Imperial Bank of India in 1956. In the same year the government also took a drastic action by rationalizing and merging as many as 245 life insurance companies into a state owned monolithic LIC of India. The year 1969 represents a landmark in the history of public control of private financial institutions when the 14 major Commercial Banks were nationalized.

Setting up of Unit Trust of India, July 1, 1964 for mobilizing the small savings for investment in corporate securities and investment of life insurance funds and provident funds in industrial securities would help in strengthening the base of capital market. The changes in the growth of capital market in India can be analyzed also by a reference to the data relating to new issues of capital formation and working of corporate sectors. Various developments in the Indian capital market, removing its basic deficiencies, since independence can be reviewed as follows:

- The adoption of an elaborate legislative code to protect the investor's interest has offered a salutary effect in the development of capital market. The Companies Act 1956, designed to safeguard the interest of shareholders, the Capital Issues (Control) Act to discourage undesirable practices like issue of shares with disproportionate voting rights and to prevent investment in non-essential enterprises, the Securities Contract (Regulations) Act 1956, to provide reforms in stock exchange trading methods and practices against undesirable manipulations, are some of the steps introduced to have a strong and healthy investment market having full confidence of the public.
- The striking success of several industrial issues, home and foreign, indicate that in recent years more and more people have become investment conscious and ready to put their savings in corporate securities.
- There was no institutionalized system of underwriting in the country before independence. But during the post independence

period the under-writing activity made satisfactory progress with the establishment of specialized institutions of industrial finance. The underwriting operations got impetus by the establishment of strong underwriting organizations like, Industrial Credit and Investment Corporation of India, Industrial Finance Corporation of India, Life Insurance Corporation of India, Unit Trust of India and Industrial Finance Corporation of India, Life Insurance Corporation of India, Unit Trust of India and Industrial Development Bank of India. The emergence of this institutionalized underwriting structure is of crucial importance for the efficient operation of the new issue market in the country.

- The growth of capital market was indirectly influenced by the activities of Commercial Banks, which provided advances essentially for working capital against shares, and debentures, which thereby encouraged investment in industrial securities. Further, by providing funds to finance corporations through the purchase of their shares and debentures and by underwriting either singly or in association with other banks and institutions. Commercial Banks have greatly influenced the growth of capital market.
- Immediately after independence in 1947, the ardent need for large-scale industrial development paved the way for the establishment of several special finance and development corporations.
- The most striking change in the capital market is the integration of the organized and unorganized sectors of the capital market on the one hand and the money and the capital market on the other. The integration has been proceeding steadily due to the growth of joint stock form of business, the expanding role of the Reserve Bank in the sphere of rural credit, the extension of banking facilities into the interior of the country, the diversification of the functions of commercial bank and government assistance to industry have all been the contributive factors to this integration.
- The establishment of Unit Trust of India (which started its public operations from July 1, 1964) and the Industrial Development Bank of India under the auspices of the Reserve Bank of India had a combining effect in strengthening and broadening the framework of the capital market in India as the source for the supply of funds to industry.

2.2. Securities market in India

The corporate securities market in India dates back to the 18th century

when the securities of the East India Company were traded in Mumbai and Kolkotta. The brokers used to gather under a Banyan tree in Mumbai and under a Neem tree in Kolkata for the purpose of trading those securities. However the real beginning came in the 1850's with the introduction of joint stock companies with limited liability. The 1860's witnessed feverish dealings in securities and reckless speculation. This brought brokers in Mumbai together in July 1875 to form the first formally organized stock exchange in the country viz. The Stock Exchange, Mumbai. Ahmedabad stock exchange in 1894 and 22 others followed this in the 20th century.

The process of reforms has led to a pace of growth almost unparalleled in the history of any country. The process of economic reforms and liberalization was set in motion in the mid-eighties and its pace was accelerated in 1991 when the economy suffered severely from a precariously low foreign exchange reserve, burgeoning imbalance on the external account, declining industrial production, galloping inflation and a rising fiscal deficit. The economic reforms, being an integrated process, included deregulation of industry, liberalization in foreign investment, regime, restructuring and liberalization of trade, exchange rate, and tax policies, partial disinvestments of government holding in public sector companies and financial sector reforms. The reforms in the real sectors such as trade, industry and fiscal policy were initiated first in order to create the necessary macroeconomic stability for launching financial sector reforms, which sought to improve the functioning of banking and financial institutions (FIs) and strengthen money and capital markets including securities market. The securities market reforms specifically included:

- Repeal of the Capital Issues (Control) Act, 1947 through which Government used to expropriate and allocate resources from capital market for favored uses;
- Enactment of the Securities and Exchange Board of India Act, 1992 to provide for the establishment of the Securities and Exchange Board of India (SEBI) to regulate and promote development of securities market;
- Setting up of NSE in 1993, passing of the Depositories Act, 1996 to provide for the maintenance and transfer of ownership of securities in book entry form;
- Amendments to the Securities Contracts (Regulation) Act, 1956 in 1999 to provide for the introduction of futures and option.
- Other measures included free pricing of securities, investor

protection measures, use of information technology, dematerialization of securities, improvement in trading practices, evolution of an efficient and transparent regulatory framework, emergence of several innovative financial products and services and specialized FIs etc.

These reforms were aimed at creating efficient and competitive securities market subject to effective regulation by SEBI, which would ensure investor protection.

Securities market in India has grown exponentially as measured in terms of amount raised from the market, number of stock exchanges and other intermediaries, the number of listed stocks, market capitalization, trading volumes and turnover on stock exchanges, investor population and price indices. Along with this, the profiles of the investors, issuers and intermediaries have changed significantly. The market has witnessed fundamental institutional changes resulting in drastic reduction in transaction costs and significant improvements in efficiency, transparency and safety, thanks to the National Stock Exchange. Indian market is now comparable to many developed markets in terms of a number of parameters.

Developments in Securities Markets, before 1992 and present scenario

Features	Pre-1992	Present scenario
Regulator	No specific regulator, but central government oversight	A specialized regulator for securities market (SEBI) created in 1992, vested with the powers to protect investors' interest and to develop and regulate securities market. SROs strengthened
Securities	Limited number of traditional instruments	Expanded to cover government securities, units of CISs and MFs, derivatives of securities, security receipts
Form of securities	Physical	Dematerialized through enabling legislation

Regulatory approach	Merit-based regulation	Disclosure-based regulation
Intermediaries	Some of the intermediaries (stock brokers, authorized clerks) regulated by the SROs (self regulated organizations)	A variety of specialized intermediaries emerged. They are registered and regulated by SEBI (also by SROs in some instances). They as well as their employees are required to follow a code of conduct and are subject to a number of compliances. All participants are identified by a unique identification number.
Access to market	Granted by the central government	Eligible issuers access the market after complying with the issue requirements as detailed in regulations under the SEBI Act, 1992
Disclosure	Voluntary, vague, scanty and non-standardized	Standardized, systematic, and at par with the international standards
Pricing of securities	Determined by the central government	Determined by market, either by the issuer through fixed price or by the investors through book building
Access to international market	No access	Corporations allowed to issue ADRs and GDRs and raise ECBs. ADRs and GDRs have limited two-way fungibility. MFs also allowed to invest overseas Foreign institutional investors allowed to trade in Indian markets.
Corporate compliance	Very little emphasis	Emphasis on disclosures, accounting standards, and corporate governance

Mutual funds	Restricted to public sector	Open to private sector and emergence of a variety of funds and schemes
Trading mechanism	Open outcry, available at the trading rings of the exchanges; opaque, auction or negotiated deals	Screen-based trading system; orders are matched on price-time priority; transparent trading platform accessible from all over the country
Form of settlement	Physical	Mostly electronic
Transfer of securities	Cumbersome. Transfer by endorsement on security and registration by issuer	Securities are freely transferable. Transfers are recorded electronically in book entry form by depositories
Systemic risk management	No focus on risk management	Comprehensive risk management system at the exchanges encompassing capital adequacy, limits on exposure and turnover, VaR-based margining, client-level gross margining, on-line position monitoring, business continuity plans, and the like
Derivatives trading	absent	A wide array of exchange-traded derivatives, such as futures and options on indexes and single stocks and futures on interest rates (available since 2000–01 and ongoing), commodities (since 2003), and currencies (since 2008)

Research	Very little	Many market participants have full-fledged research departments. Some of them have schemes and initiatives to promote research

(Source: ADBI Working Paper – Financial development in Emerging Markets: the Indian experience)

3. MONEY MARKET

One of the sections of a financial market where securities and financial instruments with short-term maturities are traded is called the money market. It deals in funds and financial instruments having a maturity period of one day to one year.

Financial assets like treasury bills, certificates of deposits, commercial paper and bankers' acceptance are some of the short-term debt securities traded in the money market.

RBI being the main constituent in the money market aims at ensuring that liquidity and short term interest rates are consistent with the monetary policy objectives. RBI describes money market as "the centre for dealings, mainly of a short-term character, in monetary assets, it meets the short-term requirements of borrowers and provides liquidity or cash to lenders".

The money market functions are -

- Transfer of large sums of money
- Transfer from parties with surplus funds to parties with a deficit
- Allow governments to raise funds
- Help to implement monetary policy
- Determine short-term interest rates

The Indian money market consists of the unorganised sector: moneylenders, indigenous bankers, chit funds; organised sector: Reserve Bank of India, private banks, public sector banks, development banks and other non-banking financial companies (NBFCs) such as Life Insurance Corporation of India (LIC), the International Finance Corporation, IDBI, and the co-operative sector.

Money market and Capital Market

Money Market is a place for short term lending and borrowing, typically within a year. It deals in short term debt financing and investments. On the other hand, Capital Market refers to stock market, which refers to trading in shares and bonds of companies on recognized stock exchanges. Individual players cannot invest in money market as the value of investments is large, on the other hand, in capital market, anybody can make investments through a broker. Stock Market is

associated with high risk and high return as against money market which is more secure. Further, in case of money market, deals are transacted on phone or through electronic systems as against capital market where trading is through recognized stock exchanges.

Money Market Instruments

1) Treasury Bills (T-Bills)

Treasury bills (T-bills) offer short-term investment opportunities, generally up to one year. They are thus useful in managing short-term liquidity. At present, the Government of India issues three types of treasury bills through auctions, namely, 91-day, 182-day and 364-day. There are no treasury bills issued by State Governments.

Treasury bills are available for a minimum amount of Rs.25,000 and in multiples of Rs. 25,000. Treasury bills are issued at a discount and are redeemed at par. Treasury bills are also issued under the Market Stabilization Scheme (MSS).

2) Repurchase Agreements

Repurchase transactions, called Repo or Reverse Repo are transactions or short term loans in which two parties agree to sell and repurchase the same security. They are usually used for overnight borrowing. Repo/Reverse Repo transactions can be done only between the parties approved by RBI and in RBI approved securities viz. Government Of India and State Government Securities, T-Bills, PSU Bonds, FI Bonds, Corporate Bonds etc. Under repurchase agreement the seller sells specified securities with an agreement to repurchase the same at a mutually decided future date and price. Similarly, the buyer purchases the securities with an agreement to resell the same to the seller on an agreed date at a predetermined price. Such a transaction is called a Repo when viewed from the perspective of the seller of the securities and Reverse Repo when viewed from the perspective of the buyer of the securities.

3) Commercial Papers (CP)

Commercial Papers were introduced in January 1990. Commercial Papers can be issued by a listed company which have working capital of not less than Rs. 5 crores. They can be issued in multiple of Rs. 25 lakhs and the minimum size of issue being Rs. 1 crore. At present the maturity period of CPs ranges between 7 days to 1 year. CPs are issued at a discount to its face value and

redeemed at its face value.

4) Certificate of Deposit (CD)

Certificate of Deposit (CD) is a negotiable money market instrument and issued in dematerialised form or as a Usance Promissory Note against funds deposited at a bank or other eligible financial institution for a specified time period. Guidelines for issue of CDs are presently governed by various directives issued by the Reserve Bank of India (RBI), as amended from time to time.

Minimum amount of a CD should be Rs.1 lakh, i.e., the minimum deposit that could be accepted from a single subscriber should not be less than Rs.1 lakh, and in multiples of Rs. 1 lakh thereafter. The maturity period of CDs issued by banks should not be less than 7 days and not more than one year, from the date of issue. The FIs (financial institutions) can issue CDs for a period not less than 1 year and not exceeding 3 years from the date of issue.

5) Banker's Acceptance

A banker's acceptance is a short-term investment plan created by a company or firm with a guarantee from a bank. It is a guarantee from the bank that a buyer will pay the seller at a future date. A good credit rating is required by the company or firm drawing the bill. The terms for these instruments are usually 90 days, but this period can vary between 30 and 180 days. Companies use the acceptance as a time draft for financing imports, exports and other trade

6) Commercial Bill

Commercial bills are short term, negotiable and self liquidating money market instruments with low risk. A bill of exchange is drawn by a seller on the buyer to make payment within a certain period of time. Generally, the maturity period is of three months. Commercial bill can be resold a number of times during the usance period of bill. The commercial bills are purchased and discounted by commercial banks and are rediscounted by financial institutions.

4. COMMODITY MARKET

Commodity market is an important constituent of the financial markets of any country. It is the market where a wide range of products, viz., precious metals, base metals, crude oil, energy and soft commodities like palm oil, coffee etc. are traded. It is important to develop a vibrant, active and liquid commodity market. This would help investors hedge their commodity risk, take speculative positions in commodities and exploit arbitrage opportunities in the market.

Investors access about 50 major commodity markets worldwide with purely financial transactions increasingly outnumbering physical trades in which goods are delivered. Futures contracts are the oldest way of investing in commodities. Futures are secured by physical assets. Commodity markets can include physical trading and derivatives trading using spot prices, forwards, futures, and options on futures. Farmers have used a simple form of derivative trading in the commodity market for centuries for price risk management.

Derivatives such as futures contracts, Swaps, Exchange-traded Commodities, forward contracts etc. have become the primary trading instruments in commodity markets. Futures are traded on regulated commodities exchanges.

The regulatory body for commodity trading in India is the Forward Markets Commission.

History of the Commodity Futures Market in India

The Commodity Futures market in India dates back to more than a century. The first organized futures market was established in 1875, under the name of 'Bombay Cotton Trade Association' to trade in cotton derivative contracts. This was followed by institutions for futures trading in oilseeds, foodgrains, etc. The futures market in India underwent rapid growth between the period of First and Second World War. As a result, before the outbreak of the Second World War, a large number of commodity exchanges trading futures contracts in several commodities like cotton, groundnut, groundnut oil, raw jute, jute goods, castorseed, wheat, rice, sugar, precious metals like gold and silver were flourishing throughout the country. In view of the delicate supply situation of major commodities in the backdrop of war efforts mobilization, futures trading came to be prohibited during the Second World War under the Defence of India Act. After Independence, especially in the second half of the

1950s and first half of 1960s, the commodity futures trading again picked up and there were thriving commodity markets. However, in mid-1960s, commodity futures trading in most of the commodities was banned and futures trading continued in two minor commodities, viz, pepper and turmeric.

The Khusro Committee (June 1980) had recommended reintroduction of futures trading in most of the major commodities , including cotton, kapas, raw jute and jute goods and suggested that steps may be taken for introducing futures trading in commodities, like potatoes, onions, etc. at appropriate time. The government, accordingly initiated futures trading in Potato during the latter half of 1980, in a few markets in Punjab and Uttar Pradesh. Futures trading were also resumed in castorseed, and gur (jaggery), and in 1992, extended to Hessian (Jute). After the introduction of economic reforms in June 1991 and the consequent trade and industry liberalization in both the domestic and external sectors, the Govt. of India appointed in June 1993, a committee on Forward Markets under the Chairmanship of Prof. K.N. Kabra. The Committee submitted its report in September 1994. The majority view of the Committee was that futures trading be introduced in Basmati Rice, Cotton and Kapas, Raw Jute and Jute Goods, Groundnut, rapeseed/ mustard seed, cottonseed, sesame seed, sunflower seed, safflower seed, copra and soybean oilseeds, oils and their oilcakes, Rice bran oil, Castor oil and its oilcake, Linseed, Silver and Onion. The Committee also recommended that some of the existing commodity exchanges particularly those with futures trading in pepper and castor seed, may be upgraded to the level of international futures markets. In April 1999, futures trading was permitted in various edible oilseed complexes.

The National Agriculture Policy announced in July 2000 and the announcements of Hon'ble Finance Minister in the Budget Speech for 2002-2003 indicated the Government's resolve to put in place a mechanism of futures trade/market. Futures trading in sugar was permitted in May 2001 and the Government issued notifications on 1.4.2003 permitting futures trading in all the commodities. With the issue of these notifications, futures trading is not prohibited in any commodity.

5. FORWARD MARKET

The forward market is the informal over-the-counter financial market by which contracts for future delivery are entered into. Standardized forward contracts are called futures contracts and traded on a futures exchange. Forward markets are used for trading a range of instruments including currencies and interest rates, as well as assets such as commodities and securities.

It should not be confused with the futures market, as –

- Future contracts are traded in exchanges whereas a forward Contract is traded over the counter.
- The forward market is highly customized.
- Though the forward market is not exchange traded, chances of parties defaulting are very low.

A forward contract is an agreement between two parties to buy or sell an asset (which can be of any kind) at a pre-agreed future point in time. Therefore, the trade date and delivery date are separated. It is used to control and hedge risk, for example currency exposure risk (e.g., forward contracts on USD or EURO) or commodity prices (e.g., forward contracts on oil). One party agrees (obligated) to sell, the other to buy, for a forward price agreed in advance. In a forward transaction, no actual cash changes hands. If the transaction is collateralized, exchange of margin will take place according to a pre-agreed rule or schedule. Otherwise no asset of any kind actually changes hands, until the maturity of the contract. The forward price of such a contract is commonly contrasted with the spot price, which is the price at which the asset changes hands (on the spot date, usually two business days). The difference between the spot and the forward price is the forward premium or forward discount.

5.1. Forward Contracts (Regulation) Act, 1952

The Forward Contracts Regulation Act provides for the regulation of commodity futures markets in India and the establishment of the Forward Markets Commission (FMC). The Forward Contracts (Regulation) Rules, 1954 has been issued under the Act.

The need for regulation arises on account of the fact that the benefits of futures markets accrue in competitive conditions. The regulation is

needed to create competitive conditions. In the absence of regulation, unscrupulous participants could use these leveraged contracts for manipulating prices. This could have undesirable influence on the spot prices, thereby affecting interests of society at large. Regulation is also needed to ensure that the market has appropriate risk management system. In the absence of such a system, a major default could create a chain reaction. The resultant financial crisis in a futures market could create systematic risk. Regulation is also needed to ensure fairness and transparency in trading, clearing, settlement and management of the exchange so as to protect and promote the interest of various stakeholders, particularly non-member users of the market.

"Forward contract" means a contract for the delivery of goods and which is not a ready delivery contract. "Goods" means every kind of movable property other than actionable claims, money and securities.

Under the Act, only those associations/exchanges, which are granted recognition by the Government, are allowed to organize forward trading in regulated commodities. The Act envisages three-tier regulation: (i) The Exchange which organizes forward trading in commodities can regulate trading on a day-to-day basis; (ii) the Forward Markets Commission provides regulatory oversight under the powers delegated to it by the central Government, and (iii) the Central Government.

Under Section 15, Government has powers to notify commodities in which forward trading is regulated as also the area in which such regulation will be in force. Once a commodity is notified under section 15, the forward trading in such contracts has to be necessarily between members of the recognized association or through or with any such member. Contracts other than these are illegal.

Under Section 17, the Government has powers to notify commodities, forward trading in which is prohibited in whole or part of India. Any forward trading in such commodities in the notified area is illegal and liable to penal action.

The following persons can be arrested and prosecuted under the Act, 1952:

- Owner or tenant of a place which is used, with the knowledge of such owner and tenant, for entering into or making or performing, whether completely or in part, illegal forward contracts.
- A person who, without permission of the Central Government,

organizes or assists in organizing or becomes a member of any association other than recognized association for the purpose of assisting in, entering into or making or performing, whether completely or in part, illegal forward contracts.

- Any person who controls, manages, or assists in keeping any place, other than recognized association for entering into, or making, or performing illegal forward contract, or for clearing or settlement of such contracts.
- Any person who deliberately misrepresents or persuades any person to believe that he is a member of a recognized association or that forward contract can be entered into or made or performed, whether completely or in part, through him.
- Any person who is not a member of a recognized association canvasses, advertises or touts in any business connected with forward contracts in contravention of the Forward Contracts (Regulation) Act, 1952.
- Any person who joins, gathers, or assists in gathering at any place other than the place of business specified in the bye-laws of the recognized associations for making bids or offers or for entering into illegal forward contracts.
- Any person who makes publishes or circulates any statement or information, which is false and which he either knows, or believes to be false, affecting or tending to affect the course of business in forward contracts in permitted commodities.
- Any person who manipulates or attempts to manipulate prices of forward contracts in permitted commodities are liable for punishment under the Act on conviction.

5.2. Forward Markets Commission

The Forward Markets Commission (FMC) is a statutory body set up under the Forward Contracts (Regulation) Act, 1952. It functions under the administrative control of the Department of Economic Affairs, Ministry of Finance since September 2013. (Before this, FMC used to function under Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution, Govt. of India. It has its headquarters at Mumbai and one regional office at Kolkata. The Commission comprises of a Chairman, and two Members. It is organized into five administrative divisions to carry out various tasks.

Forward Markets Commission provides regulatory oversight in order

to ensure financial integrity (i.e. to prevent systematic risk of default by one major operator or group of operators), market integrity (i.e. to ensure that futures prices are truly aligned with the prospective demand and supply conditions) and to protect & promote interest of consumers /non-members. The Forward Markets Commission performs the role of a market regulator. After assessing the market situation and taking into account the recommendations made by the Board of Directors of the Commodity Exchange, the Commission approves the rules and regulations of the Exchange in accordance with which trading is to be conducted. It accords permission for commencement of trading in different contracts, monitors market conditions continuously and takes remedial measures wherever necessary by imposing various regulatory measures.

Out of 19 recognized exchanges, Multi Commodity Exchange (MCX Commodity and Derivatives Exchange (NCDEX), Mumbai; National Multi Commodities Exchange, (NMCE), Ahmedabad; ACE Derivatives and Commodity Exchange, Mumbai; Indian Commodity Exchange, Ltd., Mumbai; are the major exchanges in India.

Functions of the Forward Markets Commission are –

(a) To advise the Central Government in respect of the recognition or the withdrawal of recognition from any association or in respect of any other matter arising out of the administration of the Forward Contracts (Regulation) Act 1952.

(b) To keep forward markets under observation and to take such action in relation to them, as it may consider necessary, in exercise of the powers assigned to it by or under the Act.

(c) To collect and whenever the Commission thinks it necessary, to publish information regarding the trading conditions in respect of goods to which any of the provisions of the act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government, periodical reports on the working of forward markets relating to such goods;

(d) To make recommendations generally with a view to improving the organization and working of forward markets;

(e) To undertake the inspection of the accounts and other documents of any recognized association or registered association or any member of such association whenever it considerers it necessary.

(f) To perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.

List of Exchanges

A. National Multi Commodity Exchanges

1) National Multi Commodity Exchange of India Ltd., Ahmedabad (NMCE)
2) Multi Commodity Exchange of India Ltd., Mumbai (MCX)
3) National Commodity & Derivatives Exchange Ltd., Mumbai (NCDEX)
4) Indian Commodity Exchange Ltd., Mumbai (ICEX)
5) ACE Derivatives and Commodity Exchange, Mumbai
6) Universal Commodity Exchange Ltd., Navi Mumbai

B. Commodity Specific Regional Exchanges

7) Bikaner Commodity Exchange Ltd, Bikaner
8) Bombay Commodity Exchange Ltd, Mumbai
9) Central India Commercial Exchange Ltd, Gwalior
10) Cotton Association of India, Mumbai
11) The Chamber of Commerce, Hapur
12) First Commodity Exchange of India Ltd, Kochi
13) India Pepper & Spice Trade Association, Kochi
14) National Board of Trade, Indore
15) Rajkot Commodity Exchange Ltd., Rajkot
16) Spices & Oilseeds Exchange Ltd, Sangli
17) Surendranagar Cotton Oil & Oilseeds Association Ltd, Surendranagar
18) The Rajdhani Oil & Oilseeds Exchange Ltd, Delhi
19) Vijai Beopar Chamber Ltd., Muzaffarnagar

6. DERIVATIVE MARKET

The term “Derivative” indicates that it has no independent value, i.e. its value is entirely “derived” from the value of the underlying asset. The underlying asset can be securities, commodities, bullion, currency, live stock or anything else. In other words, Derivative means a forward, future, option or any other hybrid contract of pre determined fixed duration, linked for the purpose of contract fulfillment to the value of a specified real or financial asset or to an index of securities.

India’s tryst with derivatives began in 2000 when both the NSE and the BSE commenced trading in equity derivatives. In June 2000, index futures became the first type of derivate instruments to be launched in the Indian markets, followed by index options in June 2001, options in individual stocks in July 2001, and futures in single stock derivatives in November 2001. Since then, equity derivatives have come a long way. New products, an expanding list of eligible investors, rising volumes, and the best risk management framework for exchange-traded derivatives have been the hallmark of the journey of equity derivatives in India so far.

Derivatives markets broadly can be classified into two categories, those that are traded on the exchange and those traded one to one or ‘over the counter’. They are hence known as:

- Exchange Traded Derivatives
- OTC Derivatives (Over The Counter)
- OTC Equity Derivatives

Derivative trading in India takes can place either on a separate and independent Derivative Exchange or on a separate segment of an existing Stock Exchange. Derivative Exchange/Segment function as a Self-Regulatory Organisation and SEBI acts as the oversight regulator. The clearing & settlement of all trades on the Derivative Exchange/Segment would have to be through a Clearing Corporation/ House, which is independent in governance and membership from the Derivative Exchange/Segment. Derivatives trading take place under the provisions of the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992.

The term Derivative has been defined in Securities Contracts (Regulations) Act, as:-

“A Derivative includes: -

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

b. a contract which derives its value from the prices, or index of prices, of underlying securities;”

Derivative products have been introduced in a phased manner starting with Index Futures Contracts in June 2000. Index Options and Stock Options were introduced in June 2001 and July 2001 followed by Stock Futures in November 2001. Sectoral indices were permitted for derivatives trading in December 2002. During December 2007 SEBI permitted mini derivative (F&O) contract on Index (Sensex and Nifty). Further, in January 2008, longer tenure Index options contracts and Volatility Index and in April 2008, Bond Index was introduced. In addition to the above, during August 2008, SEBI permitted Exchange traded Currency Derivatives.

Measures specified by SEBI to protect the rights of investor in Derivatives Market are –

a. Investor’s money has to be kept separate at all levels and is permitted to be used only against the liability of the Investor and is not available to the trading member or clearing member or even any other investor.

b. The Trading Member is required to provide every investor with a risk disclosure document which will disclose the risks associated with the derivatives trading so that investors can take a conscious decision to trade in derivatives.

c. Investor would get the contract note duly time stamped for receipt of the order and execution of the order. The order will be executed with the identity of the client and without client ID order will not be accepted by the system. The investor could also demand the trade confirmation slip with his ID in support of the contract note. This will protect him from the risk of price favour, if any, extended by the Member.

d. In the derivative markets all money paid by the Investor towards margins on all open positions is kept in trust with the Clearing House/Clearing corporation and in the event of default of the Trading or Clearing Member the amounts paid by the client towards margins are segregated and not utilized towards the

default of the member. However, in the event of a default of a member, losses suffered by the Investor, if any, on settled / closed out position are compensated from the Investor Protection Fund, as per the rules, bye-laws and regulations of the derivative segment of the exchanges.

e. The Exchanges are required to set up arbitration and investor grievances redressal mechanism operative from all the four areas / regions of the country.

7. FINANCIAL SECTOR REFORMS IN INDIA

The role of the financial system in India, until the early 1990s, was primarily restricted to the function of channeling resources from the surplus to deficit sectors. Whereas the financial system performed this role reasonably well, its operations came to be marked by some serious deficiencies over the years. The banking sector suffered from lack of competition, low capital base, low productivity and high intermediation cost.

After the nationalization of large banks in 1969 and 1980, public ownership dominated the banking sector. The role of technology was minimal and the quality of service was not given adequate importance. Banks also did not follow proper risk management system and the prudential standards were weak. All these resulted in poor asset quality and low profitability.

Among non-banking financial intermediaries, development finance institutions (DFIs) operated in an over-protected environment with most of the funding coming from assured sources at concessional terms. In the insurance sector, there was little competition. The mutual fund industry also suffered from lack of competition and was dominated for long by one institution, viz., the Unit Trust of India. Non-banking Financial Companies (NBFCs) grew rapidly, but there was no regulation of their asset side. Financial markets were characterized by control over pricing of financial assets, barriers to entry, high transaction costs and restrictions on movement of funds/participants between the market segments. Apart from inhibiting the development of the markets, this also affected their efficiency.

Against this backdrop, wide-ranging financial sector reforms in India were introduced as an integral part of the economic reforms initiated in the early 1990s. Financial sector reforms in India were grounded in the belief that competitive efficiency in the real sectors of the economy will not be realized to its full potential unless the financial sector was reformed as well. Thus, the principal objective of financial sector reforms was to improve the allocative efficiency of resources and accelerate the growth process of the real sector by removing structural deficiencies affecting the performance of financial institutions and financial markets.

The main thrust of reforms in the financial sector was on the creation of efficient and stable financial institutions and markets. Reforms in respect of the banking as well as non-banking financial institutions

focused on creating a deregulated environment and enabling free play of market forces while at the same time strengthening the prudential norms and the supervisory system. In the banking sector, the focus was on imparting operational flexibility and functional autonomy with a view to enhancing efficiency, productivity and profitability, imparting strength to the system and ensuring accountability and financial soundness. The restrictions on activities undertaken by the existing institutions were gradually relaxed and barriers to entry in the banking sector were removed.

In the case of non-banking financial intermediaries, reforms focused on removing sector-specific deficiencies. Thus, while reforms in respect of DFIs focused on imparting market orientation to their operations by withdrawing assured sources of funds, in the case of NBFCs, the reform measures brought their asset side also under the regulation of the Reserve Bank. In the case of the insurance sector and mutual funds, reforms attempted to create a competitive environment by allowing private sector participation.

Reforms in financial markets focused on removal of structural bottlenecks, introduction of new players/instruments, free pricing of financial assets, relaxation of quantitative restrictions improvement in trading, clearing and settlement practices, more transparency, etc. Reforms encompassed regulatory and legal changes, building of institutional infrastructure, refinement of market microstructure and technological up gradation. In the various financial market segments, reforms aimed at creating liquidity and depth and an efficient price discovery process.

Reforms in the commercial banking sector had two distinct phases. The first phase of reforms, introduced subsequent to the release of the Report of the Committee on Financial System, 1992 (Chairman: Shri M. Narasimham), focused mainly on enabling and strengthening measures. The second phase of reforms, introduced subsequent to the recommendations of the Committee on Banking Sector Reforms, 1998 (Chairman: Shri M. Narasimham) placed greater emphasis on structural measures and improvement in standards of disclosure and levels of transparency in order to align the Indian standards with international best practices.

During the last four decades, particularly after the first phase of nationalization of banks in 1969, there have been distinct improvements in the banking activities which strengthened the financial intermediation

process. The total number of offices of public sector banks which was merely at 8262 in June 1969 increased to 62,607 as of June 2011. Similarly, there have been many fold increases in aggregate deposits and credit indicating existence of a vibrant bank-based financial system.

First, an important indicator of bank-based financial deepening, i.e Private sector credit has expanded rapidly in the past five decades thereby supporting the growth momentum. Second, financial innovations have influenced velocity circulation of money by both reducing the transaction costs and enhancing the liquidity of financial assets. A relatively increasing value of velocity could be seen as a representative indicator of an efficient financial sector. In case of India, the velocity circulation of broad money has fallen since 1970s partly reflecting the fact that, in the midst of crisis, money injected to the system could not get distributed efficiently from the banking system to non-banks. Sharper fall in the velocity of narrow money reflected reluctance among banks as well as the public to part with liquidity. Third, the market-based indicator of financial deepening, i.e., market capitalization-to-GDP ratio has increased very sharply in the past two decades implying for a vibrant capital market in India. Various reform measures undertaken since the early 1990s by the Securities and Exchange Board of India (SEBI) and the Government of India have brought about a significant structural transformation in the Indian capital market. Although the Indian equity market has become modern and transparent, its role in capital formation continues to be limited. Unlike in some advanced economies, the primary equity and debt markets in India have not yet fully developed. The size of the public issue segment has remained small as corporate have tended to prefer the international capital market and the private placement market. The private corporate debt market is active mainly in the form of private placements.

However, the domestic credit provided by the Indian banks still remains at an abysmally low as compared with major emerging market and developing economies (EDEs) and advanced economies. Furthermore, the level of credit disbursement is also far below the world average levels. Therefore, there is scope for the Indian banks to expand their business to important productive sectors of the economy.

India weathered the disruptions in the global financial system mainly due to a robust regulatory and supervisory framework, limited openness and global exposure of banking system with timely policy actions especially to manage liquidity. It was, however, acknowledged

that financial sector reforms has to keep progressing with continued improvements in regulation, supervision and stability areas in order to avoid build up of new vulnerabilities. The global financial crisis provided a renewed impetus to the second generation financial sector reforms in India whose major components could be identified as: (i) adherence to international standards, especially implementing G20 commitments; (ii) developmental measures; and (iii) stability measures..

Against the backdrop of a felt need that the legal and institutional structure of the Financial sector in India need to be reviewed and recast in tune with the contemporary requirements of the sector, The Financial Sector Legislative Reforms Commission (FSLRC), headed by Justice B.N. Srikrishna, was set up by Ministry of Finance in March 2011 to review, simplify and rewrite the legal and institutional structures of the financial sector.

8. FINANCIAL SECTOR LEGISLATIVE REFORMS COMMISSION (FSLRC)

The Financial Sector Legislative Reforms Commission (FSLRC) was constituted by the Government of India, Ministry of Finance; vide resolution dated 24th March 2011. The setting up of the FSLRC was the result of a felt need that the legal and institutional structures of the financial sector in India need to be reviewed and recast in tune with the contemporary requirements of the sector.

The institutional framework governing the financial sector has been built up over a century. There are over 60 Acts and multiple rules and regulations that govern the financial sector. Many of the financial sector laws date back several decades, when the financial landscape was very different from that seen today. For example, the RBI Act and the Insurance Act are of 1934 and 1938 vintage respectively. The Securities Contract Regulation Act was enacted in 1956, when derivatives and statutory regulators were unknown. The superstructure of the financial sector governance regime has been modified in a piecemeal fashion from time to time, without substantial changes to the underlying foundations. These piecemeal changes have induced complex and cumbersome legislation, and raised difficulties in harmonising contradictory provisions. Such harmonisation is imperative for effectively regulating a dynamic market in the era of financial globalisation.

The piecemeal amendments have generated unintended outcomes including regulatory gaps, overlaps, inconsistencies and regulatory arbitrage. The fragmented regulatory architecture has led to a loss of scale and scope that could be available from a seamless financial market with all its attendant benefits of minimising the intermediation cost. For instance, complex financial intermediation by financial conglomerates of today falls under the purview of multiple regulators with gaps and overlaps. A number of expert committees have pointed out these discrepancies, and recommended the need for revisiting the financial sector legislations to rectify them. The need for complete review of the existing financial sector laws has been underlined to make the Indian financial sector more vibrant and dynamic in an increasingly interconnected world.

The remit of FSLRC, as contained in its Terms of Reference (ToR), comprises the following:

1. Review, simplify and rewrite the legislations affecting the financial

markets in India, focussing on broad principles.

2. Evolve a common set of principles for governance of financial sector regulatory institutions.
3. Remove inconsistencies and uncertainties in legislations/Rules and Regulations.
4. Make legislations consistent with each other.
5. Make legislations dynamic to automatically bring them in tune with the changing financial landscape.
6. Streamline the regulatory architecture of financial markets.

Based on substantive research, extensive deliberations in the Commission and in its Working Groups, interaction with policy makers, regulators, experts and stakeholders; the Commission evolved a tentative framework on the legal–institutional structure required for the Indian financial sector in the medium to the long run. The broad contour of that framework was outlined in the Approach Paper released by the Commission in October 2012.

The Approach Paper emphasised the following:

- A uniform legal process for the financial sector regulators emphasising rule of law.
- A well-articulated principles-based approach to primary legislation emphasising a sound body of subordinate legislation based on these laws.
- Statutorily empowered, independent regulators with clear goals, powers and accountability.
- Removing twilight zones in the financial sector: every entity operating in the financial space needs to be on the radar of a financial regulator.
- Focusing on consumer protection - This is the ultimate objective of financial sector regulation as regulation per se is not an objective. Consumer protection has two components; prevention and cure. While financial regulators will address the former, the proposed financial redressal agency (FRA) spanning across the financial sector will deal with the latter addressing financial consumer grievances. A feed-back loop from the FRA to the regulators will help the latter in systemically addressing consumer grievances by appropriate regulations.
- A resolution mechanism to address failure of financial firms and

to protect consumers, including management of the deposit insurance scheme.

- Ownership neutrality and competition.
- Moving away from the sectoral approach to regulation.
- A framework for addressing systemic risk, financial sector development, coordination etc.

8.1. FSLRC Report – Volume I & II

Subsequent to the approach paper, the Financial Sector Legislative Reforms Commission headed by Chairman Justice B.N.Srikrishna submitted a two volume report to the Ministry of Finance in March 2013, with its recommendations on the legal and institutional framework for the future of India's financial system.

The main outcome of the Commission's work is a draft 'Indian Financial Code' which is non-sectoral in nature, which is in Volume II of the report and replaces the bulk of the existing financial law. Volume 1 expresses the arguments that led up to the key decisions embedded in the draft Code.

The Commission identified nine components of focus for financial law:

i. consumer protection,

ii. micro-prudential regulation,

iii. resolution,

iv. capital controls,

v. systemic risk,

vi. development and redistribution,

vii. monetary policy,

viii. public debt management and

ix. contracts trading & market abuse.

Under the proposed regulatory architecture, Securities and Exchange Board of India (SEBI), Forward Markets Commission (FMC), Insurance Regulatory and Development Authority (IRDA) and Pension Fund Regulatory and Development Authority (PFRDA) would be merged into a new unified agency.

The Reserve Bank, however, will continue to exist with modified functions, said the two-volume report of the Commission.

It said the existing Securities Appellate Tribunal be subsumed into Financial Sector Appellate Tribunal (FSAT).

It also suggested that Financial Sector Development Council (FSDC) be given statutory framework.

The panel also suggested setting up of a new Debt Management Office (DMO) and also subsuming the existing Deposit Insurance and Credit Guarantee Corporation of India (DICGC) into the Resolution Corporation.

“The Commission believes that this proposed financial regulatory architecture is a modest step away from present practice, embeds important improvements, and will serve India well in coming years,” the Commission said.

According to the Commission, the actual functioning of the regulator lies in three areas -- regulation-making, executive functions and administrative law functions.

With regard to capital control, the report said the Finance Ministry should make rules for inbound capital flows, while the onus of making rules for outbound capital flows should rest with the RBI.

“At present, in India, there is a confusing situation with regulators utilising many instruments such as regulations, guidelines, circulars, letters, notices and press releases. The draft Code requires all regulators to operate through a small number of well defined instruments only,” it said. It said, in an emergency the regulator can issue regulations. However, these regulations would lapse within six months.

The Commission has proposed a financial regulatory architecture featuring seven agencies –

i. The existing RBI will continue to exist, though with modified functions.

ii. The existing SEBI, FMC, IRDA and PFRDA will be merged into a new unified agency.

iii. The existing Securities Appellate Tribunal (SAT) will be subsumed

into the FSAT.

iv. The existing Deposit Insurance and Credit Guarantee Corporation of India (DICGC) will be subsumed into the Resolution Corporation.

v. A new Financial Redressal Agency (FRA) will be created.

vi. A new Debt Management Office will be created.

vii. The existing FSDC will continue to exist, though with modified functions and a statutory framework.

The Commission has recommended the repeal or large scale amendment of all special legislations that (a) establish statutory financial institutions; or (b) lay down specific provisions to govern any aspect of the operation or functioning of public sector financial institutions. The undertakings of all statutory institutions should be transferred to ordinary companies incorporated under the Companies Act, 1956 and their regulatory treatment should be identical as that applicable to all other financial companies.

8.2. Draft Indian Financial Code, 2013

The draft Indian Financial Code submitted by the FSLRC contains 450 clauses under 15 Parts and 87 chapters with 6 schedules. It is a single unified and internally consistent draft law that replaces a large part of the existing Indian legal framework governing finance.

- The draft Code does not differentiate between different sectors in the financial system, the draft Code establishes a single framework for regulatory governance across all agencies.
- It creates a series of obligations for the Government and for regulators.
- The draft Code covers all functions of regulators, and defines the behaviour that is required from the regulator.
- It establishes certain elements of the functioning of board meetings, so as to ensure adequate oversight of the board over the organisation, and an emphasis on transparency.
- At present, in India, there is a confusing situation with regulators utilising many instruments such as regulations, guidelines, circulars, letters, notices and press releases. The draft Code requires all regulators to operate through a small number of well defined instruments only.

- The draft Code has specifics about each element of the executive powers. The first stage is the processing of permissions. A systematic process has been laid down through which permissions would be given.
- The draft Code has a systematic approach where certain standard categories are defined, and principles guide the application of penalties. This would help induce greater consistency, and help produce greater deterrence.
- A critical component of the framework for penalties is the mechanisms for compounding, which are laid on a sound foundation, and consistently applied across the entire financial system.
- It establishes certain basic rights for all financial consumers.
- The Commission envisages a unified Financial Sector Appellate Tribunal (FSAT) that would hear all appeals in finance. A considerable focus has been placed, in the draft Code, on the functioning of the registry of FSAT, so as to achieve high efficiency.
- The part on establishment of financial regulatory agencies provides for the creation of five new statutory bodies - UFA, Resolution Corporation, FRA, PDMA and FSAT. This part also provides for the allocation of regulatory responsibilities between the two financial sector regulators - UFA and RBI.
- The draft Code however revisits the functions and powers of RBI, and sets out the manner in which it must be operated and governed. Similarly, in case of FSDC, the existing FSDC is to be recast as a statutory body.
- The remaining provisions of the draft Code lay down the powers and functions of these statutory bodies and the principles and processes to govern the exercise of their powers.

The Code envisages the establishment of the following agencies

1) Unified Financial Authority (UFA)
2) Reserve Bank of India (RBI)
3) Financial Redress Agency (FRA)
4) Resolution Corporation
5) Financial Stability & Development Council (FSDC)
6) Public Debt Management Agency (PDMA)

7) Financial Sector Appellate Tribunal (FSAT)

The Code covers all functions of the regulator and lays down the principles and standards of behaviour expected from the regulator. It also provides for a system of monitoring the functions of the regulator with a process to ensure that the regulator is fully transparent and they act in compliance with the best practices of public administration. The Commission felt that the structure of the regulator should be standardised for all financial regulators except for certain exemptions where the general regulatory processes may not apply. These exceptions to the general process law should be kept to the minimum and generally avoided.

The consumer protection part of the Code has three components: an enumerated set of rights and protections for consumers, an enumerated set of powers in the hands of the regulator, and principles that guide what power should be used under what circumstances. The details of consumer protection would, of course, lie in the subordinated legislation to be drafted by financial regulators. The Commission felt that an overarching principle based body of law would allow regulatory flexibility, consistent treatment of consumers across all aspects of their engagement with the financial system, fairness and ultimately a more stable financial system. The basic objective of consumer protection is to guard consumer interests and to promote public awareness. While pursuing these objectives, the regulator will be empowered to make regulations to determine the manner and extent to which the protections under the law will apply to the users of different financial products and services.

The draft Code addresses fundamental concerns in the framework of capital controls, and provides for the following:

1. The rules on capital account transactions for all inbound flows including outflows that arise as a consequence of these inflows, will be made by the Central Government in consultation with the RBI. The regulations on capital account transactions for all outbound flows will be made by the RBI in consultation with the Central Government.
2. A single investment vehicle for investment in India i.e., qualified foreign investors (those foreign investors who meet the customer due diligence criteria prescribed by the Central Government);
3. A sound legal process while making rules for capital account transactions and while granting approvals;

4. A framework for imposition of controls in emergency situations (such as war, natural calamity and balance of payment crises);
5. Review or restrictions on capital account transactions on national security considerations, by the Central Government or the RBI for inbound and outbound flows, respectively;
6. Review of decisions of the Central Government and the RBI; and
7. The principle that once controls are imposed at the entry level there must be equal treatment for Indian investors and foreign investors.

Ensuring compliance of provisions on capital controls in the draft Code, rules and regulations in relation to the capital controls is placed with the RBI in the draft Code. This would include oversight of reporting of foreign exchange transactions with the FDMC and ensuring compliance of the law, rules and regulations. Under conditions of full capital account convertibility, these functions will be placed with the Central Government.

The governance and operations of the public debt management agency would be handled through a two-tiered arrangement. At the top, there would be an advisory council, comprising of experts in finance, law, and public debt management. The advisory council must advise and issue opinions on any matter related to the objectives and functions of the public debt management agency that is referred to it by the agency or the Central Government. It must also advise and provide its opinion on the financing plans submitted by the public debt management agency to the Central Government, as well as the agency's annual report, whenever such opinion is sought. The council must meet periodically to review and ratify the borrowing programme for the upcoming months. The main benefit of an independent public debt management agency will come through the integration of public debt management functions and various databases and information, which are currently dispersed. By unifying the public debt management function, and efficiently linking it with the cash and the investment management functions, there will be improved information, analysis and thus decision making. With specialised human resources at its disposal, the public debt management agency can contribute to a more effective interface with the market resulting in Cost-efficient management of Government borrowings. A specialised, unified and independent agency will have significant comparative advantage over the existing structure of a fractured and uncoordinated Government borrowing programme spread across various agencies.

Following is a list of legislations to be repealed:

1. The Securities Contracts (Regulation) Act, 1956
2. The Securities and Exchange Board of India Act, 1992
3. The Depositories Act, 1996
4. The Public Debt Act, 1944
5. The Government Securities Act, 2006
6. The Reserve Bank of India Act, 1934
7. The Insurance Act, 1938
8. The Banking Regulation Act, 1949
9. The Forward Contracts (Regulation) Act, 1952
10. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970
11. The Deposit Insurance and Credit Guarantee Corporation Act, 1961
12. The Foreign Exchange Management Act, 1999
13. The Insurance Regulatory and Development Authority Act, 1999
14. The Payment and Settlement Systems Act, 2007
15. The Acts establishing bodies corporate involved in the financial sector (e.g. The

State Bank of India Act, 1955 and The Life Insurance Corporation Act, 1956)

8.3. Adoption of governance enhancing and non-legislative elements of the draft Indian Financial Code

The Report of the Financial Sector Legislative Reforms Commission, which was submitted to the Central Government in March 2013 has recommended transformation of the legal foundations for Indian finance, through the enactment of the IFC. The IFC, establishes sound public administration and rule of law, and focuses financial agencies towards addressing market failures in the financial sector.

In its Eighth Meeting, the Financial Stability and Development Council (FSDC) decided, inter alia that, "all the financial sector regulators (including FMC) will finalise an action plan for implementation of all the FSLRC principles relating to regulatory governance, transparency and

improved operational efficiency that do not require legislative action.”

The FSDC accordingly approved twelve steps (and one item on the early implementation of these steps) that each regulator will take for the implementation of the recommendations of the Report of the Financial Sector Legislative Reforms Commission, that would enhance governance, and not require legislative action at present. This is given in the ‘Handbook on adoption of governance enhancing and non-legislative elements of the draft Indian Financial Code’.

1) Consumer Protection

   The vulnerability of consumers reflects a major gap in Indian financial regulation. The Financial Sector Legislative Reforms Commission (FSLRC) has recommended the adoption of a consolidated consumer protection framework for the entire financial system that will empower and require regulators to pursue consumer protection for the financial activities under their jurisdiction. It has recommended legislative action on two fronts: prevention and cure.

   Prevention requires regulation-making and enforcement across the entire financial system from the viewpoint of consumer interests. For example, regulation may prohibit use of certain unfair terms of contract, which unreasonably favor the financial service provider at the expense of consumers.

   Cure requires providing consumers access to effective grievance redress mechanisms. The Report of the Financial Sector Legislative Reforms Commission, has recommended a two-tiered system of grievance redress. First, there should be mandated grievance redress mechanism within each financial service provider. Second, it has recommended an Ombudsman-like mechanism to redress consumer grievances.

2) Consumer Protection for Retail Consumers

   The Report of the Financial Sector Legislative Reforms Commission, report recommends giving certain rights and protections to retail consumers. Retail consumers are individuals and small organisations.

It is envisaged that the regulators will specify by regulation:

1. A cap on the value of the financial product or financial service, below which a consumer is considered a retail consumer; and

2. A cap on the net asset value or turnover for organisations, below which such organisations may be considered retail consumers, as long as the value of the financial product or financial service they are availing or looking to avail is less than the cap specified above. Every regulator should specify these caps to create a category of retail consumers in the specific sector(s) it is regulating.

3) Framing Regulations

The FSLRC Analysis and Recommendations, lays down the key features of the desired regulation making system, which are:

1. The regulator will have to publish the following documents in the process of formulating new regulations:

   (a) Draft regulations;

   (b) Jurisdiction clause to identify the legal provision under which the proposed regulations are being made, and the manner in which the regulation is consistent with the principles in the concerned legislation(s). If the parent legislation does not specifically refer to the subject matter of regulations, the regulator will have to establish a logical connection between the subject matter and the empowering provision in the law;

   (c) A statement of the problem or market failure that the regulator seeks to address through the proposed regulations, which will be used to test the effectiveness with which the regulations address the stated problem. The statement must contain: (a) The principles governing the proposed regulations; and (b) The outcome the regulator seeks to achieve through the regulation; and

   (d) An analysis of the costs and benefits of the proposed regulation. This is required because every regulatory intervention imposes certain costs on regulated entities and the system as a whole.

2. The Commission recommends that regulations be drafted in a manner that minimises these compliance costs. In some cases where a pure numerical value based cost-benefit analysis is not possible, the regulator should provide the best possible analysis and reasoning for its choice of intervention.

3. After publishing the above documents, the regulator will specify a designated time for receiving comments from the public on the regulations and the accompanying documents.

4. The draft Code will ensure that the time period and the mode of participation specified by the regulator is appropriate to allow for widespread public participation.

4) Notices

One of the steps the IFC, takes to ensure transparency and accountability is by requiring the standardisation of notices sent to regulated entities. The serving of a notice fulfills one of the requirements of the principles of natural justice. It seeks to give the recipient necessary information to respond to a regulator effectively, in order to defend his/her actions.

5) Transparency

Transparency refers to the practice of disclosing appropriate information to the public about the workings of an organisation, including the decision making processes as well as outcomes.

The provisions of the IFC, regarding transparency are:

1. Definition of the term ‘publish’.
2. The process of making regulations, and requiring publication of drafts of proposed regulations;
3. Publication of general and special guidance;
4. The requirement that a mandatory review of all regulations take place periodically, and the result of the review be published;
5. The publication of comments received during the rulemaking process; and
6. The minimum standard for publication of information.

6) Transparency in Board Meetings

Transparency in board meetings refers to the practice of allowing public scrutiny of the work of the board’s crucial functions.

The boards of regulators have a critical role in ensuring good governance in the financial system, both by ensuring that best practices apply to regulators, and by creating a regulatory environment where good governance norms are upheld. Given this central role of boards, the FSLRC Analysis and Recommendations, has made explicit reference to the need for transparency in board meetings.

7) Reporting

Reporting refers to the practice of measuring, recording and publishing data and information about an organisation's activities, measured against the organisation's objectives.

Effective reporting results in immediate and clear benefits to regulated entities and consumers. When regulators declare how they intend to perform their functions and fulfill their objectives in their reports, regulated entities better understand the nature and context of regulation imposed on them. This helps regulated entities to account for compliance costs. It also makes regulatory action more predictable and consistent, thereby increasing its legitimacy.

8) Approvals

Approvals refer to the permissions granted by regulators and government to carry out any regulated activity. Committing to a time-bound approval process increases predictability, and this helps firms to rationally plan for rollout of products and services. Commitment to clear service-level targets also lowers administrative and compliance costs, since time-consuming status checks and follow-up calls become unnecessary.

9) Investigation

Investigation refers to the process by which the regulator determines if there has been a violation of an provision of the law or subordinate regulation that the regulator enforces.

The rule of law in the financial sector would be further enhanced where regulators assign investigative duties to specialized staff, who are not involved making a final evaluation as to whether a violation has occurred, and what penalties to impose. This is already being done by most regulators. The IFC, however requires clearer structure to the investigative process. The investigating staff would present the results of their investigation to a separate cell or specialized group within the regulatory body, whose job it is to determine violations and penalties.

10) Adjudication

Both regulators and regulated entities benefit when adjudicatory decisions are viewed as legitimate, are easy to understand, and

serve as guidance to other parties in the future. For this reason, the adjudication process should mandate that adjudicatory decisions be accompanied by a reasoned opinion. An effective, transparent, fair adjudication process, accompanied by clear, well-reasoned decisions, is a critical mechanism for removing regulatory uncertainty.

11) Imposition of Penalty

While making regulations on the imposition of penalties in a proportional manner, regulators must consider the following factors (in addition to existing law):

1. The nature and seriousness of the violation, including whether it was deliberate, reckless or negligent;
2. The consequence and impact of the violation, including the extent of unfair enrichment of the violator, loss caused or likely to be caused;
3. The conduct of the violator after the occurrence of the violation; and
4. Prior violations or offences committed by the person.

9. REGULATORY FRAMEWORK

The regulation and supervision of the financial system in India is carried out by different regulatory authorities. The Reserve Bank of India (RBI) regulates and supervises the major part of the financial system. The supervisory role of the RBI covers commercial banks, urban cooperative banks (UCBs), some financial institutions and non-banking finance companies (NBFCs). Some of the financial institutions, in turn, regulate or supervise other institutions in the financial sector, for instance, Regional Rural Banks and the Co-operative banks are supervised by National Bank for Agriculture and Rural Development (NABARD); and housing finance companies by National Housing Bank(NHB). Department of Company Affairs (DCA), Government of India regulates deposit taking activities of corporate, other than NBFCS registered under companies Act, but not those which are under separate statutes. The Registrar of Cooperatives of different states in the case of single state cooperatives and the Central Government in the case of multi-state cooperatives are joint regulators, with the RBI for UCBs, and with NABARD for rural cooperatives. Whereas RBI and NABARD are concerned with the banking functions of the cooperatives, management control rests with the State/ Central Government. This “dual control” impacts the supervision and regulation of the cooperative banks. The capital market, mutual funds, and other capital market intermediaries are regulated by Securities and Exchange Board of India (SEBI), Insurance Regulatory and Development Authority (IRDA) regulates the insurance sector; and the Pension Funds Regulatory and Development Authority (PFRDA) regulates the pension funds.

In India, the capital market is regulated by the Capital Markets Division of the Department of Economic Affairs, Ministry of Finance. The division is responsible for formulating the policies related to the orderly growth and development of the securities markets (i.e. share, debt and derivatives) as well as protecting the interest of the investors. In particular, it is responsible for (i) institutional reforms in the securities markets, (ii) building regulatory and market institutions, (iii) strengthening investor protection mechanism, and (iv) providing efficient legislative framework for securities markets, such as Securities and Exchange Board of India Act, 1992 (SEBI Act, 1992); Securities Contracts (Regulation) Act, 1956; and the Depositories Act, 1996. The division administers these legislations and the rules framed thereunder.

India has a legacy financial regulatory architecture. The present work allocation between RBI, SEBI, IRDA, PFRDA, and Forward Market

Commission (FMC) – was not designed; it has evolved over the years, with a sequence of piecemeal decisions responding to immediate pressures from time to time. Each regulator has their own rules on registration, code of conduct, commissions and fees to monitor the product providers and distributors. RBI, SEBI and IRDA have grievance redress procedures through sector financial Ombudsmen services.

The Securities and Exchange Board of India (SEBI) is the regulatory authority established under the SEBI Act, 1992, in order to protect the interests of the investors in securities as well as promote the development of the capital market. It involves regulating the business in stock exchanges; supervising the working of stock brokers, share transfer agents, merchant bankers, underwriters, etc; as well as prohibiting unfair trade practices in the securities market. The following departments of SEBI take care of the activities in the secondary market:-

- Market Intermediaries Regulation and Supervision Department (MIRSD) - concerned with the registration, monitoring, supervision, inspection, investor grievances and policy related issues of all market intermediaries in respect of all segments of the markets, such as equity, equity derivatives, debt and debt related derivatives.
- Market Regulation Department (MRD) - concerned with formulation of new policies as well as supervising the functioning and operations (except relating to derivatives) of securities exchanges, their subsidiaries, and market institutions such as Clearing and settlement organizations and Depositories.
- Corporation Finance Department - deals with matters relating to Issuance and listing of securities, including initial and continuous listing requirements, corporate governance and accounting/ auditing standards, corporate restructuring through Takeovers / buy backs, Delisting etc.
- Investment Management department - responsible for registering and regulating mutual funds, venture capital funds, foreign venture capital investors, collective investment schemes, including plantation schemes, Foreign Institutional Investors, Portfolio Managers and Custodians.
- The Integrated Surveillance department - responsible for monitoring market activity through market systems, data from other departments and analytical software.

- Investigations Department (IVD) - responsible for conducting investigations on potentially illegal market activities, providing referrals to the enforcement department and assisting the enforcement department in enforcing SEBI action against violators.
- Enforcement Department (ED) - responsible for proceedings related to regulatory action and obtaining redress for violations of securities laws and regulations against all market participants, issuers and individuals and other entities that breach securities laws and regulations.
- Department of Legal Affairs (LAD) - responsible to provide legal counsel to the Board and to its other departments, and to handle non-enforcement litigation.
- Enquiries and Adjudication Department (EAD) - handle quasi judicial matters and provide timely hearings and initiate adjudication brought by the other Departments against alleged violators who are within SEBI's disciplinary jurisdiction.
- Office of Investor Assistance and Education (OIAE) - support SEBI's operations by handling investor complaints centrally and be the focal point of SEBI's investor education effort. The Office would be the single point interface with investors and would receive complaints relating to all departments, forward to the concerned departments, follow up and respond to investors.
- General Serviced Department (GSD) - support all of the internal operations of SEBI.
- Department of Economic and Policy Analysis (DEPA) - maintain the data base for entire capital/ securities market, prepare weekly and monthly report to be sent to Ministry of Finance, prepare papers on regulatory developments or changes in regulatory structures, provide research based input for policy formation by operational departments or senior management,
- Information Technology Department - perform its role as the technical support group for SEBI.

The Governing Board of the stock exchange consists of elected member directors, government nominees and public representatives. Rules, byelaws and regulations of the stock exchange provide substantial powers to the Executive Director for maintaining efficient and smooth day-to-day functioning of the stock exchange. The governing Board has the responsibility to orderly maintain the well-regulated market.

10. LAWS APPLICABLE TO FINANCIAL MARKET

Various acts, rules, regulations, ordinances, guidelines, clarifications and press releases constitute the legal framework of Indian financial market. The main legislations governing the Financial Market in India are –

I. Acts

1) Negotiable Instruments Act, 1881
2) Reserve Bank of India Act, 1934
3) Banking Regulation Act, 1949
4) Securities Contracts (Regulation) Act, 1956
5) The Securities and Exchange Board of India Act, 1992 (SEBI Act)
6) Recovery of Debts Due to Banks and Financial Institutions Act, 1993
7) Depositories Act, 1996
8) Foreign Exchange Management Act, 1999
9) SARFAESI Act, 2002
10) Prevention of Money- Laundering Act, 2002
11) Credit Information Companies (Regulation) Act, 2005
12) Government Securities Act, 2006
13) Payment and Settlement Systems Act, 2007
14) Foreign Contribution (Regulation) Act (FCRA), 2010
15) Companies Act, 2013

II. Rules

1) The Securities Contract (Regulation) Rules, 1957
2) SEBI (Appeal to Central Government) Rules, 1993
3) SEBI (Procedure for holding inquiry and imposing penalties by adjudicating officer) Rules, 1995
4) SEBI Appellate Tribunal (Procedure) Rules, 1995
5) Depositories (Appeal to Securities Appellate Tribunal) Rules, 2000
6) Depositories (Procedure for holding Inquiry and Imposing

Penalties by Adjudicating Officer) Rules, 2005

7) The Debts Recovery Tribunal (Procedure) Rules, 1993

8) The Debts Recovery Appellate Tribunal (Procedure) Rules, 1994

9) Security Interest (Enforcement) Rules, 2002

10) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011

III. Regulations

1) SEBI (Stock-brokers and Sub-brokers) Regulations, 1992

2) SEBI (Prohibition of Insider Trading) Regulations, 1992

3) SEBI (Merchant Bankers) Regulations, 1992

4) SEBI (Portfolio Managers) Regulations, 1993

5) SEBI (Underwriters) Regulations, 1993

6) SEBI (Debenture Trustees) Regulations, 1993

7) Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993

8) SEBI (Bankers to an Issue) Regulations, 1994

9) SEBI (Foreign Institutional Investors) Regulations, 1995

10) SEBI (Depositories and Participants) Regulations, 1996

11) SEBI (Custodian Of Securities) Regulations, 1996

12) SEBI (Venture Capital Funds) Regulations, 1996

13) SEBI (Mutual Funds) Regulations, 1996

14) SEBI (Buy Back Of Securities) Regulations, 1998

15) SEBI (Credit Rating Agencies) Regulations, 1999

16) SEBI (Collective Investment Schemes) Regulations, 1999

17) SEBI (Foreign Venture Capital Investors) Regulations 2000

18) SEBI (Procedure for Board Meetings) Regulations, 2001

19) SEBI (Issue of Sweat Equity) Regulations, 2002

20) SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002

21) SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

22) SEBI - Ombudsman Regulations 2003

23) SEBI (Central Database Of Market Participants) Regulations, 2003

24) SEBI (Self Regulatory Organizations) regulations, 2004

25) SEBI (Interest Liability Regularisation) Scheme, 2004

26) SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007

27) SEBI (Intermediaries) Regulations, 2008

28) SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008

29) SEBI (Issue and Listing of Debt Securities) Regulations, 2008

30) SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

31) Securities and Exchange Board of India (Delisting Of Equity Shares) Regulations, 2009

32) SEBI (Substantial Acquisition of Shares and Takeovers) (Regulations), 2011

33) SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011

34) Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012

35) SEBI (Investment Advisers) Regulations, 2013

36) SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013

37) SEBI (Listing of Specified Securities on Institutional Trading Platform) Regulations, 2013

38) SEBI(Foreign Portfolio Investors) Regulations, 2014

39) SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014

40) SEBI (Procedure for Search and Seizure) Regulations, 2014

IV. Orders

1) SEBI (Issuing Observations On Draft Offer Documents Pending Regulatory Actions) Order, 2006

2) SEBI (Framework For Rejection Of Draft Offer Documents) Order, 2012

V. Guidelines

1) Guidelines for opening of Trading terminals abroad

2) SEBI (Delisting of securities) Guidelines, 2003

3) SEBI (Informal Guidance) Scheme, 2003

4) Guidelines for Anti-money laundering measures

5) SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999

6) SEBI (Disclosure and Investor Protection Guidelines) 2000

7) Framework for recognition and supervision of stock exchanges / platforms of stock exchanges for small and medium enterprises

8) SEBI (Disclosure and Investor Protection) Guidelines, 2000

9) SEBI (Aid for Legal Proceedings) Guidelines, 2009

10.1. Negotiable Instruments Act, 1881

Negotiable instruments are of great importance in the business world and by extension in banking. They are instruments for making payments and discharging business obligations.

The Negotiable Instruments Act, 1881 does not define a negotiable instrument but merely states, “a negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or bearer.” (Section 13)

In simple words, negotiable means transferable and instrument means document.

Thus, the term, negotiable instrument means a written document which creates a right in favour of some person and which is freely transferable. Although the Act mentions only these three instruments

(such as a promissory note, a bill of exchange and cheque), it does not exclude the possibility of adding any other instrument which satisfies the following two conditions of negotiability:

- The instrument should be freely transferable (by delivery or by endorsement. and delivery) by the custom of the trade. Usually, when we transfer any property to somebody, we are required to make a transfer deed, get it registered, pay stamp duty, etc. But, such formalities are not required while transferring a negotiable instrument. The ownership is changed by mere delivery (when payable to the bearer) or by valid endorsement and delivery (when payable to order). Further, while transferring it is also not required to give a notice to the previous holder.
- The person who obtains it in good faith and for value should get it free from all defects, and be entitled to recover the money of the instrument in his own name. This means that a person who receives a negotiable instrument has a clear and undisputable title to the instrument. However, the title of the receiver will be absolute, only if he has got the instrument in good faith and for a consideration.

About the Act

It is an Act to define and amend the law relating to promissory notes, bills of exchange and cheques.

The Negotiable Instruments Act was enacted, in India, in 1881 and came into force on the 1st day of March, 1882. Prior to its enactment, the provision of the English Negotiable Instrument Act were applicable in India, and the present Act is also based on the English Act with certain modifications. It extends to the whole of India except the State of Jammu and Kashmir.

The main object of the Negotiable Instruments Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods. The purpose of the Act was to present an orderly and authoritative statement of leading rules of law relating to the negotiable instruments To achieve the objective of the Act, the Legislature thought it proper to make provision in the Act for conferring certain privileges to the mercantile instruments contemplated under it and provide special procedure in case the obligation under the instrument was not discharged.

Types of Negotiable Instruments

Negotiable instruments recognised by the Negotiable Instruments Act, 1881 are:

(i) Promissory notes

(ii) Bills of exchange

(iii) Cheques.

Negotiable instruments recognised by usage or custom are: (i) Hundis (ii) Share warrants (iii) Dividend warrants (iv) Bankers draft (v) Circular notes (vi) Bearer debentures (vii) Debentures of Bombay Port Trust (viii) Railway receipts (ix) Delivery orders.

A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional under¬taking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. (Sec.4 of NI Act, 1881)

"A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument". (Sec.5 of NI Act, 1881)

Sec.6 of the NI Act, 1881 defines a cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

10.2. Reserve Bank of India Act, 1934

The Reserve Bank of India Act, 1934 (II of 1934) provides the statutory basis of the functioning of the Reserve Bank, which commenced operations on April 1, 1935.

Incorporation, capital and management

Reserve Bank of India has been constituted for the purposes of taking over the management of the currency from the Central Government and of carrying on the business of banking in accordance with the provisions of the Act. The general superintendence and direction of the affairs and

business of the Bank shall be entrusted to a Central Board of Directors which may exercise all powers and do all acts and things which may be exercised or done by the Bank. The Governor and in his absence the Deputy Governor nominated by him in this behalf, shall also have powers of general superintendence and direction of the affairs and the business of the Bank, and may exercise all powers and do all acts and things which may be exercised or done by the Bank.

The Central Board shall consist of the following Directors, namely:-

(a) a Governor and not more than four Deputy Governors to be appointed by the Central Government;

(b) four Directors to be nominated by the Central Government, one from each of the four Local Boards as constituted by section 9;

(c) ten Directors to be nominated by the Central Government; and

d) one Government official to be nominated by the Central Government.

Meetings of the Central Board should be convened by the Governor at least six times in each year and at least once in each quarter.

Business of the Reserve Bank

The Bank shall be authorized to carry on and transact the several kinds of business hereinafter specified, namely:-

1) the accepting of money on deposit without interest from and the collection of money for, the Central Government, the State Governments, local authorities, banks and any other persons;

2) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn on and payable in India and arising out of bona fide commercial or trade transactions bearing two or more good signatures, one of which shall be that of a scheduled bank or a State co-operative bank or any financial institution, which is predominantly engaged in the acceptance or discounting of bills of exchange and promissory notes and which is approved by the Bank in this behalf and maturing,–

    a. in the case of bills of exchange and promissory notes arising out of any such transaction relating to the export of goods from India, within one hundred and eighty days, and

b. in any other case, within ninety days, from the date of such purchase or rediscount exclusive of days of grace;

3) the purchase, sale and rediscount of bills of exchange and promissory notes, drawn and payable in India and bearing two or more good signatures, one of which shall be that of a scheduled bank or a State cooperative bank or any financial institution, which is predominantly engaged in the acceptance or discounting of bills of exchange and promissory notes and which is approved by the Bank in this behalf and drawn or issued for the purpose of financing agricultural operations or the marketing of crops, and maturing within fifteen months from the date of such purchase or rediscount, exclusive of days of grace;

4) the purchase, sale and rediscount of bills of exchange and promissory notes drawn and payable in India and bearing two or more good signatures, one of which shall be that of a State Co-operative bank or a State financial corporation or any financial institution, which is predominantly engaged in the acceptance or discounting of bills of exchange and promissory notes and which is approved by the Bank in this behalf, and drawn or issued for the purpose of financing the production or marketing activities of cottage and small scale industries approved by the Bank and maturing within twelve months from the date of such purchase or rediscount, exclusive of days of grace, provided that the payment of the principal and interest of such bills of exchange or promissory notes is fully guaranteed by the State Government;

5) the purchase, sale and rediscount of bills of exchange and promissory notes drawn and payable in India and bearing the signature of a scheduled bank, and issued or drawn for the purpose of holding or rading in securities of the Central Government or a State Government and maturing within ninety days from the date of such purchase or rediscount, exclusive of days of grace;

6) the purchase from and sale to scheduled banks foreign exchange

7) the purchase, sale and rediscount of bills of exchange (including treasury bills) drawn in or on any place in any country outside India which is a member of the International Monetary Fund

8) the making to any scheduled bank or State co-operative bank, of loans and advances, against promissory notes of such bank, repayable on demand or on the expiry of fixed periods not exceeding one hundred and eighty days; Provided that the borrowing bank furnishes a declaration in writing, to the effect

that –

a. it holds bills of exchange arising out of any transaction relating to the export of goods from India, of a value not less than the amount of such loans or advances, – (a) drawn in India and on any place in any country outside India which is a member of the International Monetary Fund or in any other country notified in this behalf by the Bank in the Gazette of India, and (b) maturing not later than one hundred and eighty days from the date of the loan or advance, and it will, so long as any part of such loans and advances remains unpaid, continue to hold such bills of exchange of a value not less than the amount of such loans or advances outstanding for the time being; or

b. it has granted a pre-shipment loan or advance to an exporter or any other person in India in order to enable him to export goods from India, the amount of the loan or advance drawn and outstanding at any time being not less than the outstanding amount of the loan or advance obtained by the borrowing bank from the Bank.

9) the making to any scheduled bank or State co-operative bank of loans and advances repayable on demand or on the expiry of fixed periods not exceeding one hundred and eighty days against promissory notes of such bank; Provided that the borrowing bank furnishes a declaration in writing to the effect that it has made loans and advances for bona fide commercial or trade transactions or for financing agricultural operations or the marketing of crops or for other agricultural purposes as set out in the declaration and the said declaration includes such other particulars as may be required by the Bank:

10) the making to local authorities, scheduled banks State co-operative banks and State Financial Corporations of loans and advances, repayable on demand or on the expiry of fixed periods not exceeding ninety days, against the security of –

11) the making to any State Financial Corporation of loans and advances repayable on the expiry of fixed periods not exceeding eighteen months from the date of such loan or advance, against securities of the Central Government or of any State Government, of any maturity, or against bonds and debentures issued by that Corporation and guaranteed by the State Government concerned and maturing within a period not exceeding eighteen months from the date of such loan or advance: Provided that the

previous approval of the State Government shall be obtained for the borrowing by the State Financial Corporation and the amount of loans and advances granted to that Corporation under this clause shall not, at any time, exceed in the aggregate twice the paid up share capital thereof;

12) the making of annual contributions to the National Rural Credit (Long Term Operations) Fund and the National Rural Credit] (Stabilisation) Fund established under sections 42 and 43, respectively, of the National Bank for Agriculture and Rural Development Act, 1981;

13) the making to the Industrial Finance Corporation of India of loans and advances, repayable on demand or on the expiry of fixed periods not exceeding ninety days from the date of such loan or advance, against securities of the Central Government or of any State Government; or repayable on the expiry of fixed periods not exceeding eighteen months from the date of such loan or advance, against securities of the Central Government of any maturity or against bonds and debentures issued by the said Corporation and guaranteed by the Central Government and maturing within a period not exceeding eighteen months from the date of such loan or advance;

14) the making to any financial institution notified by the Central Government in this behalf, of loans and advances, repayable on demand or on the expiry of fixed periods not exceeding ninety days from the date of such loan or advance, against the securities of the Central Government or of any State Government, or repayable on the expiry of fixed periods not exceeding eighteen months from the date of such loan or advance, against securities of the Central Government or of any State Government, of any maturity, or against bonds and debentures issued by that financial institution and guaranteed by the Central Government or any State Government, and maturing within a period not exceeding eighteen months from the date of such loan or advance: Provided that the amount of loans and advances granted to a financial institution shall not, at any time, exceed in the aggregate sixty per cent, of the paid-up share capital thereof;

15) the making to the Unit Trust of loans and advances - (i) repayable on demand or on the expiry of a fixed period not exceeding ninety days from the date of such loan or advance against the security of stocks, funds and securities (other than immovable property) in which a trustee is authorised to invest trust money by any law for the time being in force in India; repayable on demand or within a

period of eighteen months from the date of such loan or advance against the security of the bonds of the Unit Trust issued with the approval of and guaranteed by the Central Government; for the purpose of any scheme other than the first unit scheme under the Unit Trust of India Act, 1963 on such terms and conditions and against the security of such other property of the Unit Trust as may be specified in this behalf by the Bank;

16) the making to a Warehousing Corporation established under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956, of loans and advances;

17) the making to the Deposit Insurance Corporation of loans and advances; and generally assisting the Corporation in such manner and on such terms as may be determined by the Central Board;

18) the making to the National Housing Bank of loans and advances and generally assisting the National Housing Bank in such manner and on such terms as may be determined by the Central Board;

19) the making to the National Bank of loans and advances repayable on demand or on the expiry of fixed period not exceeding eighteen months from the date of making of the loan or advance;

20) the making of loans and advances to, and the purchasing of bonds and debentures of, the Exim Bank or the Reconstruction Bank or the Small Industries Bank out of the National Industrial Credit (Long Term Operations) Fund;

21) the making of loans and advances to, and the purchasing of bonds and debentures of, the National Housing Bank out of the National Housing Credit (Long Term Operations) Fund

22) the making to the Small Industries Bank of loans and advances ;

23) the making to scheduled banks, the Exim Bank or the Reconstruction Bank or the Small Industries Bank], the Industrial Finance Corporation and any other financial institution as may, on the recommendation of the Bank, be approved in this behalf by the Central Government of loans and advances repayable on demand or otherwise and against such security and on such other terms and conditions as may be approved in this behalf by the Central Board for the purpose of enabling such banks, or financial institution, as the case may be, to purchase foreign exchange from the Bank for the purpose of financing the import of capital goods or for such other purposes as may be approved by the Central Government;

24) the issue of demand drafts, telegraphic transfers and other kinds of remittances made payable at its own offices or agencies, the purchase of telegraphic transfers, and the making, issue and circulation of bank post bills;

25) dealing in derivatives, and, with the approval of the Central Board, in any other financial instrument;

26) the Purchase and sale of securities of the Central Government or a state Government of any maturity or of such securities of a local authority as may be specified in this behalf by the Central Government on the recommendation of the Central Board.

27) the promoting, establishing, supporting or aiding in the promotion, establishment and support of any financial institution, whether as its subsidiary or otherwise;

28) the keeping of deposits with the State Bank for such specific purposes as may be approved by the Central Government in this behalf;

29) the custody of monies, securities and other articles of value, and the collection of the proceeds, whether principal, interest or dividends, of any such securities;

30) the sale and realisation of all property, whether movable or immovable, which may in any way come into the possession of the Bank in satisfaction, or part satisfaction, of any of its claims;

31) acting as agent for the purchase and sale of gold or silver or foreign exchange;

32) the purchase and sale of gold or silver coins and gold and silver bullion and foreign exchange and the opening of a gold account with the principal currency authority of any foreign country or the Bank for International Settlements or any international or regional bank or financial institution formed by such principal currency authority or authorities or by the Government of any foreign country;

33) the purchase and sale of securities issued by the Government of any country outside India or by any institution or body corporate established outside India and expressed to be payable in a foreign currency or any international or composite currency unit, being in the case of purchase by the Bank securities maturing within a period of ten years from the date of purchase;

34) dealing in repo or reverse repo;

35) participation in any arrangement for the clearing and settlement of

any amounts due from, or to, any person or authority on account of the external trade of India with any other country or group of countries;

36) the borrowing of money for a period not exceeding one month for the purposes of the business of the Bank, and the giving of security for money so borrowed;

37) the making and issue of bank notes subject to the provisions of this Act;

38) the providing of facilities for training in banking and for the promotion of research, where, in the opinion of the Bank, such provision may facilitate the exercise by the Bank of its powers and functions, or the discharge of its duties;

The business which the bank may not transact –

- engage in trade or otherwise have a direct interest in any commercial, industrial, or other undertaking except such interest as it may in any way acquire in the course of the satisfaction of any of its claims: Provided that all such interests shall be disposed of at the earliest possible moment;
- purchase the shares of any banking company or of any other company, or grant loans upon the security of any such shares;
- advance money on mortgage of, or otherwise on the security of, immovable property or documents of title relating thereto, or become the owner of immovable property, except so far as is necessary for its own business premises and residences for its officers and servants;
- make loans or advances;
- draw or accept bills payable otherwise than on demand;
- allow interest on deposits or current accounts.

10.3. Banking Regulation Act, 1949

The Banking Regulation Act has been enacted to control and regulate the banking sector in India.

"Banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. (Sec.5(b))

Business in which banking companies may engage

In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely: —

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;

(b) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent or secretary and treasurer of a company;

(c) contracting for public and private loans and negotiating and issuing the same;

(d) the effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) carrying on and transacting every kind of guarantee and indemnity business;

(f) managing, selling and realising any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;

(h) undertaking and executing trusts;

(i) undertaking the administration of estates as executor, trustee or otherwise;

(j) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependents or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(l) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(m) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub- section;

(n) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;

(o) any other form of business which the Central Government may, by notification in the Official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

No banking company should engage in any form of business other than those referred to above.

Requirements regarding minimum paid up capital and reserves

Section 11 of the Banking Companies Act lays down the requirements regarding the minimum standard of paid up capital and reserves as a condition for the commencement of business. Although Section 11 prescribes a minimum capital of Rs.5.00 lakh only, Reserve Bank currently prescribes a minimum paid-up capital of Rs.500 crore for

setting up a new bank¬ing company. The cap on the foreign investment, including FDI/FII and NRI, has been set at 49 per cent.

Under the provisions of Section 12, the subscribed capital of the company is not less than half of its authorized capital and the paid up capital is not less than half of its sub¬scribed capital, provided when the capital is increased this proportion may be permitted to be secured within a period to be determined by the Reserve Bank not exceeding two years from the date of increase.

Under Section 14, no banking company shall create any charge upon its unpaid capi¬tal, and any such charge if created, shall be invalid.

Limiting the payment of dividends

Section 15 prohibits every banking company from paying any dividend on its shares unless it has completely written off the capitalized expenses specified therein.

According to this section no banking company shall pay any dividend on its shares until all its capitalized expenses such as Preliminary Expenses, Brokerage and Commission on issue of shares, etc., have been completely written off.

Transfer to Reserve Fund

Under Section 17, Banking companies incorporated in India are obligated to transfer to the reserve fund a sum equivalent to not less than 20% of the profit each year, unless the amount in such fund together with the amount in the share premium account is more than or equal to its paid-up capital.

Maintenance of cash reserve by non-scheduled banks

According to Section 18, every banking company not being a scheduled bank (i.e., a non-scheduled bank) has to maintain in India by way of cash reserve with itself or in cur¬rent account opened with the Reserve Bank or the State Bank of India or any notified Bank or partly in cash with itself and partly in such account or accounts a sum equivalent to at least 3% of its total time and demand liabilities.

Licensing of banking companies

According to Section 22, no company should carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose. Before granting any licence under this section, the Reserve Banking may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely : —

a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;

c) that the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors;

d) that the company has adequate capital structure and earning prospects;

e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;

f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

g) any other condition, the fulfilment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

Maintenance of Accounts and Balance Sheets: Section 29

Section 29 provides for the preparation of Balance Sheet and Profit & Loss Account as on the last working day of the year in respect of all business transacted by a banking company incorporated in India and in respect of all business transacted through its branches in India by a banking company incorporated outside India. It is prepared in the forms set out in the Third Schedule.

10.4. Securities Contracts (Regulation) Act, 1956

Stock exchanges in India are regulated and controlled by the Securities Contracts (Regulation) Act, 1956. The objective of the Act is to prevent undesirable transactions in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith. The Act extends to the whole of India and came into force on 28th February, 1957.

The Act provides for direct and indirect control of almost all aspects of securities trading including the running of stock exchanges which aims to prevent undesirable transactions in securities. It gives a detailed procedure for the recognition of stock exchanges from Government; listing of securities of companies and operations of the brokers in relation to purchase and sale of securities on behalf of investors.

The Act gives the Central Government regulatory jurisdiction over stock exchanges through a process of recognition and continued supervision, contracts in securities and listing of securities on stock exchanges. As a condition of recognition, the stock exchange should comply with the requirements prescribed by the Central Government. The stock exchange should frame their own listing regulations in consonance with the minimum listing criteria set out in the Securities Contracts Regulation Rules, 1957.

"Stock exchange" means—

(a) any body of individuals, whether incorporated or not, constituted before corporatisation and demutualisation under sections 4A and 4B, or

(b) a body corporate incorporated under the Companies Act, 1956 (1 of 1956) whether under a scheme of corporatisation and demutualisation or otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

Recognised Stock Exchanges

Every stock exchange which is desirous of being recognized for the purposes of this Act, may make an application in the prescribed manner to the Central Government (the powers of Central Government with regard to this Act are exercisable by SEBI). Every such application should contain required particulars and be accompanied by a copy

of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange.

If the Central Government is satisfied, after making such inquiry as may be necessary may grant recognition to the stock exchange subject to some conditions. On and from the appointed date, all recognised stock exchanges (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 4B. All recognised stock exchanges referred to in section 4A shall, within such time as may be specified by the SEBI, submit a scheme for corporatisation and demutualisation for its approval

On receipt of the scheme, the SEBI after making such enquiry as may be necessary and if it is satisfied that it may approve the scheme with or without modification.

Every recognised stock exchange should furnish to SEBI periodical returns relating to its affairs as may be prescribed. Every recognised stock exchange and every member thereof should preserve such books of accounts and other documents for period of not exceeding five years. Every recognised stock exchange should furnish the Central Government a copy of the annual report.

The Central Government is empowered to suspend the business of recognised stock exchange on an emergency situation by giving notification in the Official Gazette stating the reasons therein, for a period of not exceeding seven days and subject to such conditions as may be specified in the notification. However, in the interest of the trade or the public the said period can be extended from time to time, provided that no such period of suspension can be extended, unless the governing body of the recognised stock exchange has been given an opportunity of being heard in the matter.

Listing

Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange. A recognised stock exchange may delist the securities, after recording the reasons there for, on any of the ground or grounds as may be prescribed under this Act, provided that the securities of a company shall not be delisted unless

the company concerned has been given a reasonable opportunity of being heard.

A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal (SAT) against the decision of the recognised stock exchange within fifteen days from the date of the decision of the recognised stock exchange, provided that SAT may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month. Where a recognised stock exchange refuses to list the securities of any public company or collective investment scheme, the company or scheme may appeal to the Central Government against such refusal, omission or failure, as the case may be. Where a recognised stock exchange refuses to list the securities of any public company or collective investment scheme, the company or scheme may appeal to the SAT against such refusal, omission or failure, as the case may be.

Section	Contravention/Non-compliance	Penalty Prescribed
23A	Failure to furnish information, returns, etc and maintain books of accounts and records.	One lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
23B	Any person who is required under this Act or bye-laws of a recognised stock exchange to enter into an agreement with clients, fails to enter into such agreement	One lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
23C	Any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, fails to redress the grievances within the time stipulated by the SEBI or a recognised stock exchange	One lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
23D	Any stock broker or sub-broker who fails to segregate securities or moneys of the client(s) or uses the securities or moneys of a client(s) for self or for any other client	Penalty not exceeding one crore rupees.

23E	If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions	Penalty not exceeding twenty-five crore rupees.
23F	If any issuer dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognised stock exchange	Penalty not exceeding twenty-five crore rupees.
23G	If a recognised Stock exchanges fails to furnish the periodical returns to the SEBI or fails to amend the bye laws as directed by SEBI or fails to comply with the directions of the Board	Penalty which may extend to Twenty-Five Crores Rupees.
23H	Who fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the SEBI for which no separate penalty has been provided-Section 23H	Penalty which may extend to one crore rupees.

The Securities Contracts Regulation Rules, 1957 issued under the Securities Contracts (Regulation) Act, 1956 provides the procedure to be followed for recognition of stock exchanges, submission of returns and annual reports by recognized stock exchanges, inquiry into the affairs of stock exchanges and their members and requirements for listing of securities. The rules consist of a code of standardized regulations that is uniformly applicable to all the recognized stock exchanges.

SEBI has issued the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 to regulate recognition, ownership and governance in stock exchanges and clearing corporations. By notifying this regulation, the Securities Contracts (Regulations) (Manner of increasing and maintaining public

shareholding in recognised stock exchanges) Regulations, 2006 stands repealed.

Clearing corporation means an entity that is established to undertake the activity of clearing and settlement of trades in securities or other instruments or products that are dealt with or traded on a recognized stock exchange and includes a clearing house.

According to this Regulation, all stock exchanges and clearing corporations should apply for recognition by the SEBI. It details the manner of making application, fees, documents required and consideration or grant of recognition by SEBI. It also provides for period of recognition, renewal and withdrawal of recognition. The stock exchanges and clearing corporations are required to maintain net worth requirement of Rs. One Hundred Crores at all times. The regulation also requires securities of recognised stock exchanges and clearing corporations to be held in dematerialized form.

10.5. Securities and Exchange Board of India Act, 1992

Securities regulation began in India with the Capital Issues (Control) Act of 1947, which had its origin during the war in 1943, with the objective to support the war effort. The Act was retained with some modifications as a means of control over the raising of capital by companies and to serve goals and priorities of the government; however, as part of the liberalization process, the Act was repealed in 1992 paving the way for market determined allocation of resources.

In 1988 the Securities Exchange Board of India was established by the Government of India through an executive resolution and was subsequently upgraded as a fully autonomous body (a statutory board) in the year 1992 with the passing of the securities Exchange Board of India Act, 1992 on 30th January, 1992. In the place of Government control, a statutory and autonomous regulatory board with defined responsibilities, to cover both development and regulation in the market, and independent powers were set up.

The basic objectives of Securities Exchange Board of India are:

i. To protect the interests of investors in securities;

ii. To promote the development of the securities market;

iii. To regulate the securities market;

iv. And for matters connected therewith and incidental thereto.

Containing 7 chapters and 35 sections, the SEBI Act governs all the Stock Exchanges and the Securities Transactions in India.

Establishment of the Securities Exchange Board of India

Chapter two of the SEBI Act deals with the establishment of the Securities and Exchange Board of India. Section 3 speaks about the establishment and incorporation of Board.

The Board shall be a body corporate by the name Securities Exchange Board of India which will have perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to enter in to contract and can sue or be sued by the said name. The head office of the Board shall be at Bombay. The Board may establish other offices at any other places in India.

The management of the Board is covered in section 4 of the Act. The Board shall consist of the following members, namely:

(a) a Chairman;

(b) two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act, 1956;

(c) one member from amongst the officials of the Reserve Bank;

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

The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board. The Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board. The Chairman and members shall be appointed by the Central Government and members from amongst the officials of the Reserve Bank of India and five other members shall be nominated by the Central Government and the Reserve Bank respectively. The chairman and the other member shall be persons of ability, integrity and standing who have the capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other

discipline which, in the opinion of the Central Government, shall be useful to the Board.

The term of office and other conditions of service of the Chairman and members shall be as prescribed by the Board. The Central Government shall have the right to terminate the services of the Chairman or a member appointed under section 4 at any time before the expiry of the period prescribed, by giving him notice of not less than three months in writing or three months salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office at any time before the expiry of the period prescribed by giving to the Central Government notice of not less than three months in writing.

The Central Government shall remove a member from the office if he-

i. Is or at any time has been adjudicated as insolvent,

ii. Is of unsound mind and stands so declared by the competent person,

iii. Has been convicted of an offence which in the opinion of the Central Government involves moral turpitude,

iv. In the opinion of the Central Government the member has abused his position as to tender his continuation detrimental to the public interest. It is also provided that no member shall be removed under this section unless he has been given an opportunity of being heard.

The Board shall meet at such places and shall observe such rules of procedure in regard to the transaction of business at its meetings, including quorum as may be provided by the regulations. If the Chairman is unable to attend any of the meeting of the Board, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting. All questions which come up to any meeting of the Board shall be decided by the majority votes of the members present and voting and in the event of equality of votes, the Chairman or in his absence, the person presiding shall have a second or casting vote.

Chapter four of the SEBI Act, 1992 deals with the powers and function of the Securities Exchange Board of India. It shall be the duty of the Securities Exchange Board of India:

i. to protect the interest of investors in securities and

ii. to promote the development of and

iii. to regulate the securities market by such measures as the Board thinks fit and

iv. for matters connected therewith and incidental thereto.

The Board is entrusted with two functions, namely:

A. Regulatory functions and

B. Developmental functions

Developmental functions - The Board is responsible for:

i. regulating the business in stock exchanges and any other securities markets;

ii. registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

iii. registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

iv. registering and regulating the working of venture capital funds and collective investment schemes],including mutual funds;

v. promoting and regulating self-regulatory organisations;

vi. prohibiting fraudulent and unfair trade practices relating to securities markets;

vii. promoting investors' education and training of intermediaries of securities markets;

viii. prohibiting insider trading in securities;

ix. regulating substantial acquisition of shares and take-over of companies;

x. calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market intermediaries and self- regulatory organisations in the securities market;

xi. calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;

xii. performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;

xiii. levying fees or other charges for carrying out the purposes of this section;

xiv. conducting research for the above purposes;

xv. calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions and

xvi. performing such other functions as may be prescribed.

Developmental Functions:

i. Promoting investor's education

ii. Training of intermediaries

iii. Conducting research and publishing information useful to all market participants.

iv. Promotion of fair practices

v. Promotion of self regulatory organizations

The Board shall also have the power of a civil court. It will have the same powers as are vested in a civil court under the Civil Procedure Code, 1908. In addition to the above mentioned powers, the Board may, by an order, in writing, iin the interest of investors or securities market, take any of the following measures, either pending investigation or inquiry or inquiry or on completion of such investigation or inquiry, namely:

i. suspend the trading of any security in a recognised stock exchange;

ii. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal

in securities;

iii. suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

iv. impound and retain the proceeds or securities in respect of any transaction which is under investigation;

v. attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder. Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

vi. direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation. The Board before passing any of the above orders shall give an opportunity of being heard to such intermediaries or persons concerned.

Section 11A gives the power to Board to regulate or prohibit the issue of prospectus, offer document or advertisement soliciting money for issue of securities. The Board may also specify the requirements for listing and transfer of securities and any other matter incidental thereto. Section 11C deals with investigation power of the Board. It shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary or every person associated with the securities market, to produce to Investigating Authority or any other person authorised by the Board, all the books, registers, other documents and record of or relating to the company or relating to the intermediary.

Registration Certificate

A person willing to operate as stock broker, sub broker, share agent, banker to an issue, trustee of trust deed, register to an issue, merchant banker, underwriter, portfolio manager, investment advisor and such other intermediary can do so only if he gets himself registered under the SEBI Act, 1992. Section 12 of Chapter five deals with registration of

stock brokers, sub-brokers, share transfer agents, etc. No depository, participant, custodian of securities, foreign institutional investor, credit rating agency or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.

Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition Of Securities Or Control

Prohibition of Manipulative and Deceptive Devices, Insider Trading and Substantial Acquisition of Securities or Control is covered under Chapter VA of the SEBI Act.

No person shall directly or indirectly-

i. use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

ii. employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange; engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

iii. engage in insider trading;

iv. deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

v. acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

Establishment, Jurisdiction, Authority and Procedure of Appellate Tribunal

Establishment, jurisdiction, authority and procedure of appellate tribunal has been covered under chapter VIB. The Securities Appellate Tribunal has been established under section 15K of the Act. The Central Government shall, by notification, establish one or more Appellate Tribunals to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act or any other law for the time being in force. The Central Government shall also specify in the notification the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

10.6. Recovery of Debts Due to Banks and Financial Institutions Act, 1993

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBFI Act) was passed by the Parliament of India to provide for the speedy adjudication of matters relating to recovery of debts due to banks and financial institutions. This Act provided a procedure that was distinct from the existing Code of Civil Procedure in order to ensure such a speedy adjudication. This Act also provided for setting up of a separate set of tribunals to hear such matters and these tribunals are termed as Debt Recovery Tribunals (DRTs). The Government has set up such DRTs in many states in the country. Presently there are thirty three Debt Recovery Tribunals and five Debt Recovery Appellate Tribunals across the country.

The provisions of RDDBI Act, 1993 will not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees.

The RDDBI Act, 1993 provides Banks and Financial Institutions to approach the Debt Recovery Tribunal by filing an application for recovering its due. Only when the amount of due qualifies under the Act,

the Banks and Financial Institutions could approach the Debt Recovery Tribunals under RDDBI Act, 1993. When the Bank approaches the Tribunal for recovery, then, the Tribunal will look into the claim made by the Bank in accordance with the procedure prescribed under RDDBI Act, 1993 and finally pass an award. The award can be executed by the Bank.

The procedures adopted in DRTs are very simple and uncomplicated. Unlike higher costs in civil courts, the DRT proceedings are cheaper. Within 30 days of filing DRT application, summons are sent to the defendants, who have to immediately submit their reply statements. Evidences are admitted in the form of sworn affidavit. Defendants are given the opportunity to cross examine bank's witness. As per the Act, the Tribunal has to decide the case within six months from the filing of case.

Any person aggrieved by any measure taken by secured creditor or his authorized officer may file an appeal to Debts Recovery Tribunal, within 45 days from date on which such measure was taken i.e. action of taking possession of asset, takeover of management of business of borrower, appointing person to manage secured asset etc. is taken by the creditor.

When a borrower files an appeal, the appeal cannot be entertained unless; the borrower deposits 75% of the amount claimed in the notice by secured creditor. The DRT can waive or reduce the amount required to be deposited. The amount is not required to be deposited at the time of filing appeal, but appeal will not be heard till the amount is deposited. The borrower while filing the appeal should also file an application requesting the Debt Recovery Tribunal to admit the appeal without deposit of any amount. It the DRT orders partial deposit of the amount and the same is not deposited, appeal can be dismissed. The 75% deposit is only required if the appeal is filed by the borrower. If some other aggrieved person (e.g. guarantor, shareholder) files it the deposit is not required.

If a person is aggrieved by the order of the DRT, it can file an appeal to the Appellate Tribunal within 30 days from date of receipt of the DRT order.

If the DRT or Appellate Tribunal holds that possession of assets by the secured creditor was wrongful and directs the secured creditor to return asset to concerned borrower, the borrower shall be entitled to

compensation and costs as may be determined by DRT or Appellate tribunal.

The Tribunal can also direct return of asset, if the secured creditor had already sold or transferred the asset to a third party.

The tribunal can also make an interim order (injunction or stay or attachment) against the defendant to debar him from transferring, alienating or disposing of any property and assets belonging to him. In the case of disobedience of an order made by the Tribunal, or breach of any of the terms on which the order was made the Tribunal may order the properties of the person guilty of such disobedience or breach, to be attached and may also order such person to be detained in the civil prison.

The Tribunal has the power to appoint a receiver of any property, to remove any person from the possession or custody of the property and commit the same to the possession, custody or management of the receiver for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits and the execution of documents as the owner himself has, or can appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

10.7. Depositories Act, 1996

The Depositories Act, 1996 provides a legal framework for establishment of depositories to facilitate holding of securities including shares in the demat form (electronic form) and to effect transfer of securities through book entry. The Act establishes the depository system in India by providing for setting up of one or more depositories to enable the investors to hold securities in non-physical form (known as dematerialized form) and to affect transfer of securities by way of book entries in accounts maintained by the depository.

“Depository” means a company formed and registered under the Companies Act, 1956 (1 of 1956), and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992). (Sec.2(1)(e) of Depositories Act, 1996)

The depository system envisages a deposit of securities by various investors with the depository. Once the securities are lodged with the depository, their transfer would be through book entry transfers in accounts maintained by the depository. Thus the main function of a depository is to dematerialize the securities and enable their transaction in book entry form.

Every depository is required to be registered with the Securities and Exchange Board of India (SEBI) and will have to obtain a Certificate for commencement of business on fulfillment of the prescribed conditions.

Rights and obligations of Depositories, Participants, Issuers and Beneficial Owners are given below:

1. Agreement between Depository and Participant:

   A depository shall enter into an agreement with one or more participants as its agent in the prescribed form (Sec. 4).

2. Services of Depository:

   Any person, through a participant, may enter into an agreement, in the specified form with any depository for availing its services (Sec. 5).

3. Surrender of Certificate of Security:

   Any person who has entered into an agreement with the depository will have to surrender the certificate of security, for which he seeks to avail the services of a depository, to the issuer. The issuer, on receipt of certificate of security shall cancel the certificate of security and substitute in its records the name of the depository as a registered owner in respect of that security and inform the depository accordingly. The depository, thereafter will enter the name of that person in its records, as the beneficial owner (Sec. 6).

4. Registration of Transfer of Securities with Depository:

   Every depository shall, on receipt of intimation from a participant, register the transfer of security in the name of the transferee. Further, if a beneficial owner or a transferee of any security seeks to have custody of such security, the depository shall inform the issuer accordingly (Sec. 7).

5. Options to Receive Security Certificate or Hold Securities with Depository:

Every person subscribing to securities offered by an issuer shall have the option either to receive the security certificates or hold securities with a depository (Sec. 8).

6. Securities in Depositories to be in Fungible Form:

   All securities held by a depository shall be dematerialised and shall be in a fungible form (Sec. 9).

7. Rights of Depositories and Beneficial Owner:

   A depository shall be deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner. The depository as a registered owner shall not have any voting rights or any other rights in respect of securities held by it. The beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository (Sec. 10).

8. Register of Beneficial Owner:

   Every depository shall maintain a register and an index of beneficial owners in the manner provided in the Companies Act.

9. Pledge or Hypothecation of Securities Held in a Depository:

   A beneficial owner may with the previous approval of the depository, create a pledge or hypothecation in respect of a security owned by him through a depository. Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly (Sec. 12).

10. Furnishing of Information and Records by Depository and Issuer:

    Every depository is required to furnish to the issuer information about the transfer of securities in the name of beneficial owners at such intervals and in such manner as may be specified by the bye-laws. Every issuer also has to make available to the depository copies of the relevant records in respect of securities held by such depository (Sec. 13).

11. Option to opt out in Respect of any Security:

    If a beneficial owner seeks to opt out of a depository in respect of any security, he shall inform the depository accordingly who will make appropriate entries in its records and shall inform the issuer (Sec. 14).

12. Depositories to Indemnify Loss in Certain Cases:

The depository shall have to indemnify any loss caused to the beneficial owner due to its negligence or of the participant. Where the loss due to the negligence of the participant is indemnified by the depository, the depository shall have the right to recover the same from such participant.

Penalties

If any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, fails to dematerialise or issue the certificate of securities on opting out of a depository by the investors, within the time specified under this Act or regulations or bye-laws made thereunder or abets in delaying the process of dematerialisation or issue the certificate of securities on opting out of a depository of securities, such issuer or its agent or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

If any depository or participant or any issuer or its agent or any person, who is registered as an intermediary under the provisions of section 12 of the Securities and Exchange Board of India Act, 1992, after having been called upon by the Board in writing, to redress the grievances of the investors, fails to redress such grievances within the time specified by the Board, such depository or participant or issuer or its agents or intermediary shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or bye-laws made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees, or with both.

10.8. Foreign Exchange Management Act, 1999

Exchange Control in India dates back to 1939 when for the first time it was introduced as a war measure under the Defence of India Rules. Soon after independence, a complex web of controls were imposed for all external transactions through a legislation i.e., Foreign Exchange Regulation Act (FERA), 1947. These were put into a more rigorous framework of controls through FERA, 1973. Severe restrictions on current account transactions had continued till mid-1990s when relaxations were made in the operations of the FERA, 1973. The control framework was essentially transaction based in terms of which all transactions in foreign exchange including those between residents and non-residents were prohibited, unless specifically permitted.

In the 1990s, consistent with the general philosophy of economic reforms a sea change relating to the broad approach to reform in the external sector took place. The Report of the High Level Committee on Balance of Payments (Chairman: Dr. C. Rangarajan, 1993) set the broad agenda in this regard. The Committee recommended, inter alia, the introduction of a market-determined exchange rate regime within limits; liberalisation of current account transactions leading to current account convertibility; compositional shift in capital flows away from debt to non debt creating flows; strict regulation of external commercial borrowings, especially short-term debt; discouraging volatile elements of flows from non-resident Indians; full freedom for outflows associated with inflows (i.e., principal, interest, dividend, profit and sale proceeds) and gradual liberalisation of other outflows; and dissociation of Government in the intermediation of flow of external assistance, as in the 1980s, receipts on capital account and external financing were confined to external assistance through multilateral and bilateral sources.

The sequence of events in the subsequent years generally followed these recommendations. In 1993, exchange rate of rupee was made market determined; close on the heels of this important step, India accepted Article VIII of the Articles of Agreement of the International Monetary Fund in August 1994 and adopted the current account convertibility.

In 1997, the Tarapore Committee on Capital Account Convertibility (CAC), constituted by the Reserve Bank, had indicated the preconditions for Capital Account Convertibility. The three crucial preconditions were fiscal consolidation, a mandated inflation target and, strengthening of the financial system. The Tarapore Committee had also recommended

change in the legislative framework governing foreign exchange transactions. Accordingly, the Foreign Exchange Regulation Act (FERA) which formed the statutory basis for exchange control in India was repealed and replaced by the new Foreign Exchange Management Act (FEMA) with effect from June 2000. The philosophical approach was shifted from that of conservation of foreign exchange to one of facilitating trade and payments as well as developing orderly foreign exchange market.

The main objective of the Act is to facilitate external trade and payments and to promote the orderly development and maintenance of foreign exchange market in India. It is the main legislation that deals with inbound investments into India and outbound investments from India and trade and business between India and the other countries.

The Foreign Exchange Management Act, 1999 came into force on 1st June 2000 vide Notification No.371(E) dated 01-05-2000.

Applicability

The Foreign Exchange Management Act, 1999 is applicable to all parts of India i.e. it applies to any transaction that takes place in India by any person residing in India at the time of transaction. It also applies to all branches, offices and agencies outside India owned or controlled by a person who is resident of India. Any contravention that is committed outside India by these entities, is also covered under FEMA.

Residential status is the most important factor for determining the applicability of the Act. The types of persons that are covered under the Act are –

- Persons resident in India
- Non-resident Indian (NRI)
- Persons resident outside India
- Overseas Corporate Body (OCB)

Persons of Indian Origin (PIO)

Regulation and Management of Foreign Exchange

The basic provisions of the Act are dealt with under Chapter II, i.e. regulation and management of Foreign Exchange.

No person should deal in foreign exchange except through an authorized person. The Act lays down restrictions on dealings in foreign exchange and provides that:

- No person should deal in or transfer foreign exchange or foreign security to any person who is not an authorized person.
- No person should make any payment or credit to any person outside India.
- No person should receive any payment from or on behalf of any person resident outside India otherwise through an authorized person.
- No person should enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

No person resident in India should acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

Any person resident in India is restrained from acquiring, holding, owning, possessing or transferring any foreign exchange, foreign security or any immovable property situated outside India.

Any person can sell or draw foreign exchange to or from an authorized person if such sale or drawal is a current account transaction.

Any person can draw or sell foreign exchange from or to an authorized person for a capital account transaction. The Reserve Bank of India may permit any class or classes of capital account transactions and also lay down the limit upto which foreign exchange may be admissible for capital account transactions. But RBI should not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

The Reserve Bank of India can prohibit, restrict or regulate by regulations, the transactions specified below:

(a) transfer or issue of any foreign security by a person resident in India;

(b) transfer or issue of any security by a person resident outside

India;

(c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;

(d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;

(e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;

(f) deposits between persons resident in India and persons resident outside India;

(g) export, import or holding of currency or currency notes;

(h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;

(i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;

(j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred—

(i) by a person resident in India and owed to a person resident outside India; or

(ii) by a person resident outside India.

The Act allows a person resident in India to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if the same was transacted when he was resident outside India or inherited from a person who was resident outside India. The Act also allows a person resident outside India to hold, own, transfer or invest in Indian currency, etc. situated in India if the same was transacted by him when he was resident in India or inherited from a person who was resident in India.

Export of goods and services is also covered under the Foreign Exchange Management Act, 1999. Every exporter of goods and services should submit to the Reserve Bank or other specified authority a declaration containing true and correct material particulars, including the amount representing the full export value or, if the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods/services in a market outside India.

The Act fixes a responsibility on persons resident in India who have any amount of foreign exchange due or accrued in their favour to get the same realized and repatriated to India within the period and manner specified by RBI.

Section 46 of the Foreign Exchange Management Act, 1999 empowers the Central Government to make rules to carry out the provisions of the Act. The rules can be made for the following:

a) Imposition of reasonable restrictions on current account transactions;

b) Manner in which the contravention may be compounded;

c) Manner of holding an inquiry by the Adjudicating Authorities

d) Form of appeal and fee for filing such appeal;

e) Salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal and the Special Director (Appeals);

f) Salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal and the Office of the Special Director (Appeals);

g) Additional matters in respect of which the Appellate Tribunal and the Special Director (Appeals) may exercise the powers of a civil court;

h) The authority or person and the manner in which any documents may be authenticated; and

i) Any other matter which is required to be, or may be prescribed.

Section 47 of the Foreign Exchange Management Act, 1999 empowers the Reserve Bank of India to make regulations to carry out the provisions of the Act and Rules made thereunder. The regulations can be made for the following:

a) The permissible classes of capital account transactions, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of certain capital account transactions;

b) The manner and the form in which the declaration is to be furnished by exporters;

c) The period within which and the manner of repatriation of foreign exchange;

d) The limit up to which any person may possess foreign currency or foreign coins;

e) The class of persons and the limit up to which foreign currency account may be held or operated;

f) The limit up to which foreign exchange acquired may be exempted;

g) The limit up to which foreign exchange acquired may be retained;

h) Any other matter which is required to be, or may be, specified.

10.9. SARFAESI Act, 2002

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (here-in-after referred to as The Securitisation Act) has been enacted with an intention to strengthen the creditors rights through foreclosure and enforcement of securities by the banks and financial institutions by conferring on the creditors the right to seize the secured asset and sell of the same in order to recover dues promptly bypassing the costly and very time consuming legal process through courts.

The Securitisation Act empowers the banks and financial institutions to move on its own against a borrower whose assets are secured, and who has made some kind of default in repayment of the same. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law . Thus after complying with the statutory provisions in the said act the banks can:

- Take possession of the secured assets of the borrower. This includes the right to transfer by way of lease, assignment or sale of the same for realization of the secured debt.
- Take over the management of the secured asset including the right to transfer by way of lease, assignment or sale of the same for realization of the secured debt.
- Appoint any person to manage the secured asset.

The Act deals with three aspects.

- Enforcement of Security Interest by secured creditor (Banks/

Financial Institutions)

- Transfer of non- performing assets to Asset Reconstruction Company, which will then dispose of those assets and realize the proceeds.
- To provide a legal framework for securitisation of assets.

Incorporation and registration of Special Purpose Companies -

The Securitisation Act proposes to securitise and reconstruct the financial assets through two special purpose vehicles viz. 'Securitisation Company ('SCO')' and 'Reconstruction Company (RCO)'. SCO and RCO ought to be a company incorporated under the Companies Act, 1956 having securitisation and asset reconstruction respectively as main object. The Securitisation Act requires compulsory registration of SCO and RCO under the Securitisation Act before commencing its business. Further a minimum financial stability requirement is also provided by requiring SCO and RCO to possess owned fund of Rs.2 crore or up to 15% of the total financial assets acquired or to be acquired. The RBI has the power to specify the rate of owned fund from time to time. Different rates can be prescribed for different classes of SCO and RCO.

Enforcement of Security Interest -

Under the Act security interest created in favour of any secured creditor may be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provision of this Act.

Where any borrower, who is under a liability to a secured creditor under a security under a security agreement, makes any default in repayment of secured debt or any installment thereof , and his account in respect of such debt is classified by the secured creditor as non-performing asset, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor with in sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Sec.13. In case the borrower fails to discharge his liability in full within the period specified above, the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for releasing the secured asset.

(b) take over the management of the assets of the borrower including the right to transfer by way of lease, assignment or sale for releasing the secured asset.

(c) appoint any person to manage the secured assets the possession of which has been taken over by the secured creditor.

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money any money is due or may become due to the borrower, to pay the secured creditor so much of the money as is sufficient to pay the secured debt.

Methods for recovery of Non-performing assets -

The SARFAESI Act, 2002 provides three alternative methods for recovery of Non Performing Assets (NPAs), namely:

- Securitisation: It means issue of security by raising of receipts or funds by Securitisation Company (SC) /Asset Reconstruction Companies (ARC). A securitisation company or reconstruction company may raise funds from the qualified institutional buyers by forming schemes for acquiring financial assets. The SC/ARC shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired, out of investments made by a qualified institutional buyer and ensure that realizations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.
- Asset Reconstruction: The SCs/ARCs for the purpose of asset reconstruction should provide for any one or more of the following measures:
    - the proper management of the business of the borrower, by change in, or takeover of, the management of the business of the borrower
    - the sale or lease of a part or whole of the business of the borrower
    - rescheduling of payment of debts payable by the borrower
    - enforcement of security interest in accordance with the provisions of this Act
    - settlement of dues payable by the borrower
    - taking possession of secured assets in accordance with the

provisions of this Act.

- Exemption from registration of security receipt: The Act also provides, notwithstanding anything contained in the Registration Act, 1908, for enforcement of security without Court intervention: (a) any security receipt issued by the SC or ARC, as the case may be, under section 7 of the Act, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument; or (b) any transfer of security receipts, shall not require compulsory registration.

Exception to the Securitisation Act -

The provisions of this Act will not apply to--

(a) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 (9 of 872; or the Sale of Goods Act, 1930 (3 of 1930) or any other law for the time being in force;

(b) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872 (9 of 1872);

(c) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934 (24 of 1934);

(d) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

(e) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;

(f) any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930 (3 of 1930);

(g) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (5 of 1908);

(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;

(i) any security interest created in agricultural land;

(j) any case in which the amount due is less than twenty per cent of the principal amount and interest thereon.

10.10. Prevention of Money-Laundering Act, 2002

The Prevention of Money-Laundering Act, 2002 (PMLA 2002) and the Rules notified thereunder came into effect on July 1, 2005. The Prevention of Money-Laundering Act, 2002 consists of ten chapters containing 75 sections and one Schedule. Amendments were made to this Act vide The Prevention of Money-laundering (Amendment) Act, 2005 (20 of 2005), Prevention of Money-laundering (Amendment) Act, 2009 (21 of 2009) and Prevention of Money laundering-(Amendment) Act, 2012 (2 of 2013).

The object of the Act is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and to punish those who commit the offence of money laundering. The Act extends to the whole of India including the state of Jammu and Kashmir.

Obligations of Reporting Entity

"Reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession. (Section 2(1)(wa) - inserted by Prevention of Money-Laundering (Amendment) Act, 2012)

Section 12 of the Prevention of Money Laundering Act, 2002 lays down the following obligations on reporting entity.

Every reporting entity should –

- maintain a record of all transactions, including information relating to transactions whether attempted or executed so as to enable it to reconstruct individual transactions;
- furnish to the Director within the prescribed time, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
- verify the identity of its clients;
- identify the beneficial owner, if any, of such of its clients;
- maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

Maintenance of Records

Section 12(1)(a) of the Act makes it mandatory for every reporting entity to maintain a record of all transactions, including information relating to transactions whether attempted or executed so as to enable it to reconstruct individual transactions.

The following records should be maintained –

1) all cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;

2) all series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency;

3) all transactions involving receipts by non-profit organisations of value more than rupees ten lakh, or its equivalent in foreign currency;

4) all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions;

5) all suspicious transactions whether or not made in cash and by way of –

a. deposits and credits, withdrawals into or from any accounts in whatsoever name they are referred to in any currency maintained by way of:

   i. cheques including third party cheques, pay orders, demand drafts, cashiers cheques or any other instrument of payment of money including electronic receipts or credits and electronic payments or debits, or

   ii. travellers cheques, or

   iii. transfer from one account within the same banking company, financial institution and intermediary, as the case may be, including from or to Nostro and Vostro accounts, or

   iv. any other mode in whatsoever name it is referred to

b. credits or debits into or from any non-monetary accounts such as

d-mat account, security account in any currency maintained by the banking company, financial institution and intermediary, as the case may be;

c. money transfer or remittances in favour of own clients or non-clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by any of the following –

    i. payment orders, or

    ii. cashiers cheques, or

    iii. demand drafts, or

    iv. telegraphic or wire transfers or electronic remittances or transfers, or

    v. internet transfers, or

    vi. Automated Clearing House remittances, or

    vii. lock box driven transfers or remittances, or

    viii. remittances for credit or loading to electronic cards, or

    ix. any other mode of money transfer by whatsoever name it is called;

d. loans and advances including credit or loan substitutes, investments and contingent liability by way of –

    i. subscription to debt instruments such as commercial paper, certificate of deposits, preferential shares, debentures, securitized participation, inter bank participation or any other investments in securities or the like in whatever form and name it is referred to, or

    ii. purchase and negotiation of bills, cheques and other instruments, or

    iii. foreign exchange contracts, currency, interest rate and commodity and any other derivative instrument in whatsoever name it is called, or

    iv. letters of credit, standby letters of credit, guarantees, comfort letters, solvency certificates and any other instrument for settlement and/or credit support.

e. collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to.

6) All cross border wire transfers of the value of more than five lakh rupees or its equivalent in foreign currency where either the origin or destination of fund is in India;

7) all purchase and sale by any person of immovable property valued at fifty lakh rupees or more that is registered by the reporting entity, as the case may be.

Furnishing of Information

Section 12(1)(b) of the Prevention of Money Laundering Act, 2002, makes it mandatory for every reporting entity to furnish to the Director within the prescribed time, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed.

Reports

The Prevention of Money laundering Act, 2002 and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 require every reporting entity to furnish the following reports:

- Cash Transaction reports (CTRs)
- Suspicious Transaction Reports (STRs)
- Counterfeit Currency Reports (CCRs)
- Non Profit Organisation Transaction reports (NTRs)

The reporting entities are required to submit reports to FIU-IND which is compliant with the XML format specifications. Reporting entities which have necessary technical capabilities may generate XML (eXtensible Markup Language) reports directly from their systems. The reporting format guide – version 2.0 of 2011 provides reporting entities with the specifications of prescribed reports required to be submitted to the Financial Intelligence Unit – India (FIU-IND).

Client Due Diligence

It is mandatory for every reporting entity, at the time of opening an account or executing any transaction with it, to verify the record of identity and current address or addresses including permanent address or addresses of the client, the nature of business of the client and his financial status. If it is not possible to verify the identity of the client at the time of opening an account or executing any transaction, the reporting entity is required to verify the identity of the client within a reasonable

time after the account has been opened or the transaction has been executed. Every reporting entity, should exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the customer, his business and risk profile.

Every reporting entity should exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and where necessary, the source of funds.

Offences under the Act

Whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property will be guilty of offence of money-laundering. (Section 3)

Whoever commits the offence of money-laundering will be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to 7 years and will also be liable to fine. But if the proceeds of crime involved in money laundering relates to any offence specified under paragraph 2 of Part A of the Schedule i.e. offences specified under the Narcotic Drugs and Psychotropic Substances Act, 1985, then the term of imprisonment may extend to 10 years. (Section 4)

Any person who willfully and maliciously gives false information and causes an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to 2 years or with fine which may extend to Rs.50,000 or both. [Section 63(1)]

If any person legally bound to give information relating to any offence of money laundering, refuses to answer any question put forth by the authorities or give evidence or produce books of accounts or other documents at a certain place or time, shall pay by way of penalty a sum which shall not be less than Rs.500 but which may extend to Rs.10,000 for each such default or failure. [Section 63(2)]

10.11. Credit Information Companies (Regulation) Act, 2005

A Credit Information Company (CIC) is an independent organization licensed by the Reserve Bank of India (RBI) that signs up banks, NBFCs and financial institutions as its members and aggregates data and identity information for individual consumers and businesses from its members.

The Credit Information Companies (Regulation) Act, 2005, is a legislation enacted by the Government of India to regulate the actions of credit information companies in India and to facilitate efficient distribution of credit as well as for matters connected to the same.

Credit information companies inform banks whether a prospective borrower is creditworthy or not based on his past payment track record. The quality of information defines the ability of lenders to evaluate risk and of consumers to obtain credit at competitive rates. Credit reporting is a vital part of a country's financial infrastructure and is an activity of public interest.

Credit information companies service individuals (wanting to access their own credit reports), lenders who access credit reports of their existing customers and prospective customers who are applying for new loans or credit cards and businesses who are borrowing from banks and financial institutions to keep a check on their reported credit history.

10.12. Government Securities Act, 2006

Government securities offer the benefit of safety, liquidity and attractive returns to investors. With the enactment of the Government Securities Act, 2006, Government securities, including the Relief/Savings Bonds issued by the Government of India, have become more investor friendly.

The Government Securities Act, 2006 is an Act to consolidate and amend the laws relating to Government securities and its management by the RBI and for matters connected therewith. Government Securities Regulations, 2007 have been framed by the RBI to carry out the purposes of the Act.

Government security (G-Sec) means a security created and issued by

the Government for the purpose of raising a public loan or any other purpose as notified by the Government in the Official Gazette and having one of the following forms.

i. a Government Promissory Note (GPN) payable to or to the order of a certain person; or
ii. a bearer bond payable to a bearer; or
iii. a stock; or
iv. a bond held in a Bond Ledger Account (BLA).

10.13. Payment and Settlement Systems Act, 2007

The Payment and Settlement Systems Act, 2007, empowers the RBI to regulate and oversee all payment and settlement systems in the country and also to provide settlement finality and a sound legal basis for netting. The Act came into effect on 12 August 2008. The RBI has constituted the Board for Regulation and Supervision of Payment and Settlement Systems (BPSS) as a committee of its Central Board. The BPSS became operational with effect from 7 March 2005. It formulates policies for the regulation and supervision of all types of payment and settlement systems, sets standards for existing and future systems, authorises payment and settlement systems, determines criteria for membership to these systems and decides on continuation, termination and rejection of membership. The BPSS was reconstituted after the Payment and Settlement Systems Act came into effect. The Act specifies that no person, other than the RBI, shall operate a payment system except with an authorisation issued by the RBI (unless specifically exempted by the terms of the Act). The Act provides for netting and settlement finality and vests formal oversight powers over all payment and settlement systems with the RBI. In summary, the Act:

- designates the RBI as the authority that regulates payment and settlement systems;
- makes it mandatory to obtain RBI authorisation to operate a payment system;
- empowers the RBI to regulate and supervise payment systems by determining standards and calling for information, regular reports, documents etc;
- empowers the RBI to audit and conduct on- and off-site inspections of payment systems;

- empowers the RBI to issue directives; and
- provides for netting and settlement to be final and irrevocable

10.14. Foreign Contribution (Regulation) Act (FCRA), 2010

Till 30th April, 2011, receipt and utilisation of foreign contribution used to be regulated under the provisions of the Foreign Contribution (Regulation) Act, 1976 and the Foreign Contribution (Regulation) Rules, 1976. Thereafter, FCRA, 1976 was repealed. Foreign contribution is now regulated under the provisions of the Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011. Both FCR Act, 2010 and FCR Rules, 2011 have come into force simultaneously with effect from 1st May, 2011. While the basic features of the repealed Act have generally been retained, the FCR Act, 2010 is an improvement over the repealed Act as more stringent provisions have been made in order to prevent mis-utilisation of the foreign contribution received by any person.

The FCR Act of 2010 seeks to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

Regulation of Foreign Contribution

The Act regulates receipt of foreign contribution by the following broad categories of Associations/individuals:

(i) Category I (Section 3):

Section 3 of the Act prohibits receipt of foreign contribution by the following categories of persons:

i. Candidates for election;

ii. Correspondents, columnists, cartoonists, editors, owners, printers or publishers of registered newspapers;

iii. Judges, Government servants or employees of any Corporation or any other body controlled or owned by the Government;

iv. Members of any legislature;

v. Political parties or office-bearers thereof;

vi. Organizations of a political nature as may be specified under subsection (1) of Section 5 of the Act by the Central Government;

vii. Associations or companies engaged in the production or broadcast of audio news or audio visuals or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (i) of Section 2 of the Information Technology Act, 2000 or any other mode of mass communication;

viii. Correspondents or columnists, cartoonists, editors, owners of the Associations or companies referred to in clause (g); and

ix. Individuals or Associations who have been prohibited from receiving foreign contribution.

ii) Category II [Section 11]:

Section 11 of the Act provides that no Association having a definite cultural, economic, educational, religious or social programme can receive foreign contribution without seeking registration or prior permission from the Central Government.

Any Association which has a definite programme for carrying out specific activities, which may fall in the five generic categories as mentioned above, may seek registration or prior permission for receipt of foreign contribution.

After grant of registration or prior permission under the Act, the Association is permitted to receive foreign contribution only in the single Bank Account mentioned in the order for registration or prior permission granted by the Central Government. This account number would be the same as has been intimated by the organisation in their application for registration/prior permission. However, one or more accounts, in one or more scheduled banks, may be opened for utilizing the foreign contribution provided that no funds other than the foreign contribution received should be deposited in such account or accounts. An Association which has received foreign contribution is also required to inform the Central Government of the amount of each foreign contribution received by it, the sources thereof, the manner in which such foreign contribution was received and the purposes for which such foreign contribution was utilized by it.

(iii) Category III (Sections 9 and 12):

Section 9 of the Act empowers the Central Government to prohibit any individual or Association not specified in Section 3 from accepting any foreign contribution, or to require any Association specified in Section 11 to receive foreign contribution only after obtaining prior permission of the Central Government. Such prohibition or requirement for prior permission is made only after the Central Government is satisfied that the receipt of foreign contribution by such Association or person or class of persons, as the case may be, is likely to prejudicially affect:

(i) the sovereignty and integrity of the nation; or

(ii) the security, strategic, scientific or economic interest of the State; or

(iii) harmony between religious, racial, social, linguistic or regional groups, castes or communities; or

(iv) friendly relation with any foreign State; or

(v) the public interest; or

(vi) freedom or fairness of election to any legislature; and that the acceptance of foreign contribution-

    (a) shall not lead to incitement of an offence;

    (b) shall not endanger the life or physical safety of any person.

Foreign Hospitality

"Foreign Hospitality" means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment.

The Act regulates acceptance of foreign hospitality by certain individuals, which includes members of a legislature, office-bearers of a political party, judges, government servants or employees of any Corporation, while visiting any country or territory outside India. Such individuals can receive foreign hospitality only with the prior permission of the Central Government by applying in Form FC-2.

Maintenance of Accounts

An association granted prior permission or registration should maintain

a separate set of accounts and records, exclusively for foreign contribution received and utilised. If the foreign contribution relates only to articles, the intimation should be submitted in Form FC-7. If the foreign contribution relates to foreign securities, the intimation should be submitted in Form FC-8. Every report submitted shall be duly certified by a chartered accountant.

Every account giving details of the receipt and purpose-wise utilisation of the foreign contribution, including the interest earned on the foreign contribution amount, should be maintained on an yearly basis, commencing on the 1st day of April each year, and every such yearly account is to be submitted, in prescribed Form FC – 6 along with the income and expenditure statement, balance sheet and statement of receipt and payment, duly certified by a chartered accountant in duplicate, within nine months of the closure of the year, i.e., before 31st December. Every such return in Form FC-6 should also be accompanied by a copy of a statement of account from the bank where the exclusive foreign contribution account is maintained by the person, duly certified by an officer of such bank. The cash book and ledger account on double entry basis, where the foreign contribution relates to currency received and utilised. The annual return in Form FC-6 should reflect the foreign contribution received in the exclusive bank account and include the details in respect of the funds transferred to other bank accounts for utilisation.

The accounting statements should have to be preserved by the NGO/ association for a period of six years.

Even if no foreign contribution is received during a year, a 'Nil' return is required to be filed with the Ministry of Home Affairs. Any transfer of foreign contribution should be reflected in the returns in Form FC-6 as well as in Form FC-10 by the transferor and the recipient.

Associations/NGOs granted registration or prior permission, which have received foreign contribution in excess of one crore rupees, or equivalent thereto, in a financial year, should place the summary data on receipts and utilisation of the foreign contribution pertaining to the year of receipt as well as for one year thereafter in the public domain.

Penalty

Any person who gives false information or seeks prior permission or registration by fraud or false representation or concealment of material

fact will be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Any person who contravenes any other provisions of the Act will be punishable with imprisonment for a term which may extend to five years or with fine or with both.

10.15. Companies Act, 2013

The Companies Act, 2013 was passed by Lok Sabha on the 18th of December 2012 and passed by the Rajya Sabha on 8th August 2013 and is all set to replace the 57 year old Companies Act, 1956. The Companies Act, 2013 received the Assent of the President on 29th August, 2013 and was notified in the Gazette of India on 30th August, 2013.

The Ministry of Corporate Affairs has also notified 98 sections for implementation of the provisions of the Companies Act, 2013 on 12th September, 2013. Rest of the provisions will come into force on such date as the Central Government may appoint by notification/s in the Official Gazette. Towards the proper implementation of the Companies Act 2013, draft rules were also placed on the website of the Ministry of Corporate Affairs in three phases, for comments and objections/ suggestions from the general public/stakeholders.

The Companies Act sets out the code of conduct for the corporate sector in relation to issue, allotment and transfer of securities, and disclosures to be made in public issues of capital, particularly in the fields of company management and projects, information about other listed companies under the same management, and management perception of risk factors. It also regulates underwriting, the use of premium and discounts on issues, rights and bonus issues, payment of interest and dividends, supply of annual report and other information.

The new law has mandated the setting up of a National Financial Reporting Authority, which will monitor compliance with accounting and auditing standards. It will also have the power to investigate auditors that are registered under section 22 of the Chartered Accountants Act, 1949.

While the new legislation has been pruned to around 470 clauses, compared with 700 sections in the older law, several key changes have

been introduced to promote transparency in investments, strengthening the rights of minority shareholders, making it tough for companies to hide illegal transactions, and promoting gender equality on company boards.

The following provisions and chapters of the new Act are relevant for companies dealing with Indian Financial Markets:

1) Chapter III of the new Companies Act, 2013 deals with public offer and allotment of securities. This Chapter has two parts to it:

   i. Part I deals with Public Offer (Sections 23 to 41)

   ii. Part II deals with Private Placement (Section 42)

2) Chapter IV deals with Share Capital And Debentures (Sections 43 to 72)

3) Chapter V deals with Acceptance of Deposits by (Sections 73 to 76)

Chapter III of the Companies Act, 2013 deals with the following:

(i) Public Offer And Private Placement-Section 23, 24, 25, 28 and 42

(ii) Prospectus-Section 25, 26 and 27

(iii) Variants of Prospectus-Section 30, 31, 32 And 33

(iv) Allotment of Securities-Section 29, 39, 40 And 41

(v) Penal Provisions Under Public Offer-Section 34, 35, 36, 37, 38, 39 and 40

Section 23 - Public offer and private placement

(1) A public company may issue securities--

   (a) to public through prospectus which is nothing but public offer or

   (b) through private placement by complying with the provisions of Part II of this Chapter; or

   (c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations

made thereunder.

(2) A private company may issue securities--

    (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or

    (b) through private placement by complying with the provisions of Part II of this Chapter.

Note: The term “public offer” includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

Section 24 - Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.

This section authorises the SEBI to regulate the listed companies and also those companies which intend to get their securities listed on any recognised stock exchange in India on the following matters:

(i) issue and transfer of securities; and

(ii) non-payment of dividend,

In case of other companies, which are not listed or have no intention of getting listed on any stock exchange in India, the powers to regulate lie with the Central Government.

Note: All powers relating to all other matters like issue of prospectus return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.

Section 25 - Document containing offer of securities for sale to be deemed prospectus

This section says that when a company allots or agrees to allot any securities of the company for sale to the public, any document by which the offer for sale to the public is made should be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply.

According to this section, it is understood that the securities have been offered to the public if

(a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

This section also says that the offer document or prospectus needs to be signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

Requirement in Deemed Prospectus (Section 25):

Section 26 as applied by Section 25 shall have effect as if —

it required a prospectus to state in addition to the matters required by section 26 to be stated in a prospectus—

i. the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

ii. the time and place at which the contract where under the said securities have been or are to be allotted may be inspected; the persons making the offer were persons named in a prospectus as directors of a company.

Prospectus Section 26:

Definition of Prospectus:

Clause (70) of Section 2 of the Companies Act, 2013 defines "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

Matters to be stated in Prospectus (Section 26):

A prospectus may be issued by or behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company.

Information in Prospectus:

Every prospectus shall state following information:-

i. names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

ii. dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

iii. a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;

iv. details about underwriting of the issue;

v. consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

vi. the authority for the issue and the details of the resolution passed there for;

vii. procedure and time schedule for allotment and issue of securities;

viii. capital structure of the company in the prescribed manner;

ix. main objects of public offer, terms of the present issue and such other particulars as may be prescribed;

x. main objects and present business of the company and its location, schedule of implementation of the project;

xi. particulars relating to—

a) management perception of risk factors specific to the

project;

b) gestation period of the project;

c) extent of progress made in the project;

d) deadlines for completion of the project; and

e) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

xii. minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

xiii. details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

xiv. Disclosures in such manner as may be prescribed about sources of promoter's contribution.

Reports with Prospectus:

Every prospectus shall set out following reports for the purpose of financial information:

i. Reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

ii. Reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed. Where company has not completed five financial years than such report for all financial years is required.

iii. Reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus. Where company has not completed five financial years than such report for all financial years is required.

iv. Reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly.

Declaration of Compliance:

Every prospectus shall make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under.

Other matters in Prospectus:

Clause (d) of Sub – section (1) of section 26 give unlimited power to central government to list other matters and set out other reports to be included in a prospectus.

Delivery of Prospectus with Registrar:

A copy of prospectus shall be delivered to the Registrar for registration signed by every person who is named as a director or proposed director of the company or by his duly authorised attorney on or before the date of its publication and only then it shall be issued by or on behalf of a company or in relation to an intended company.

Statement of an Expert:

A statement made by an expert shall be included only if expert is or was engaged or interested in the formation or promotion or management of the company and has given his written consent to the issue of the prospectus. Such consent of expert must not be withdrawn by his before the delivery of prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

Every prospectus issued shall state that a copy has been delivered to the Registrar and specify attached documents.

The registrar shall not register a prospectus all requirements has been complied with and the prospectus is accompanied by the consent in writing of all the person named in the prospectus.

Prospectus shall not be valid if it is issued more than ninety days after the date on which a copy thereof delivered to the Registrar.

Note: If a prospectus is issued in contravention of the provisions of

section 26, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Variation in terms of contract or objects in prospectus (Section 27):

A company may vary the terms of a contract refered in the prospectus or object for which the prospectus was issued, only under approval or authority given by way of special resolution.

The notice of such resolution to shareholders shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated. These notices shall clearly indicate justification for such variation.

The shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at exit price as determined in accordance with regulation made by the Securities and Exchange Board of India.

Section 28- Offer for Sale:

Where certain members of company propose to offer whole or part of their holding of share to public, they may do so in accordance with prescribed procedure. This proposal must be in consultation with the Board of Directors and in accordance with the any law for the time being in force.

Any such offer document shall be deemed to be prospectus issued by the company and all law and related to prospectus shall apply to this document.

All these members shall collectively authorise the company to take all actions in respect of offer of sale for and on their behalf. They will reimburse the company all expenses incurred by it on that matter.

Securities in De-materialised Form (Section 29):

As per this Section, every company making public offer; and such other class or classes of companies as may be prescribed shall issue the securities only in the de-materialised form.

When any company issue its securities in de-materialised form, provisions of the Depositories Act, 1996 and regulations made under that Act shall be applicable.

There is no bar for any other company to issue its securities in any form. Any other company may convert its securities into de-materialised form.

Advertisement of prospectus (Section 30):

When a company issues an advertisement of prospectus, the advertisement shall specify the following:

a) contents of its memorandum;

b) the objects, the liability of members,

c) amount of share capital,

d) name of signatories, and

e) number of shares subscribed for by these signatories and

f) its capital structure.

Shelf Prospectus (Section 31):

Any class of company may file a shelf prospectus with the Registrar of Companies at the stage of first offer of securities.

"Shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

The shelf prospectus shall indicate that validate period of the shelf prospectus is a period not exceeding one year from the date of first offer of securities under that prospectus. Once, a shelf prospectus has been issued, there will be no requirement of any further prospectus for any subsequent offer of these securities issued during this validity

period.

For any subsequent issue, company shall file an “Information Memorandum”. This information memorandum shall contain all material facts relating to

(i) new charges created; and

(ii) changes in financial position of the company from first/ previous offer to this second/subsequent offer under this Shelf Prospectus.

It may be possible that a company or any other person has received an application and advance payment of subscription before any material changes like new charges or financial position. In these cases, the company or that other person shall intimate these changes to the applicants. If they express a desire to withdraw their application, the company or other person shall refund all the money received as share application money for subscription within fifteen days.

When an offer of securities is made on shelf prospectus, the information memorandum together with shelf prospectus shall be deemed to be a prospectus.

RED HERRING PROSPECTUS (SECTION 32):

A company may issue a red herring prospectus before the issue of a prospectus.

“Red herring prospectus” means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

The company shall file red herring prospectus with Registrar of companies at least three days before the opening of the subscription list and the offer.

A red herring prospectus shall carry the same obligation as are applicable to a prospectus. In case there is any variation between red herring prospectus and a prospectus shall be highlighted as variation in the prospectus.

Upon the closing of the offer of securities, the prospectus shall be filed

with the Registrar and the Securities and Exchange Board of India. This prospectus shall state

(a) total capital raised,

(b) whether debt capital or share capital,

(c) closing price of the securities and

(d) any other details not included in red herring prospectus.

Issue of Application Forms and Abridged Prospectus (Section 33):

Every application form for the purchase of the securities of a company shall be issued unless the form is accompanied by an "Abridge Prospectus".

There is no need for abridge prospectus in case of:

a) Underwriting Agreement; and

b) Private placement.

Any person may make a request for a copy of the prospectus before closing of the subscription list and the offer. The company shall furnish a copy to him.

Any default in under this section, company shall be liable to a penalty of fifty thousand rupees for each default.

Some Penal Provisions under Chapter III:

Criminal liability for mis-statement in prospectus (Section 34):

Where a prospectus, issued, circulated or distributed:

a) includes any statement which is untrue or misleading in form or context in which it is included; or

b) where any inclusion or omission of any matter is likely to mislead;

Every person who authorises the issue of such prospectus shall be liable under section 447 i.e. fraud of the Companies Act, 2013.

Defences available in this section are:

a) Person proves that statement or omission was immaterial;

b) Person has reasonable ground to believe and did believe that statement was true; or

c) Person has reasonable ground to believe and did believe that the inclusion or omission was necessary.

Civil liability for mis-statements in prospectus (Section 35):

Where a person has subscribed for securities of a company acting upon any misleading statement, inclusion or omission and has sustained any loss or damage as its consequence, the company and every person who –

a) is a director at the time of the issue of prospectus;

b) has named as director or as proposed director with his consent;

c) is a promoter of the company;

d) has authorised the issue of the prospectus; and

e) is an expert; shall be liable to pay compensation to the affected person.

This civil liability shall be in addition to the criminal liability under section 36.

Where it is proved that a prospectus has been issued with an intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

Defences under this section are:

a) he has withdrawn his consent or never given his consent;

b) the prospectus was issued without his knowledge or consent and when he become aware, gave a reasonable public notice that prospectus was issued without his knowledge or consent.

Punishment for fraudulently inducing persons to invest money (Section 36):

Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,—

(a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or

(c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution; shall be liable for action under section 447 i.e. fraud of the Companies Act, 2013.

Action by affected person (Section 37):

A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Punishment for personation for acquisition etc of Securities (Section 38):

Any person who—

(a) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

(b) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or

(c) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name, shall be liable for action under section 447 i.e. fraud of the Companies Act, 2013

This provision shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.

Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.

The amount received through disgorgement or disposal of securities under subsection (3) shall be credited to the Investor Education and Protection Fund.

Allotment of Securities by Company (Section 39):

After public offer, any allotment shall be made only if the amount stated in the prospectus as minimum amount. The sum payable on application for the amount so stated as minimum amount has been paid to and received by the company by cheque or other instrument.

The amount payable on application on every security shall not be less than five percent of he nominal amount of security or such other percentage or amount as may be specified.

If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, all amount received shall be returned within prescribed time and in prescribed manner.

The company shall file with the Registrar of Companies a “Return of Allotment” in prescribed manner.

In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Listing of Shares (Section 40):

Every company making public offer shall make an application to at least one stock exchange before making the public offer. This is duty of company to obtain permission of stock exchange or stock exchanges for the dealing of securities there.

Prospectus for the public offer shall also state the name or names of the stock exchange in which application for dealing of the securities has been made.

All money received on application from the public for subscription of the securities shall be kept in a separate bank account in a schedule bank. This money shall not be utilised for any purpose other than –

For adjustment against allotment of securities where the permission from the stock exchanges named in prospectus has been received; or

For repayment of money within the time specified by the Securities and Exchange Board, where the company is for any other reason unable to allot securities.

A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

Any condition which require or bind any applicant for securities to waive compliance with any of the requirement of this section shall be void.

If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Global Depository Receipt (Section 41):

A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country in such manner, and subject to such conditions, as may be prescribed.

Section 42- Private Placement:

Private placement provisions under Companies Act, 1956

As per the proviso to section 67(3) of the 1956 Act, when a company makes an offer or invitation to subscribe for shares or debentures to 50 or more persons, such offers is treated as made to public.

Where an invitation in made by the management of a company to selected persons for subscription or purchase by less than fifty persons receiving the offer or invitation, the shares or debentures and such invitation or offer is not calculated directly or indirectly to be availed of by other persons, such invitation or offer shall not be treated as an offer or invitation to the public.[1]

Definition of private placement under Companies Act, 2013:

Part II of Chapter III of the Act deals exclusively with private placements.

Private placement has been defined in explanation II(ii) to section 42 of the Act.

“private placement” means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section

It is to be noted that the provisions for private placement apply to issue of “securities” and not “shares”. The new provisions cover a whole host of instruments such as shares, bonds, debentures and other marketable securities.

Section 42(4) provides that any offer or invitation not in compliance with the provisions of the section shall be treated as a public offer and all provisions of the Act, SCRA and SEBI Act shall be required to be complied with in such a case.

Offer can be made only to 200 persons in a financial year [Section 42(2) and rule 3.12(2)]

Chapter IV of the Companies Act, 2013

Chapter IV of the Companies Act, 2013 deals with Share Capital and Debentures:

(i) Share Capital-Section 43, 44, 45, 46, 47 and 48

(ii) Financial treatment related to Share Capital-Section 49, 50, 51, 52, 53, 54 and 55

(iii) Transfer and transmission of Securities-Section 56, 57, 58, 59 and 72

(iv) Alteration of Share Capital-Section 60, 61, 62, 63, 64 and 65

(v) Reduction of Share Capital-Section 66

(vi) Purchase of own shares and buyback-Section 67, 68,69 and 70

(vii) Debenture-Section 71

Kinds of Share Capital (SECTION 43):

The share capital of companies limited by share shall be of two kinds, namely;

(a) Equity share capital;

(b) Preference share capital.

This Section uses the terms “Shall be” and “and” denote that having these two kinds of share capital is a requirement but, according to further reading, a company may have zero equity or preference share capital.

Equity Share Capital:

For this Section, “Equity share capital” means all share capital which is not preference share capital. Equity share capital may be of divided into;

(i) Equity share capital With voting right; or

(ii) Equity share capital with differential voting rights.

This differential voting right may have difference related to dividend, voting or otherwise in accordance with rules. The term otherwise brings scope for innovation within the limits of rules. It may be difference related to managing control, power to appoint director, or power to appoint proxy and so on.

Preference Share Capital:

Preference share capital of the issued share capital of the company which carries or would carry a preference right with respect to –

(a) Payment of dividend, either as a fixed amount or an amount calculated at a fixed rate. Which may be either be free of or subject to income tax; and

(b) Repayment of amount of share capital or share capital deemed to be paid up, whether or not, there is preferential right specified in the memorandum or article of the company.

This Act does not interfere in rights of preference shareholders who are entitled to participate in the proceeds of winding up before commencement of this Act.

Nature of Shares or Debentures (Section 44):

The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Issue of Sweat Equity Shares (Section 54):

If the following conditions are fulfilled, a company may issue sweat equity shares of a class of shares already issued –

(a) the issue is authorised by a special resolution passed by the company;

(b) the resolution specified the number of shares, the current market price, consideration and the class or classed of directors or employees to whom such equity shares are to be issued;

(c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and

(d) Listed company shall follow regulation made by SEBI, and other companies shall follow rules by MCA.

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank pari passu with other equity shareholders.

Issue and Redemption of Preference Shares (Section 55):

No company limited by shares shall issue any preference shares which are irredeemable.

All these preference shares shall be redeemable within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.

However a company may issue preference shares for a period exceeding twenty years for infrastructure projects subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders.

The following are the conditions for issue of preference shares –

(a) Preference shares shall be redeemed only out of the profit of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purpose of such redemption;

(b) Only fully paid preference shares shall be redeemed;

(c) Where such shares are proposed to be redeemed out of the profits of the company, there shall out of such profits be transferred a sum equal to the nominal amount of shares to be redeemed to a reserve, called Capital Redemption Reserve Account. The provision of this Act relating to reduction of shares capital of a company shall apply as if the Capital Redemption Reserve Account were paid – up share capital of the company. subject to the provisions of this section.

(d) In case of such class of companies as may be prescribed and whose financial statement comply with the accounting standard, the premium, if any payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed. The premium if any payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or pout of the company's securities premium account before such shares are redeemed. In case of other companies the premium, if any, payable on redemption shall be provided for out of the profits of the company or put of the company's securities premium account, before such shares are redeemed.

Where a company is not in a position to redeem any preference share or to pay dividend, if any; it may issue further redeemable preference shares equal to the amount due including dividend thereon, in respect of the unredeemed preference shares and on issue of such further redeemed preference shares, the unredeemed preference shares shall be deemed to have redeemed. This means, preference shares may be redeemed by issuing further preference shares. The conditions to be fulfilled are –

(i) Consent of the holders of three – fourths in value of such preference shares, and

(ii) With the approval of the Tribunal on petition made in this behalf.

The Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares

This further issue shall not be deemed to be an increase or a reduction in the share capital of the company.

The capital redemption reserve account may, notwithstanding anything in this section, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

One of the most essential characteristics of forming a company is that the shares are freely transferable subject to certain conditions specified by the Companies Act, 2013:

Transfer and Transmission of Securities (Section 56):

A company shall register a transfer of securities or interest of members only when such a proper instrument of transfer; duly stamped, dated and executed by or on behalf of the transferor and transferee and specifying the name, address and occupation has been delivered to the company by either party within a period of sixty days from date of execution, along with the certificate of security or the letter of allotment of securities.

Power of Company to alter its Share Capital (Section 61):

A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

(a) increase its authorised share capital by such amount as it thinks expedient; or

(b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal.

(c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

(d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Cancellation of these shares shall not be deemed to be a reduction of share capital.

Further Issues of Shares (Section 62):

Where a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered –

(a) to person who at the date of the offer are holders of equity shares of the company in proportion to the paid – up shares capital on those shares, by sending a letter of offer subject to following conditions, namely:-

the offer shall be made by notice specifying the number of shares offered and limiting a time not less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted shall be deemed to have been declined;

unless the article of the company otherwise provide, the offer shall be deemed to including a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person and the notice shall contain a statement of this right;

after the expiry of the time specified in the notice or receipt of earlier intimation from the person to whom the notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis – advantageous to the shareholders and the company;

(b) to employees under a scheme of employees' stock option to special resolution passed by company and subject to such conditions as may be prescribed; or

(c) to any person, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer.

The notice of letter of offer shall be despatched through registered post or speed post or electronic mode to all the existing shareholders at

least three days before opening of the issue.

These conditions shall not apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loan into share in the company. The terms of issue of such debentures or loan containing such an option to convert have been approved before the issue of such debentures or raising of loan by a special resolution passed by the company in general meeting.

Where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.

In determining the terms and conditions of conversion, the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

Where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

Where the Government has, directed that any debentures or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

Issue of Bonus Share (Section 63):

A company may issue fully paid-up bonus shares to its members, in any

manner whatsoever, out of—

(i) its free reserves;

(ii) the securities premium account; or

(iii) the capital redemption reserve account.

No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), unless—

(a) it is authorised by its articles;

(b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;

(c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

(d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

(e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up; and

(f) it complies with such conditions as may be prescribed.

The bonus shares shall not be issued in lieu of dividend.

11. NBFCS

A Non-Banking Financial Company (NBFC) is a company registered under the Companies Act, 1956 engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government or local authority or other marketable securities of a like nature, leasing, hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity, industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale/purchase/ construction of immovable property. A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in one lump sum or in installments by way of contributions or in any other manner, is also a non-banking financial company (Residuary non-banking company).

The Reserve Bank of India is entrusted with the responsibility of regulating and supervising the Non-Banking Financial Companies by virtue of powers vested in Chapter III B of the Reserve Bank of India Act, 1934. The regulatory and supervisory objective is to:

a) ensure healthy growth of the financial companies;

b) ensure that these companies function as a part of the financial system within the policy framework, in such a manner that their existence and functioning do not lead to systemic aberrations; and that

c) the quality of surveillance and supervision exercised by the Bank over the NBFCs is sustained by keeping pace with the developments that take place in this sector of the financial system.

Different types / categories of NBFCs registered with RBI

NBFCs are categorized – (a) in terms of the type of liabilities into Deposit and Non-Deposit accepting NBFCs, (b) non deposit taking NBFCs by their size into systemically important and other non-deposit holding companies (NBFC-NDSI and NBFC-ND) and (c) by the kind of activity they conduct. Within this broad categorization the different types of NBFCs are as follows:

i. Asset Finance Company (AFC) : An AFC is a company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive/economic

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

ii. Investment Company (IC) : IC means any company which is a financial institution carrying on as its principal business the acquisition of securities.

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

iv. Infrastructure Finance Company (IFC) : IFC is a non-banking finance company a) which deploys at least 75 per cent of its total assets in infrastructure loans, b) has a minimum Net Owned Funds of Rs. 300 crore, c) has a minimum credit rating of ‘A ‘or equivalent d) and a CRAR of 15%.

v. Systemically Important Core Investment Company (CIC-ND-SI) : CIC-ND-SI is an NBFC carrying on the business of acquisition of shares and securities which satisfies the following conditions:-

   a. it holds not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, debt or loans in group companies;

   b. its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Total Assets;

   c. it does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;

   d. it does not carry on any other financial activity referred to in Section 45I(c) and 45I(f) of the RBI act, 1934 except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies.

e. Its asset size is Rs 100 crore or above and

f. It accepts public funds

vi. Infrastructure Debt Fund: Non- Banking Financial Company (IDF-NBFC) : IDF-NBFC is a company registered as NBFC to facilitate the flow of long term debt into infrastructure projects. IDF-NBFC raise resources through issue of Rupee or Dollar denominated bonds of minimum 5 year maturity. Only Infrastructure Finance Companies (IFC) can sponsor IDF-NBFCs.

vii. Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI): NBFC-MFI is a non-deposit taking NBFC having not less than 85% of its assets in the nature of qualifying assets which satisfy the following criteria:

a. loan disbursed by an NBFC-MFI to a borrower with a rural household annual income not exceeding Rs. 60,000 or urban and semi-urban household income not exceeding Rs. 1,20,000;

b. loan amount does not exceed Rs. 35,000 in the first cycle and Rs. 50,000 in subsequent cycles;

c. total indebtedness of the borrower does not exceed Rs. 50,000;

d. tenure of the loan not to be less than 24 months for loan amount in excess of Rs. 15,000 with prepayment without penalty;

e. loan to be extended without collateral;

f. aggregate amount of loans, given for income generation, is not less than 75 per cent of the total loans given by the MFIs;

g. loan is repayable on weekly, fortnightly or monthly instalments at the choice of the borrower

viii. Non-Banking Financial Company – Factors (NBFC-Factors): NBFC-Factor is a non-deposit taking NBFC engaged in the principal business of factoring. The financial assets in the factoring business should constitute at least 75 percent of its total assets and its income derived from factoring business should not be less than 75 percent of its gross income.

Regulatory Framework of NBFC

a. Chapter IIIB of Reserve Bank of India (RBI) Act 1934 - Provisions

relating to Non banking Institutions receiving deposits and Financial Institutions

b. Chapter III-C of RBI Act 1934 - Prohibition of acceptance of deposits by Unincorporated bodies

c. RBI Directions

   i. Miscellaneous Non-banking Companies (Reserve Bank) Directions, 1977

   ii. Non-Banking Financial Companies and Miscellaneous Non-Banking Companies (Advertisement) Rules, 1977

   iii. Residuary Non-banking Companies (Reserve Bank) Directions, 1987

   iv. Reserve Bank of India (NBFC) Returns Specification, 1997

   v. NBFCs acceptance of public deposits (RBI) Directions, 1998

   vi. Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008

   vii. Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007

   viii. Non-Banking Financial (Non - Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007

   ix. Mortgage Guarantee Company (Reserve Bank) Guidelines, 2008

   x. Mortgage Guarantee Company (Reserve Bank) Prudential Norms, 2008

   xi. The Non-Banking Financial Companies (Deposit Accepting) (Approval of Acquisition or Transfer of Control) Directions, 2009

   xii. Non Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs) (Reserve Bank) Directions 2011

   xiii. Non-Banking Financial Company – Factors (Reserve Bank) Directions, 2012

   xiv. Fair Practice Code for NBFCs

   xv. Guidelines on Corporate Governance for NBFCs

xvi. Know your Customer Guidelines for NBFCs

xvii. Guidelines for Asset-Liability Management (ALM) system in NBFCs

xviii. RBI guidelines for issue of Commercial Paper (CP)

xix. RBI guidelines for issue of Certificates of Deposit (CD)

d. RBI Circulars; Notifications and Guidelines issued from time to time

RBI regulatory framework

The Reserve Bank regulates and supervises NBFCs as defined in Chapter III B of the RBI Act, 1934. Accordingly, the Reserve Bank has issued a set of directions to regulate the activities of NBFCs under its jurisdiction. Some features of the RBI regulatory framework are as follows:

- An NBFC must have specific authorization to accept deposits from the public.
- NBFC must display the Certificate of Registration or a certified copy thereof at the Registered office and other offices/branches.
- Registration of an NBFC with the RBI merely authorizes it to conduct the business of NBFC. RBI does not guarantee the repayment of deposits accepted by NBFCs. NBFCs cannot use the name of the RBI in any manner while conducting their business.
- The NBFC whose application for grant of Certificate of Registration (CoR) has been rejected or cancelled by the RBI is neither authorized to accept fresh deposits nor renew existing deposit. Such rejection or cancellation is also published in newspapers from time to time. Besides, a list of NBFCs permitted to accept public deposits, NBFCs whose applications for CoR has been rejected or whose CoR has been cancelled by the RBI is available on the RBI's web site www.rbi.org.in (go to site map and then NBFC list)
- NBFCs which accept deposits should have minimum investment grade credit rating granted by an approved credit rating agency for deposit collection, except certain Asset Finance (equipment leasing and hire purchase finance) companies and Residuary Non-Banking Companies (RNBCs).
- NBFCs excluding RNBCs cannot

- Offer a rate of interest on deposits more than that approved by RBI from time to time (current Interest Rate is 12.5%p.a)
- Accept deposit for a period less than 12 months and more than 60 months
- Offer any gifts/incentives to solicit deposits from public.

• RNBCs should
  - offer a rate of interest of not less than 5% per annum on term deposits and 3.5% on daily deposits, both compounded annually, under extant directions.
  - RNBCs cannot accept deposits for a period less than 12 months and more than 84 months.
  - RNBCs cannot offer any gifts/incentives to solicit deposits from public

• NBFCs including RNBCs can
  - accept deposit only against issue of proper receipt.
  - the receipt should bear the name of the company and should be signed by an authorized official of the company.
  - The receipt should mention the name of the depositor, the amount in words as well as figures, the rate of interest payable on the deposit amount and the date of repayment of matured deposit along with the maturity amount.

• In the case of brokers/agents etc collecting public deposits on behalf of NBFCs, the depositors should satisfy themselves that the brokers/agents are duly authorized by the NBFC.

• If a deposit taking NBFC fails to repay the deposit or the interest accrued thereon in accordance with the terms and conditions of acceptance of such deposit, redressal of grievance can be through - the Regional Bench of the Company Law Board at Chennai/ Delhi/ Kolkata/Mumbai

• Acceptance of deposits by companies engaged in activities including plantation activities, commodities trading, multilevel marketing, manufacturing activities, housing finance, nidhis (mutual benefit financial companies), and potential nidhis (mutual benefit company) and companies engaged in collective investment schemes do not come under the purview/regulations of the RBI.

• Individuals, firms and other unincorporated association of

individuals or bodies shall not accept deposits from the public–

(ii) if his or its business wholly or partly includes any of the financial activities such as loans and advances, acquisition of shares or marketable securities, leasing or hire purchase activities , or

if his or its principal business is that of receiving deposits or lending in any manner.

12. INSURANCE

Insurance is a contract whereby, in return for the payment of premium by the insured, the insurers pay the financial losses suffered by the insured as a result of the occurrence of unforeseen events. With the help of Insurance, large number of people exposed to similar risks makes contributions to a common fund out of which the losses suffered by the unfortunate few, due to accidental events, are made good.

An insurer is a company selling the insurance; an insured or policyholder is the person or entity buying the insurance. The insurance rate is a factor used to determine the amount to be charged for a certain amount of insurance coverage, called the premium.

Insurance business is divided into following types of business namely:

1) Life Insurance, and
2) General Insurance
    a. Marine insurance
    b. Fire insurance
    c. Motor vehicle insurance
    d. Miscellaneous insurance
3) Reinsurance

Life Insurance

Life insurance is a contract that pledges payment of an amount to the person assured (or his nominee) on the happening of the event insured against. The contract is valid for payment of the insured amount during:

- The date of maturity, or
- Specified dates at periodic intervals, or
- Unfortunate death, if it occurs earlier.

Among other things, the contract also provides for the payment of premium periodically to the Corporation by the policyholder. Life insurance is universally acknowledged to be an institution, which eliminates 'risk', substituting certainty for uncertainty and comes to the timely aid of the family in the unfortunate event of death of the breadwinner.

General Insurance

Insurance other than 'Life Insurance' falls under the category of General Insurance. General Insurance comprises of insurance of property against fire, burglary etc, personal insurance such as Accident and Health Insurance, and liability insurance which covers legal liabilities.

Non-life insurance companies have products that cover property against Fire and allied perils, flood storm and inundation, earthquake and so on. There are products that cover property against burglary, theft etc. The non-life companies also offer policies covering machinery against breakdown. There are policies that cover the hull of ships and so on. A Marine Cargo policy covers goods in transit including by sea, air and road. Further, insurance of motor vehicles against damages and theft forms a major chunk of non-life insurance business.

Micro Insurance

The term Micro-insurance is used to refer to insurance to the low-income people, and is different from insurance in general as it is a low value product (involving modest premium and benefit package) which requires different design and distribution strategies such as premium based on community risk rating (as opposed to individual risk rating), active involvement of an intermediate agency representing the target community and so forth.

India is the first country to introduce regulation for micro insurance, i.e. the IRDA (Micro-Insurance) Regulations, 2005 and it is one of the few developing countries in the world that has a special micro-insurance regulation to regulate the suppliers of micro-insurance products through its special agency for insurance regulation – the Insurance Regulatory and Development Authority.

A Micro-Insurance Policy means an Insurance Policy sold under a Plan which has been specifically approved by the IRDA as a Micro-Insurance product.

Insurance Laws

The principal legislation regulating the insurance business in India is the Insurance Act of 1938. Some other existing legislations in the field are – the Life Insurance Corporation (LIC) Act, 1956, the Marine Insurance Act, 1963, the General Insurance Business (GIB) (Nationalization) Act,

1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The provisions of the Indian Contract Act, 1872 are applicable to the contracts of insurance, whether for life or non-life. Similarly, the provisions of the Companies Act, 2013 are applicable to the companies carrying on insurance business. The subordinate legislation includes Insurance Rules, 1939 and the Ombudsman Rules, 1998 framed by the Central Government under Sec.114 of the principal Act as also 32 regulations made by the IRDA under Sec.114 A of the principal Act and Sec.26 of the IRDA Act 1999.

The Insurance sector in India is regulated by the following Acts:

1) The Insurance Act, 1938
2) The Life Insurance Corporation Act, 1956
3) Marine Insurance Act, 1963
4) General Insurance Business (Nationalization) Act, 1972
5) Insurance Regulatory and Development Authority (IRDA) Act, 1999

Regulations framed under the Insurance Regulatory and Development Authority (IRDA) Act, 1999 are:

1) IRDA (Member of Insurance Advisory Committee) Regulations, 2000
2) IRDA (Appointment of Insurance Advisory Committee) Regulations, 2000
3) IRDA (The Insurance Advisory Committee) (Meeting) Regulations, 2000
4) IRDA (Appointed Actuary) Regulations, 2000
5) IRDA (Actuarial Report and Abstract) Regulations, 2000
6) IRDA (Licensing of Insurance Agents) Regulations, 2000
7) IRDA (Assets, Liabilities and Solvency Margin of Insurers) Regulations, 2000
8) IRDA (General Insurance-Reinsurance) Regulations, 2000
9) IRDA (Registration of Indian Insurance Companies) Regulations, 2000
10) IRDA (Insurance Advertisements and Disclosure) Regulations, 2000

11) IRDA (Meetings) Regulations, 2000

12) IRDA (Investment) Regulations, 2000

13) IRDA (Conditions of Service of Officers and other Employees) Regulations, 2000

14) IRDA (Insurance Surveyors and Loss Assessors (Licensing, Professional Requirements and Code of Conduct)) Regulations, 2000

15) IRDA (Life Insurance - Reinsurance) Regulations, 2000

16) IRDA (Third Party Administrators - Health Services) Regulations, 2001

17) IRDA (Re-Insurance Advisory Committee) Regulations, 2001

18) IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002

19) IRDA (Protection of Policyholders' Interests) Regulations, 2002

20) IRDA (Insurance Brokers) Regulations, 2002

21) IRDA (Obligations of Insurers to Rural and Social Sectors) Regulations, 2002

22) IRDA (Licensing of Corporate Agents) Regulations, 2002

23) IRDA (Manner of Receipt of Premium) Regulations, 2002

24) IRDA (Distribution of Surplus) Regulations, 2002

25) IRDA (Qualification of Actuary) Regulations, 2004

26) IRDA (Micro-Insurance) Regulations, 2005

27) IRDA (Maternity Leave) Regulations, 2005

28) IRDA (Reinsurance Cessions) Notification

29) IRDA (Sharing of Database for Distribution of Insurance Products) Regulations, 2010

30) IRDA (Treatment of Discontinued Linked Insurance Policies) Regulations, 2010

31) IRDA(Scheme for Amalgamation and Transfer of General Insurance Business) Regulations 2011

32) IRDA(Issuance of Capital by Life Insurance Companies) Regulations, 2011

The Insurance Act, 1938

It is the first comprehensive piece of insurance legislation in India governing both life and non life branches of insurance.

The Act applies to all type of insurance business-life, fire, marine etc. done by companies incorporated in India or elsewhere.

According to Sec. 2(C) of the Act, there is prohibition of transaction of insurance business by certain persons. Save as hereinafter providing, no person shall after the commencement of the Insurance Act, begin to carry on any class of insurance business in India shall after the expiry of one year, from such commencement, continue to carry on any such business unless he is –

a) A public company or

b) A society registered under the Cooperative Societies Act, 1912 or under any other law for the time being in force in any state relating to cooperative societies or,

c) A body corporate incorporated under the law of any country outside India not being of the nature of a private company.

Registration of insurance companies is covered under Sec.3 of the Act and the Insurance Regulatory and Development Authority (Registration of Indian Insurance Companies) Regulations, 2000.

Insurance Regulatory and Development Authority Act, 1999

The Insurance Regulatory and Development Authority Act, 1999 also known as the IRDA Act was enacted to establish a statutory body to regulate, promote and ensure orderly growth of insurance and reinsurance business as also to protect the interest of policy holders.

The IRDA Act provides for the composition of the Authority, terms and conditions of the Chairperson and members including their tenure and removal; duties, powers and functions of the Authority including regulation making power and delegation of powers; establishment of Insurance Advisory Committee; Insurance Regulatory and Development Authority Fund and powers of the Central Government to make rules, to issue directions to the Authority and to supersede the same, if it is necessary; and other miscellaneous provisions.

13. FINANCIAL PLANNING

A financial plan is a series of steps which are carried out, or goals that are accomplished, which relate to an individual's financial affairs. It is a series of steps or specific goals undertaken for spending and saving future income. This plan allocates future income to various types of expenses and also reserves some income for short-term and long-term savings.

The importance of financial planning especially in the present scenario cannot be overstated. Among others, two factors are responsible for the same i.e. inflation and changing lifestyles. Inflation is a situation where too much money chases a limited number of goods. This leads to a fall in the value of money. It is also expressed as a rise in the general price level. Financial planning can ensure that one is equipped to deal with the impact of inflation, especially in phases like retirement when expenses continue but income streams dry up. The second factor is changing lifestyles. With higher disposable incomes, it is common for individuals to upgrade their standard of living. Apart from these, there are contingencies like medical emergencies or unplanned expenditure that an individual might have to cope with. Sound financial planning can enable him to easily mitigate such situations, without straining his finances.

It is possible to manage income effectively through financial planning. It helps in segregating it into tax payments, other monthly expenditures and savings. Financial planning is also necessary from the point of family security. The various policies available in the market serve the purpose of financially securing the family. The savings created through appropriate planning come to the rescue in difficult times. Death of the bread winner in a family, affects the standard of living to a great extent. A proper financial plan such as a Will, acts as a guard in such situations and enables the family to survive hard times.

Investment

A person gets income as salary or wages, business profits, professional fees etc. Savings is nothing but the surplus available over the expenses. This surplus amount needs to be invested to ensure future returns. Investment can be in various schemes available in the financial market like deposits, mutual funds, insurance policies, pension schemes etc. One has to analyze the cost of investment over the other and then decide which will be appropriate and a better investment opportunity.

Investment is an asset or item that is purchased with the hope that it will generate income or appreciate in the future. In finance, investment means the purchase of a financial product or other item of value with an expectation of favorable future returns.

Small savings schemes in India

Small Saving schemes have been always an important source of household savings in India and they are essentially a basket of diversified and heterogeneous products. Although these instruments are technically not Government Securities and do not have any explicit Government guarantee, their legacy has given them characteristic of being equivalent to that of a Sovereign liability. These schemes have been extremely popular amongst a large number of small investors in India who seek to invest in a secure instrument. At the same time, these instruments have been treated as a means of providing social benefit to the small savers.

The Government formulates a basket of small savings schemes to meet the varying needs of different groups of small investors. In respect of each scheme, statutory rules are framed by the Central Government indicating the various details including the rate of interest and the maturity period.

Being liabilities of the Central Government, the schemes are perceived to be devoid of any risk and a surrogate for social security among the public.

Broadly, three types of small saving schemes are currently in operation in India. These are postal deposits, saving certificates and social security schemes like PPF and retirement schemes.

Legislations regulating investment schemes in India

1) The Government Savings Banks Act, 1873
2) The Government Savings Certificates Act, 1959
3) The Post office Savings Banks (Nomination) Rules, 1960
4) The Post Office Savings Bank General Rules, 1981
5) The Post Office Savings Account Rules, 1981
6) The Post Office Recurring Deposit Rules, 1981

7) The Post Office Time Deposit Rules, 1981
8) National Savings Scheme Rules, 1992
9) Post Office (Monthly Income Account) Rules, 1987
10) Indira Vikas Patra Rules, 1986
11) National Savings Certificates (VIII Issue) Rules, 1989
12) National Savings Certificates (IX Issue) Rules, 2011
13) Provident Funds Act, 1925
14) Public Provident Fund Act, 1968
15) Public Provident Fund Scheme, 1968
16) National Savings Scheme Rules, 1987
17) The Post Office Savings Certificates Rules, 1960
18) Senior Citizens Savings Scheme Rules, 2004
19) Post Office Life Insurance Rules, 2011
20) Kisan Vikas Patra Rules, 1988 (the scheme has been discontinued from 01/12/2011)

Post Office Schemes

Post Offices offer varied services. Their work is not just restricted to delivering mails. They accept deposits, provide retail services like sale of forms, bill collection etc, provide savings schemes, life insurance cover etc.

India Post offers various Post Office Saving Schemes that are risk free investment options that are safe and secured and provide the investor with capital gains without Tax Deduction at Source (No TDS).

The Financial services offered by Post office include Savings and Postal Life Insurance (PLI) / Rural Postal Life Insurance (RPLI).

Employees of the following Organizations are eligible for PLI policy -

- Central Government
- Defence Services
- Para Military forces
- State Government

- Local Bodies
- Government-aided Educational Institutions
- Reserve Bank of India
- Public Sector Undertakings
- Financial Institutions
- Nationalized Banks
- Autonomous Bodies
- Extra Departmental Agents in Department of Posts

The prime objective of the Rural Postal Life Insurance is to provide insurance cover to the rural public in general and to benefit weaker sections and women workers of rural areas in particular and also to spread insurance awareness among the rural population. For Rural Postal Life Insurance any Indian residing in Rural India can take RPLI. Rural area is defined as one being outside the limits of a municipality.

The Post Office Savings Bank schemes are an agency function performed by the Department of Posts on behalf of the Ministry of Finance, Government of India. Through its network, the Post Office Savings Bank provides an avenue to people all over the country to deposit their savings in various Schemes.

Presently, seven savings schemes are operated from Post Offices across the country.

These are -

1. Savings Accounts
2. Recurring Deposit (RD)
3. Time Deposit (TD)
4. Monthly Income Scheme (MIS)
5. Senior Citizens Savings Scheme (SCSS)
6. Public Provident Fund (PPF)
7. National Savings Certificate (NSC)

Pension Schemes

A pension provides people with a monthly income when they are no longer earning.

The Government of India (GOI) has rolled out the National Pension System (NPS) for all citizens of India from May 01, 2009.

The Government of India has established a Pension Fund Regulatory and Development Authority (PRFDA) for developing and regulating the pension funds under the New Pension System. Department of Posts has been identified by PFRDA as one of the Points of Presence (POP) to implement the scheme and the Head Post Offices will be POP Service Providers (POP-SP) to enrol, receive and forward deposits and grievance handling.

To extend the coverage of NPS to the weaker and economically disadvantaged sections of the society with their limited investment potential, PFRDA has launched NPS- Swavalamban which specifically targets the marginal investors and promotes small savings during their productive life.

14. STATE FINANCIAL CORPORATIONS

A Central Industrial Finance corporation was set up under the industrial Finance corporations Act, 1948 in order to provide medium and long term credit to industrial undertakings which fall outside normal activities of commercial banks. The State governments expressed their desire that similar corporations be set up in states to supplement the work of the Industrial financial corporation. State governments also expressed that the State corporations be established under a special statue in order to make it possible to incorporate in the constitutions necessary provisions in regard to majority control by the government, guaranteed by the State government in regard to the payment principal. In order to implement the views Expressed by the State governments the State Financial Corporation Act of 1951 was passed.

The State Financial Corporations (SFCs) provide the following types of assistance to industrial units in their respective states:

- The SFCs while giving loans to industrial units see to it that loans are secured by a pledge, mortgage, hypothecation of movable and immovable property or other tangible assets or guarantee by the state government or scheduled commercial bank, they also accept personal pledge by the entrepreneur. SFCs do not give loans on the basis of second mortgage.
- Grant loans or advances to industrial concern repayable within a period not exceeding 20 years.
- Providing guarantee for loans raised by industrial units from commercial banks and state cooperative banks.
- Providing guarantee for deferred payments in cases where industrial units have purchased capital goods on a deferred payment basis.
- To underwrite the issue of shares, bonds and debentures of industrial concerns.
- To Subscribe to shares, bonds and debentures of industrial concerns.
- Guarantee loans raised by industrial concerns which are re-payable within a period not exceeding 20 years and which are floated in the public market
- SFCs grant loans to industrial units for the purchase of fixed capital assets like land, machinery. In some exceptional cases,

some SFSs also provide loans for working capital requirements in combination with loans for fixed capital.

- SFCs provide loans in foreign currency for the import of machinery and technical know – how, under the IDA (International development association) and World Bank tie up.
- SFCs however are prohibited from subscribing directly to the shares or stock of any company having limited liability except for underwriting purposes and granting any loans or advance on the security of its own shares .

S.No.	State Financial Corporation	Website
1	Andhra Pradesh State Financial Corporation	http://www.apsfc.com/
2	Assam Financial Corporation	http://www.afconline.gov.in/
3	Bihar State Financial Corporation	http://bsfc.bih.nic.in/
4	Delhi Financial Corporation	http://www.dfcdelhi.nic.in/
5	Gujarat State Financial Corporation	http://www.gsfc.gujarat.gov.in/
6	The Economic Development Corporation of Goa	http://www.edc-goa.com/
7	Haryana Financial Corporation	http://www.hfcindia.org/
8	Himachal Pradesh Financial Corporation	http://www.hpfc.nic.in/
9	Jammu & Kashmir State Finance Corporation	http://jakfinance.nic.in/
10	Karnataka State Financial Corporation	http://www.ksfc.in/
11	Kerala Financial Corporation	http://www.kfc.org/
12	Madhya Pradesh Financial Corporation	http://www.mpfc.org/
13	Maharashtra State Financial Corporation	http://www.maharashtradirectory.com/industrial resources/msfc.htm

14	Orissa State Financial Corporation	http://www.osfcindia.com/
15	Punjab Financial Corporation	http://164.100.52.13/pfc/index.html
16	Rajasthan Financial Corporation	http://www.rfconline.org/
17	Tamil Nadu Industrial Development Corporation	http://www.tiic.org/
18	Uttar Pradesh Financial Corporation	http://www.upfcindia.com/
19	West Bengal Financial Corporation	http://www.wbfconline.org/

15. PROFESSIONAL OPPORTUNITIES

- Advisor to corporate for tapping capital through the capital market
- Auditor for capital market compliances
- Internal regulator & service provider to Regulators/Stock Exchanges
- Intermediary
- Investment banker
- Fund manager
- Equity trader/strategist
- Institutional dealer
- Research analyst
- Position company among knowledgeable investors
- Add value chain for capital creation and procreation
- Provide continuous feedback and performance report
- Conduct stock valuation and evaluation
- Venture capitalist
- Broking entity
- Wealth management specialist
- Manager for corporate portfolio
- Private Equity Strategist
- Advisory on valuation of shares
- Advisory on public/rights/bonus issues
- Regulatory role of surveillance, investigation, inspection etc.
- Representation before Appellate Tribunal
- Due Diligence of Investee Companies
- Advise Investment options
- Consultancy on Investment in Primary Market – especially Issue Price/price band in IPOs, quality of financial statements
- Consultancy on Investment in Secondary markets, various financial instruments namely derivatives

- Resolution in case of disputes as Arbitrator
- Advisory on risk factors in investment options
- Project Financing Consultancy
- Liasioning with different Financial Institutions

16. USEFUL WEBSITES

http://finmin.nic.in/ - Ministry of Finance

http://www.rbi.org.in - Reserve Bank of India

http://www.sebi.gov.in/ - Securities and Exchange Board of India

http://www.mca.gov.in/ - Ministry of Corporate Affairs

http://www.irdaindia.org/ - Insurance Regulatory and Development Authority

http://finmin.nic.in/the_ministry/dept_eco_affairs/ - Capital Markets Division, Department of Economic Affairs, Ministry of Finance

http://www.mha.nic.in - Ministry of Home Affairs, Government of India

http://www.fslrc.org.in/index.html - Financial Sector Legislative Reforms Commission

www.fmc.gov.in – Forward Markets Commission

www.indiapost.gov.in – India Post, Ministry of Communication & Information Technology