

A Study on
The Industries (Development
and Regulation) Act, 1951



Corporate and Allied Laws Committee

The Institute of Chartered Accountants of India

(set up under an Act of Parliament)

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FOREWORD

The Corporate And Allied Laws Committee has undertaken various pro-active exercises to meet the emerging needs of the profession in the context of ongoing globalisation process. The Industrial Policy Resolution, 1991 is a major policy decision to integrate the corporate sector into the liberalised global order. Needless to mention that the Chartered Accountants because of their training, excellence and professionalism are the best professionals to provide services to the national and trans-national corporate world. At the same time, there is no scope of complacency in sharpening the competitive edge of the expertise.

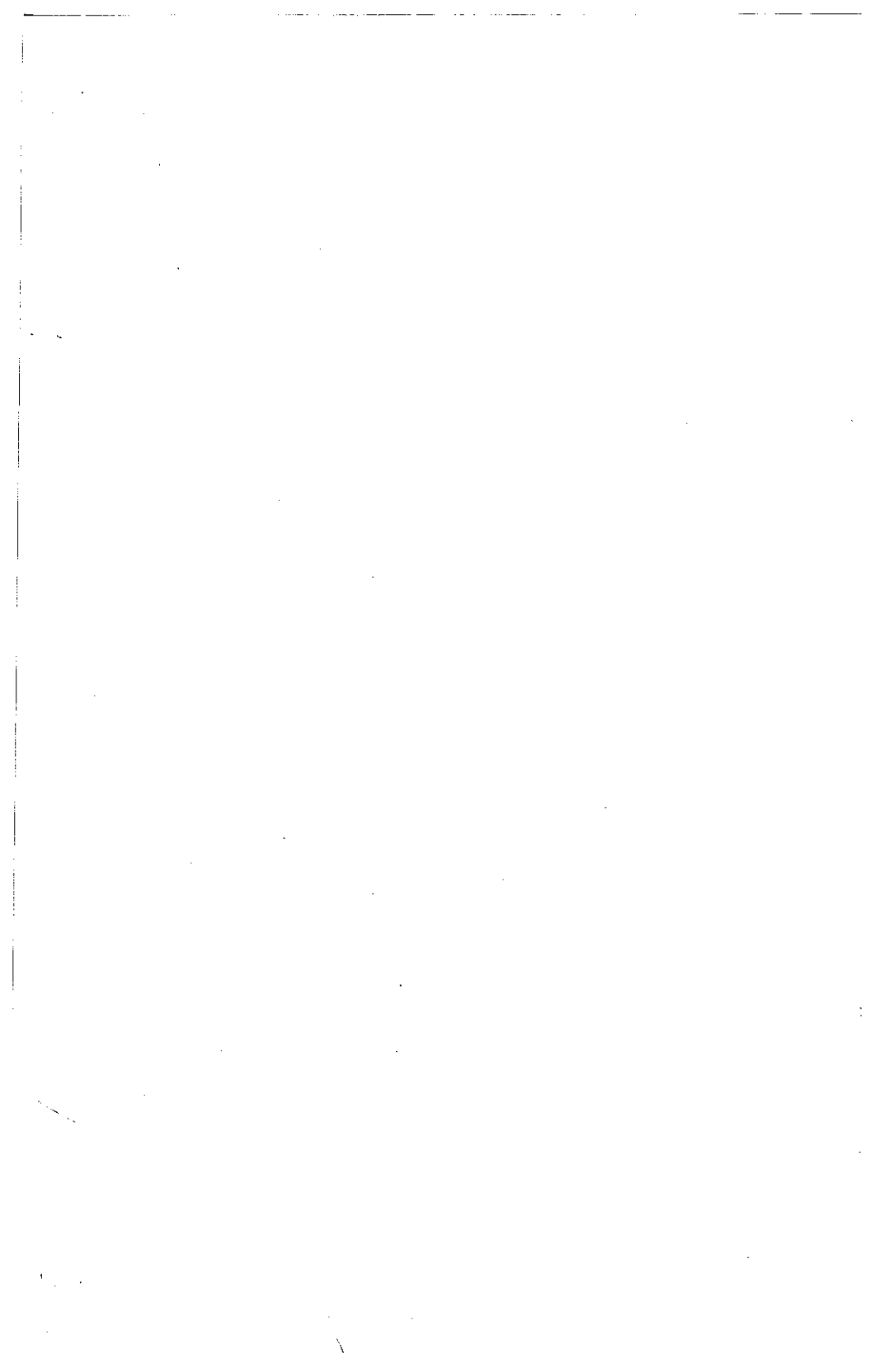
In the emerging scenario of the globalised world, it is a challenging task of the profession to update its skill and to widen the horizon of its knowledge management. The profession has to appreciate in the changing spectrum of national industrial policy in the background of globalization. This Study on Industries (Development & Regulation) Act, 1951 is an illuminating and exhaustive exercise to appreciate the law.

I compliment Shri Sunil Talati, Chairman, Corporate And Allied Laws Committee and other members of the Committee to bring out this prestigious publications covering all the facets of the Industries (Development and Regulation) Act, 1951. I compliment Shri K.K. Vaidyanathan for preparing the draft of the Study.

I am confident that this publication will be well received by the members.

New Delhi
Date: 2nd February, 2006

Kamlesh S. Vikamsey
President



PREFACE

The Corporate And Allied Laws Committee has undertaken various exercises to empower the profession to meet the challenges emerging in the service market. Chartered accountants are acquiring excellence in economic legislations and they are in a better position to provide consultancy services to the corporate world with more professionalism and objectivity. Appreciating the rapid changes in the industrial policy, the Corporate And Allied Laws Committee decided to bring out a publication on the Industries (Development & Regulation) Act, 1951.

I sincerely express my gratitude to Shri Kamlesh S. Vikamsey, President of the Institute and Shri T.N. Manoharan, Vice-President of the Institute for their guidance, support and encouragement in pursuit of various activities of the Committee during the year 2005-06 and bring out this prestigious publication. I compliment Shri K.K. Vaidyanathan for his painstaking exercise to prepare the draft.

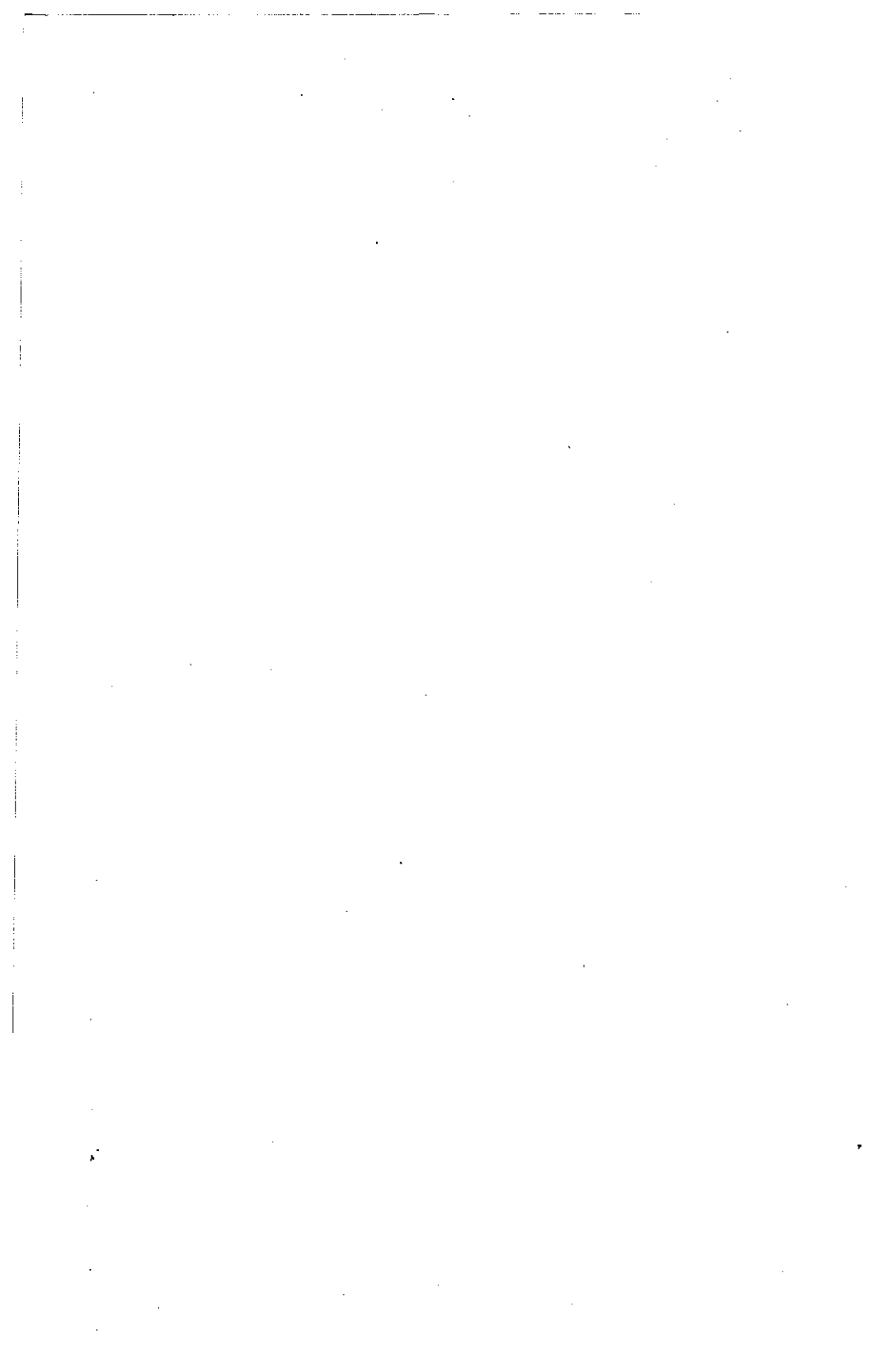
I thank and compliment my learned colleagues Shri Harinderjit Singh, Vice-Chairman of the Committee, Shri Amarjit Chopra, Shri G. Ramaswamy, Shri Rajkumar S. Adukia, Shri S. Gopalakrishnan, Shri S. Santhanakrishnan, Shri Jitesh Khosla and Mrs. Anita Kapur in the Committee for their co-operation and suggestions to carry out various exercises of the Committee and the support rendered by the Co-opted Members of the Committee Shri K. B. Kapur, Ms. Parul Bharat Sheth, Shri Ashok Kantilal Shah, Shri M. Kandasami, Shri Sanjay L. Kapadia, Shri Rajesh Sharma and Shri Mahesh P. Sarda. I also compliment Dr. Ashok Haldia, Secretary of the Institute for his support and co-operation to carry out the various exercises of the committee.

I sincerely appreciate the dedication of Dr. Alok Ray, Secretary of the Committee & his team to bring out this publication.

I firmly believe that this publication will be as well received by the members as the other publications of the Committee.

New Delhi
30th January, 2006

SUNIL TALATI
Chairman
Corporate And Allied Laws Committee



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Industrial Development -Pre-independence era

- 1.1. Prior to the First World War, in India, the only major industries, which had developed substantially, were cotton and jute textiles, for which the country had exceptional natural advantages.
- 1.2. The industrial development since the twenties was associated with the adoption of a progressive industrial and fiscal policy. In 1922 the policy of discriminating protection was adopted. Between 1922 and 1939 the production of cotton piece goods in the country increased two and a half times, the production of steel ingots rose eight times, that of paper went up two and a half times and in the case of sugar, within a period of four years from 1932 to 1936, the country was able to produce its entire requirements. The growth of the cement industry also belongs to this period. The production of matches, glass, vanaspati, soap and several engineering industries also recorded large increases. Towards the close of the inter-war period, the manufacture of electrical equipment and goods was also initiated.
- 1.3 The Second World War created conditions for the maximum utilization of existing capacity in Indian industries. Conditions were, however, not favorable for the setting up of large-scale equipment and plant for new industries. Several industries such as ferroalloys, non-ferrous metals like aluminum and antimony, diesel engines, pumps, bicycles and sewing machines, chemicals and simple machinery were started on a modest scale during this period. However, the major impetus of the war was felt in the sector of medium and small-scale industries, such as light engineering, pharmaceuticals, medicines and drugs, cutlery, etc.

- 1.4. In the immediate post-war years, there was considerable new investment activity leading to the establishment of industries like rayon, automobiles, ball and roller bearings, ring frames and locomotives. Several new units were started and existing units expanded in industries like fertilizers, cement, sheet glass, and the manufacture of caustic soda and sulphuric acid. Industrial development during the war and the post-war period was influenced largely by the prevailing inflationary conditions and scarcities, with the result that long term factors such as the most advantageous location or scale of operation, the availability of raw materials, the size of the market and the adequacy of the financial and technical organization for successful operation under competitive conditions did not receive the attention they deserved. In the established industries the need during the war period to work multiple shift and the difficulties in the way of securing imports for depreciation and replacement led to a large accumulation of arrears which it took the country several years to make good.

Industrial Development -Post-independence periods

Constitution of India

- 1.5 The constitution of India was enacted guaranteeing certain Fundamental Rights and enunciating Directive Principles of State Policy. The vision of the architects of the Constitution of India left a lasting impression on every facet of national endeavour since Independence. The Constitution of India, adopted by the Constituent Assembly on the twenty-sixth day of November, 1949 in its preamble, has declared that it aims at securing for all its citizens:

"JUSTICE, Social, economic and political;

LIBERTY of thought, expression, belief, faith and Worship;

EQUALITY of status and opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity of the Nation"

DIRECTIVE PRINCIPLES OF STATE POLICY

1.6 In its Directive Principles of State Policy, it is stated that

The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Further, the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. (Article 38 of the Constitution)

Article 39 of the Constitution proclaims that the State shall, in particular, direct its policy towards securing-

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

Right to work, to education and to public assistance in certain cases is envisaged as per article 41 of the constitution. It is aimed that the state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

As per article 43 *ibid* the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Policy Resolution 1948

- 2.1.1. The men at the helm of affairs at the dawn of independence realized that the nation's industrial policy must contribute to the realization of the goals and objectives spelt out in the directive principles at an accelerated pace. The statement of industrial policy was inspired by these very concerns and represented a renewed initiative towards consolidating the gains of national reconstruction. The essentials of government policy in the sphere of industrial development have been stated in the Industrial Policy Resolution of 6th April 1948. The Resolution listed certain industries like the manufacture of arms and ammunition, the production and control of atomic energy and the ownership and management of railway transport as being reserved exclusively for the Central Government. In the cases of certain other industries also such as coal, iron and steel, aircraft manufacture, ship-building, manufacture of telephone, telegraph wireless apparatus and mineral oils, the State, including the Central and State Governments and other public authorities, will be responsible for further development except to the extent that it regards the co-operation of private enterprise necessary for the purpose. The rest of the industrial field was to be open to private enterprise, individual as well as cooperative, but the State would intervene whenever the progress of any industry under private enterprise was found to be unsatisfactory. Central regulation and control was envisaged for 18 specified industries of special importance from the points of view of the investment and technical skill involved. It was presumed that within the framework of the Industrial Policy Resolution of 1948, it would be possible to have a programme of industrial development, which would meet the country's needs.

2.1.2. The distinction between the public and the private sector related to the mode of operation rather than to the ultimate objective. Private enterprise operating in terms of legitimate profit expectations and the efficient use of available resources had an important part to play in developing the economy. The scope and need for development were so great that it was best for the public sector to develop those industries in which private enterprise was unable or unwilling to put up the resources required and run the risks involved, leaving the rest of the field free for private enterprise. In this matter of investment of the limited resources available to the public sector, the intention was to have complete coordination between the plans of the State Governments and of the Central Government. In a planned economy, the justification of private enterprise was that, within the framework of national policy it would be capable of contributing to the fulfillment of the objectives defined in the plan and to accept new obligations towards the worker, the investor and the consumer and to maintain a high standard of integrity and efficiency. The large volume of resources needed for all-round development of the economy could be secured only when the public and the private sectors co-operated closely. Such co-operation was also necessary from the point of view of utilizing to the best advantage the limited resources of initiative, technical skill and business experience available in the country.

2.2. **The Industries (Development and Regulation) Act 1951** an important piece of legislation affecting the industrial sector of the country came into effect on 8th May 1952. The ensuing chapters deal with this piece of legislation in detail.

The Industrial policy of 1956

2.3.1. Planning proceeded on an organized basis and the First Five Year Plan was completed. Parliament accepted the socialist pattern of society as the objective of social and economic policy. These important developments necessitated a fresh statement of industrial policy, more particularly as the Second Five Year Plan was soon to be placed before the country. The Industrial policy of 1956 was governed by the principles laid down in the Constitution, the objective of socialism, and the experience gained during the preceding eight years. The Directive

Principles of State Policy got a more precise direction when Parliament accepted in December, 1954, the socialistic pattern of society as the objective of social and economic policy. The nation's industrial policy, as other policies, was thus governed by these principles and directions

2.3.4. In order to realize this objective, it was essential to accelerate the rate of economic growth and to speed up industrialization and, in particular, to develop heavy industries and machine making industries, to expand the public sector, and to build up a large and growing cooperative sector. These provided the economic foundations for increasing opportunities for gainful employment and improving living standards and working conditions for the mass of the people. Equally, it was urgent to reduce disparities in income and wealth and to prevent private monopolies and concentration of economic power in different fields in the hands of small numbers of individuals. Accordingly, the State would progressively assume a predominant and direct responsibility for setting up new industrial undertakings and for developing transport facilities. It would also undertake State trading on an increasing scale. At the same time, as an agency for planned national development, in the context of country's expanding economy, the private sector would have the opportunity to develop and expand. The principle of cooperation should be applied whenever possible and a steadily increasing proportion of the activities of the private sector developed along cooperative lines.

2.3.5. The adoption of the socialist pattern of society as the national objective, as well as the need for planned and rapid development, required that all industries of basic and strategic importance, or in the nature of public utility services should be in the public sector. Other industries which were essential and required investment on a scale which only the State, could provide, had also to be in the public sector. The State had, therefore, to assume direct responsibility for the future development of industries over a wide area. Nevertheless, there were limiting factors which made it necessary at that stage for the State to define the field in which it would undertake sole responsibility for further development, and to make a selection of industries in the development of which it

would play a dominant role. After considering all aspects of the problem in consultation with the Planning Commission, the Government of India decided to classify industries into three categories, having regard to the part which the State would play in each of them.

2.3.6. The first category included the industries the development of which was the exclusive responsibility of the State. The second category consisted industries which would be progressively state-owned and in which the State would, therefore, generally take the initiative in establishing new undertakings, but in which private enterprise would also be expected to supplement the efforts of the State. The third category included all the remaining industries, and their future development was, in general, left to the initiative and enterprise of the private sector.

2.3.7.1. All new units in the first category industries, save where their establishment in the private sector had already been approved, were to be set only by the State. This did not preclude the expansion of the existing privately owned units or the possibility of the State securing co-operation of private enterprise in the establishment of new units when the national interests so require. Railways and air transport, arms and ammunition and atomic energy were however, to be developed as Central Government monopolies.

2.3.7.2. With a view to accelerating the future development of the industries in the second category, the State would increasingly establish new undertakings in these industries. At the same time, private enterprise would also have the opportunity to develop in this field, either on its own or with State participation.

2.3.7.3. All the remaining industries fell in the third category, and it was expected that their development would be undertaken ordinarily through the initiative and enterprise of the private sector. It was the policy of the State to facilitate and encourage the development of these industries in the private sector, in accordance with the programmes formulated in successive Five Year Plans, by ensuring the development of transport, power and other services, and by appropriate

fiscal and other measures. The State would continue to foster institutions to provide financial aid to these industries, and special assistance would be given to enterprises organized on cooperative lines for industrial and agricultural purposes. In suitable cases, the State may also grant financial assistance to the private sector.

- 2.3.8. Industrial undertakings in the private sector had necessarily to fit into the framework of the social and economic policy of the State and were subject to control and regulation in terms of the Industries (Development and Regulation) Act and other relevant legislation. The Government of India, however, recognized that it would, in general, be desirable to allow such undertakings to develop with as much freedom as possible, consistent with the targets and objectives of the national plan.
- 2.3.9. The division of industries into separate categories did not imply that they were placed in water-tight compartments. It would be open to the State to start any industry not included in the first category and second category when the needs of planning so required or there were other important reasons for it. In appropriate cases, privately owned units were to be permitted to produce an item falling within first category for meeting their own requirements or as byproducts. There was ordinarily no bar to small privately owned units undertaking production, such as the making of launches and other light craft, generation for power for local needs and small scale mining. Further, heavy industries in the public sector obtained some of their requirements of lighter components from the private sector, while the private sector in turn relied for many of its needs on the public sector. The same principle applied with even greater force to the relationship between large scale and small scale industries.
- 2.3.10. The Government of India, in this context, stressed the role of cottage and village and small scale industries in the development of the national economy as they provided immediate large scale employment and also offered a method of ensuring a more equitable distribution of the national income.

- 2.3.11. The State followed a policy of supporting cottage and village and small scale industries by restricting the volume of production in the large scale sector, by differential taxation, or by direct subsidies. The aim of the State Policy was to ensure that the decentralized sector acquired sufficient vitality to be self supporting and its development integrated with that of large-scale industry. The State, therefore, concentrated on measures designed to improve the competitive strength of the small-scale producer. Lack of technical and financial assistance, of suitable working accommodation and inadequacy of facilities for repair and maintenance were among the serious handicaps of small scale producers. A start was made with the establishment of industrial estates and rural community workshops to make good these deficiencies. The extension of rural electrification and the availability of power at prices which the workers could afford were of considerable help.
- 2.3.12. In order that industrialization may benefit the economy of the country as a whole, it was important that disparities in levels of development between different regions should be progressively reduced. A concentration of industries in certain areas was due to the ready availability of power, water supply and transport facilities. It was one of the aims of national planning to ensure that these facilities were steadily made available to areas which were lagging behind industrially or where there was greater need for providing opportunities for employment provided the location is otherwise suitable.
- 2.3.14. To meet these rapidly growing needs for the expansion of the public sector and for the development of the village and small scale industries, proper managerial and technical cadres in the public services were established. Steps were also taken to meet shortages at supervisory levels, to organize apprenticeship schemes of training on a large scale both in public and in private enterprises, and to extend training facilities in business management in universities and other institutions.
- 2.3.15. The maintenance of industrial peace is one of the prime requisites of industrial progress. In a socialist democracy,

labour is a partner in the common task of development and should participate with enthusiasm. Some laws governing industrial relations were enacted and a broad common approach was developed with growing recognition of the obligations of both management and labour.

- 2.3.16. Speedy decisions and a willingness to assume responsibility are essential if the public enterprises are to succeed. For this wherever possible, there should be decentralization of authority and their management should be along business lines. It is expected that public enterprises will augment the revenues of the State and provide resources for further development in fresh fields. But such enterprises may sometimes incur losses. Public enterprises have to be judged by their total results and in their working they should have the largest possible measure of freedom.

Industrial Policy Statement 1977

- 2.4.1. Experience revealed that though some elements of the Industrial Policy Resolution of 1956 still remained valid, certain structural distortions had crept in the system. The In the 1977 Policy Statement new policies were hence directed towards removing these distortions. It provided for a closer interaction between the agricultural and industrial sectors, accorded the highest priority to the generation and transmission of power and an exhaustive analysis of industrial products was made to identify products which are capable of being produced in the small scale sector. The list of industries exclusively reserved for the small scale sector was expanded from 180 items to more than 500 items. It provided for an annual review of this list in view of new products and new processes of manufacture that emerge. Within the small scale sector, a tiny sector was also defined with investment in machinery and equipment up to Rs.1 lakh and situated in towns with a population of less than 50,000 according to 1971 census figures, and in villages. Special legislation to protect cottage and household industries was also proposed to be introduced. A District Industries Centre was proposed to be set up to provide, under a single roof, all the services and support required by small and village entrepreneurs. In addition, the Khadi and Village Industries Commission would

plan and develop the 22 village industries under its purview. The areas delineated for the large scale industry were:

- (a) basic industries that are essential for providing infrastructure and for the development for small and village industries, such as steel, non-ferrous metals, cement, oil refineries;
- (b) capital goods industries;
- (c) high technology industries that require large scale production and that are related to agricultural and small scale industrial development such as fertilizers, pesticides and petrochemicals; and
- (d) other industries that are outside the list of reserved items for the small scale sector, such as machine tools, and organic and inorganic chemicals.

2.4.2. It was also clarified that foreign companies that diluted their foreign equity up to 40% under the Foreign Exchange Regulation Act (FERA), 1973 would be treated on par with Indian companies. A list of industries was issued where no foreign collaboration, financial or technical, was considered necessary since indigenous technology was fully developed in the field. For all approved foreign investment, complete freedom for remittance of profits, royalties, dividends and repatriation of capital (subject to rules and regulations common to all) was provided. Only in highly export oriented and/ or sophisticated technology areas fully owned foreign companies were to be permitted. It was also decided that compulsory export obligations, merely for ensuring the foreign exchange balance of the project, would no longer be insisted upon while approving new industrial capacity. In cases where a relaxation from industrial policy has been accorded specially on considerations of export alone, compulsory export obligations would continue to be imposed and for sufficiently long periods. In order to secure balanced regional development it was decided that industrial licenses would not be issued to new industrial units for location within certain limits of large metropolitan cities having a population of more than 1 million and urban areas with a population of more than 5 lakhs as per the 1971 census. In the areas of price

control of agricultural and industrial products, the prices would be regulated to ensure an adequate return to the investor. The take over of the management of sick units by the Government would be resorted to only selectively in view of the large amounts of public funds pumped into sick units that have been taken over but which continued to make losses which have to be financed by the public exchequer.

- 2.4.3. Industrial Policy Highlights within its orbit, on producing inputs needed by a large number of smaller units and making adequate marketing arrangements. The nucleus plant would also work for upgrading the technology of small units. The Government proposed to promote the development of a system of linkages between nucleus large plants and the satellite ancillaries. To boost the development of small scale industries, the investment limit in the case of tiny units was enhanced to Rs.2 lakh, of a small scale unit to Rs.20 lakh and of ancillaries to Rs.25 lakh. A scheme for building buffer stocks of essential raw materials for the Small Scale Industries was introduced for operation through the Small Industries Development Corporations in the States and the National Small Industries Corporation in the Centre. In order to ensure fullest utilization of existing industrial capacities, particularly in core industries and in industries with a long term export potential, the facility of automatic expansion of capacity of 5% per annum or 25% in a five year plan period to be taken in one or more stages was permitted to all Appendix I Industries. Requests for setting up 100% export oriented units and for expansion of existing units for purposes of export would also be considered sympathetically.

Industrial processes and technologies aimed at optimum utilization of energy or the exploitation of alternative sources of energy would be given special assistance, including finance on concessional terms. Similar benefits would be given to activities that contribute directly to the improvement of the environment and reduce the deleterious effects on pollution of air and water.

Industrial policy Statement of 1980

- 2.5.1. The Industrial Policy Statement of July 1980, which again is

based on the Industrial Policy Resolution of 1956, spells out the following socio-economic objectives:

- (i) Optimum utilization of installed capacity;
- (ii) Maximum production and achieving higher productivity;
- (iii) Higher employment generation;
- (iv) Correction of regional imbalances;
- (v) Strengthening of the agricultural base through agro based industries and promotion of optimum inter-sectoral relationship;
- (vi) Promotion of export-oriented industries;
- (vii) Promotion of economic federalism through equitable spread of investment and dispersal of returns; and
- (viii) Consumer protection against high prices and bad quality

2.5.2. Noting the erosion in people's faith in the public sector, it was decided to launch a drive to revive the efficiency of public sector undertakings through time bound programme of corrective action on a unit by unit basis.

2.5.3 Government committed to take effective steps to develop the management cadres of public sector undertakings in functional fields such as operations, finance, and marketing and information system.

2.5.4. In order to eliminate the artificial distinction of conflicting interests between small and large scale industry, the concept of economic federalism was to be promoted through the setting up of a few nucleus plants in identified industrially backward districts. The nucleus plant would concentrate on assembling the products of the ancillary units.

2.5.5. The industrial policies created a climate for rapid industrial growth in the country. A broad-based infrastructure could be built up. Basic industries could be established. A high degree of self-reliance in a large number of items - raw materials, intermediates, finished goods - could be achieved.

2.5.6 New growth centres of industrial activity emerged. So had a new generation of entrepreneurs. A large number of engineers, technicians and skilled workers were also trained.

- 2.5.7 Recognizing the need to consolidate the strength and respond effectively to the emerging challenges, a number of policy and procedural changes were introduced aimed at increasing productivity, reducing costs and improving quality.

Industrial Policy, 1991

- 2.6.1. In its Industrial Policy, 1991 the Government placed greater emphasis on building up the ability to pay for imports through India's own foreign exchange earnings. The Industrial policy was guided by the principles of (i) encouragement of entrepreneurship, (ii) development of indigenous technology (iii) dismantling of the regulatory system, (iv) development of the capital markets and (v) the spread of industrialization to backward areas through appropriate incentives, institutions and infrastructure investments.
- 2.6.2 Government considered it necessary to provide enhanced support to the small-scale sector.
- 2.6.3. The Government decided to ensure that the public sector is run on business lines as envisaged in the Industrial Policy Resolution of 1956 and to continue to innovate and lead in strategic areas of national importance
- 2.6. 4. Government's policy was to fully protect the interests of labour, enhance their welfare and equip them in all respects to deal with the inevitability of technological change.
- 2.6.5. Foreign investment and technology collaboration were welcomed to increase exports and to expand the production base.
- 2.6.6. The new industrial policy was to abolish the monopoly of any sector except on strategic or military considerations.
- 2.6.7. The new policy also aimed at promotion of Workers' participation in management.
- 2.6.8. The new industrial policy package would be to build on the gains already made; correct the distortions that may have crept in to maintain a sustained growth in productivity and gainful employment and attain international competitiveness. All sector of industry whether small, medium or large, belonging to the public, private or cooperative sector would be encouraged to grow and improve on their past performance.

3.1 In pursuit of the objectives mentioned in paras 2.6.1 to 2.6.8 above, Government in its Industrial policy 1991 decided to take a series of initiatives in respect of the following areas.

- A. Industrial Licensing.
- B. Foreign Investment
- C. Foreign Technology Agreements.
- D. Public Sector Policy
- E. MRTP Act.

A. INDUSTRIAL LICENSING POLICY

3.2.1 The Industrial Policy Resolution of 1956 identified the following three categories of industries: those that would be reserved for development in public sector, those that would be permitted for development through private enterprise with or without State participation, and those in which investment initiatives would ordinarily emanate from private entrepreneurs. Over the years, the industrial licensing policy and procedures have been liberalized. As a continuation of this process of change it was concluded that measures must be taken to let the entrepreneurs make investment decisions on the basis of their own commercial judgment and the Government policy and procedures must be geared to assisting entrepreneurs in their efforts. This can be done only if government relaxed controls and instead provide help and guidance and by eliminating delays. Private sector enterprise is gradually allowed to enter into many of the areas reserved for public sector coupled with removal of restraints on capacity creation keeping in mind that over-riding national interests are not jeopardized. The industrial licensing policy drawn was on the following issues:

Industrial licensing will be abolished for all projects except for a short list of industries related to security and strategic concerns, social reasons, hazardous chemicals and overriding environmental reasons, and items of elitist consumption (list follows as Annex II, please refer to page 21).

Industries reserved for the small scale sector will continue to be so reserved.

Areas where security and strategic concerns predominate will continue to be reserved for the public sector (list follows as Annex I, please refer to page 21).

In projects where imported capital goods are required, automatic clearance will be given (a.) in cases where foreign exchange availability is ensured through foreign equity OR (b.) if the CIF value of imported capital goods required is less than 25% of total value of plant and equipment, upto a maximum value of Rs. 2 crore.

In locations other than cities of more than 1 million populations, there will be no requirement of obtaining industrial approvals from the Central Government except for industries subject to compulsory licensing. In respect of cities with population greater than 1 million, industries other than those of a non polluting nature such as electronics, computer software and printing will be located outside 25 kms. of the periphery, except in prior designated industrial areas. A flexible location policy would be adopted in respect of such cities (with population greater than 1 million) which require industrial re-generation. Appropriate incentives and the design of investments in infrastructure development will be used to promote the dispersal of industry particularly to rural and backward areas and to reduce congestion in cities.

The system of phased manufacturing programmes run on an administrative case by case basis will be applicable to new projects.

Existing units will be provided a new broad banding facility to enable them to produce any article without additional investment.

The exemption from licensing will apply to all substantial expansions of existing units.

The mandatory convertibility clause will no longer be applicable for term loans from the financial institutions for new projects.

Procedural consequences

- 3.2.2 All existing registration schemes (Delicensed Registration, Exempted Industries Registration, DGTD registration) will be abolished.

Entrepreneurs will henceforth only be required to file an information memorandum on new projects and substantial expansions.

The lists at Annex II and Annex III (Please refer to pages 21 and 22) has been notified in the Indian Trade Classification (Harmonised System).

B. FOREIGN INVESTMENT POLICY

- 3.3 While freeing Indian industry from official controls, opportunities for promoting foreign investments in India should also be fully exploited. The relationship between domestic and foreign industry needs to be much more dynamic. Foreign investment would bring attendant advantages of technology transfer, marketing expertise, introduction of modern managerial techniques and new possibilities for promotion of exports. The government will welcome foreign investment which is in the interest of the country's industrial development. In order to invite foreign investment in high priority industries the policy laid down were as under:

Grant approval for direct foreign investment upto 51 percent foreign equity in high priority industries (Annex III, please refer to page 22). There shall be no bottlenecks of any kind in this process. Such clearance will be available if foreign equity covers the foreign exchange requirement for imported capital goods.

While the import of components, raw materials and intermediate goods, and payment of know-how fees and royalties will be governed by the general policy applicable to other domestic units, the payment of dividends would be monitored through the Reserve Bank of India so as to ensure that outflows on account of dividend payments are balanced by export earnings over a period of time.

Other foreign equity proposals will continue to need prior clearance. Foreign equity proposals need not necessarily be accompanied by foreign technology agreements.

To provide access to international markets, majority foreign equity holding upto 51% equity will be allowed for trading companies primarily engaged in export activities...

A special Empowered Board would be constituted to negotiate with a number of large international firms and approve direct foreign investment in select areas. This would be a special programme to attract substantial investment that would provide access to high technology and world markets.

C. FOREIGN TECHNOLOGY AGREEMENT POLICY

- 3.4. There is a great need for promoting an industrial environment where the acquisition of technological capability receives priority. In the fast changing world of technology the relationship between the suppliers and users of technology must be a continuous one. Such a relationship becomes difficult to achieve when the approval process includes unnecessary governmental interference on a case to case basis involving endemic delays and fostering uncertainty. Government will provide automatic approval for technology agreement related to high priority industries within specified parameters. Indian companies will be free to negotiate the terms of technology transfer with their foreign counterparts according to their own commercial judgment. In order to avail foreign technology in high priority industries the policy laid down were as under:

Automatic permission will be given for foreign technology agreements in high priority industries (Annex III, please refer to page 22) upto a lump sum payment of Rs. 1 crore, 5% royalty for domestic sales and 8% for exports, subject to total payment of 8% of sales over a 10 year period from date of agreement or 7 years fro commencement of production. The prescribed royalty rates are net of taxes and will be calculated according to standard procedures.

In respect of industries other than those in Annex III, automatic permission will be given subject to the same guidelines as above if no free foreign exchange is required for any payments.

All other proposals will need specific approval under the general procedures in force.

No permission will be necessary for hiring of foreign technicians, foreign testing of indigenously developed technologies. Payment may be made from blanket permits or free foreign exchange according to RBI guidelines.

D. PUBLIC SECTOR POLICY

- 3.5 Public ownership and control in critical sector has played an important role in preventing the concentration of economic power, reducing regional disparities and ensuring that planned development serves the common good. However, a

number of problems such as low rate of return on the capital invested poor project management, over-manning, lack of continuous technological up gradation, and inadequate attention to R&D and human resource development begun to manifest in many of the public enterprises. Many of the public enterprises have become a burden rather than being an asset to the Government. Many have also become sick units. In the Government's new approach to public enterprises the priority areas for growth would as under:

Essential infrastructure goods and services

Exploration and exploitation of oil and mineral resources

Technology development and building of manufacturing capabilities in areas which are crucial in the long term development of the economy and where private sector investment is inadequate

Manufacture of products where strategic considerations predominate such as defence equipment.

Portfolio of public sector investments will be reviewed with a view to focus the public sector on strategic, high-tech and essential infrastructure. There would be no bar for areas of exclusivity to be opened up to the private sector selectively. The public sector will also be allowed entry in areas not reserved for it.

Public enterprises which are chronically sick will be referred to the Board for Industrial and Financial Reconstruction (BIFR). A social security mechanism will be created to protect the interests of the workers concerned.

In order to raise resources, a part of the government's shareholding in the public sector would be offered to mutual funds, financial institutions, general public and workers.

Boards of public sector companies would be made more professional and given greater powers.

There will be a greater thrust on performance improvement through the Memoranda of understanding (MOU) systems through which managements would be granted greater autonomy and will be held accountable.

To facilitate a fuller discussion on performance, the MOU

signed between Government and the public enterprise would be placed in Parliament.

E. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT (MRTP ACT)

- 3.6. The MRTP Act became effective in June 1970. The principal objectives sought to be achieved through the MRTP Act were (i) prevention of concentration of economic power and (ii) prohibition of monopolistic and restrictive and unfair trade practices. Major amendments to the MRTP Act were carried out in 1982 and 1984 to remove impediments to industrial growth and expansion. With the growing complexity of industrial structure, the interference of the Government through the MRTP Act in investment decisions of large companies became deleterious in its effects on Indian industrial growth. The Government therefore took the policy decision that:

The MRTP Act will be amended to remove the threshold limits of assets in respect of MRTP companies and dominant undertakings. This eliminates the requirement of prior approval of Central Government for establishment of new undertakings, expansion of undertakings, merger, amalgamation and takeover and appointment of Directors under certain circumstances.

Emphasis will be placed on controlling and regulating monopolistic, restrictive and unfair trade practices. Simultaneously, the newly empowered MRTP Commission will be authorized to initiate investigations on complaints received from individual consumers in regard to monopolistic, restrictive and unfair trade practices. Necessary comprehensive amendments will be made in the MRTP Act in this regard for enabling the Commission to exercise punitive and compensatory powers.

ANNEX I

PROPOSED LIST OF INDUSTRIES TO BE RESERVED FOR THE PUBLIC SECTOR

1. Arms and ammunition and allied items of defence equipment, defence aircraft and warships.
2. Atomic Energy.
3. Coal and lignite.
4. Mineral oils.
5. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.
6. Mining of copper, lead, zinc, tin, molybdenum and wolfram.
7. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.
8. Railway transport.

ANNEX II

LIST OF INDUSTRIES IN RESPECT OF WHICH INDUSTRIAL LICENSING WILL BE COMPULSORY

1. Coal and Lignite.
2. Petroleum (other than crude) and its distillation products.
3. Distillation and brewing of alcoholic drinks.
4. Sugar.
5. Animal fats and oils.
6. Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
7. Asbestos and asbestos-based products.
8. Plywood, decorative veneers, and other wood based products such as particle board, medium density fibre board, block board.
9. Raw hides and skins, leather, chamois leather and patent leather.
10. Tanned or dressed furskins.
11. Motor cars.
12. Paper and Newsprint except bagasse-based units.
13. Electronic aerospace and defence equipment; All types.
14. Industrial explosives, including detonating fuse safety fuse, gun powder, nitrocellulose and matches.
15. Hazardous chemicals.
16. Drugs and Pharmaceuticals (according to Drug Policy).
17. Entertainment electronics (VCRs, colour TVs, C.D. Players, Tape Recorders).
18. White Goods (Domestic Refrigerators, Domestic Dishwashing machines, Programmable Domestic Washing Machines, Microwave ovens, Air conditioners).

Note: The compulsory licensing provisions would not apply in respect of the small-scale units taking up the manufacture of any of the above items reserved for exclusive manufacture in small scale sector.

ANNEX III

LIST OF INDUSTRIES FOR AUTOMATIC APPROVAL OF FOREIGN TECHNOLOGY AGREEMENTS AND FOR 51% FOREIGN EQUITY APPROVALS

1. Metallurgical Industries
 - i. Ferro alloys.
 - ii. Castings and forgings.
 - iii. Non-ferrous metals and their alloys.
 - iv. Sponge iron and pelletisation.
 - v. Large diameter steel welded pipes of over 300 mm diameter and stainless steel pipes.
 - vi. Pig iron.
2. Boilers and Steam Generating Plants
3. Prime Movers (other than electrical generators)
 - i. Industrial turbines.
 - ii. Internal combustion engines.
 - iii. Alternate energy systems like solar wind etc. and equipment therefor.
 - iv. Gas/hydro/steam turbines upto 60 MW.
4. Electrical Equipment
 - i. Equipment for transmission and distribution of electricity including power and distribution transformers, power relays, HT-switch gear synchronous condensers.
 - ii. Electrical motors.
 - iii. Electrical furnaces, industrial furnaces and induction heating equipment.
 - iv. X-ray equipment.

- v. Electronic equipment, components including subscribers' end telecommunication equipments.
 - vi. Component wires for manufacture of lead-in wires.
 - vii. Hydro/steam/gas generators/generating sets upto 60 MW.
 - viii. Generating sets and pumping sets based on internal combustion engines.
 - ix. Jelly-filled telecommunication cables.
 - x. Optic fibre.
 - xi. Energy efficient lamps and
 - xii. Midget carbon electrodes.
5. Transportation
- i. Mechanised sailing vessels upto 10,000 DWT including fishing trawlers.
 - ii. Ship ancillaries.
 - iii. (a) Commercial vehicles, public transport vehicles including automotive commercial three wheeler jeep type vehicles, industrial locomotives.
 - (b) Automotive two wheelers and three wheelers.
 - (c) Automotive components/spares and ancillaries.
 - iv. Shock absorbers for railway equipment and
 - v. Brake system for railway stock and locomotives.
6. Industrial Machinery
- i. Industrial machinery and equipment.
7. i. Machine tools and industrial robots and their controls and accessories

- ii. Jigs, fixtures, tools and dies of specialized types and cross land tooling, and
- iii. Engineering production aids such as cutting and forming tools, patterns and dies and tools.

8. Agricultural Machinery

- i. Tractors.
- ii. Self-propelled Harvester Combines.
- iii. Rice transplanters.

9. Earth Moving Machinery

- i. Earth moving machinery and construction machinery and components thereof.

10. Industrial Instruments

- i. Indicating, recording and regulating devices for pressures, temperatures, rate of flow weights levels and the like.

11. Scientific and Electromedical Instruments and Laboratory Equipment.

12. Nitrogenous & Phosphatic Fertilizers falling under

- i. Inorganic fertilizers under '18-Fertilizers' in the First Schedule to IDR Act, 1951.

13. Chemicals (other than fertilizers).

- i. Heavy organic chemicals including petrochemicals.
- ii. Heavy inorganic chemicals.
- iii. Organic fine chemicals.
- iv. Synthetic resins and plastics.
- v. Man made fibres.
- vi. Synthetic rubber.
- vii. Industrial explosives.
- viii. Technical grade insecticides, fungicides, weedicides, and the like.

- ix. Synthetic detergents
- x. Miscellaneous chemicals (for industrial use only)
 - a. Catalysts and catalyst supports.
 - b. Photographic chemicals.
 - c. Rubber chemicals.
 - d. Polyols.
 - e. Isocyanates, urethanes, etc.
 - f. Speciality chemicals for enhanced oil recovery.
 - g. Heating fluids.
 - h. Coal tar distillation and product there from.
 - i. Tonnage plants for the manufacture of industrial gases.
 - j. High altitude breathing oxygen/medical oxygen.
 - k. Nitrous oxide.
 - l. Refrigerant gases like liquid nitrogen, carbon dioxide etc.in large volumes.
 - m. Argon and other rare gases.
 - n. Alkali/acid resisting cement compound
 - o. Leather chemicals and auxiliaries.
- 14. Drugs and Pharmaceuticals
According to Drug Policy.
- 15. i. Paper and pulp including paper products.
 - ii. Industrial laminates.
- 16. i. Automobile tyres and tubes.
 - ii. Rubberized heavy duty industrial beltings of all types.
 - iii. Rubberized conveyor beltings.
 - iv. Rubber reinforced and lined fire fighting hose pipes.
 - v. High pressure braided hoses.
 - vi. Engineering and industrial plastic products.
- 17. Plate Glass

- i. Glass shells for television tubes.
- ii. Float glass and plate glass.
- iii. H.T. insulators.
- iv. Glass fibres of all types.
18. Ceramics
 - i. Ceramics for industrial uses.
19. Cement Products
 - i. Portland cement.
 - ii. Gypsum boards, wall boards and the like.
20. High Technology Reproduction and Multiplication Equipment.
21. Carbon and Carbon Products
 - i. Graphite electrodes and anodes.
 - ii. Impervious graphite blocks and sheets.
22. Pretensioned High Pressure RCC Pipes.
23. Rubber Machinery
24. Printing Machinery.
 - i. Web-fed high speed off-set rotary printing machine having output of 30,000 or more impressions per hour.
 - ii. Photo composing/type setting machines.
 - iii. Multi-colour sheet-fed off-set printing machines of sizes 18"x25" and above.
 - iv. High speed rotograture printing machines having output of 30,000 or more impressions per hour.
25. Welding Electrodes other than those for Welding Mild Steel
26. Industrial Synthetic Diamonds.
27. i. Photosynthesis improvers.
 - ii. Genetically modified free living symbiotic nitrogen fixer.
 - iii. Pheromones.
 - iv. Bio-insecticides.
28. Extraction and Upgrading of Minor Oils

29. Pre-fabricated Building Material.
30. Soya Products
 - i. Soya texture proteins.
 - ii. Soya protein isolates.
 - iii. Soya protein concentrates.
 - iv. Other specialized products of soybean.
 - v. Winterized and deodorized refined soybean oil.
31. (a) Certified high yielding hybrid seeds and synthetic seeds and
(b) Certified high yielding plantlets developed through plant tissue culture.
32. All food processing industries other than milk food, malted foods, and flour, but excluding the items reserved for small-scale sector.
33. All items of packaging for food processing industries excluding the items reserved for small scale sector.
34. Hotels and tourism-related industry.

The Industries (development and Regulation) Act, 1951

The full text of the Industries (development and Regulation) Act, 1951 is furnished at pages 108 to 183 of this publication. The various Sections of the Act have been analyzed in this chapter.

Definitions

Section 3 of the Industries (Development Regulation) Act 1951 defines some of the terms used in the Act and clarifies that the words and expressions used in the Act and not defined there under but defined in the Companies Act, 1956 shall have the meanings respectively assigned in the Companies Act, 1956.

The meaning and scope of some of the important terms used in the Industries (Development Regulation) Act 1951 are discussed below.

(i) Existing industrial undertaking

Section 3(bb) of the Act defines the term existing industrial undertaking as to mean-

- (a) in the case of an industrial undertaking pertaining to any of the industries specified in the Schedule I as originally enacted, an industrial undertaking which was in existence on the commencement of this Act or for the establishment of which effective steps had been taken before such commencement, and
- (b) in the case of an industrial undertaking pertaining to any of the industries added to Schedule I by an amendment thereof, an industrial undertaking which is in existence on the coming into force of such amendment or for the establishment of which effective steps had been taken before the coming into force of such amendment.

In this context Rule 2 of the Registration and Licensing of Industrial Undertakings Rules, 1952 defines "effective steps" to mean one or more of the following:

- (a) 60 per cent or more of the capital issued for an industrial undertaking which is a public company within the meaning of the Indian Companies Act, 1956 has been paid up;
- (b) a substantial part of the factory building has been constructed;
- (c) a firm order has been placed for a substantial part of the plant and machinery required for the undertaking.

To be an "existing industrial undertaking" the undertaking must pertain to an industry specified in the First Schedule i.e., it must have been set up to manufacture articles which can be said to fall in an item in the First Schedule. \

(ii) Factory

Section 3(c) of the Act defines 'Factory' as any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on-

- (i) With the aid of power, provided that fifty or more workers are working or were working thereon on any day of the preceding twelve months; or

- (ii) Without the aid of power, provided that one hundred or more workers are working or were working thereon on any day of the preceding twelve months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power.

Note: In this context it has to be understood that the definition of factory under the Industries (Development Regulation) Act 1951 differs from the definition of factory under the Factories Act, 1948. The definition as per Section 2(m) of the Factories Act, 1948 is as under:

"factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on, any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)] or [a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place].

The clause further explains that for computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account and the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

The term 'manufacturing process' has not been defined under the Act. Although what constitutes "manufacturing process" will depend on the facts and circumstances of each case, it can be said that as a first principle that, in order to constitute "manufacture", there must be a transformation. Merely labour bestowed on an article even if

the labour is applied through machine will not make it a manufacture unless it has progressed so far that transformation ensues, and the article becomes commercially known as another and different article from that with which it begins its existence. (A.M. Chinniah, Manager, Sangu Soap Works, AIR (1957) Mad. 755)

In *Delhi Cloth and General Mills Co. Ltd. v. Jt. Secretary, Government of India* (1978) Tax.L.R. 2094 it had been held that it was not necessary that the manufacturing process should be carried on in the whole of the premises and that even if part of the premises was held for manufacturing process the other could as well be included in factory premises.

Note: In this context it has to be understood how the Factories Act, 1948 defines 'manufacturing process'. The definition as per Section 2(k) of the Factories Act, 1948 is as under:

"manufacturing process" means any process for-

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) pumping oil, water, sewage or any other substance; or
- (iii) generating, transforming or transmitting power; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage.

(iii) Industrial undertaking

Section 3(d) of the Act defines "Industrial undertaking" to include any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government.

According to the above definition, the undertaking must not only pertain to a scheduled industry but also should be carried on in one

or more 'factories' within the meaning of section 3(C) of the Act. That means, where the number of workers employed is less than 50 where power is used or, less than hundred where no power is used, it would not be considered to be factory under the Act and consequently it would not be an "industrial undertaking" for the purpose of this Act. Though the word 'undertaking' is not separately defined in the Act, the basic feature expected to be present to constitute an undertaking is the existence of a factory as defined in the Act where some manufacturing process is carried on.

(iv) New article

As per section 3(dd) "new article" in relation to an industrial undertaking which is registered or in respect of which a license or permission has been issued under this Act, means-

- (a) any article which falls under an item in Schedule I other than the item under which articles ordinarily manufactured or produced in the industrial undertaking at the date of registration or issue of the licence or permission as the case may be, fall;
- (b) any article which bears a mark as defined in the Trade Marks Act, 1940, or which is the subject of a patent, if at the date of registration, or issue of the licence or permission, as the case may be, the industrial undertaking was not manufacturing or producing such article bearing that mark or which is the subject of the patent.

According to the above definition, an article, the manufacture of which would not be covered by the existing industrial license would be a "new article." Where the article to be manufactured is covered under existing license of the manufacturer by virtue of any broad banding facility announced by the Government, it would not be termed as a "new article". But in case the new article to be manufactured bears a new trade mark or a patent, a fresh license would be required even if the article falls under the same item in the First Schedule for which the undertaking already possesses a license.

In order to show that the proposed manufacture of an article is a proposal for manufacturing a new article, it should be proved that the proposed article cannot be brought within the item under which the article being manufactured presently falls. Where, it can be shown

that the proposed article falls under a different item of the First Schedule; it would constitute a new article. It may be noted that soon after the introduction of the definition of the term "new article" in the Act, the Licensing Committee had pointed out that the broad and reasonable view of that term should be taken and that where no new trademark or no new patent was involved and the product was covered within the ambit of the same item in the First Schedule under which the concerned undertaking held a registration certificate or industrial license, the article of a proposed manufacture would not be considered as a new article and there should be no objection to the owner of the industrial undertaking manufacturing it.

The term "new article" assumes significance and importance in the context of Section 11A which casts an obligation up on the owner of an industrial undertaking to obtain a license for producing or manufacturing new articles.

(v) Owner

As per Section 3(f) "owner" in relation to an industrial undertaking means the person who, or the authority which, has the ultimate control over the affairs of the undertaking, and, where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking.

The term person employed in the definition would include both natural and artificial persons. Bodies corporate owning industry undertakings would also be covered within the above definition. While this definition makes it clear that any person or authority having ultimate control over the affairs of the undertaking is the owner, it also introduces a deeming provision whereby certain categories of persons in whom the affairs of the industrial undertaking may be entrusted are declared to be owners. Thus a company owning an industrial undertaking would be the person having "ultimate control" over the affairs of the undertaking, but where it has appointed a manager who has the management control of the whole, or substantially the whole of the affairs of the company, he will also be deemed to be the owner.

The term "owner" has particular relevance and significance in the context of the provisions of Sections 5, 6, 10, 10 A, 13 as well as Section 18F of the Act Reference to managing agent in the definition is not of any significance now as the system of managing agency has since

been abolished .

(vi) Scheduled Industry

As per Section 3(i) of the Act "scheduled industry" means any of the industries specified in the First Schedule of the Act. 38 industries have been listed in the First Schedule. These include:

- (a) consumer goods industries like cotton and woollen textiles, vanaspati and vegetable oils, sugar and salt, pharmaceuticals and drugs, etc.;
- (b) capital goods and producer goods industries like iron and steel, locomotives and rolling stock, non-ferrous metals and alloys, heavy machinery for industry including ball and roller bearings, gear wheels, etc., and machine tools ;
- (c) industries producing fuel such as coal, power and industrial alcohol, motor and aviation fuel, and other oils;
- (d) industries producing machinery and equipment for the generation, transmission and distribution of electric energy, electric motors, batteries and electrical goods ;
- (e) heavy chemicals including fertilizers;
- (f) automobiles including tractors, aircraft, ship-building and telephones, telegraph and wireless communication apparatus, and
- (g) various others, such as arms and ammunition, agricultural implements, mathematical and scientific instruments, small and hand tools, sewing and knitting machines, bicycles, hurricane lanterns, glass and ceramics

(vii) Current Assets

As per Section 3(ab) of the Act 'current assets' means bank balances and cash and includes such other assets or reserves as are expected to be realised in cash or sold or consumed within a period of not more than twelve months in the ordinary course of business, such as stock-in-trade, amounts due from sundry debtors for sale of goods and for services rendered, advance tax payments and bills receivable, but does not include sums credited to a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the

employees, maintained by a company owning an industrial undertaking.

(viii) Current Liabilities

Section 3 (ac) defines the term current liabilities as to mean liabilities which must be met on demand or within a period of twelve months from the date they are incurred; and includes any current liability which is suspended under Section 18FB.

Central Advisory Council and Development Councils

Central Advisory Council

For the purpose of advising it on matters concerning the development and regulation of scheduled industries, Section 5 of the Act empowers the Central Government, by notified order, to establish a Council to be called the Central Advisory Council.

The Advisory Council consists of a Chairman and other members not exceeding thirty, all of whom shall be appointed by the Central Government. The members would represent the interests of-

- (a) owners of industrial undertakings in scheduled industries;
- (b) persons employed in industrial undertakings in scheduled industries,
- (c) consumers of goods manufactured or produced by scheduled industries;
- (d) such other class of persons including primary producers..

The Central Government shall consult the Advisory Council in regard to the making of any rules and may consult the Council on any other matter connected with the administration of this Act in respect of which the Central Government may consider it necessary to obtain the advice of the Advisory Council.

Development Council

Section 6 of the Act empowers the Central Government, by notified order, establish for any scheduled industry or group of scheduled industries, a body of persons to be called a Development Council which shall consist of members who in the opinion of the Central

Government are-

- (a) persons capable of representing the interests of owners of industrial undertakings in the scheduled industry or group of scheduled industries;
- (b) persons having special knowledge of matters relating to the technical or other aspects of the scheduled industry or group of scheduled industries;
- (c) persons capable of representing the interests of persons employed in industrial undertakings in the scheduled industry or group of scheduled industries;
- (d) persons not belonging to any of the aforesaid categories who are capable of representing the interests of consumers of goods manufactured or produced by the scheduled industry or group of scheduled industries.

The Development Council shall be a body corporate and may hold and transfer property and shall by the said name sue and be sued.

The Development Council shall perform such functions of a kind specified in the Schedule II to the Act as may be assigned to it by the Central Government in order to increase the efficiency or productivity in the scheduled industry or to improve the service that such industry could render to the community, or to enable such industry to render such service more economically.

The Development Council shall also perform such other functions as it may be required to perform by or under any other provision of the Act.

Section 7 of the Act makes obligatory on the part of the Development Council to submit to the Central Government and the Advisory Council, annually, a report setting out what has been done in the discharge of its functions during the financial year. The report shall include a statement of the audited accounts of the Council, including a copy of any report made by the auditors on the accounts. A copy of each such report of a Development Council, or made by the auditors on its accounts, shall be laid before Parliament by the Central Government.

Section 8 of the Act empowers the Central Government to dissolve

the Development Council by a notified order. On dissolution, the assets of the Development Council, after its liabilities, if any, are met there from, shall vest in the Central Government.

Imposition of cess on scheduled industries in certain cases

Section 9 of the Act empowers the Central Government to levy and collect cess on all goods manufactured or produced in any specified industry. The cess shall in no case exceed 13 paise per cent of the value of the goods.

It has been specifically explained in Section 9 of the Act that the expression 'value' in relation to any goods shall be deemed to be the whole sale cash price for which such goods of the like kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at that time of their removal there from, without any abatement or reduction whatever except trade discount and the amount of duty then payable.

The Central Government may hand over the cess collected to the Development Council and the Council shall utilize the proceeds

- (a) to promote scientific and industrial research with reference to the scheduled industry in respect of which the cess is established;
- (b) to promote improvements in design and quality of the products of such industry
- (c) to provide for the training of technicians and labour in such industry and
- (d) to meet the expenses of the Council.

The 'milk plants' are Scheduled Industry'. These are governed by the provisions of the 1951 Act and the Milk and Milk product order 1992. The Parliament has clearly declared that it is expedient in public interest to vest the control in the Central Government. Keeping in view of the declared objective and the provisions of the 1951 Act, it was held in the case of *Health-Aid Foods Specialist Pvt. Ltd. v. State of Punjab* (A.I.R. 2002 P. & H. 112 at p. 123.) that the State Legislature has invaded the territory occupied by the Parliament and the impugned impost of cess on milk plants as ultra vires.

Note. The Central Advisory Council (Procedural) Rules, 1952 and the Development Councils (Procedural) Rules, 1952 have been furnished at pages 194 and 199 of this publication

Regulation of Scheduled Industries

Regulation of industries specified in the first Schedule to the Act is sought to be achieved by means of registration of existing industrial undertakings, licensing of new industrial undertakings, and licensing for producing or manufacturing new articles. Registration and licensing procedures has been provided in the Act for the purpose of canalizing the limited resources of the country in a manner conducive to the overall industrial development of the country .The Act requires industrial license to be obtained from the Central Government

Registration of existing industrial undertakings (Section 10)

The owner of every existing industrial undertaking,(not being the Central Government), shall, within such period as the Central Government may, by notification in the Official Gazette, fix in this behalf, register the undertaking in the prescribed manner.

The Central Government shall also register in the same manner every existing industrial undertaking of which it is the owner. .

Where an industrial undertaking is registered under this section, a certificate of registration containing the productive capacity of the industrial undertaking and such other particulars as may be prescribed shall be issued to the owner of the undertaking.

The owner of every industrial undertaking to whom a certificate of registration has been issued under this section before the commencement of the Industries (Development and Regulation) Amendment Act, 1973, shall, if the undertaking falls within such class of undertaking as the Central Government may, by notification in the Official Gazette, specify in this behalf, produce, within such period as may be specified in such notification the certificate of registration for entering therein the productive capacity of the industrial undertaking and other prescribed particulars.

In specifying the productive capacity in any certificate of registration issued under this sub-section , the Central Government shall take into consideration the productive or installed capacity of the industrial undertaking as specified in the application for registration made under this sub-section , the level of production immediately

before the date on which the application for registration was made under this sub-section, the level of the highest annual production during the three years immediately preceding the introduction in Parliament of the Industries (Development and Regulation) Amendment Bill, 1973, the extent to which production during the said period was utilized for export and such other factors as the Central Government may consider relevant including the extent of under-utilization of capacity, if any, during the relevant period due to any cause.

Revocation of registration in certain cases (Section 10A)

If the Central Government is satisfied that the registration of any industrial undertaking has been obtained by misrepresentation as to an essential fact or that any industrial undertaking has ceased to be registrable under this Act by reason of any exemption granted under this Act becoming applicable thereto or that for any other reason the registration has become useless or ineffective and therefore requires to be revoked, the Central Government may after giving an opportunity to the owner of the undertaking to be heard revoke the registration.

As per Section 11 of the Act no person other than the Central Government, shall, after the commencement of the Act, establish any new industrial undertaking, except under and in accordance with a licence issued in that behalf by the Central Government. A government other than the Central Government may, with the previous permission of the Central Government, establish a new industrial undertaking.

The licence may contain such conditions including, conditions as to the location and the minimum standards in respect of size.

Licence for producing or manufacturing new articles (Section 11A)

As per Section 11A the owner of an industrial undertaking not being the Central Government which is registered under section 10 or in respect of which a licence has been issued under section 11 shall not manufacture any new article unless-

- (a) in the case of an industrial undertaking registered under section 10, he has obtained a licence for manufacturing such new article; and

- (b) in the case of an industrial undertaking in respect of which a licence has been issued under section 11, he has had the existing licence amended in the prescribed manner.

Section 11B of the Act empowers the Central Government to specify the requirements which shall be complied with by small scale industrial undertakings. (A separate chapter deals with this topic in detail. Please refer to page 71 of this publication)

Revocation and amendment of license in certain cases (Section 12)

If the Central Government is satisfied, that any person to whom a licence has been issued has, without reasonable cause failed to establish the new industrial undertaking it may revoke the licence.

Subject to any rules that may be made in this behalf, the Central Government may also vary or amend any licence issued under section 11 provided that no such power shall be exercised after effective steps have been taken to establish the new industrial undertaking.

Further provision for licensing of industrial undertakings in special cases (Section 13)

In accordance with Section 13, no owner of an industrial undertaking, other than the Central Government, shall-

- (a) in the case of an industrial undertaking required to be registered under section 10, but which has not been registered within the time fixed for the purpose under that section, carry on the business of that undertaking after expiry of such period, or
- (b) in the case of an industrial undertaking the registration in respect of which has been revoked under section 10A, carry on the business of the undertaking after the revocation, or
- (c) in the case of an industrial undertaking to which the provisions of this Act did not originally apply but became applicable after the commencement of this Act for any reason, carry on the business of the undertaking after the expiry of three months from the date on which the provisions of this Act became so applicable, or

- (d) effect any substantial expansion of an industrial undertaking which has been registered or in respect of which a licence or permission has been issued, or
- (e) change the location of the whole or any part of an industrial undertaking which has been registered,

except under, and in accordance with, a licence issued in that behalf by the Central Government, and in the case of a State Government, except under and in accordance with the previous permission of the Central Government.

Explanation: For the purposes of this section, "substantial expansion" means the expansion of an existing industrial undertaking which substantially increases the productive capacity of the undertaking, or which is of such a nature as to amount virtually to a new industrial undertaking, but does not include any such expansion as is normal to the undertaking having regard to its nature and the circumstances relating to such expansion.

Procedure for the grant of licence or permission (Section 14)

Before granting any licence or permission under section 11, section 11A, section 13 or section 29B the Central Government as specified in Section 14 may appoint an authority to make a complete investigation in respect of applications received in this behalf.

Power to cause investigation to be made into scheduled industries or industrial undertakings (Section 15)

Where the Central Government is of the opinion that-

- (a) in respect of any scheduled industry or industrial undertaking or undertakings-
- (i) there has been, or is likely to be, a substantial fall in the volume of production in respect of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which, having regard to the economic conditions prevailing, there is no justification; or

- (ii) there has been, or is likely to be, marked deterioration in the quality of any article or class of articles relating to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided; or
- (iii) there has been or is likely to be a rise in the price of any article or class of articles relating to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which there is no justification; or
- (iv) it is necessary to take any such action as is provided in this Chapter for the purpose of conserving any resources of national importance which are utilised in the industry or the industrial undertaking or undertakings, as the case may be; or
- (b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest;

the Central Government may make or cause to be made a full and complete investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose.

Power to investigate into the affairs of a company in liquidation (Section 15A)

Where a company, owning an industrial undertaking is being wound up by or under the supervision of the High Court, and the business of such company is not being continued, the Central Government may, if it is of the opinion that it is necessary, in the interest of the general public and, in particular, in the interests of production, supply or distribution of articles or class of articles relating to the concerned scheduled industry, to investigate into the possibility of running or restarting the industrial undertaking, make an application to the High Court praying for permission to make, or cause to be made, an investigation into such possibility by such person or body of persons as that government may appoint for the purpose. In such cases, the High Court shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force, grant the permission prayed for.

Powers of Central Government on completion of investigation under section 15 (Section 16)

If after making any such investigation under section 15, the Central Government is satisfied that action under this section is desirable, it may issue such directions to the industrial undertaking appropriate in the circumstances for all or any of the following purposes,

- (a) regulating the production of any article or class of articles by the industrial undertaking and fixing the standards of production;
- (b) requiring the industrial undertaking to take such steps as the Central Government may consider necessary to stimulate the development of the industry
- (c) prohibiting the industrial undertaking from resorting to any act or practice which might reduce its production, capacity or economic value;
- (d) controlling the prices, or regulating the distribution, of any article or class of articles which have been the subject-matter of investigation.

Power of person or body of persons appointed under section 15 or section 15A to call for assistance in any investigation (Section 18)

The person appointed to make any investigation under section 15 or section 15A shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

Power of Central Government to assume management or control of an industrial undertaking in certain cases (Section 18A)

- (1) If the Central Government is of opinion that-
 - (a) an industrial undertaking to which directions have been issued in pursuance of section 16 has failed to comply with such directions, or
 - (b) an industrial undertaking in respect of which an investigation has been made under section 15 is being managed in a manner

highly detrimental to the scheduled industry concerned or to public interest,

the Central Government may, by notified order, authorise any person to take over the management of the undertaking. Such notified order shall have effect for such period not exceeding five years.

Power to take over industrial undertakings without investigation under certain circumstances (Section 18AA)

If, the Central Government is satisfied that the persons in charge of any industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation; or it has been closed for a period of not less than three months and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to restart the undertaking and such restarting is necessary in the interests of the general public, it may, by a notified order, authorise any person to take over the management of the industrial undertaking.

Effect of notified order under section 18A (Section 18B)

On the issue of a notified order under section 18A authorising the taking over of the management of an industrial undertaking-

- (a) all persons in charge of the management immediately before the issue of the notified order shall be deemed to have vacated their offices,
- (b) any contract of management between the industrial undertaking and any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have been terminated;
- (c) the person authorised under section 18A to take over the management shall take all such steps as may be necessary to take into his custody all the property, of the industrial undertaking

- (d) the persons, authorised under section 18A (7 of 1913) shall alone be entitled to exercise all the powers of the directors of the industrial undertaking.

The person authorised to take over the management of an industrial undertaking, shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial undertaking

Contracts in bad faith, etc. may be cancelled or varied (Section18C)

The person authorised under section 18A to take over the management of an industrial undertaking may, with the previous approval of the Central Government, make an application to any court for the purpose of canceling or varying any contract or agreement entered into, at any time before the issue of the notified order under section 18A, between the industrial undertaking and any other person and the court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial undertaking, make an order canceling or varying that contract or agreement, and the contract or agreement shall have effect accordingly.

No right to compensation for termination of office or contract (Section18D)

No person who ceases to hold any office by reason of the provisions contained in section 18B, or whose contract of management is terminated by reason of the provisions contained in that section, shall be entitled to any compensation for the loss of office or for the premature termination of his contract of management:

Application of Act 7 of 1913 (Section18E)

Where the management of an industrial undertaking being a company as defined in the Indian Companies Act, 1956 is taken over by the Central Government, then notwithstanding anything contained in the Act, or in the memorandum or articles of association of such undertaking-

- (a) it shall not be lawful for the shareholders of such undertaking or any other person to nominate or appoint any person to be a director of the undertaking;
 - (b) no resolution passed at any meeting of the shareholder of such undertaking shall be given effect to unless approved by the Central Government
 - (c) no proceeding for the winding up of such undertaking or for the appointment of the receiver in respect thereof shall lie in any court except with the consent with of the Central Government
- (2) Subject to the provision contained in sub-section (1), and to the other provisions contained in this Act and subject to such other exception, restriction and limitation, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Indian Companies Act, 1956 shall continue to apply to such undertaking in the same manner as it applied thereto before the issue of the notified order under section 18A.

Power of Central Government to cancel notified order under section 18 A (Section 18 F)

If at any time it appears to the Central Government on the application of the owner of the industrial undertaking or otherwise that the purpose of the order made under section 18A has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and on the cancellation of any such order the management or the control, as the case may be, of the industrial undertaking shall vest in the owner of the undertaking.

Power of Central Government to authorize, with the permission of the High Court, persons to take over management or control of industrial undertakings (Section 18FA)

If the Central Government is of opinion that there are possibilities of running or restarting an industrial undertaking, in relation to which an investigation has been made under section 15A, and that such industrial undertaking should be run or restarted, for

maintaining or increasing the production, supply or distribution of articles the government may make an application to the High Court for permission to appoint any person to take over the management of the industrial undertaking.

Where such an application is made, the High Court shall make an order empowering the Central Government to authorize any person to take over the management of the industrial undertaking for a period not exceeding five years:

After expiry of five years Central Government may apply to the High Court for continuance of such management for period not exceeding two years and the High Court may permit the authorised person to continue to manage the industrial undertaking provided the total period of such continuance (after the expiry of the initial period of five years) shall not exceed twelve years.

Where an order has been made by the High Court under this section and with direction of the High Court, the authorised person appointed shall be deemed to be the Official Liquidator in respect of the industrial undertaking.

On taking over the management of the industrial undertaking, the authorised person shall take immediate Steps to run the industrial undertaking to ensure the maintenance of production.

The authorised person may, on such terms and conditions as may be prescribed, raise any loans for the purpose of running the industrial undertaking and may, for that purpose, create a floating charge on the current assets of the industrial undertaking.

Where the authorised person is of opinion that the replacement or repair of any machinery of the industrial undertaking is necessary for the purpose of efficient running of the undertaking, he shall, make such replacement or repair.

The loan obtained by the authorised person shall be recovered from the assets of the industrial undertaking.

For the purpose of running the undertaking, the authorised person may employ the required former employees of the undertaking.

The proceedings in the winding up of the company, insofar as they relate to-

- (a) the industrial undertaking, the management of which has been taken over by the authorised person under this section, or
- (b) the concerned part in relation to which any function of control is exercised by the authorised person under this section,

shall, during the period of such management or control, remain stayed, and, in computing the period of limitation for the enforcement of any right, privilege, obligation or liability in relation to such undertaking or the concerned part, the period during which such proceedings remained stayed shall be excluded.

Power of Central Government to make certain declarations in relation to industrial undertakings, the management or control of which has been taken over under section 18A, section 18AA or section 18FA(Section 18FB)

If in relation to an industrial undertaking, the management of which has been taken over under Sections 18A or 18AA or 18FA, where it is necessary to do so in the interests of the general public, the Central Government may, by notified order, declare that-

- (a) all or any of the enactments specified in Schedule III shall not apply or shall apply with such adaptations, to such industrial undertaking, or
- (b) the operation, of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in shall remain suspended

The notified order shall remain in force, in the first instance, for period one year, but it may be extended from time to time provided that no such notified order shall remain in force after the expiry of the period for which the management of the industrial undertaking was taken over under section 18A, section 18AA or section 18FA, or for more than eight years in the aggregate from the date of issue of the first notified order, whichever is earlier.

In computing the period of limitation for the enforcement of any right, privilege, obligation or liability referred to above the period during which the enforcement remained suspended shall be excluded.

Power of Central Government to call for report on the affairs and working of managed company (Section 18FC)

Where the management or control of an industrial undertaking has been taken over under section 18A, or under section 18AA or section 18FA, the Central Government may, at any time during the continuance of such management or control, call for a report from the authorised person on the affairs and working of industrial undertaking

Decision of Central Government in relation to managed company (Section 18FD)

If the Central Government is satisfied in relation to a company owning an industrial undertaking, which is not being wound up by the High Court, that the financial condition and other circumstances of the company are such that it is not in a position to meet its current liabilities out of its current assets, that government may, if it considers necessary or expedient in the interests of the general public so to do, by order, decide that the industrial undertaking should be sold as a running concern as provided in section 18FE and proceedings should simultaneously be started for the winding up, by the High Court, of the company;

- (b) in relation to the company, owning the industrial undertaking, which is being wound up by the High Court, that its assets and liabilities are such that in the interest of its creditors and contributories the industrial undertaking should be sold as a running concern as provided in section 18FE, it may, by order, decide accordingly.
- (2) Notwithstanding anything contained in sub-section (1), if, on receipt of the report submitted by the authorised person, the Central Government is satisfied that-
 - (a) in the interests of the general public, or
 - (b) in the interests of the shareholders, or
 - (c) to secure the proper management of the company owning the industrial undertaking,

it is necessary so to do, the government may, by order, decide to prepare a scheme for the reconstruction of the company owning the industrial undertaking:

PROVIDED that no such scheme shall be prepared in relation to a company which is being wound up by or under the supervision of the High Court, except with the previous permission of that court.

- (3) The powers exercisable by the Central Government under section 18F, in relation to an undertaking taken over under section 18A, shall also be exercisable in relation to an undertaking taken over under section 18AA or section 18FA but such powers shall not be exercised after the making of an order under sub-section (1) or, as the case may be, under sub-section (2) of the section.

Provisions where government decides to follow the course of action specified in section 18FD (1) (Section 18FE)

- (1) The provisions hereinafter laid down shall apply where the Central Government decides that the course of action specified in sub-section (1) of section 18FD should be followed, namely
- (a) the decisions of the Central Government that the course of action specified in clause (a) of sub-section (1) of section 18FD should be followed in relation to a company owning an industrial undertaking shall be deemed to be a ground specified in section 433 of the Companies Act, 1956 (1 of 1956), on which the company may be wound up by the High Court;
- (b) the authorised person shall, as soon as may be, after the decision specified in clause (a) of sub-section (1) of section 18FD has been taken by the Central Government, present an application to the High Court for the winding up of the company owning the industrial undertaking;
- (c) when an application is made by the authorised person under clause (b), for the winding up, the High Court, of the company owning the industrial undertaking, the High Court shall order the winding up of the company and shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), appoint the authorised person as the Official Liquidator in relation to such undertaking;

- (d) whenever the Central Government decides under clause (b) of sub-section (1) of section 18FD that the industrial undertaking should be sold as a running concern, it shall cause a copy of its decision to be laid before the High Court;
- (e) until the industrial undertaking referred to in clause (a) or clause (b) of sub-section (1) of section 18FD is sold or purchased in pursuance of this section, the authorised person shall continue to function as the Official Liquidator in relation to the said undertaking in the winding up proceedings of the company, and thereafter the Official Liquidator appointed by the Central Government under section 448 of the Companies Act, 1956 (1 of 1956), shall take over and function as the Official Liquidator in the said proceedings.
- (2) The authorised person shall make a report to the Central Government as to what should be the reserve price for the sale of the industrial undertaking as a running concern.
- (3) In making a report under sub-section (2), the authorised person shall have regard to-
 - (a) the financial condition of the company owning the industrial undertaking on the date on which the order under section 18FD is made-
 - (i) as disclosed in its books of account;
 - (ii) as disclosed in its balance sheet and profit and loss account during a period of five years immediately preceding the said date;
 - (b) the condition and nature of the plant, machinery, instrument and other equipment from the point of view of their suitability for profitable use in the running of the industrial undertaking;
 - (c) the total amount of liability on account of secured and unsecured debts including overdrafts, if any, drawn on banks, liabilities on account of terminal benefits to the employees and other borrowings, and other liabilities of the company; and
 - (d) other relevant factors including the factor that the industrial undertaking will be sold free from all encumbrances.

- (4) Notice of the reserve price determined by the authorised person shall be given in such manner as may be prescribed to the members and creditors of the company owning such industrial undertaking to make representations within a specified time to the Central Government through the authorised person and the Central Government shall, after considering the representations received and the report of the authorised person, determine the reserve price.
- (5) The authorised person shall thereafter, with the permission of the High Court, invite tenders from the public in such manner as may be determined by the High Court for the sale of the industrial undertaking as a running concern subject to the condition that it will be sold to the person offering the highest which shall not be less than the reserve price determined under sub-section (4) provided that the High Court shall not refuse to grant such permission if it is satisfied that the company is not in a position to meet its current liabilities out of its current assets.
- (6) The industrial undertaking shall be sold to the highest bidder as a running concern, only if the price offered by him therefor is not less than the reserve price.
- (7) Where no offer of price is equal to, or more than, the reserve price, the industrial undertaking shall be purchased by the Central Government at the reserve price.
- (8) (a) The amount realised from the sale of the industrial undertaking as a running concern together with any other sum which may be realised from any contributory, purchaser or any other person from whom any money is due to the company shall be utilized in accordance with the provisions of the Companies Act, 1956 (1 of 1956), in discharging the liabilities of the company and distributing the balance, if any, amongst the members of the company. In other respects the provisions of the Companies Act, 1956 relating to the winding up of a company by the High Court shall apply.
- (9) When an industrial undertaking is sold to any person under sub-section (6), or purchased by the Central Government under sub-section (7), there shall be transferred to and vested in the purchaser, free from all encumbrances, all such assets relating

to the industrial undertaking as are referred to in sub-clause (i) of clause (a) of section 18FG and existing at the time of the sale or purchase.

Provisions where government decides to follow the course of action specified in section 18FD (2) (Section 18FF)

- (1) Where the Central Government decides that the course of action specified in sub-section (2) of section 18FD should be followed, it shall direct the authorised person to prepare a scheme for the reconstruction of the company and the authorised person shall submit the same for the approval of the government. The scheme may contain provisions for all or any of the following matters, namely,-
 - (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the company on its reconstruction;
 - (b) any change in the Board of Directors, or the appointment of a new Board of Directors of the company on its reconstruction and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;
 - (c) the vesting of controlling interest, in the reconstructed company, in the Central Government either by the appointment of additional directors or by the allotment of additional shares;
 - (d) the alteration of the memorandum and articles of association of the company, on its reconstruction, to give effect to such reconstruction;
 - (e) subject to the provisions of the scheme, the continuation by, or against the company, on its reconstruction, of any action or proceedings pending against the company immediately before the date of its reconstruction;
 - (f) the reduction of the interest or rights which the members and

creditors have in or against the company before its reconstruction to such extent as the Central Government may consider necessary in the interests of general public or in the interests of the members and creditors or for the maintenance of the business of the company:

PROVIDED that nothing contained in this clause shall be deemed to authorize the reduction of the interest or rights of any creditor (including government) in respect of any loan or advance made by that creditor to the company after the date on which the management of the industrial undertaking of the company has been taken over under section 18A, section 18AA, or section 18FA;

- (g) the payment in cash or otherwise to the creditors in full satisfaction of their claim-
 - (i) in respect of their interest or rights in or against the company before its reconstruction; or
 - (ii) where their interest or rights in or against the company has or have been reduced under clause (f), in respect of such interest, or rights as so reduced;
- (h) the allotment to the members of the company for shares held by them therein before its reconstruction whether their interest in such shares has been reduced under clause (f) or not, of shares in the company on its reconstruction and where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim-
 - (1) in respect of their interest in shares in the company before its reconstruction; or
 - (2) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;
- (i) the offer by the Central Government to acquire by negotiations with the members of the company their respective shares on payment in cash to those members who may volunteer to sell their shares to the Central Government in full satisfaction of their claim-

- (1) in respect of their interest in shares in the company before its reconstruction; or
- (2) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;
- (j) the conversion of any debentures issued by the company after the taking over of the management of the company under section 18A or section 18AA or section 18FA or of any loans obtained by the company after that date or of any part of such debentures or loans, into shares in the company and the allotment of those shares to such debenture-holders or creditors, as the case may be;
- (k) the increase of the capital of the company by the issue of new shares and the allotment of such new shares to the Central Government;
- (l) the continuance of the services of such of the employees of the company as the Central Government may specify in the scheme in the company itself, on its reconstruction, on such terms and conditions as the Central Government thinks fit;
- (m) notwithstanding anything contained in clause (1), where any employees of the company whose services have been continued under clause (1) have, by notice in writing given to the company at any time before the expiry of one month next following the date on which the scheme is sanctioned by the High Court, intimated their intention of not becoming employees of the company, on its reconstruction, the payment to such employees and to other employees whose services have not been continued on the reconstruction of the company, of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947 (14 of 1947), and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorizations of the company immediately before the date of its reconstruction;
- (n) any other terms and conditions for the reconstruction of the company;
- (o) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction of the company shall be fully and effectively carried out.

A copy of the scheme, as approved by the Central Government, shall be sent in draft to the company, to the registered trade unions, if any, of which the employees of the company are members and to the creditors thereof for suggestions and objections, if any, within such period as the Central Government may specify for this purpose.

The Central Government may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the company, from the registered trade unions of which the employees of the company are members and from any members or creditors of the company.

The scheme shall thereafter be placed before the High Court for its sanction and the High Court, if satisfied that the scheme is in the interests of the general public or in the interests of the shareholders or for securing the proper management of the company and that the scheme is designed to be fair and reasonable to the members and creditors of the company, may, after giving a reasonable opportunity to the company and to its members and creditors of showing cause, sanction the scheme without any modification or without modification as it may consider necessary.

The scheme, as so sanctioned by the High Court, shall come into force on such date as that court may specify in this behalf provided that different dates may be specified for different provisions of the scheme.

The sanction accorded by the High Court under shall be conclusive evidence that all the requirements that of this section relating to the reconstruction of the company have been complied with, and the copy of the sanctioned scheme certified by the High Court to be a true copy thereof, shall, in legal proceedings (whether original or in appeal or otherwise), be admitted as evidence to the same extent as the original scheme.

On and from date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the company and also on all the members and other creditors and employees of the company and on any other person having any right or liability in relation to the company.

On the coming into operation of the scheme or any provision thereof, the authorised person shall cease to function, and the management

of the reconstructed company shall be assumed by the Board of Directors as provided in the scheme.

Copies of the scheme shall be laid before each House of Parliament, after the scheme has been sanctioned by the court.

The provisions of this section and of any scheme made hereunder shall have effect notwithstanding anything contained in sections 391 to 394A (both inclusive) of the Companies Act, 1956.

Preparation of inventory of assets and liabilities and list of members and creditors of managed company (Section 18FG)

The authorised person shall, after taking over the management of the industrial undertaking of a company under section 18A or section 18AA or section 18FA prepare a complete inventory of (i) all properties, movable and immovable and all books of account, registers, maps, plants, sections, drawings, records, documents or titles of ownership of property, and all other documents of whatever nature relating thereto; and (ii) all borrowings, liabilities and obligations of whatever kind of the company including liability on account of terminal benefits to its employees subsisting immediately before the said date

The authorized person shall also prepare separately a list of members, and a list of creditors, of such company as on the date of taking over of the management of the industrial undertaking showing separately in the list of creditors, the secured creditors and the unsecured creditors:

Stay of suits and other proceedings (Section 18FH)

In the case of a company in respect of which an order under section 18FD has been made, no suit or other legal proceeding shall be instituted or continued against the company except with the previous permission of the Central Government or any officer or authority authorised by that government in this behalf.

Power to control supply, distribution, price, etc. of certain articles (Section 18 G)

The Central Government, if found expedient for securing the

equitable distribution and availability at fair prices of any article may by notified order, provide for regulating the supply and distribution thereof. The notified order may provide

- (a) for controlling the prices at which any such article may be bought or sold;
- (b) for regulating by licences, permits or otherwise the distribution, transport, disposal, acquisition possession, use or consumption of any such article;
- (c) for prohibiting the withholding from sale of any such article ordinarily kept for sale;
- (d) for requiring any person manufacturing, producing or holding in stock such article to sell the articles during a specified period or to such person or class of persons and in such circumstances as may be specified in the order;
- (e) for regulating or prohibiting any class of commercial or financial transactions relating to such article if it is likely to be detrimental to public interest;
- (f) for requiring persons engaged in the distribution and trade and commerce in any such article to exhibit a statement of the total quantities of any such articles in stock;
- (g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and
- (h) for any incidental or supplementary matters, including, in particular, the grant of issue of licences, permits, or other documents and charging of fees therefor.

Where in pursuance of any order made with reference to clause (d) above, any person sells any article; he shall be paid the price therefore at the prescribed rate.

No order made in exercise of any power conferred by this section shall be called in question in any court.

Explanation : In this section, the expression "article or class of articles" relatable to any scheduled industry includes any article or

class of articles imported into India which is of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry.

Powers of inspection (Section 19)

For the purpose of ascertaining the position of working of any industrial undertaking, any person authorised by the Central Government in this behalf shall have the right (a) to enter and inspect any premises; (b) to order the production of any document; and (c) to examine any person having the control of, or employed in connection with, any industrial undertaking. The authorised person shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

General prohibition of taking over management or control of industrial undertakings (Section 20)

After the commencement of the Act, it shall not be competent for any State Government or a local authority to take over the management or control of any industrial undertaking under any law for the time being in force which authorizes any such government or local authority so to do.

Certain administrative expenses of Development Councils to be paid from moneys provided by Parliament (Section 21)

Such administrative expenses as relate to the emoluments of officers of a Development Council, who are appointed by the Central Government, shall be defrayed out of moneys provided by Parliament.

Power of the Central Government to issue directions to Development Councils (Section 22)

In the exercise of its function under his act, every development council shall be guided by the such instructions as may be given to it by the Central Government and such instructions may include direction relating to the manner in which, and the purpose for which, any proceeds of the cess levied under section 9 which may have been handed over to it, shall be expended.

Decision of Central Government final respecting in certain matters (Section 23)

If, for the purposes of this Act, any question arises as to whether (a) there has been a substantial expansion of an industrial undertaking, or (b) an industrial undertaking is producing or manufacturing any new article, the decision of the Central Government thereon shall be final.

Penalties (Section 24)

- (1) If any person contravenes or attempts to contravene or abets the contravention of-
 - (i) the provisions of sub-section (1) or sub-section (4) of section 10, or of sub-section (1) of section 11 or of section 11A or of sub-section (1) of section 13 or of sub-sections (2), (2A), (2D), (2F) and (2G) of section 29B, or
 - (ii) any direction issued under section 16 or sub-section (3) of section 18B, or
 - (iii) any order made under section 18G, or
 - (iv) any rule the contravention of which is made punishable under this section, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both, and, in the case of continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.
- (2) If the person contravening any of the said provisions is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (3) Notwithstanding anything contained in sub-section (2), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section-

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

Penalty for false statements (Section 24A)

If any person(a) when required by this Act or by any order under this Act to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false or does not believe to be true; or (b) makes any such statement as aforesaid in any book, account, record, declaration, return, or other document which he is required by any other direction or order made under this Act to maintain or furnish; he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

Delegation of powers (Section 25)

- (1) The Central Government may by notified order, direct that any power exercisable by it under this Act (other than the power given to it by sections 16, 18A, 18AA and 18FA) shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority (including in the said expressions any Development Council, State Government or officer or authority subordinate to the Central Government) as may be specified in the direction.
- (2) Any power exercisable by a State Government by virtue of a direction under sub-section (1) may, unless otherwise provided

in such direction, be exercised also by such officer or authority subordinate to that State Government as it may, by notified order, specify in this behalf

Power to issue directions (Section 26)

The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any order or direction made there under.

Cognizance of offences (Section 27)

No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860).

Burden of proof in certain cases (Section 28)

Where any person is prosecuted for contravening any order made under section 18G which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

Jurisdiction of courts (Section 29)

- (1) Subject to the provisions of sub-section (2), no court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.
- (2) Any Magistrate or bench of Magistrates empowered, for the time being, to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898 (5 of 1898), may, on application in this behalf being made by the prosecution, try, in accordance with the provisions contained in sections 262 to 265 of the said Code, any offence which consists of a contravention of an order made under section 18G.

Special provision regarding fines (Section 29A)

Notwithstanding anything contained in section 32 of the Code of

Criminal Procedure, 1898 it shall be lawful for any Magistrate of the first class and for any Presidency Magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of any offence under this Act.

Power to exempt in special cases (Section 29B)

- (1) If the Central Government is of opinion, having regard to the smallness of the number of workers employed or to the amount invested in any industrial undertaking or to the desirability of encouraging small undertakings generally or to the stage of development of any scheduled industry, that it would not be in public interest to apply all or any of the provisions of the Act thereto, it may, by notification in the Official Gazette, exempt, subject to such conditions as it may think fit to impose, any industrial undertaking or class of industrial undertakings or any scheduled industry or class of scheduled industries as it may specify in the notification from the operation of all or any of the provisions of this Act or any rule or order made there under.

Where any notification under granting any exemption is cancelled, no owner of any industrial undertaking to which the provisions of section 10, section 11, section 11A or clause (d) of sub-section (1) of section 13, would have applied, if the notification had not been issued, shall carry on the business of the undertaking after the expiry of such period as may be specified in the notification canceling the exemption except under and in accordance with a licence issued in this behalf by the Central Government and, in the case of a State Government, except under and in accordance with the previous permission of the Central Government.

If it is satisfied, the Central Government may, by notified order, direct that any article or class of articles specified in Schedule I shall, on and from such date as may be specified in the notified order be reserved for exclusive production by the ancillary, or small scale, industrial undertaking

The Central Government shall, with a view to determining the nature of any article or class or articles that may be reserved for production by the ancillary or small scale industrial undertakings, constitute an Advisory Committee to give advice

on the matter. The advisory committee shall, after considering the following matters, communicate its recommendation to the Central Government, namely-

- (a) the nature of any article or class of articles which may be produced economically by the ancillary or small scale, industrial undertakings;
- (b) the level of employment likely to be generated by the production of such article or class of articles by the ancillary or small scale, industries undertakings;
- (c) the possibility of encouraging and diffusing entrepreneurship in industry;
- (d) the prevention of concentration of economic power to the common detriment; and
- (e) such other matters as the Advisory Committee may think fit.

The production of any reserved article or class of reserved articles by any industrial undertaking (not being an ancillary, or small scale, industrial undertaking) which, on the date of reservation, is engaged in, or has taken effective steps for, the production of any reserved article or class of reserved articles, shall, after the commencement of the Industries (Development and Regulation) Amendment Act, 1984, be subject to such conditions as the Central Government may specify. While specifying the conditions the Central Government may take into consideration the level of production of any reserved articles or class of reserved articles achieved, immediately before the date of reservation and such other factors as may be relevant.

Every person, not being the Central Government, who, is registered under section 10 or to whom a licence has been issued under section 11 for the production of any article which has been subsequently reserved for the ancillary, or small scale industrial undertakings, shall produce, such registration certificate/ licence within such period as the Central Government may specify.

The owner of every industrial undertaking (not being an ancillary, or small scale, industrial undertaking) which, immediately before the commencement of the Act, or the date of reservation, whichever is later-

- (a) was engaged in the production of any article articles, which has been reserved for the ancillary or small scale industrial undertakings, or
- (b) had before such commencement or before the date of such reservation, as the case may be, taken effective steps for commencing the production of such reserved article,

without being registered under section 10 or in respect of which a licence or permission has not been issued under section 11, shall refrain from the production of such reserved article, on and from the date of expiry of three months from such commencement or from the date of such reservation, whichever is later.

Protection of action taken under the Act (Section 29C)

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder. No suit or other legal proceeding shall lie against the government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made there under.

Debts incurred by the authorised person to have priority (Section 29D)

Every debt arising out of any loan obtained by the authorised person for carrying on the management of an industrial undertaking taken over under section 18A or section 18AA or section 18FA shall have priority over all other debts and it shall be a preferential debt within the meaning of section 530 of the Companies Act, 1956 Such debts shall rank equally among themselves and be paid in full out of the assets of the industrial undertaking unless such assets are insufficient to meet them, in which case they shall abate in equal proportions.

Power to make rules (Section 30)

The Central Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

Such rules may provide for all or any of the following matters, namely,-

- (a) the constitution of the Advisory Council and Development Councils, the term of office and other conditions of service of, the procedure to be followed by, and the manner of filling casual vacancies among members of the Advisory Council or a Development Council;
- (b) the form of the statement of account to be furnished by a Development Council;
- (c) the intervals at which, the time within which, and the manner in which the cess leviable under section 9 shall be payable and the rebate for the prompt payment of such cess.
- (d) the expenses which a Development Council may meet from the proceeds of the cess levied under section 9 which may have been handed over to it;
- (e) the appointment by or with the approval of the Central Government of any officers of a Development Council;
- (f) the facilities to be provided by any industrial undertaking for the training of technicians and labour;
- (g) the collection of any information or statistics in respect of any scheduled industry;
- (h) the manner in which industrial undertakings may be registered under section 10 and the levy of a fee therefor;
- (i) the procedure for the grant or issue of licences and permissions under sections 11, section 11A, section 13 or section 29B, the time within which such licences or permissions shall be granted or issued including, in particular, the publication of notices calling for applications and the holding of such public inquiry in relation thereto as may be necessary in the circumstances;
- (j) the fees to be levied in respect of licences and permissions issued under this Act;
- (k) the matters which may be taken into account in the granting or issuing of licences and permissions, including in particular, the previous consultation by the Central Government with the

Advisory Council or any Development Council or both in regard to the grant or issue of any such licences or permissions;

- (l) the procedure to be followed in making any investigation under this Act;
- (m) the conditions which may be included in any licences and permissions;
- (n) the conditions on which licences and permissions may be varied or amended under section 12;
- (o) the maintenance of books, accounts and records relating to an industrial undertaking;
- (p) the submission of special or periodical returns relating to an industrial undertaking by persons having the control of, or employed in connection with, such undertaking, and the forms in which, and the authorities to which such returns and reports shall be submitted;
- (pp) any matter which is to be or may be prescribed for giving effect to the provisions of Chapter IIIAA or Chapter IIIAC;
- (q) any other matter which is to be or may be prescribed under this Act.

Any rule made under this section may provide that a contravention thereof shall be punishable under section 24.

Every rule made under this section shall be laid before the houses of parliament, for a total period of thirty days.

Application of other laws not barred (Section 31)

The provisions of this Act shall be in addition to and not, save as otherwise expressly provided in this Act, in derogation of any other Central Act for the time being in force, relating to any of the scheduled industries.

Small Scale Industrial Undertakings

The conceptual and legal framework for small scale and ancillary industrial undertakings is derived from the Industries Development and Regulation Act, 1951. Section 11-B of the IDR Act, 1951 provides the power to specify the definition of SSI in consideration of factors relating to:

- (i) investment of unit in fixed assets
- (ii) nature of ownership
- (iii) smallness of number of workers employed and
- (iii) Nature, cost and quality of product etc.

Section 29-B of the **Industries Development and Regulation Act, 1951**, provides for reservation of products for exclusive production in the small-scale sector.

The Central Government would first ascertain which ancillary and small scale industrial undertakings need supportive measures and favorable treatment to enable them to be viable for promoting the economy and reduce unemployment and also to ensure that the resources of the community are distributed to subserve the community. Considering certain important factors the Central Government would specify the requirements which should be complied with by small scale industrial undertakings to enable them to be regarded as ancillary or small scale industrial undertakings. The factors taken into consideration by the Central Government in this respect are:

- (i) The investment factor- the amount to be invested by the industrial undertaking in plant and machinery, buildings etc.,
- (ii) The nature of ownership of the industrial undertaking;
- (iii) The smallness, considering the number of workers employed in the industrial undertaking;
- (iv) The nature, cost and quality of the product of the industrial undertaking;

- (v) Foreign exchange, if any, required for the import of any plant or machinery by the industrial undertaking.

No industrial undertaking will be regarded as an ancillary industrial undertaking unless it is engaged in the manufacture of parts or components or supplying or rendering not less than fifty per cent of its production or its services to other units for production of other articles. Further, no such undertaking shall be a subsidiary of, or owned or controlled by any other undertaking.

The Industries Development and Regulation Act, 1951, specifically refers to only two categories of the small-scale sector, viz.

Small Scale Industrial undertaking and

Ancillary Industrial undertaking.

However, over the years, some sub-sectors have been identified within overall small-scale sector. These are:

- (i) Tiny enterprise
- (ii) Export Oriented Units
- (iii) Small Scale Service and Business Enterprises (SSSBE)
- (iv) Women Enterprises.

Statutory reservation of items for exclusive production in the small-scale sector

IDR Act provides for statutory reservation of items/products for exclusive production in the small-scale sector. Such products therefore are reserved for manufacture only in the small-scale sector. The provisions relating to reservation are contained in section 29 B (2 A) to (2H) of the the Industries Development and Regulation Act, 1951.

The policy of reservation was given statutory backing by an amendment in the IDR Act in 1984.

As per Sub section 2A to Section 29B of the Industries Development

and Regulation Act, 1951, the Central Government, if found necessary, can for the development and expansion of ancillary or small scale industrial undertakings direct that any article specified in the First Schedule of the **Industries Development and Regulation Act, 1951**, be reserved for exclusive production by the ancillary, or small scale, industrial undertakings.

To determining the nature of any article that may be reserved for production by the ancillary or small scale industrial undertakings, the Central Government has to constitute an expert Advisory Committee to give advice on the matter. (Sub section 2B to Section 29B *ibid*)

As per Sub section 2C to Section 29B of the Industries Development and Regulation Act, 1951 the Advisory Committee mentioned above would , after considering the following matters, communicate its recommendations to the Central Government, namely: -

- (i) The nature of any article or class of articles which may be produced economically by the ancillary, or small scale, industrial undertakings,
- (ii) The level of employment likely to be generated by the production of such article or class of article by the ancillary, or small-scale, industrial undertakings.
- (iii) The possibility off encouraging and diffusing entrepreneurship in industry;
- (iv) The prevention of concentration of economic power to the common detriment and such other matters as the Advisory Committee may think fit.

After the commencement of the Industries (Development and Regulation) Amendment Act, 1984, the production of any reserved article by any industrial undertaking (not being an ancillary, or small scale, industrial undertaking) which is engaged in or has taken effective steps for the production of any reserved article would be subject to such conditions as the Central Government may specify (Sub section 2D of Section 29B *ibid*)

While specifying any condition under sub-section (2D) *ibid*, the

Central Government may take into consideration the level of production of any reserved articles achieved, immediately before the date of reservation, by the industrial undertaking and such other factors as may be relevant. (Sub section 2E to Section 29B *ibid*)

The person who is registered under section 10 of the Industries Development and Regulation Act, 1951 or to whom permission has been granted under section 11 *ibid* for the production of any article which has been subsequently reserved for the ancillary or small scale industrial undertakings has to produce the registration certificate or permission to the Central government and the Central Government will enter therein the conditions specified under sub-section (2D) including the productive capacity of the industrial undertakings (Sub section 2F to Section 29B *ibid*).

All industrial undertaking (other than ancillary or small-scale, industrial undertaking) earlier engaged in the production of the article which has been reserved for the ancillary or small scale industrial undertakings under the Industries (Development and Regulation) Amendment Act, 1984 have to stop production of such reserved article. (As per Sub section 2H to Section 29B *ibid*)

Every notified order made under sub-section (2A) *ibid* shall be laid, before each House of Parliament for a total period of thirty days. (Sub section 2G of Section 29B *ibid*)

The requirements to be complied with by an industrial undertaking for being regarded as small scale industrial undertaking

(As per Gazette Notification No. S.O. 232 (E) dated 2nd April, 1991)

- (a) An industrial undertaking in which the investment in fixed assets in plant and machinery whether held on ownership terms or on lease or by hire purchase does not exceed Rs. 6 million.
- (b) In case of an industrial undertaking referred to in (a) above the limit investment in fixed assets in plant and machinery shall be rupees 7.5 million provided the unit undertakes to export at least 30 per cent of the annual production by the end of 3rd year from the date of its commencing production.

Requirements to be complied with by an industrial undertaking for being regarded as ancillary industrial undertaking

(As per Gazette Notification No. S.O. 232 (E) dated 2nd April, 1991)

An industrial undertaking which is engaged in the manufacture or production of parts, components, sub-assemblies, tooling or intermediates, or the rendering of services, and the undertaking supplies or renders not less than 50 per cent of its production or services, as the case may be, at one or more other industrial undertakings and whose investment in fixed assets in plant and machinery whether held on ownership terms or on lease or on hire purchase, does not exceed Rs. 7.5 million.

The investment limit has since been enhanced from Rs. 7.5 million to Rs. 10 million both in respect of SSI and ancillary industrial undertakings with effect from. 24.12.1999. The definition for Export oriented units as at (b) above dropped from December 1997.

In calculating the value of plant and machinery, the original price paid by the owner, irrespective of whether the plant and machinery are new / second hand will be taken into account.

The cost of equipment such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores will be excluded while computing the value of plant and machinery. Similarly, the cost installation of plant and machinery will also be excluded.

The cost of R&D equipment and pollution control equipment will be excluded in computing the value of plant and machinery.

In the case of imported machinery, import duty will be included, but not the miscellaneous expenses like transportation from the port to the site the factory, demurrage if any paid at the port and premium if any paid for import entitlement or import of machinery. However, shipping charges, customs clearance charges and sales tax should be included in computing the cost of plant and machinery.

The cost of generation sets, if any, installed will be excluded. Similarly, the cost of extra transformer, etc. which has to be installed by a unit as per the regulations of State Electricity Board would also be excluded.

The bank charges and services charges paid to the National Small Industries Corporation or to the State Small Industries Corporation will be excluded in computing the cost of plant and machinery.

The cost involved in procurement/installation of cables, wiring bus-bars, electrical control panels (not those mounted on individual machines), etc. which are necessarily to be used for imparting electrical power to the plant & machinery/safety measures is not to be taken into account for computing the cost of plant and machinery for determining the status of an industrial undertaking.

Cost of gas producer plant will be excluded.

The Central Government under Notification S.O. 2(E) Dated 1.1.1993 issued explanatory notes as under :

- (A) "Owned" shall have the meaning as derived from the definition of the expression "owner" specified in clause (f) of Section-3 of the Industries Development & Regulation) Act, 1951 (65 of 1951):
- (B) "Subsidiary" shall have the same meaning as in clause (47) of Section 2, read with Section 4, of the Companies Act, 1956 (1 of 1956).
- (C) The expression "controlled by any other industrial undertaking" means as under: -

Where two or more industrial undertakings are set up by the same person as a proprietor, each of such industrial undertakings shall be considered to be controlled by the other industrial undertaking or undertakings.

Where two or more industrial undertakings are set up as partnership firms under the Companies Act, 1956 (1 of 1956), an industrial undertaking shall be considered to be controlled by other industrial undertaking if: -

Where industrial undertakings are set up by Companies under the Companies Act, 1956 (1 of 1956), an industrial undertaking shall be considered to be controlled by other industrial undertaking if: -

The equity holding by other industrial undertaking in it exceeds 24% of its total equity, or

the management control of an undertaking is passed on to the other industrial undertaking by way of the Managing Director of the first mentioned undertaking being also the Managing director or Director in the other industrial undertaking or the majority of Directors on the Board of the first mentioned undertaking being the equity holders in the other industrial undertaking:

- (D) The extent of equity participation by other industrial undertaking or undertakings in the undertaking shall be worked out as follows: -

The equity participation by other industrial undertaking shall include both foreign and domestic equity.

Equity participation by other industrial undertaking shall mean total equity held in an industrial undertaking by other industrial undertaking or undertakings, whether small scale or otherwise, put together as well as the equity held by persons who are Directors in any other industrial undertaking or undertakings.

Equity held by a person, having special technical qualification and experience, appointed as a Director in a small scale industrial undertaking, to the extent of qualification shares, if so provided in the Articles of Association, shall not be counted in computing the equity held by other industrial undertaking or undertakings even if the person concerned is a Director in other industrial undertaking or undertakings.

- (E) Where an industrial undertaking is a subsidiary of or is owned controlled by any other industrial undertaking or undertaking, and if the total investment in fixed assets in plant and machinery of the first mentioned industrial undertaking and the other industrial undertaking or undertakings clubbed together exceeds the limit of investment specified, none of these industrial undertakings shall be considered to be a small scale or ancillary industrial undertaking.

The Central Government under Circular No. 4(1)/92-SSI Bd. (4) Dated 17th May, 1993 further clarified as under:

- (a) It should be understood that industrial undertaking is different from its form of ownership. The forms of ownership are of three

types viz., proprietary, partnership and company. The provisions of "controlled" and "clubbing" referred in Notification S.O. 2(E) Dated 1.1.1993 will apply only to similar forms of ownership of industrial undertakings, e.g., an industrial undertaking owned by a proprietary concern cannot be clubbed with one owned as a company OR an industrial undertaking owned by a partnership firm cannot be clubbed with an industrial undertaking owned as a proprietary concern irrespective of the concerned persons (proprietor, partner or equity holder) being common. In other words, in the above examples the provisions of "controlled" and "clubbing" will not apply.

A Company will be considered as having set up an industrial undertaking only if it has an equity interest (i.e. invested in equity) in an industrial undertaking. In other words, a company with no equity interest in any industrial undertaking can invest in a small-scale unit without such equity being counted as equity by other industrial undertaking. Thus, in the first instance, such a company can invest even more than 24% equity in a small-scale industrial unit. However, no sooner the company acquires an equity interest in an industrial undertaking it becomes a company that has set up an industrial undertaking. Therefore, in the second or subsequent instances the equity investment by such a company will count towards equity by other industrial undertaking and the provisions of clubbing will apply.

Similarly, an NRI can invest in the first instance in a small-scale industrial unit without such equity being counted as equity by other industrial undertaking. Thus, in the first instance the equity investment can be more than 24%, even 100%. However, in the second or subsequent instances, the provisions of "clubbing" will start to apply.

Similarly, a foreign company with no equity interest in an industrial undertaking, whether in India or abroad can, in the first instance, invest equity of any amount in a small-scale industrial undertaking. However, in the subsequent instances, the provisions of "clubbing" will apply because such a company would, after the first investment, be considered as having set up an industrial undertaking.

Export oriented units (EOUS), electronics hardware technology parks (EHTPS) software technology parks (STPS) and bio-technology parks (BTPS)

Eligibility 1 Units undertaking to export their entire production of goods and services (except permissible sales in the DTA), may be set up under the Export Oriented Unit (EOU) Scheme, Electronic Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering, and rendering of services. Trading units, however, are not covered under these schemes.

Export and Import

- of Goods 2** (a) An EOU/EHTP/STP/BTP unit may export all kinds of goods and services except items that are prohibited in the ITC. Export of Special Chemicals, Organisms, Materials, Equipment and Technologies shall be subject to fulfillment of the conditions indicated in the ITC.
- (b) An EOU/EHTP/STP/BTP unit may import and/or procure from DTA or bonded warehouses in DTA/international exhibition held in India without payment of duty, provided they are not prohibited items of import. The units shall also be permitted to import goods free of cost or on loan/lease from clients. The import of capital goods will be on a self certification basis.
- (c) State Trading regime shall not apply to EOU manufacturing units.
- (d) EOU/EHTP/STP/BTP units may import/procure from Domestic Tariff Area (DTA) without payment of duty including capital goods certain specified goods for creating a central facility which will be used by software units. These software units can be EOU/DTA units who will use the facility for export of software.

- (e) An EOU engaged in agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture may be permitted to remove specified goods in connection with its activities for use outside the bonded area.
- (f) Gems and jewellery EOUs may source gold/silver/platinum through the nominated agencies also. Units obtaining gold/silver/platinum from the nominated agencies shall export gold/silver/platinum jewellery within 60 days from the date of release. This shall not, however, apply to outright purchase of precious metal from the nominated agencies.
- (g) EOU/EHTP/STP/BTP units, other than service units, may export to Russian Federation in Indian Rupees against repayment of State Credit/Escrow Rupee Account of the buyer subject to RBI clearance, if any.
- (h) Procurement and supply of spares and consumables required for the goods manufactured by the units may be allowed to be exported along with goods up to 1.5% of FOB value of exports. This shall, however, not count towards NFE calculation, for concessional rate DTA sales or for Income Tax exemption.

Second Hand

Capital Goods 3 Second hand capital goods without any age limit may also be imported duty free.

Leasing of Capital

Goods 4 An EOU/EHTP/STP/BTP unit may, on the basis of a firm contract between the parties, source the capital goods from a domestic/foreign leasing company without payment of customs/excise duty. In such a case, the EOU/EHTP/STP/BTP unit and the domestic/foreign leasing company shall jointly file the documents to enable import/procurement of the capital goods without payment of duty.

**Net Foreign
Exchange Earnings**

- (NFE) 5 EOU/EHTP/STP/BTP unit shall be a positive net foreign exchange earner. Net Foreign Exchange Earnings (NFE) shall be calculated cumulatively in blocks of five years, starting from the commencement of production.

**Letter of
Permission/ Letter of
Intent and Legal**

- Undertaking 6(a)** On approval, a Letter of Permission (LOP) /Letter of Intent (LOI) shall be issued by the Development Commissioner to EOU/EHTP/STP/BTP unit. The LOP/LOI shall have an initial validity of 3 years. Its validity may be extended further up to 3 years.
- (b) LOP/LOI issued to EOU/EHTP/STP/BTP units by the concerned authority would be construed as a licence for all purposes.
- (c) The unit shall execute a legal undertaking with the Development Commissioner concerned. Failure to ensure positive NFE or to abide by any of the terms and conditions of the LOP/LOI/IL/LUT shall render the unit liable to penal action under the provisions of the Foreign Trade (Development & Regulation) Act, 1992 and cancellation or revocation of LOP/LOI/IL.

Investment Criteria

- (d) Only projects having a minimum investment of Rs.1 crore in plant and machinery shall be considered for establishment as EOUs. This shall, however, not apply to existing units and units in EHTP / STP/ BTP, Handicrafts/ Agriculture/ Floriculture/Aquaculture/ Animal Husbandry/ Information Technology, Services, Brass hardware, handmade Jewellery and such other sectors as may be decided by the BOA.

Application &

- Approvals** 7 (a) Applications for setting up of units under EOU scheme other than proposals for setting up of unit in the services sector (except R&D, software and IT enabled services, or any other service activity as may be delegated by the BOA), shall be approved or rejected by the Units Approval Committee within 15 days.
- (b) In other cases, approval may be granted by the Board of Approval (BOA).
- (c) Proposals for setting up EOU requiring industrial licence may be granted approval by the Development Commissioner after clearance of the proposal by the Board of Approval and Department of Industrial Policy and Promotion within 45 days.

DTA Sale of

Finished Products/

Rejects Waste/

Scrap/ Remnants and By-

- products** 8 The entire production of EOU/EHTP/STP/BTP units shall be exported subject to the following:(a) Units, other than gems and jewellery units may sell goods up to 50% of FOB value of exports subject to fulfillment of positive NFE on payment of concessional duties. Within the entitlement of DTA sale, the unit may sell in DTA its products similar to the goods which are exported or expected to be exported from the units. No DTA sale at concessional duty shall be permissible in respect of motor cars, alcoholic liquors, books and tea (except instant tea) or by a packaging/ labeling /segregation/ refrigeration unit.Sales made to a unit in SEZ shall also be taken into account for the purpose of arriving at FOB value of export by EOU provided payment for such sales are made from EEFC Account.

- (b) For services, including software units, sale in the DTA in any mode, including on line data communication shall also be permissible up to 50% of FOB value of exports and /or 50% of foreign exchange earned.
- (c) Gems and jewellery units may sell up to 10% of FOB value of exports of the preceding year in DTA subject to fulfillment of positive NFE.
- (d) Unless specifically prohibited in the LOP, rejects may be sold in the DTA on payment of duties as applicable to sale under paragraph 8(a) on prior intimation to the Customs authorities. Such sales shall be counted against DTA sale entitlement.
- (e) Scrap/ waste/ remnants arising out of production process or in connection therewith may be sold in the DTA as per the Standard Input-Output norms notified under the Duty Exemption Scheme on payment of concessional duties. Sale of waste/scrap/remnants by units not entitled to DTA sale or sales beyond the DTA sale entitlement shall be on payment of full duties.
- (f) There shall be no duties/taxes on scrap/waste/remnants in case the same are destroyed with the permission of Customs authorities.
- (g) By-products included in the LOP may also be sold in the DTA subject to achievement of positive NFE on payment of applicable duties within the overall entitlement of paragraph 8(a).
- (h) EOU/ EHTP/ STP/BTP units may sell finished products, which are freely importable under the Policy in the DTA under intimation to the Development Commissioner against payment of full duties provided they have achieved the positive NFE.
- (i) In the case of units manufacturing electronics hardware and software, the NFE and DTA sale entitlement shall be reckoned separately for hardware and software.

- (j) In case of DTA sale of goods manufactured by EOU/EHTP/STP/BTP, where basic duty and CVD is nil, and such goods may be considered as non-excisable for the purpose of payment of duty.
- (k) In case of new EOUs, advance DTA sale will be allowed based on its estimated exports for the first year.

Other Supplies

in DTA 9

- Following supplies effected from EOU/EHTP/STP/BTP units to DTA will be counted for the purpose of fulfillment of positive NFE: (a) Supplies effected in DTA to holders of advance licence, advance licence for annual requirement/DFRC /EPCG scheme.
- (b) Supplies effected in DTA against payment from the Exchange Earners Foreign Currency (EEFC) Account of the buyer in the DTA or against foreign Exchange remittance received from overseas.
 - (c) Supplies to other EOU/EHTP/STP//BTP/SEZ units provided that such goods are permissible for procurement in terms of paragraph 2 of the Policy.
 - (d) Supplies made to bonded warehouses set up under the policy and/ or under section 65 of the customs act and warehouses in Free Trade and Warehouse SEZ, where payment is received in foreign exchange.
 - (e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by the Ministry of Finance.
 - (f) Supply of services (by services units) relating to exports paid for in free foreign exchange or for such services rendered in India Rupees which are otherwise considered as having been paid for in free foreign exchange by RBI.

- (g) Supplies of Information Technology Agreement items and notified zero duty telecom/ electronic items.

**Export through
others** 10

An EOU/EHTP/STP/BTP unit may export goods manufactured/software developed by it through another exporter or any other EOU/EHTP/STP/SEZ unit subject to the conditions prescribed therefore.

**Entitlement for
supplies from the**

- DTA 11** (a) Supplies from the DTA to EOU/EHTP/STP/BTP units will be regarded as "deemed exports" and the DTA supplier shall be eligible for the relevant entitlements besides discharge of export obligation, if any, on the supplier. Notwithstanding the above, EOU/ EHTP/ STP/ BTP units shall, on production of a suitable disclaimer from the DTA supplier, be eligible for obtaining the specified entitlements.
- (b) Suppliers of precious and semi-precious stones, synthetic stones and processed pearls from DTA to EOU shall be eligible for grant of Replenishment Licenses at the specified rates.
- (c) In addition, the EOU/EHTP/STP/BTP units shall be entitled to the following:-
- i. Exemption from payment of Central Sales Tax on goods manufactured in India.
 - ii. Exemption from payment of Central Excise Duty on goods procured from DTA on goods manufactured in India.
 - iii. Reimbursement of Central Excise Duty/ additional excise duty paid on bulk tea procured from licenced auction centres.
 - iv. Reimbursement of Duty paid on fuels procured from domestic oil companies as per the rate of

Drawback notified by the DGFT from time to time.

- v. Exemption from payment of service tax.

Other

Entitlements 12 Other entitlements of EOU/EHTP/STP/BTP units are as under:

- (a) Exemption from payment of Income Tax as per the provisions of Section 10A and 10B of Income Tax Act.
- (b) Exemption from industrial licensing for manufacture of items reserved for SSI sector.
- (c) An Offshore Banking Unit will extend credit on the same terms and condition as extended to units to SEZ.
- (d) Export proceeds will be realized within 12 Months.
- (e) Will be allowed to retain 100% of its export earning in the EEFC account.
- (f) The Units will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where the unit has (i) a turnover of rupees one crore or above, (ii) the unit is in existence for at least three years and (iii) unit having an unblemished track record.
- (g) 100% FDI investment permitted through Automatic Route similar to SEZ units.

Inter Unit

Transfer 13 (a) Transfer of manufactured goods from one EOU/EHTP/STP/BTP unit to another EOU/EHTP/STP/BTP/ SEZ unit will be allowed.

- (b) Transfer of goods from one EOU/EHTP/STP/BTP unit to another will be eligible for Income Tax exemption under the Income Tax Act.

- (c) Capital goods may be transferred or given on loan to other EOU/EHTP/STP/BTP/SEZ units with prior permission of the concerned Development Commissioner with prior intimation to Customs authorities.
- (d) Goods supplied by one unit of EOU/EHTP/STP/BTP to another unit shall be treated as imported goods for the second unit for the purpose of payment of duty, on DTA sale by the second unit.

Sub-Contracting 14

- (a) (i) EOU/EHTP/STP/BTP units, including gem and jewellery units, may subcontract production processes to DTA through job work.
- (ii) These units may also subcontract up to 50% of the overall production of the previous year in value terms for job work in DTA.
- (b) (i) EOU may, on the basis permission from the Customs authorities, undertake job work for export, on behalf of DTA exporter subject to prescribed conditions. For such exports, the DTA units will be entitled for refund of duty paid on the inputs.
- (ii) Duty free import of goods for execution of export order placed on EOU by Foreign Supplier on job work basis would be allowed subject to the condition that no DTA clearance shall be allowed.
- (iii) Subcontracting of both production and production processes may also be undertaken without any limit through other EOU/EHTP/STP/SEZ/BTP units on the basis of records maintained in the unit.
- (iv) Subcontracting of part of production process may also be permitted abroad with the approval of the Development Commissioner.
- (c) Scrap/waste/remnants generated through job

work may either be cleared from the job worker's premises on payment of applicable duty on transaction value or destroyed in the presence of Customs/ Excise authorities or returned to the unit. Destruction shall not apply to gold, silver, platinum, diamond, precious and semi precious stones.

- (d) Sub-contracting/exchange by gems and jewellery EOUs through other EOUs or SEZ units or units in DTA shall be as per the prescribed procedure.

Sale of Un-utilized

- Material 15** (a) In case an EOU/EHTP/STP/BTP unit is unable to utilize the goods and services, imported or procured from DTA, it may be (i) transferred to another EOU/SEZ/EHTP/STP/BTP unit or (ii) disposed off in the DTA with the approval of the Customs authorities on payment of applicable duties and submission of import licence, if required, or (iii) exported.
- (b) Capital goods and spares that have become obsolete/surplus, may be exported, transferred to another EOU/EHTP/STP/BTP/SEZ or disposed of in the DTA on payment of applicable duties. The benefit of depreciation, as applicable, will be available in case of disposal in DTA. No duty shall be payable in case capital goods, raw material, consumables, spares, goods manufactured, processed or packaged, and scrap/ waste/ remnants/rejects are destroyed within the Unit after intimation to the Custom authorities or destroyed outside the Unit with the permission of Custom authorities. Destruction as stated above shall not apply to gold, silver, platinum, diamond, precious and semi precious stones.
- (c) In the case of textile sector , disposal of leftover material/fabrics up to 2% of CIF value or quantity of import whichever is lower, on payment of duty on transaction value may be

allowed, subject to certification of central excise/
custom officers certify that these are leftover.

- (d) Disposal of used packing material will be allowed
on payment of duty on transaction value.

**Reconditioning
Repair and Re-engineering**

- 16 EOU/EHTP/STP/BTP units may be set up with
the approval of BOA to carry out reconditioning,
repair, remaking, testing, calibration, quality
improvement, up-gradation of technology and re-
engineering activities for export in foreign
currency.

Replacement/ Repair of imported/ Indigenous Goods

- 17 (a) The general provisions of the Policy relating to
export of replacement/repair of goods would also
apply equally to EOU/EHTP/STP/BTP units.
- (b) The goods sold in the DTA and not accepted for
any reasons may be brought back for repair/
replacement, under intimation to the concerned
jurisdictional Customs/Excise authorities.
- (c) Goods or parts thereof on being imported/
indigenously procured and found defective or
otherwise unfit for use or which have been
damaged or become defective subsequently may
be returned and replacement obtained or
destroyed.

Exit from EOU

- Scheme** 18 (a) With the approval of the Development
Commissioner, EOU units may opt out of the
scheme subject to payment of Excise and customs
duties.
- (b) If the unit has not achieved the obligations under
the scheme, it shall be liable to penalty at the time
of exit.
- (c) In the event of a gem and jewellery unit ceasing

its operation, gold and other precious metals shall be handed over to an agency nominated by the Ministry of Commerce and Industry (Department of Commerce) at the price to be determined by that agency.

- (d) An EOU//EHTP/STP/BTP unit may also be permitted by the Development Commissioner, to exit from the scheme on payment of duty on capital goods under the prevailing EPCG Scheme as a one time option.
- (e) Units proposing to exit from EOU scheme should obtain permission for in principle approval and submit details of imports and exports made to the Central Excise/Customs Authority. After such verification, the said authority will assess the duty payment and the unit will pay the duty so assessed and obtain 'no dues certificate' from the excise authority. During the period between such payment of customs duty and obtaining the final debonding letter, the unit will not be entitled to claim any exemption for procurement of capital goods or inputs. They can however, claim DEEC/DEPB/DFRC/Duty Drawback.
- (f) In cases where a unit is initially established as DTA unit with machine procured from abroad after payment of applicable import duty or from domestic market after payment of excise duty and the units are subsequently converted to EOU, in such cases removal of such capital goods to DTA after de-bonding would be without payment of duty.

Conversion

- 19 (a) Existing DTA units may also apply for conversion into an EOU/EHTP/STP/BTP unit, and Income Tax benefits under Section 10B will be available under the scheme for plant, machinery and equipment already installed.
- (b) The existing EHTP/STP units may also apply for

conversion/merger to EOU unit and vice-versa. In such cases the units will remain in bond and avail the exemptions in duties and taxes as applicable under the relevant scheme.

Monitoring of

NFE 20

The performance of EOU/EHTP/STP/BTP units shall be monitored by the Units Approval Committee as per the prescribed guidelines.

Export through Exhibitions/

Export Promotion Tours /

Export through showrooms abroad/

Duty Free Shops.

- 21 EOU/EHTP/STP/BTP are permitted to : (a)
Export goods for holding/ participating in exhibitions abroad with the permission of Development Commissioner.
- (b) Personal carriage of gold/ silver/ platinum jewellery, precious, semi-precious stones, beads and articles.
- (c) Export goods for display/sale in the permitted shops set up abroad.
- (d) Display/sell in the permitted shops set up abroad or in the show rooms of their distributors/agents.
- (e) Set up show rooms/retail outlets at the International Airports.

Personal Carriage Of Import /

Export Parcels Including Through Foreign

bound Passengers

- 22 Import/ export through personal carriage of gem and jewellery items may be under-taken as per the procedure prescribed by Customs. The export proceeds shall, however, be realized through normal banking channel. Import/export through personal carriage for units, other than gem and jewellery units, shall be allowed provided the goods are not in commercial quantity.

Export /Import by Post

/Courier 23 Goods including free samples, may be exported/ imported by airfreight or through Foreign Post Office or through courier, subject to the procedure prescribed by Customs.

Administration of EOUs/

Power of Development

Commissioner 24 Details of administration of EOUs and Power of Development Commissioner are given in Handbook (Vol.1).

Revival of

Sick units 25 Subject to a unit being declared sick by the appropriate authority, proposals for revival of the unit or its take over may be considered by the Board of Approval.

Approval for

EHTP/STP 26 In the case of units under EHTP/STP Schemes, necessary approval / permission shall be granted by the officer designated by the Ministry of Communication and Information Technology, Department of Information Technology for the purpose instead of the Development Commissioner of SEZ and by the Inter-Ministerial Standing Committee (IMSC) instead of BOA.

Approval of

BTP 27 Bio-Technology Parks (BTP) would be notified by the DGFT on the recommendations of Department of Biotechnology. In the case of units in the BTP, necessary approval/permission under relevant provisions of this chapter will be granted by designated officer of the Department of Biotechnology

Industrial Park scheme, 2002

Undertaking which develops, develops and operates or maintains and operates an industrial park notified by the Central Govt. in accordance with the scheme framed and notified by the Govt. will be allowed, while computing the total income, a deduction of hundred percent of profits and gains derived from such business for the first five assessment years and thereafter twenty five percent for further five assessment years. If the assessee is a company instead of twenty five percent for the later five years the deduction would be thirty five percent.

In exercise of the powers conferred by clause (iii) of sub-section (4) of

section 80 IA of the Income-tax Act, 1961, the Central Government under S.O.354(E) dated April,2002 has framed the following scheme for industrial parks:-

1. Short title and commencement. - (1) This scheme may be called Industrial Park Scheme, 2002
2. Definitions
 - (a) "Act" means Income Tax Act, 1961;
 - (b) "allocable area" means, -
 - (i) industrial park referred to in sub-paragraph (b) of paragraph 4, the net floor area available for allocation but excluding the built up space used for providing common facilities;
 - (ii) in any other case, the net area available for allocation for industrial, commercial or residential purpose but excluding the areas used for providing common facilities;
 - (c) "common facilities" includes the facilities of air conditioning, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power used by two or more industrial units in an industrial park;

- (d) "empowered committee" means a committee constituted under paragraph 7;
 - (e) "form" means a form appended to this Scheme;
 - (f) "infrastructure development" includes, roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning and such other facilities as are for common use for industrial activity which are identifiable and are provided on commercial terms;
 - (g) "paragraph" means paragraph of this Scheme;
 - (h) "undertaking" means any undertaking which is engaged in the business of developing, developing and operating or maintaining and operating an industrial park notified by the Central Government in accordance with this scheme;
 - (i) "unit" means any separate and distinct entity for the purpose of one or more state or central tax laws.
3. Period of operation of the scheme. - This scheme shall be applicable for any undertaking which develops, develops and operates or maintains and operates an Industrial Park for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006. In a case, where an undertaking develops an Industrial Park on or after the 1st day of April, 1999 and transfers the operation and maintenance of such Industrial Park to another undertaking (transferee undertaking), the benefits shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years in a manner as if the operation and maintenance were not so transferred to the transferee undertaking.
4. Objectives of the industrial park. - Any project, being an industrial park, shall aim at setting up of -
- (a) an Industrial Model Town for development of industrial infrastructure for carrying out integrated manufacturing activities including research and development by providing plots or sheds and common facilities within its precincts; or

- (b) an industrial park for development of infrastructural facilities or built-up space with common facilities in any area allotted or earmarked for the purposes of industrial use specified in explanation to para 6 sub clause (c); or
- (c) a Growth Centre under the Growth Centre Scheme of the Government of India:

Provided that the scheme referred in this clause is implemented by an undertaking and the Growth Centre is distinctly developed as a separate profit centre.

5. Automatic approval.

- (1) An undertaking shall make an application in the prescribed Form for obtaining approval for setting up an industrial park
 - (2) The application shall be made to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion in the Ministry of Commerce & Industry, New Delhi-110011
 - (3) The Secretariat for Industrial Assistance shall give acknowledgement for receipt of such applications along with a registration number allotted
 - (4) The application shall be accompanied by a fee of six thousand rupees
 - (5) All applications eligible for Automatic approval as per para 6 below shall be disposed of within fifteen days.
 - (6) In case any application is not found eligible as per para 6 below for Automatic approval the decision regarding the same shall be immediately communicated to the applicant.
6. Criteria for automatic approval. - An undertaking which seeks approval shall fulfill the following conditions, namely:-
- (a) The minimum area required to be developed for an Industrial Model Town shall be 1000 acres:

Provided that minimum area for specified industrial park referred to in clause(b) and (c) of paragraph 4 may vary depending upon their activities;

- (b) The project referred to in clauses (a), (b) and (c) of paragraph 4 shall have provision for the location of minimum number of industrial units as follows:-

Type of industrial park	Minimum Number of units to be provided in the Industrial Model Town/Industrial Park/Growth Centre
(1)	(2)
(i) Industrial Model Town referred to in clause (a) of paragraph 4.	50 units;
(ii) industrial park referred to in clause (b) of paragraph 4.	30 units;
(iii) Growth Centre referred to in clause (c) of paragraph 4.	30 units;
(c) The minimum percentage of the area to be allocated for industrial use shall not be less than sixty six percent of the total allocable area.	
(d) The percentage of land to be earmarked for commercial use shall not be more than ten per cent. of the allocable area;	
(e) In case of an Industrial Model Town, Industrial Park and Growth Centre, the minimum investment on infrastructure development shall not be less than 50% of the total project cost. In the case of an Industrial Park and Growth Centre which provides built up space for industrial use, the minimum expenditure on infrastructure development including cost of construction of industrial space, shall not be less than 60% of the total project cost;	

- (f) No single unit referred to in column (2) of the above Table shall occupy more than fifty per cent. of the allocable industrial area of an industrial model town or industrial park or Growth Centre;
- (g) Every undertaking being an industrial park shall obtain approval for Foreign Direct Investment or non resident Indian investment from the Foreign Investment Promotion Board or Reserve Bank of India, or any authority specified under any law for the time being in force, as the case may be.

7 Non Automatic Approvals. - (1) All applications not eligible for Automatic approval under paragraph 6 shall require the approval of the Empowered Committee, constituted by the Central Government and all such applications shall be placed before the Empowered Committee within fifteen days of receipt of applications.

(2) The Empowered Committee shall consist of the following, namely:-

- (a) Secretary, Department of Industrial Policy and Promotion, Chairman;
- (b) Chairman, Central Board of Direct Taxes, Member; or his representative
- (c) Secretary, Department of Urban Development, Member; or his representative
- (d) A representative of the State Government to which the Member; project relates
- (e) Joint Secretary, Department of Industrial Policy Member Secretary; and Promotion,

The Empowered Committee may co-opt other Secretaries to the Government of India and officials of financial institutions, banks and professional experts from Industry and Commerce as Co-opted members of the Committee...

- (3) The Empowered Committee shall consider each application on a case to case basis, subject to its complying with the statutory

requirements as prescribed by the Ministry of Finance under the Income Tax Act, 1961, and other applicable statutory rules/obligations. The Committee will consider each case on its merit and grant approval subject to such other conditions as may be deemed fit by it. However, in all cases of rejection of proposals, the applicants shall be afforded an opportunity of being heard by the Committee and the orders shall be passed and communicated within twelve weeks. The Committee may also periodically review implementation of the approved proposals.

- (4) The Empowered Committee will hold meetings whenever necessary. All Industrial Model Town/Industrial Park/Growth Centre proposals received shall be placed before the Committee within 15 days of receipt. The Committee, as far as possible, would ensure that the Government decision on each proposal is communicated to the applicant within six weeks. The Committee will adopt its own mode and working procedure, keeping in view the requirement of each proposal.
8. Withdrawal of approval. - The Central Government may withdraw the approval given to an undertaking under this Scheme when such undertaking fails to comply with any of the conditions of grant of approval:

Provided that before withdrawal of approval, the undertaking being industrial park, shall be given an opportunity of being heard.

9. General conditions. - (1) In case the commencing of the Industrial Model Town or Industrial Park or Growth Centre gets delayed by more than 1 year from the date indicated in the application, fresh approval may have to be obtained to get the benefits under the Act.
- (2) The tax benefits under the Act can be availed only after the number of units indicated in the application, are located in the Industrial Park.
- (3) The undertaking applying for approval shall undertake to continue to operate the Industrial Model Town or Industrial Park or Growth Centre during the period in which the benefits under the Act are to be availed.

- (4) In a case where an undertaking develops an industrial park on or after the 1st day April, 1999 and transfers the operation and maintenance of such industrial park (i.e., transferor undertaking) to another undertaking (i.e., the transferee undertaking), the transferor and transferee shall jointly intimate to the Entrepreneurial Assistance Unit of the Secretariat for Industrial Assistance, Department of Industrial Policy and Promotion, along with a copy of the agreement executed between the transferor and transferee undertaking for the aforesaid transfer. Secretariat for Industrial Assistance shall on receipt of each such intimation issue a communication to the applicants of having taken the intimation on record.
- (5) Every undertaking, which has been granted approval shall continue to furnish to the Central Government on 1st January and 1st July of every year a report in the prescribed form during the period in which the benefits under the Act are to be availed.

Environmental Impact and environmental Management Plan

The Industrial Revolution heralded an era of prosperity, comforts and other blessings. However, due to industrial revolution the rain forests have been decimated. Harmful gases were spewed into the atmosphere and poisonous fluids dumped into rivers, lakes and the sea. In short, the industrial revolution also brought with it a serious threat to the environment.

Environmental Impact Assessment

An Environmental Impact Assessment can be carried out to identify and evaluate the potential, beneficial and adverse, impacts of development and projects on the environmental system. It is a useful aid for decision making based on understanding of the environmental implications including social, cultural and aesthetic concerns which could be integrated with the analysis of the project costs and benefits. This exercise should be undertaken early enough in the planning stage of projects for selection of environmentally compatible sites, process technologies and such other environmental safeguards.

While all industrial projects may have some environmental impacts all of them may not be significant enough to warrant elaborate assessment procedures. The need for such exercises will have to be decided after initial evaluation of the possible implications of a particular project and its location. The projects which could be the candidates for detailed Environment Impact Assessment include the following:-

- Those which can significantly alter the landscape, land use pattern and lead to concentration of working and service population;
- Those which need upstream development activity like assured mineral and forest products supply or downstream industrial process development;
- Those involving manufacture, handling and use of hazardous materials;
- Those which are sited near ecologically sensitive areas, urban centers, hill resorts, places of scientific and religious importance.

- Industrial Estates with constituent units of various types which could cumulatively cause significant environmental damage.

The Environmental Impact Assessment should be prepared on the basis of the existing background pollution levels vis-à-vis contributions of pollutants from the proposed plant. The EIA should address some of the basic factors listed below:

- Meteorology and air quality

Ambient levels of pollutants such as Sulphur Dioxide, oxides of nitrogen, carbon monoxide, suspended particulate matters, should be determined at the center and at 3 other locations on a radius of 10 km with 120 degrees angle between stations. Additional contribution of pollutants at the locations are required to be predicted after taking into account the emission rates of the pollutants from the stacks of the proposed plant, under different meteorological conditions prevailing in the area.

- Hydrology and water quality
- Site and its surroundings
- Occupational safety and health
- Details of the treatment and disposal of effluents(liquid, air and solid) and the methods of alternative uses
- Transportation of raw material and details of material handling
- Control equipment and measures proposed to be adopted

Preparation of environmental Management Plan is required for formulation, implementation and monitoring of environmental protection measures during and after commissioning of projects. The plans should indicate the details as to how various measures have been or are proposed to be taken including cost components as may be required. Cost of measures for environmental safeguards should be treated as an integral component of the project cost and environmental aspects should be taken into account at various stages of the projects:

- **Conceptualization:** preliminary environmental assessment
- **Planning:** detailed studies of environmental impacts and design of safeguards
- **Execution:** implementation of environmental safety measures

- **Operation:** monitoring of effectiveness of built-in safeguards

The management plans should be necessarily based on considerations of resource conservation and pollution abatement, some of which are:

1. Liquid Effluents

- Effluents from the industrial plants should be treated well to the standards as prescribed by the Central/State Water Pollution Control Boards.
- Soil permeability studies should be made prior to effluents being discharged into holding tanks or impoundments and steps taken to prevent percolation and ground water contamination.
- Special precautions should be taken regarding flight patterns of birds in the area. Effluents containing toxic compounds, oil and grease have been known to cause extensive death of migratory birds. Location of plants should be prohibited in such type of sensitive areas.
- Deep well burial of toxic effluents should not be resorted to as it can result in re-surfacing and ground water contamination. Re-surfacing has been known to cause extensive damage to crop and livestock.
- In all cases, efforts should be made for re-use of water and its conservation.

2. Air Pollution

- The emission levels of pollutants from the different stacks should conform to the pollution control standards prescribed by Central or State Boards.
- Adequate control equipment should be installed for minimizing the emission of pollutants from the various stacks.
- In-plant control measures should be taken to contain the fugitive emissions.
- Infrastructural facilities should be provided for monitoring the stack emissions and measuring the ambient air quality

including micro-meteorological data (wherever required) in the area.

- Proper stack height as prescribed by the Central/State Pollution Control Boards should be provided for better dispersion of pollutants over a wider area to minimize the effect of pollution.
- Community buildings and townships should be built up-wind of plant with one-half to one kilometer gap in addition to physiographical barrier.

3. Solid Wastes

- The site for waste disposal should be checked to verify permeability so that no contaminants percolate into the ground water or river/lake.
- Waste disposal areas should be planned down-wind of villages and townships.
- Reactive materials should be disposed of by immobilizing the reactive materials with suitable additives.
- The pattern of filling disposal site should be planned to create better landscape and be approved by appropriate agency and the appropriately pretreated solid wastes should be disposed according to the approved plan.
- Intensive programs of tree plantation on disposal areas should be undertaken.

4. Noise and Vibration

Adequate measures should be taken for control of noise and vibrations in the industry.

5. Occupational Safety and Health

Proper precautionary measures for adopting occupational safety and health standards should be taken.

6. Preventive Maintenance and operation of Environment Control Systems
 - Adequate safety precautions should be taken during preventive maintenance and shut down of the control systems.
 - A system of inter-locking with the production equipment should be implemented where highly toxic compounds are involved.

7. House - Keeping

Proper house-keeping and cleanliness should be maintained both inside and outside of the industry.

8. Human Settlements

- Residential colonies should be located away from the solid and liquid waste dumping areas. Meteorological and environmental conditions should be studied properly before selecting the site for residential areas in order to avoid air pollution problems.
- Persons, who are displaced or have lost agricultural lands as a result of locating the industries in the area, should be properly rehabilitated.

9. Transport Systems

- Proper parking places should be provided for the trucks and other vehicles by the industries to avoid any congestion or blocking of roads.
- Siting of industries on the highways should be avoided as it may add to more road accidents because of substantial increase in the movements of heavy vehicles and unauthorized shops and settlements coming up around the industrial complex.
- Spillage of chemicals/substances on roads inside the plant may lead to accidents. Proper road safety signs both inside

and outside the plant should be displayed for avoiding road accidents.

10. Recovery - reuse of waste products

Efforts should be made to recycle or recover the waste materials to the extent possible. The treated liquid effluents can be conveniently and safely used for irrigation of lands, plants and fields for growing non-edible crops.

11. Vegetal Cover

Industries should plant trees and ensure vegetal cover in their premises. This is particularly advisable for those industries having more than 10 acres of land.

12. Disaster Planning

Proper disaster planning should be done to meet any emergency situation arising due to fire, explosion, sudden leakage of gas etc. Fire fighting equipment and other safety appliances should be kept ready for use during disaster/emergency situation including natural calamities like earthquake/flood.

13. Environment Management Cell

Each industry should identify within its setup a Department/Section/Cell with trained personnel to take up the model responsibility of environmental management as required for planning and implementation of the projects.

Frequently Asked Questions

Q.1. Can we have a very brief synopsis of the Industries (Development & Regulation) Act, 1951?

A.1. The Industries (Development & Regulation) Act, 1951 lays down procedures and principles for the growth and regulation of certain industries.

The object of the Act is to strengthen the industrial development in India by bringing the working of industries under the purview of law.

The Act consists of 4 Chapters and 32 sections.

Chapter I deal with definitions and legal terminologies.

The establishment, function and other aspects in relation to the Central Advisory Council and Development Councils are mentioned in Chapter II of the act. Their task is to advise and assist the government on matters concerning the development and regulation of schedule industries.

The regulation of Schedule Industries is taken in Chapter III while direct management of industries by Central Government in certain cases dealt in Chapter IIIA. The control of industrial undertaking owned by companies in liquidation is explained in Chapter IIIA under section 18FA. Power to provide relief to certain industrial undertaking and liquidation of companies are explained under Chapter III AB and III AC respectively. The Act highlights need for registration of existing industrial undertaking. The Act lays down that a certificate of registration containing productive capacity of the industrial undertaking should be issued to the owner of the undertaking. The Act prohibits the establishment of certain new industrial undertakings except in accordance with a licence issued in that behalf by the Central Government. In case of management of industrial undertaking by companies in liquidation the government can make application to High Court for permission to appoint some authority to take over the management of such undertaking. The government is empowered to control supply, distribution, price etc. of certain articles relating to any

schedule industry under the provisions contained in Chapter III B.

All miscellaneous provisions are included in Chapter IV of this Act. These include Power of inspection, Penalties, Jurisdiction of Courts, Power to exempt in certain cases etc. The act empowers Central Government to make Rules for carrying out the purposes of this Act

Q.2. what exactly was the Industrial Policy shift of the Government in the beginning of 1990s?

A.2. The government's industrial policy resolution of 1948 (amended in 1956) was in the backdrop of socialistic pattern of society being a proclaimed goal, to be achieved by following a forceful policy of government intervention and management. The development of key industries such as steel, petroleum and even heavy machinery was reserved for public sector. The philosophy was that by controlling the commanding heights of industrial landscape - that is the infrastructure and industries supplying key raw materials - the state could cause the development of all industries, in private and public sectors, to follow the 'socially desirable objectives'. The public sector was to be the model for private sector to follow.

A major share of investment in the five-year plans was appropriated by public sector. Yet, the enterprises thus created or acquired through nationalization performed poorly. Policy making in terms of location, technology, employment and pricing in public sector became politicized. Inefficiency and waste, over manning and mounting losses were the result. Far from generating resources, the public sector became a mounting burden on taxpayers.

The broad features of industrial policy essentially remained same from '50s till 1991 reforms. Even the private sector investments were made under guidelines of locational policy and capacity controls to prevent monopolies. Technology used was from viewpoint of self reliance and imports were seen in light of conservation of depleting foreign exchange and desirability of self reliance. The result has been indiscriminate protection leading to massive misallocation of resources to

industries and enterprises which enjoy no inherent economic advantage and cannot survive competition in international markets.

In order to impart dynamism to the economy, industrial policy was completely revamped in the 90s. The key measures adopted in the revised scenario included abolition of industrial licensing for all but key industries where security and strategic concerns predominate, amendment of the monopolies act to enable global scale of operations and encouragement for foreign investments in most areas -like high technology intensive industries and infrastructure projects requiring large infusion of money.

The significant reform measures were:

- i) **Abolition of Industrial Licensing:** Industrial licensing was abolished in most industries except for a few where controls were needed due to strategic and environmental reasons or where import content was high. In effect, over 85% of the industry came out of licensing control.
- ii) **Dereservation of sectors restricted to Public Sector:** In order to initiate private sector investments in core and basic industries, the number of areas reserved for the public sector has been reduced from 17 to 6. The significant areas thrown open to private sector were telecommunications, oil & gas, power generation, air transport, ports, roadways etc.
- iii) **Monopolies and Restrictive Trade Practices (MRTP) Act amended in order to stimulate industrial growth:** In order to allow Indian corporate to achieve global scale of operations to compete in the international markets, MRTP Act was amended to allow Indian corporate to expand capacities or establish new undertakings without prior approval.
- iv) **Foreign Investments-In High Priority Areas:** In order to encourage Foreign Direct Investment (FDI), the foreign equity holding limit was raised from 40 to 51% in 35 high priority industries. No prior approval was required for this. Foreign Investment Promotion Board (FIPB) was formed to speed up clearances, in cases where the foreign equity holding exceeded 51% or where the investment was in a non-priority sector.

- v) Project Location: Government clearance for project location (except for 23 cities) was dispensed with. This measure would ensure that locations would be decided on economic and not on political criteria. undertakings without prior approval

Q.3. Is there any unfinished agenda which warrants Government's early attention?

A.3. One major issue which the Government has not touched is the exit policy which would allow closure of unviable units. As a result, sick companies have to approach Board of Industrial and Financial Reconstruction (BIFR) to necessarily continue operations and thereby seek various concessions. This also leads to flow of scarce capital towards sick units. It has been the experience that majority of such units do not turn around. A clearly defined exit policy is needed to give an additional incentive to international players to invest in India. Licensing is still required in number of industries, prominent one being sugar. Privatization and liberalization calls for delicensing of these industries. Similarly administrative and procedural hurdles need to be cleared in order to accelerate the pace of investments. With a number of State Governments being favorably disposed towards reforms process, time has come to have greater corporation between center and states for speedier implementation of projects.

Q.4 In an agro-based economy is there real need for industrialization for economic development?

A.4 It is not at all necessary to emphasize the need for a substantial and rapid improvement in agriculture in order to increase the supply of food grains and raw materials needed in the country. The fact that at the present juncture priority is given to agricultural development including the building up of the necessary basic services like power does not, however, mean that industrial development is in any sense less important. In a developing economy there is really no conflict between agricultural and industrial development. Improvement in agriculture cannot proceed beyond a point unless the surplus working force on the land is progressively diverted to industries and services. Similarly, industrial development itself cannot advance sufficiently without a large increase in the supply of food necessary to maintain the population thus

diverted and of the raw materials needed to enable industries to expand production. The fact that the productivity of labour in industry is much higher than in agriculture also points to the need for rapid industrial development. Moreover, in a developing country the surpluses created in the industrial sector are likely to be available for investment relatively more easily than surpluses in the agricultural sector. The pattern of industrialization to be adopted, that is, the relative emphasis on capital goods industries and consumer goods industries and the degree of capital intensiveness in different lines of industry, has, of course, to be decided in the light of several technical, economic and social factors. But there is no doubt that over a period the desired rate of economic progress will necessitate a rapid diversification of the occupational structure through development of industry, together with trade and transport.

Q.5. Is there any major difference in the objectives of public sector and private sector?

A.5. The distinction between the public and the private sector relates to the mode of operation rather than to the ultimate objective. Private enterprise operating in terms of legitimate profit expectations and the efficient use of available resources has an important part to play in developing the economy. The scope and need for development are so great that it is best for the public sector to develop those industries in which private enterprise is unable or unwilling to put up the resources required and run the risks involved, leaving the rest of the field free for private enterprise. In this matter of investment of the limited resources available to the public sector, there should be complete coordination between the plans of the State Governments and of the Central Government. In a planned economy, the justification of private enterprise is that, within the framework of national policy it is capable of contributing to the fulfillment of the objectives defined in the plan. This means inevitably that it has to accept new obligations towards the worker, the investor and the consumer and has to maintain a high standard of integrity and efficiency. The large volume of resources needed for all-round development of the economy can be secured only if the public and the private sectors co-operate closely. Such co-operation is also necessary from the point of view of utilizing to the best advantage the limited

resources of initiative, technical skill and business experience available in the country.

Q.6 To attract foreign investment whether any policy measures have been taken by the Govt.? If, yes, detail them briefly.

A.6. In order to invite foreign investment in high priority industries, requiring large investments and advanced technology, Govt. has decided to provide approval for direct foreign investment up to 51% foreign equity in such industries. There shall be no bottlenecks of any kind in this process. These groups of industries have generally been known as the "Appendix I Industries" and are areas in which FERA companies have already been allowed to invest on a discretionary basis. This change will go a long way in making Indian policy on foreign investment transparent. Such a framework will make it attractive for companies abroad to invest in India.

Promotion of exports of Indian products calls for a systematic exploration of world markets possible only through intensive and highly professional marketing activities. To the extent that expertise of this nature is not well developed so far in India, Government will encourage foreign trading companies to assist us in our export activities. Attraction of substantial investment and access to high technology, often closely held, and to world markets, involves interaction with some of the world's largest international manufacturing and marketing firms. The Government will appoint a special board to negotiate with such firms so that we can engage in purposive negotiation with such large firms, and provide the avenues for large investments in the development of industries and technology in the national interest.

Q.7. Carry-On-Business (COB) Licence is granted under the provisions of Sections 13(a), 13(b), 13(c) and 29B (2) of the Industries (Development & Regulation) Act, 1951. Please detail the procedure in this regard.

A.7. Application for C O B License is to be submitted to Secretariat for Industrial Assistance, Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Udyog Bhawan, New Delhi with 5 spare copies of the application.

1. Application shall be necessarily accompanied by a Demand Draft for Rs. 2500/- (Rupees Two thousand and five hundred only) drawn in favour of "Pay and Accounts Officer, Department of Industrial Development" payable at State Bank of India, Nirman Bhawan Branch, New Delhi.
2. The application should be complete in all respects. Incomplete applications will not be entertained. The application format should be duly signed and the designation/authority of the person signing the application should be clearly shown.
3. On receipt of application SIA will issue an Acknowledgement with a distinctive reference number. The applicant has to quote the distinctive reference number in all future correspondence.
4. The applicant shall furnish details of investment and production duly certified by a Chartered Accountant.
5. In case unit is registered with technical authorities and/or State Director of Industries, a notarized copy of the registration certificate is to be attached.
6. Balance sheet for the last three years should be attached with three copies of the application.

Applicant shall furnish a list of names and addresses of proprietors, partners, owners or Board of Directors.

7. In calculating the value of Plant & Machinery, the original price thereof irrespective of whether the Plant & Machinery are new or second hand, shall be taken into account.
8. In calculating the value of plant and machinery, the following shall be excluded, namely:-
 - i) the cost of equipments such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores;
 - ii) the cost of installation of plant and machinery;
 - iii) the cost of Research and Development (R&D) equipment and pollution control equipment;

- iv) the cost of generation sets, extra transformer, etc. installed by the undertaking as per the regulations of the State Electricity Board;
 - v) the Bank charges and service charges paid to the National Small Industries Corporation or the State Small Industries Corporation;
 - vi) the cost involved in procurement or installation of cables, wiring, bus bars, electrical control panels (not those mounted on individual machines), Oil Circuit Breakers/ Miniature Circuit Breakers, etc. which are necessarily to be used for providing electrical power to the plant and machinery/safety measures;
 - vii) the cost of gas producer plant;
 - viii) Transportation charges (excluding of taxes e.g. Sales-tax, Excise etc.) For indigenous machinery from the place of manufacturing to the site of the factory;
 - ix) charges paid for technical know-how for erection of plant and machinery;
 - x) cost of such storage tanks which store raw material finished products only and are not linked with the manufacturing process; and
 - xi) cost of fire fighting equipments
9. In the case of imported machinery, the following shall be included in calculating the value, namely:-
- i) Import duty (excluding miscellaneous expenses as transportation from the port to the site of the factory, demurrage paid at the port).
 - ii) the shipping charges
 - iii) Customs clearance charges, and Sales tax

The Industries (Development and Regulation) Act 1951
(Act No. 65 of 1951)
(31ST October, 1951)

An Act to provide for the development and regulation of certain industries

Be it enacted by the Parliament as follows:

Statement of Objects and Reasons of the Industries (Development and Regulation) Act 1951

The object of this bill is to provide the Central Government with the means of implementing their industrial policy which is announced in their Resolution no. 1 (3)-44 (13) 48 dated 6th April 1948 and approved by the central legislature. The bill brings under central control the development and regulation of a number of important industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all- India import. The planning of future development on sound and balanced lines is sought to be secured by the licensing of all new undertakings by the Central Government. The bill confers on Government power to make rules for the registration of existing undertakings, for regulating the production and development of the industries in the Schedule and for consultation with provincial Governments on these matters. Provision has also been made for the constitution of a Central Advisory Council, prior consultation with which will be obligatory before the Central Government takes certain measures such as the revocation of a licence or taking over the control and management of any industrial concern.

Statement of Objects and Reasons of Act 26 of 1953: The Industrial (Development and Regulation) Act, 1951, came into force on the 8th May 1952 (by a notification of the same date issued under Section 1 (3) of the Act). In the course of the working of this Act, certain practical difficulties have come to light. Some of those difficulties are: -

1. The period allowed under Sec. 10 of the Act for registration of undertaking has not been found to be adequate in actual practice, and, therefore, requires to be extended.

A Study on The Industries (Development and Regulation) Act, 1951

2. While powers are available in the Act 65 of 1951 to revoke licenses in certain cases, no such powers are available for the revocation of registration where it is necessary to do so.
3. The provisions relating to licensing are not complete in as much as they do not apply to-
 - (i) Industrial undertakings which, though required to be registered, are not registered within the time limited for the purpose,
 - (ii) Industrial undertakings which, though not eligible for registration at the commencement of the Act, become subsequently eligible for registration by reason of the definitions in the Act becoming applicable thereto,
 - (iii) Industrial undertakings proposing to change their location,
 - (iv) Industrial undertakings proposing to take up the manufacture of goods of new branch (and types) within the same Scheduled industry or of goods pertaining to any other Scheduled industry, without any additional plant and machinery or factory buildings
4. The explanation of the term "substantial expansion" is not free from ambiguity.
5. Government can not take over the management of any industrial undertakings, even in a situation calling for emergent action, without first issuing directions to it and waiting to see whether or not they are obeyed.
6. The law as it stands does not deal in any detail with the consequences of Government taking over the management of an undertaking.
7. Certain items in the First Schedule are not sufficiently descriptive so as to include all important sections of the industries concerned.

The object of this bill is mainly to remove such difficulties.

At present the power to control prices and distribution of various goods under this Act is confined to industrial undertakings registered or licensed under this Act. In all other cases, it is necessary to have recourse to powers derived from the Essential Supplies (Temporary Powers) Act, 1946 and the Supply and Prices of Goods Act, 1950. Both these enactments have a limited period of life. It is proposed to add a chapter taking power to control the distribution and price of goods produced in scheduled industries and of similar goods even though they may be of imported origin.

Opportunity is also taken to remove a doubt, which may arise by reason of the phraseology of Sec.4, which says that nothing in the Act shall apply to industrial undertakings of which the capital invested does not exceed rupees one lakh. This provision is liable to be misconstrued to mean that even the declaration contained in Sec.2 is inapplicable to such undertakings. It is also difficult to define "capital invested" suitably for the purpose of the Act. It is therefore, proposed to omit Sec. 4 and wherever necessary, exemptions would be granted under the new Sec. 28 to any undertakings or scheduled industries. Incidentally, six more important industries, namely, the silk, the artificial silk, the dyestuff, the soap, the plywood and the ferromanganese industries are being added to the Schedule.

Statement of Objects and Reasons of Act 72 of 1971

The industries included in the first schedule to the Industries (Development and Regulation) Act, 1951 are those the control of which by the Union has been considered expedient in the public interest. The proper development of these industries is vital to the economic development of the country. These industries not only substantially contribute to the gross National Product of the country, but also afforded gainful employment to millions of people. For diverse reasons, a number of industrial undertakings engaged in these industries have had to close down and the continuing economic operation of many others is beset with serious difficulties affecting industrial production and employment. Action has, therefore, to be taken to rehabilitate such undertakings by investment of public funds and managerial skill and put them on their feet. While provisions already exist for Government to take over sick industrial undertakings, such undertakings have got to be returned to the original owners after a period of 15 years or less. During the period of takeover Government has to invest public funds in such

undertakings and it must be able to do so with a measure of confidence about the continued efficient management of the undertakings at the end of the period of take over. In order to ensure that at the end of the period of takeover by Government the industrial undertaking is not returned to the same hands which were responsible for its earlier misfortunes, it has been provided in the Bill that in relation to an undertaking taken over by them, Government will have the power to move for

- (i) The sale of the undertaking at a reserve price or higher (Government purchasing it at the reserve price, if no offer at or above the reserve price is received), action being taken simultaneously for the winding up of the company owning the industrial undertakings; or
 - (ii) The reconstruction of the company owning the industrial undertaking with a view to giving the Government a controlling interest in it.
2. At present Government has no power to take over the management of industrial undertakings in respect of which proceedings for liquidation are pending before a Court. It has been provided in the Bill that Government may, notwithstanding anything contained in the Company's Act, move the court for permission to investigate into the affairs of such an undertaking and also take over its management with the permission of the Court. The Bill also provides that in relation to such an undertaking Government may, if it considers necessary, resort to the further course of action, i.e. the sale of the undertaking at the reserve price or higher or reconstruction of the company, as explained in the preceding paragraph.
 3. With a view to ensuring speedy action by Government, it has been provided in the Bill that if the Government has evidence to the effect that assets of the company owning the industrial undertakings are being frittered away or the undertaking has been closed for a period not less than 3 months and such closure is prejudicial to the concerned Scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery installed in the undertaking is such that it is possible to restart the undertaking and such restarting is in the public interest,

Government may take over it's management without an investigation.

4. The smooth running of industrial undertakings taken over by the Government is also liable to be hampered by the various claims and liabilities, etc, which existed prior to the date of takeover. It has been suspended for a maximum period up to 5 years, the past obligations, liabilities, etc of the undertaking. Government may also decide to grant relief to an undertaking taken over by them from the operation of certain Acts i.e.
 - (i) The Industrial Employment (Standing Orders) Act, 1946
 - (ii) The Industrial Disputes Act, 1947
 - (iii) The Minimum Wages Act, 1948
5. An Ordinance to amend the Industries (Development and Regulation) Act, 1951 was promulgated by the President on the 1st November 1971 to give effect to the above proposals.
6. The Bill seeks to replace the said Ordinance.
(The Act 72 of 1971 replaced the said Ordinance)

Statement of Objects and Reasons of Act 67 of 1973

At the time of enacting the Industrial development and regulation Act 1951 it was provided in the Act that the owner of every industrial undertaking, which existed at the commencement of the Act, shall get the undertaking registered with the Central Government. Such undertakings seeking registration were required to furnish information regarding monthly installed capacity, the number shifts, number working days in a month, past production during the last three years etc. The form of registration certificate issued to the undertaking, which was prescribed under the rules, did not however contain any column for specifying the productive capacity. Accordingly in many cases the productive capacity of the undertaking was not specified in the registration certificates.

2. It has come to the notice of the Central Government that certain registered undertakings have increased their production to a much higher level than what was reported by them at the time of registration. Such increases are detrimental to the interests of the small and medium units, as also likely to lead to other adverse results. If such a state of affairs is allowed to continue, the production level of such undertakings would remain indeterminate and cannot be pegged to a specified level as distinguished from the undertakings licensed after the commencement of the Act, for which the specific productive capacities are mentioned in the license.
3. The Bill therefore, proposes to empower the Government to call for the registration certificates from any class of undertakings for entering there in the productive capacity of the industrial undertaking and other prescribed particulars. The Bill seeks to provide that for the purpose of specifying the productive capacity, the Central Government shall take into consideration the productive or installed capacity of the industrial undertakings as specified in the application for registration, the level of production immediately before the date on which the application for registration was made, the level of average annual production during the three years immediately preceding the commencement of the proposed Amending Act, the level of export and such other factors as the Central Government may consider relevant.

4. It has also been provided in the Bill that failure to produce the registration certificate by any undertaking after the issue of notification in this regard by the central Government shall be punishable under the provision of the Act.
5. 'Linoleum', whether felt-based or jute-based, is an important industry and the item is required both by Government Departments and the public. As such, a scheme of regulation for this industry is necessary on the same basis as other industries covered by the First Schedule to the Act. To enable the Government to do so the Bill provides for inclusion of the said item in the First Schedule to the Act. (Published in the Gazette of India, Extraordinary, dated 27th August, 1973.)

Statement of Objects and Reasons of Act 4 of 1984

One of the important policy measures adopted by the Government to improve the competitive strength of industrial undertakings in the small-scale sector is to reserve selected items for exclusive production by such undertakings. Under this policy 872 items are presently so reserved. The Government has been making such reservations since 19th February 1970 through the exercise of powers under Sec. 29-B of the Industries (Development and Regulation) Act, 1951 which provides that the Central Government having regard to the smallness of the number of workers employed or the amount invested in the industrial undertaking or to the desirability of encouraging small undertakings generally or to the stage of development of any scheduled industry, may exempt any undertaking from the operation of all or any of the provisions of the Act.

As there is no specific mention in Sec. 29-B of the Act about reservation of items for exclusive production by small-scale undertakings, doubts have been raised about the competence of the Government to take such action. With a view to placing the matter beyond doubt, the President has promulgated the Industries (Development and Regulation) Amendment Ordinance, 1984 (No 1 of 1984) making specific provision in the Industries (Development and Regulation) Act 1951, empowering the Government to:-

- (a) Specify the requirements to be complied with by an industrial undertaking to enable it to be regarded as an ancillary or a small scale industrial undertaking.

- (b) Make reservation of any article or class of article for exclusive production by an ancillary or a small-scale industrial undertaking,
- (c) Fix the productive capacity of large and medium scale units, already producing such reserved items on the date of reservation; and
- (d) Provide for all other matters incidental thereto.

The Bill seeks to replace the said Ordinance.

The Act 4 of 1984 replaced the Industries (Development and Regulation) Amendment Ordinance 1984 (No 1 of 1984)

INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

CHAPTER I: PRELIMINARY

1. Short title, extent and commencement

- (1) This Act may be called the Industries (Development and Regulation) Act, 1951.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Declaration as to expediency of control by the Union

It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in Schedule I.

3. Definitions

In this Act, unless the context otherwise requires,-

- (a) "Advisory Council" means the Central Advisory Council established under section 5;
- (aa) 'ancillary industrial undertaking' means an industrial undertaking which in accordance with the proviso to sub-section (1) of section 11B and the requirements specified under that sub-section, is entitled to be regarded as an ancillary industrial undertaking for the purposes of this Act;
- (ab) 'current assets' means bank balances and cash and includes such other assets or reserves as are expected to be realized in cash or sold or consumed within a period of not more than twelve months in the ordinary course of business, such as stock-in-trade, amounts due from sundry debtors for sale of goods and for services rendered, advance tax payments and bills receivable, but does not include sums credited to a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by a company owning an industrial undertaking;
- (ac) "Current liabilities" means liabilities which must be met on demand or within a period of twelve months from the date they are incurred; and includes any current liability which is

suspended under section 18FB;

- (b) "Development Council" means a Development Council established under section 6;
- (bb) "Existing industrial undertaking" means-
 - (a) in the case of an industrial undertaking pertaining to any of the industries specified in the Schedule I as originally enacted, an industrial undertaking which was in existence on the commencement of this Act or for the establishment of which effective steps had been taken before such commencement, and
 - (b) in the case of an industrial undertaking pertaining to any of the industries added to Schedule I by an amendment thereof, an industrial undertaking which is in existence on the coming into force of such amendment or for the establishment of which effective steps had been taken before the coming into force of such amendment;
- (c) 'factory' means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried a on-
 - (i) with the aid of power, provided that fifty or more workers are working or were working thereon on any day of the preceding twelve months; or
 - (ii) without the aid of power, provided that one hundred or more workers are working or were working thereon on any day of the preceding twelve months and provided further that in no part of such premises any manufacturing process is being carried on with the aid of power;
- (cc) "High Court" means the High Court having jurisdiction in relation to the place at which the registered office of a company is situate;
- (d) "industrial undertaking" means any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including government;
- (dd) "new article" in relation to an industrial undertaking which is registered or in respect of which a licence or permission has been issued under this Act, means-

- (a) any article which falls under an item in Schedule I other than the item under which articles ordinarily manufactured or produced in the industrial undertaking at the date of registration or issue of the licence or permission as the case may be, fall;
 - (b) any article which bears a mark as defined in the Trade Marks Act, 1940, or which is the subject of a patent, if at the date of registration, or issue of the licence or permission, as the case may be, the industrial undertaking was not manufacturing or producing such article bearing that mark or which is the subject of the patent;
 - (c) "notified order" means an order notified in the Official Gazette;
 - (d) "owner" in relation to an industrial undertaking, means the person who, or the authority which, has the ultimate control over the affairs of the undertaking, and, where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking;
 - (e) "prescribed" means prescribed by rules made under this Act;
 - (f) "Schedule" means a Schedule to this Act;
 - (g) "scheduled industry" means any of the industries specified in the Schedule I;
 - (h) "small scale industrial undertaking" means an industrial undertaking which, in accordance with the requirements specified under sub-section (1) of section 11B, is entitled to be regarded as a small scale industrial undertaking for the purposes of this Act;
 - (i) words and expressions used herein but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956), have the meanings respectively assigned to them in that Act.
4. **Saving [Rep. by Industries (Development and Regulation) Amendment Act, 1953, w.e.f. 1-10-1953]**

CHAPTER II : CENTRAL ADVISORY COUNCIL AND DEVELOPMENT COUNCILS

5. Establishment and constitution of Central Advisory Council and its functions
 - (1) For the purpose of advising it on matters concerning the development and regulation of scheduled industries, the Central Government may, by notified order, establish a Council to be called the Central Advisory Council.
 - (2) The Advisory Council shall consist of a Chairman and such other members not exceeding thirty in number, all of whom shall be appointed by the Central Government from among persons who are in its opinion capable of representing the interests of-
 - (a) owners of industrial undertakings in scheduled industries;
 - (b) persons employed in industrial undertakings in scheduled industries,
 - (c) consumers of goods manufactured or produced by scheduled industries;
 - (d) such other class of persons including primary producers, as in the opinion of the Central Government, ought to be represented on the Advisory Council.
 - (3) The term of office of, the procedure to be followed in the discharge of their functions by, and manner of filling casual vacancies among members of the Advisory Council, shall be such as may be prescribed.
 - (4) The Central Government shall consult the Advisory Council in regard to-
 - (a) the making of any rules, other than the first rules to be made under sub-section (3);
 - (b) [Omitted by Act 26 of 1973]

and may consult the Advisory Council in regard to any other matter connected with the administration of this Act in respect of which the Central Government may consider it necessary to obtain the advice of the Advisory Council.

6. Establishment and constitution of Development Councils and their functions

- (1) The Central Government may by notified order, establish for any scheduled industry or group of scheduled industries, a body of persons to be called a Development Council which shall consist of members who in the opinion of the Central Government are-
 - (a) persons capable of representing the interests of owners of industrial undertakings in the scheduled industry or group of scheduled industries;
 - (b) persons having special knowledge of matters relating to the technical or other aspects of the scheduled industry or group of scheduled industries;
 - (c) persons capable of representing the interests of persons employed in industrial undertakings in the scheduled industry or group of scheduled industries;
 - (d) persons not belonging to any of the aforesaid categories who are capable of representing the interests of consumers of goods manufactured or produced by the scheduled industry or group of scheduled industries.
- (2) The number and the term of office of, and the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among members of a Development Council, shall be such as may be prescribed.
- (3) Every Development Council shall be, by virtue of this Act, a body corporate by such name as may be specified in the notified order establishing it, and may hold and transfer property and shall by the said name sue and be sued.
- (4) A Development Council shall perform such functions of a kind specified in the Schedule II as may be assigned to it by the Central Government and for whose exercise by the Development Council it appears to the Central Government expedient to provide in order to increase the efficiency or

productivity in the scheduled industry or, group of scheduled industries for which the Development Council is established, to improve or develop the service that such industry or group of industries renders or could render to the community, or to enable such industry or group of industries to render such service more economically.

- (5) A Development Council shall also perform such other functions as it may be required to perform by or under any other provision of this Act.

7. Reports and accounts of Development Councils

- (1) A Development Council shall prepare and transmit to the Central Government and the Advisory Council, annually, a report setting out what has been done in the discharge of its functions during the financial year last completed.
- (2) The report shall include a statement of the accounts of the Development Council for that year, and shall be transmitted as soon as accounts therefor have been audited, together with a copy of any report made by the auditors on the accounts.
- (3) The statement of accounts shall be in such form as may be prescribed, being a form which shall conform to the best commercial standards, and the statement shall show the total of remuneration and allowances paid during the year to members and officers of the Council.
- (4) A copy of each such report of a Development Council, or made by the auditors on its accounts, shall be laid before Parliament by the Central Government.

8. Dissolution of Development Councils

- (1) The Central Government may if it is satisfied that a Development Council should cease to continue in being, by notified order, dissolve that Development Council.
- (2) On the dissolution of a Development Council under sub-section (1), the assets of the Development Council, after its liabilities, if any, are met therefrom, shall vest in the Central Government for the purposes of this Act.

9. Imposition of cess on scheduled industries in certain cases

- (1) There may be levied and collected as a cess for the purposes of this Act on all goods manufactured or produced in any such scheduled industry as may be specified in this behalf by the Central Government by notified order a duty of excise at such rate as may be specified in the notified order, and different rates may be specified for different goods or different classes of goods:

PROVIDED that no such rate shall in any case exceed 13 paise per cent of the value of the goods

Explanation : In this sub-section, the expression "value" in relation to any goods shall be deemed to be the wholesale cash price for which such goods of the like kind and quality are sold or are capable of being sold for delivery at the place of manufacture and at the time of their removal there from, without any abatement or deduction whatever except trade discount and the amount of duty then payable.

- (2) The cess shall be payable at such intervals, within such time and in such manner as may be prescribed, and any rules made in this behalf may provide for the grant of a rebate for prompt payment of the cess.
- (3) The said cess may be recovered in the same manner as an arrear of land revenue.
- (4) The Central Government may hand over the proceeds of the cess collected under this section in respect of the goods manufactured or produced by any scheduled industry or group of scheduled industries to the Development Council established for that industry or group of industries, and where it does so, the Development Council shall utilize the said proceeds-
- (a) to promote scientific and industrial research with reference to the scheduled industry or group of scheduled industries in respect of which the Development Council is established;
 - (b) to promote improvements in design and quality with reference to the products of such industry or group of industries;
 - (c) to provide for the training of technicians and labour in such industry or group of industries;
 - (d) to meet such expenses in the exercise of its functions and its administrative expenses as may be prescribed.

CHAPTER III: REGULATION OF SCHEDULED INDUSTRIES

10. Registration of existing industrial undertakings

- (1) The owner of every existing industrial undertaking, not being the Central Government, shall, within such period as the Central Government may, by notification in the Official Gazette, fix in this behalf with respect to industrial undertakings generally or with respect to any class of them, register the undertaking in the prescribed manner.
- (2) The Central Government shall also cause to be registered in the same manner every existing industrial undertaking of which it is the owner.
- (3) Where an industrial undertaking is registered under this section, there shall be issued to the owner of the undertaking or the Central Government, as the case may be, a certificate of registration containing the productive capacity of the industrial undertaking and such other particulars as may be prescribed.
- (4) The owner of every industrial undertaking to whom a certificate of registration has been issued under this section before the commencement of the Industries (Development and Regulation) Amendment Act, 1973, shall, if the undertaking falls within such class of undertaking as the Central Government may, by notification in the Official Gazette, specify in this behalf, produce, within such period as may be specified in such notification the certificate of registration for entering therein the productive capacity of the industrial undertaking and other prescribed particulars.
- (5) In specifying the productive capacity in any certificate of registration issued under sub-section (3), the Central Government shall take into consideration the productive or installed capacity of the industrial undertaking as specified in the application for registration made under sub-section (1), the level of production immediately before the date on which the application for registration was made under sub-section (1), the level of the highest annual production during the three years immediately preceding the introduction in Parliament of the Industries (Development and Regulation) Amendment

Bill, 1973, the extent to which production during the said period was utilized for export and such other factors as the Central Government may consider relevant including the extent of under-utilization of capacity, if any, during the relevant period due to any cause.

10A. Revocation of registration in certain cases

If the Central Government is satisfied that the registration of any industrial undertaking has been obtained by misrepresentation as to an essential fact or that any industrial undertaking has ceased to be registrable under this Act by reason of any exemption granted under this Act becoming applicable thereto or that for any other reason the registration has become useless or ineffective and therefore requires to be revoked, the Central Government may after giving an opportunity to the owner of the undertaking to be heard revoke the registration.

11. Licensing of new industrial undertakings

- (1) No person or authority other than the Central Government, shall, after the commencement of this Act, establish any new industrial undertaking, except under and in accordance with a licence issued in that behalf by the Central Government:

PROVIDED that a government other than the Central Government may, with the previous permission of the Central Government, establish a new industrial undertaking.

- (2) A licence or permission under sub-section (1) may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the Central Government may deem fit to impose in accordance with the rules, if any, made under section 30.

11A. Licence for producing or manufacturing new articles

The owner of an industrial undertaking not being the Central Government which is registered under section 10 or in respect of which a licence or permission has been issued under section 11 shall not produce or manufacture any new article unless-

- (a) in the case of an industrial undertaking registered under section 10, he has obtained a licence for producing or manufacturing such new article; and
- (b) in the case of an industrial; undertaking in respect of which a licence or permission has been issued under section 11, he has had the existing licence or permission amended in the prescribed manner.

11B. Power of Central Government to specify the requirements which shall be complied with by small scale industrial undertakings

- (1) The Central Government may, with a view to ascertaining which ancillary and small scale industrial undertakings need supportive measures, exemptions or other favourable treatment under this Act to enable them to maintain their viability and strength so as to be effective in-
 - (a) promoting in a harmonious manner the industrial economy of the country and easing the problem of unemployment, and
 - (b) securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good, specify, having regard to the factors mentioned in sub-section (2), by notified order, the requirements which shall be complied with by an industrial undertaking to enable it to be regarded, for the purposes of this Act, as an ancillary, or a small scale industrial undertaking and different requirements may be so specified for different purposes or with respect to industrial undertakings engaged in the manufacture or production of different articles:

PROVIDED that no industrial undertaking shall be regarded as an ancillary industrial undertaking unless it is, or is proposed to be, engaged in-

- (i) the manufacture of parts, components, sub-assemblies, tooling or intermediates; or
- (ii) rendering of services, or supplying or rendering, not more than fifty per cent of its production or its total services, as the case may be, to other units for production of other articles.

- (2) The factors referred to in sub-section (1) are the following, namely:-
 - (a) the investment by the industrial undertaking in-
 - (i) plant and machinery; or
 - (ii) land, buildings, plant and machinery;
 - (b) the nature of ownership of the industrial undertaking;
 - (c) the smallness of the number of workers employed in the industrial undertaking;
 - (d) the nature, cost and quality of the product of the industrial undertaking;
 - (e) foreign exchange, if any, required for the import of any plant or machinery by the industrial undertaking; and
 - (f) such other relevant factors as may be prescribed.
- (3) A copy of every notified order proposed to be made under sub-section (1) shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the proposed notified order or both Houses agree in making any modification in the proposed notified order, the notified order shall not be made or, as the case may be, shall be made only in such modified form as may be agreed upon by both the Houses.
- (4) Notwithstanding anything contained in sub-section (1), an industrial undertaking which, according to the law for the time being in force, fell, immediately before the commencement of the Industries (Development and Regulation) Amendment Act, 1984, under the definition of an ancillary, or small scale, industrial undertaking, shall, after such commencement, continue to be regarded as an ancillary, or small scale, industrial undertaking for the purposes of this Act until the

definition aforesaid is altered or superseded by any notified order made under sub-section (1).

12. Revocation and amendment of licences in certain cases

- (1) If the Central Government is satisfied, either on a reference made to it in this behalf or otherwise, that any person or authority, to whom or to which a licence has been issued under section 11, has, without reasonable cause, failed to establish or to take effective steps to establish the new industrial undertaking in respect of which the licence has been issued within the time specified therefor or Within such extended time as the Central Government may think fit to grant in any case, it may revoke the licence.
- (2) Subject to any rules that may be made in this behalf, the Central Government may also vary or amend any licence issued under section 11:

PROVIDED that no such power shall be exercised after effective steps have been taken to establish the new industrial undertaking in accordance with the licence issued in this behalf

- (3) The provisions of this section shall apply in relation to a licence issued under section 11A or where a licence has been amended under that section, to the amendment thereof, as they apply in relation to a licence issued under section 11.

13. Further provision for licensing of industrial undertakings in special cases

- (1) No owner of an industrial undertaking, other than the Central Government, shall-
- (a) in the case of an industrial undertaking required to be registered under section 10, but which has not been registered within the time fixed for the purpose under that section, carry on the business of that undertaking after expiry of such period, or
- (b) in the case of an industrial undertaking the registration in respect of which has been revoked under section 10A, carry on the business of the undertaking after the revocation, or

- (c) in the case of an industrial undertaking to which the provisions of this Act did not originally apply but became applicable after the commencement of this Act for any reason, carry on the business of the undertaking after the expiry of three months from the date on which the provisions of this Act became so applicable, or
 - (d) effect any substantial expansion of an industrial undertaking which has been registered or in respect of which a licence or permission has been issued, or
 - (e) change the location of the whole or any part of an industrial undertaking which has been registered, except under, and in accordance with, a licence issued in that behalf by the Central Government, and in the case of a State Government, except under and in accordance with the previous permission of the Central Government.
- (2) The provisions of sub-section (2) of section 11 and of section 12 shall apply, so far as may be, in relation to the issue of licences or permissions to any industrial undertaking referred to in this section as they apply in relation to the issue of licences or permissions to a new industrial undertaking.

Explanation: For the purposes of this section, "substantial expansion" means the expansion of an existing industrial undertaking which substantially increases the productive capacity of the undertaking, or which is of such a nature as to amount virtually to a new industrial undertaking, but does not include any such expansion as is normal to the undertaking having regard to its nature and the circumstances relating to such expansion.

14. Procedure for the grant of licence or permission

Before granting any licence or permission under section 11, section 11A, section 13 or section 29B the Central Government may require such officer or authority as it may appoint for the purpose, to make a complete investigation in respect of applications received in this behalf, and report to it the result of such investigation and in making any such investigation, the officer or authority shall follow such procedure as may be prescribed.

15. Power to cause investigation to be made into scheduled industries or industrial undertakings

Where the Central Government is of the opinion that-

- (a) in respect of any scheduled industry or industrial undertaking or undertakings-
 - (i) there has been, or is likely to be, a substantial fall in the volume of production in respect of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which, having regard to the economic conditions prevailing, there is no justification; or
 - (ii) there has been, or is likely to be, marked deterioration in the quality of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided; or
 - (iii) there has been or is likely to be a rise in the price of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which there is no justification; or
 - (iv) it is necessary to take any such action as is provided in this Chapter for the purpose of conserving any resources of national importance which are utilized in the industry or the industrial undertaking or undertakings, as the case may be; or
- (b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest; the Central Government may make or cause to be made a full and complete investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose.

15A. Power to investigate into the affairs of a company in liquidation

- (1) Where a company, owning an industrial undertaking is being wound up by or under the supervision of the High Court, and the business of such company is not being continued, the Central Government may, if it is of the opinion that it is necessary, in the interest of the general public and, in particular, in the interests of production, supply or distribution of articles or class of articles relatable to the concerned scheduled industry, to investigate into the possibility of running or restarting the industrial undertaking, make an application to the High Court praying for permission to make, or cause to be made, an investigation into such possibility by such person or body of persons as that government may appoint for the purpose.
- (2) Where an application is made by the Central Government under sub-section (1), the High Court shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force, grant the permission prayed for.

16. Powers of Central Government on completion of investigation under section 15

- (1) If after making or causing to be made any such investigation as is referred to in section 15 the Central Government is satisfied that action under this section is desirable, it may issue such directions to the industrial undertaking or undertakings concerned as may be appropriate in the circumstances for all or any of the following purposes, namely-
 - (a) regulating the production of any article or class of articles by the industrial undertaking or undertakings and fixing the standards of production;
 - (b) requiring the industrial undertaking or undertakings to take such steps as the Central Government may consider necessary to stimulate the development of the industry of which the undertaking or undertakings relates or relate;
 - (c) prohibiting the industrial undertaking or undertakings from resorting to any act or practice which might reduce its or their production, capacity or economic value;

- (d) controlling the prices, or regulating the distribution, of any article or class of articles which have been the subject-matter of investigation.
 - (2) Where a case relating to any industry or industrial undertaking or undertakings is under investigation, the Central Government may issue at any time any direction of the nature referred to in sub-section (1) to the industrial undertaking or undertakings concerned, and such direction shall have effect until it is varied or revoked by the Central Government.
- 17. Special provisions for direct control by Central Government in certain cases**

[Rep. by Industries (Development and Regulation) Amendment Act, 1953, w.e.f. 1-10-1953.]

- 18. Power of person or body of persons appointed under section 15 or section 15A to call for assistance in any investigation**
- (1) The person or body of persons appointed to make any investigation under section 15 or section 15A may choose one or more persons possessing special knowledge of any matter relating to the investigation to assist him or it in holding the investigation.
 - (2) The person or body of persons so appointed shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence on oath (which he or it is hereby empowered to administer) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the person or body of persons shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

CHAPTER III-A: DIRECT MANAGEMENT OR CONTROL OF INDUSTRIAL UNDERTAKINGS BY CENTRAL GOVERNMENT IN CERTAIN CASES

18A. Power of Central Government to assume management or control of an industrial undertaking in certain cases

- (1) If the Central Government is of opinion that-
 - (a) an industrial undertaking to which directions have been issued in pursuance of section 16 has failed to comply with such directions, or
 - (b) an industrial undertaking in respect of which an investigation has been made under section 15 (whether or not any directions have been issued to the undertaking in pursuance of section 16), is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, the Central Government may, by notified order, authorize any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.
- (2) Any notified order under sub-section (1) shall have effect for such period not exceeding five years as may be specified in the order:

PROVIDED that if the Central Government is of opinion that it is expedient in the public interest that any such notified order should continue to have effect after the expiry of the period of five years aforesaid, it may from time to time issue direction for such continuance for such period, not exceeding two years at a time, as may be specified in the direction, so however, that the total period of such continuance (after the expiry of the said period of five years) does not exceed twelve years, and where any such direction is issued, a copy thereof shall be laid, as soon as may be, before both Houses of Parliament.

Explanation: The power to authorize a body of persons under this section to take over the management of an industrial undertaking which is a company includes also a power to

appoint any individual, firm or company to be the managing agent of the industrial undertaking on such terms and conditions as the Central Government may think fit.

18AA. Power to take over industrial undertakings without investigation under certain circumstances

- (1) Without prejudice to any other provision of this Act, if, from the documentary or other evidence in its possession, the Central Government is satisfied, in relation to an industrial undertaking, that-
 - (a) the persons in charge of such industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation; or
 - (b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to restart the undertaking and such restarting is necessary in the interests of the general public, it may, by a notified order, authorize any person or body of persons (hereafter referred to as the "authorised person") to take over the management of the whole or any part of the industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.
- (2) The provisions of sub-section (2) of section 18A shall, as far as may be, apply to a notified order made under sub-section (1) as they apply to a notified order made under sub-section (1) of section 18A.
- (3) Nothing contained in sub-section (1) and sub-section (2) shall apply to an industrial undertaking owned by a company which

is being wound up by or under the supervision of the court.

- (4) Where any notified order has been made under sub-section (1), the person or body of persons having, for the time being, charge of the management or control of the industrial undertaking whether by or under the orders of any court or any contract, instrument or otherwise shall, notwithstanding anything contained in such order, contract, instrument or other arrangement, forthwith make over the charge of management or control, as the case may be, of the industrial undertaking to the authorised person.
- (5) The provisions of section 18B to 18E (both inclusive) shall, as far as may be, apply to, or in relation to, the industrial undertaking, in respect of which a notified order has been made under sub-section (1), as they apply to an industrial undertaking in relation to which a notified order has been issued under section 18A.

18B. Effect of notified order under section 18A

- (1) On the issue of a notified order under section 18A authorizing the taking over of the management of an industrial undertaking-
 - (a) all persons in charge of the management, including persons holding office as managers or directors of the industrial undertaking immediately before the issue, of the notified order, shall be deemed to have vacated their offices as such;
 - (b) any contract of management between the industrial undertaking and any managing agent or any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have been terminated;
 - (c) the managing agent, if any, appointed under section 18A shall be deemed to have been duly appointed as the managing agent in pursuance of the Indian Companies Act, 1913 (7 of 1913), and the memorandum and articles of association of the industrial undertaking, and the provisions of the said Act and of the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly, but no such

managing agent shall be removed from office except with the previous consent of the Central Government;

- (d) the person or body of persons authorised under section 18A to take over the management shall take all such steps as may be necessary to take into his or their custody or control all the property, effects and actionable claims to which the industrial undertaking is or appears to be entitled, and all the property and effects of the industrial undertaking, shall be deemed to be in the custody of the person or, as the case may be, the body of persons as from the date of the notified order; and
- (e) the persons, if any, authorised under section 18A to take over the management of an industrial undertaking which is a company shall be for all purposes the direct of industrial undertaking duly constituted under the Indian Companies Act, 1913 (7 of 1913), and shall alone be entitled to exercise all the powers of the directors of the industrial undertaking, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial undertaking or from any other source.
- (2) Subject to the other provisions contained in this Act and to the control of the Central Government, the person or body of persons authorised to take over the management of an industrial undertaking, shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial undertaking and shall exercise such other powers and have such other duties as may be prescribed.
- (3) Where any person or body of persons has been authorised to exercise any functions of control in relation to an industrial undertaking, the undertaking shall be carried on pursuant to any directions given by the authorised person in accordance with the provisions of the notified order, and any person having any functions of management in relation to the undertaking or part thereof shall comply with all such directions.
- (4) The person or body of persons authorised under section 18A shall, notwithstanding anything contained in the memorandum or articles of association of the industrial undertaking, exercise his or their functions in accordance with such directions as may

be given by the Central Government, so, however, that he or they shall not have any power to give any other person any directions under this section inconsistent with the provisions of any Act or instrument determining the functions of the authority carrying on the undertaking except insofar as may be specifically provided by the notified order.

18C. Contracts in bad faith, etc. may be cancelled or varied

Without prejudice to the provisions contained in section 18B, the person or body of persons authorised under section 18A to take over the management of an industrial undertaking may, with the previous approval of the Central Government, make an application to any court having jurisdiction in this behalf for the purpose of canceling or varying any contract or agreement entered into, at any time before the issue of the notified order under section 18A, between the industrial undertaking and any other person and the court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the industrial undertaking, make an order canceling or varying (either unconditionally or subject to such conditions as it may think fit to impose) that contract or agreement, and the contract or agreement shall have effect accordingly.

18D. No right to compensation for termination of office or contract

Notwithstanding anything contained in any law for the time being in force, no person who ceases to hold any office by reason of the provisions contained in clause (a) of section 18B, or whose contract of management is terminated by reason of the provisions contained in clause (b) of that section, shall be entitled to any compensation for the loss of office or for the premature termination of his contract of management:

PROVIDED that nothing contained in this section shall affect the right of any such person to recover from the industrial undertaking moneys recoverable otherwise than by way of such compensation.

18E. Application of Act 7 of 1913

- (1) Where the management of an industrial undertaking being a company as defined in the Indian Companies Act, 1913 (7 of

1913), is taken over by the Central Government, then notwithstanding anything contained in the Act, or in the memorandum or articles of association of such undertaking-

- (a) it shall not be lawful for the shareholders of such undertaking or any other person to nominate or appoint any person to be a director of the undertaking;
 - (b) no resolution passed at any meeting of the shareholder of such undertaking shall be given effect to unless approved by the Central Government
 - (c) no proceeding for the winding up of such undertaking or for the appointment of the receiver in respect thereof shall lie in any court except with the consent with of the Central Government
- (2) Subject to the provision contained in sub-section (1), and to the other provisions contained in this Act and subject to such other exception, restriction and limitation, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Indian Companies Act, 1913 (7 of 1913)⁴, shall continue to apply to such undertaking in the same manner as it applied thereto before the issue of the notified order under section 18A.

18F. Power of Central Government to cancel notified order under section 18 A

If at any time it appears to the Central Government on the application of the owner of the industrial undertaking or otherwise that the purpose of the order made under section 18A has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and on the cancellation of any such order the management or the control, as the case may be, of the industrial undertaking shall vest in the owner of the undertaking.

CHAPTER III

AA: MANAGEMENT OR CONTROL OF INDUSTRIAL UNDERTAKINGS OWNED BY COMPANIES IN LIQUIDATION

18FA. Power of Central Government to authorize, with the permission of the High Court, persons to take over management or control of industrial undertakings

- (1) If the Central Government is of opinion that there are possibilities of running or restarting an industrial undertaking, in relation to which an investigation has been made under section 15A, and that such industrial undertaking should be run or restarted, as the case may be, for maintaining or increasing the production, supply or distribution of articles or class of articles relatable to the scheduled industry, needed by the general public, that government may make an application to the High Court praying for permission to appoint any person or body of persons to take over the management of the industrial undertaking or to exercise in respect of the whole or any part of the industrial undertaking such functions of control as may be specified in the application.
- (2) Where an application is made under sub-section (1), the High Court shall make an order empowering the Central Government to authorize any person or body of persons (hereinafter referred to as the "authorised persons") to take over the management of the industrial undertaking or to exercise functions of control in relation to the whole or any part of the industrial undertaking (hereinafter referred to as the 'concerned part') for a period not exceeding five years:

PROVIDED that if the Central Government is of opinion that it is expedient in the interests of the general public that the authorised person should continue to manage the industrial undertaking, or continue to exercise functions of control in relation to the concerned part, as the case may be, after the expiry of the period of five years aforesaid, it may make an application to the High Court for the continuance of such management or functions of control, for such period, not exceeding two years at a time, as may be specified in the application and thereupon the High Court may make an order permitting the authorised person to continue to manage the

industrial undertaking or to exercise functions of control in relation to the concerned part:

PROVIDED FURTHER that the total period of such continuance (after the expiry of the initial period of five years) shall not, in any case, be permitted to exceed twelve years.

- (3) Where an order has been made by the High Court under sub-section (2) the High Court shall direct the Official Liquidator or any other person having, for the time being, charge of the management or control of the industrial undertaking, whether by or under the orders of any court, or any contract or instrument or otherwise to make over the management of such undertaking or the concerned part, as the case may be, to the authorised person and thereupon the authorised person shall be deemed to be the Official Liquidator in respect of the industrial undertaking or the concerned part, as the case may be.
- (4) Before making over the possession of the industrial undertaking or the concerned part of the authorised person, the Official Liquidator shall make a complete inventory of all the assets and liabilities of the industrial undertaking or the concerned part, as the case may be, in the manner specified in section 18FG and deliver a copy of such inventory to the authorised person, who shall, after verifying the correctness thereof, sign on the duplicate copy thereof as evidence of the receipt of the inventory by him.
- (5) On taking over the management of the industrial undertaking, or on the commencement of the exercise of functions of control in relation to the concerned part, the authorised person shall take immediate Steps to so run the industrial undertaking or the concerned part as to ensure the maintenance of production.
- (6) The authorised person may, on such terms and conditions and subject to such limitations or restrictions as may be prescribed, raise any loans for the purpose of running the industrial undertaking or the concerned part, and may, for that purpose, create a floating charge on the current assets of the industrial undertaking or the concerned part, as the case may be,
- (7) Where the authorised person is of opinion that the replacement

or repair of any machinery of the industrial undertaking or the concerned part is necessary for the purpose of efficient running of the industrial undertaking or such part, he shall, on such terms and conditions and subject to such limitations or restrictions as may be prescribed, make such replacement or repair, as the case may be.

- (8) The loan obtained by the authorised person shall be recovered from the assets of the industrial undertaking or the concerned part, in such manner and subject to such conditions as may be prescribed.
- (9) For the purpose of running the industrial undertaking, or exercising functions of control in relation to the concerned part, the authorised person may employ such of the former employees of the industrial undertaking whose services became discharged by reason of the winding up of the company owning such undertaking and every such person employed by the authorised person shall be deemed to have entered into a fresh contract of service with the company.
- (10) The proceedings in the winding up of the company, insofar as they relate to-
 - (a) the industrial undertaking, the management of which has been taken over by the authorised person under this section, or
 - (b) the concerned part in relation to which any function of control is exercised by the authorised person under this section, shall, during the period of such management or control, remain stayed, and, in computing the period of limitation for the enforcement of any right, privilege, obligation or liability in relation to such undertaking or the concerned part, the period during which such proceedings remained stayed shall be excluded.

CHAPTER III

AB: POWER TO PROVIDE RELIEF TO CERTAIN INDUSTRIAL UNDERTAKINGS

18FB. Power of Central Government to make certain declarations in relation to industrial undertakings, the management or control of which has been taken over under section 18A, section 18AA or section 18FA

- (1) The Central Government, if it is satisfied, in relation to an industrial undertaking or any part thereof, the management or control of which has been taken over under section 18A, whether before or after the commencement of the Industries (Development and Regulation) Amendment Act, 1971, or under section 18AA or section 18FA, that it is necessary so to do in the interests of the general public with a view to preventing fall in the volume of production of any scheduled industry, it may, by notified order, declare that-
 - (a) all or any of the enactments specified in Schedule III shall not apply or shall apply with such adaptations, whether by way of modification, addition or omission (which does not however, affect the policy of the said enactments) to such industrial undertaking, as may be specified in such notified order, or
 - (b) the operation, of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force (to which such industrial undertaking or the company owning such undertaking is a party or which may be applicable to such industrial undertaking or company) immediately before the date of issue of such notified order shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising there under before the said date, shall remain suspended or shall be enforceable with such adaptations and in such manner as may be specified in the notified order.
- (2) The notified order made under sub-section(1) shall remain in force, in the first instance, for the period of one year, but the duration of such notified order may be extended from time to time by a further notified order by a period not exceeding one year at a time:

PROVIDED that no such notified order shall, in any case, remain in force-

- (a) after the expiry of the period for which the management of the industrial undertaking was taken over under section 18A, section 18AA or section 18FA, or
- (b) for more than eight years in the aggregate from the date of issue of the first notified order, whichever is earlier.
- (3) Any notified order made under sub-section (1) shall have effect notwithstanding anything to the contrary contained in any other law, agreement or instrument or any decree or order of a court, Tribunal, officer or other authority or of any submission, settlement or standing order.
- (4) Any remedy for the enforcement of any right, privilege, obligation or liability, referred to in clause(b) of sub-section (1) and suspended or modified by a notified order made under that sub-section shall, in accordance with the terms of the notified order, remain suspended or modified and all proceedings relating thereto pending before any court, Tribunal, officer or other authority shall accordingly remain stayed or be continued subject to such adaptations, so, however, that on the notified order ceasing to have effect-
 - (a) any right, privilege, obligation, or liability so remaining suspended or modified shall become revived and enforceable as if the notified order had never been made;
 - (b) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.
- (5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability referred to in clause (b) of sub-section (1), the period during which it or the remedy for the enforcement thereof remained suspended shall be excluded.

CHAPTER III-

AC: LIQUIDATION OR RECONSTRUCTION OF COMPANIES

18FC. Power of Central Government to call for report on the affairs and working of managed company

Where the management or control of an industrial undertaking has been taken over under section 18A, whether before or after commencement of the Industries (Development and Regulation) Amendment Act, 1971, or under section 18AA or section 18FA, the Central Government may, at any time during the continuance of such management or control, call for a report from the authorised person on the affairs and working of industrial undertaking and in submitting the report the authorised person shall take into account the inventory and the lists of members and creditors prepared under section 18FG.

18FD. Decision of Central Government in relation to managed company

- (1) If, on receipt of the report submitted by the authorised person, the Central Government is satisfied-
- (a) in relation to the company owning the industrial undertaking, which is not being wound up by the High Court, that the financial condition and other circumstances of the company are such that it is not in a position to meet its current liabilities out of its current assets, that government may, if it considers necessary or expedient in the interests of the general public so to do, by order, decide that the industrial undertaking should be sold as a running concern as provided in section 18FE and proceedings should simultaneously be started for the winding up, by the High Court, of the company;
- (b) in relation to the company, owning the industrial undertaking, which is being wound up by the High Court, that its assets and liabilities are such that in the interest of its creditors and contributories the industrial undertaking should be sold as a running concern as provided in section 18FE, it may, by order, decide accordingly.

- (2) Notwithstanding anything contained in sub-section (1), if, on receipt of the report submitted by the authorised person, the Central Government is satisfied that-
- (a) in the interests of the general public, or
 - (b) in the interests of the shareholders, or
 - (c) to secure the proper management of the company owning the industrial undertaking,

it is necessary so to do, the government may, by order, decide to prepare a scheme for the reconstruction of the company owning the industrial undertaking:

PROVIDED that no such scheme shall be prepared in relation to a company which is being wound up by or under the supervision of the High Court, except with the previous permission of that court.

- (3) The powers exercisable by the Central Government under section 18F, in relation to an undertaking taken over under section 18A, shall also be exercisable in relation to an undertaking taken over under section 18AA or section 18FA but such powers shall not be exercised after the making of an order under sub-section (1) or, as the case may be, under sub-section (2) of the section.

18FE. Provisions where government decides to follow the course of action specified in section 18FD (1)

- (1) The provisions hereinafter laid down shall apply where the Central Government decides that the course of action specified in sub-section (1) of section 18FD should be followed, namely
- (a) the decisions of the Central Government that the course of action specified in clause (a) of sub-section (1) of section 18FD should be followed in relation to a company owning an industrial undertaking shall be deemed to be a ground specified in section 433 of the Companies Act, 1956 (1 of 1956), on which the company may be wound up by the High Court;

- (b) the authorised person shall, as soon as may be, after the decision specified in clause (a) of sub-section (1) of section 18FD has been taken by the Central Government, present an application to the High Court for the winding up of the company owning the industrial undertaking;
- (c) when an application is made by the authorised person under clause (b), for the winding up, the High Court, of the company owning the industrial undertaking, the High Court shall order the winding up of the company and shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), appoint the authorised person as the Official Liquidator in relation to such undertaking;
- (d) whenever the Central Government decides under clause (b) of sub-section (1) of section 18FD that the industrial undertaking should be sold as a running concern, it shall cause a copy of its decision to be laid before the High Court;
- (e) until the industrial undertaking referred to in clause (a) or clause (b) of sub-section (1) of section 18FD is sold or purchased in pursuance of this section, the authorised person shall continue to function as the Official Liquidator in relation to the said undertaking in the winding up proceedings of the company, and thereafter the Official Liquidator appointed by the Central Government under section 448 of the Companies Act, 1956 (1 of 1956), shall take over and function as the Official Liquidator in the said proceedings.
- (2) The authorised person shall make a report to the Central Government as to what should be the reserve price for the sale of the industrial undertaking as a running concern.
- (3) In making a report under sub-section (2), the authorised person shall have regard to-
 - (a) the financial condition of the company owning the industrial undertaking on the date on which the order under section 18FD is made-
 - (i) as disclosed in its books of account;

- (ii) as disclosed in its balance sheet and profit and loss account during a period of five years immediately preceding the said date;
 - (b) the condition and nature of the plant, machinery, instrument and other equipment from the point of view of their suitability for profitable use in the running of the industrial undertaking;
 - (c) the total amount of liability on account of secured and unsecured debts including overdrafts, if any, drawn on banks, liabilities on account of terminal benefits to the employees and other borrowings, and other liabilities of the company; and
 - (d) other relevant factors including the factor that the industrial undertaking will be sold free from all encumbrances.
- (4) Notice of the reserve price determined by the authorised person shall be given in such manner as may be prescribed to the members and creditors of the company owning such industrial undertaking to make representations within a specified time to the Central Government through the authorised person and the Central Government shall, after considering the representations received and the report of the authorised person, determine the reserve price.
- (5) The authorised person shall thereafter, with the permission of the High Court, invite tenders from the public in such manner as may be determined by the High Court for the sale of the industrial undertaking as a running concern subject to the condition that it will be sold to the person offering the highest which shall not be less than the reserve price determined under sub-section (4):

PROVIDED that the High Court shall not refused to grant such permission if it is satisfied that the company is not in a position to meet its current liabilities out of its current assets

- (6) The industrial undertaking shall be sold to the highest bidder as a running concern, only if the price offered by him therefor is not less than the reserve price.
- (7) Where no offer of price is equal to, or more than, the reserve price, the industrial undertaking shall be purchased by the

Central Government at the reserve price.

- (8) (a) The amount realised from the sale of the industrial undertaking as a running concern together with any other sum which may be realised from any contributory, purchaser or any other person from whom any money is due to the company shall be utilized in accordance with the provisions of the Companies Act, 1956 (1 of 1956), in discharging the liabilities of the company and distributing the balance, if any, amongst the members of the company.
- (b) In other respects the provisions of the Companies Act, 1956 (1 of 1956), relating to the winding up of a company by the High Court shall, as far as may be, apply.
- (9) When an industrial undertaking is sold to any person under sub-section (6), or purchased by the Central Government under sub-section (7), there shall be transferred to and vested in the purchaser, free from all encumbrances, all such assets relating to the industrial undertaking as are referred to in sub-clause (i) of clause (a) of section 18FG and existing at the time of the sale or purchase.

18FF. Provisions where government decides to follow the course of action specified in section 18FD (2)

- (1) Where in any case the Central Government decides that the course of action specified in sub-section (2) of section 18FD should be followed, it shall, subject to the provisions of that sub-section, cause to be prepared, by the authorised person, a scheme for the reconstruction of the company, owning the industrial undertaking, in accordance with the provisions hereinafter contained and the authorised person shall submit the same for the approval of the government.
- (2) The scheme for the reconstruction of the company owning the industrial undertaking may contain provisions for all or any of the following matters, namely,-
 - (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the company on its reconstruction;

- (b) any change in the Board of Directors, or the appointment of a new Board of Directors of the company on its reconstruction and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any director, the period for which such appointment shall be made;
- (c) the vesting of controlling interest, in the reconstructed company, in the Central Government either by the appointment of additional directors or by the allotment of additional shares;
- (d) the alteration of the memorandum and articles of association of the company, on its reconstruction, to give effect to such reconstruction;
- (e) subject to the provisions of the scheme, the continuation by, or against the company, on its reconstruction, of any action or proceedings pending against the company immediately before the date of its reconstruction;
- (f) the reduction of the interest or rights which the members and creditors have in or against the company before its reconstruction to such extent as the Central Government may consider necessary in the interests of general public or in the interests of the members and creditors or for the maintenance of the business of the company:

PROVIDED that nothing contained in this clause shall be deemed to authorize the reduction of the interest or rights of any creditor (including government) in respect of any loan or advance made by that creditor to the company after the date on which the management of the industrial undertaking of the company has been taken over under section 18A, section 18AA, or section 18FA;

- (g) the payment in cash or otherwise to the creditors in full satisfaction of their claim-
- (i) in respect of their interest or rights in or against the company before its reconstruction; or

- (ii) where their interest or rights in or against the company has or have been reduced under clause (f), in respect of such interest, or rights as so reduced;
- (h) the allotment to the members of the company for shares held by them therein before its reconstruction whether their interest in such shares has been reduced under clause (f) or not, of shares in the company on its reconstruction and where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim-
 - (1) in respect of their interest in shares in the company before its reconstruction; or
 - (2) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;
- (i) the offer by the Central Government to acquire by negotiations with the members of the company their respective shares on payment in cash to those members who may volunteer to sell their shares to the Central Government in full satisfaction of their claim-
 - (1) in respect of their interest in shares in the company before its reconstruction; or
 - (2) where such interest has been reduced under clause (f), in respect of their interest in shares as so reduced;
- (j) the conversion of any debentures issued by the company after the taking over of the management of the company under section 18A or section 18AA or section 18FA or of any loans obtained by the company after that date or of any part of such debentures or loans, into shares in the company and the allotment of those shares to such debenture-holders or creditors, as the case may be;
- (k) the increase of the capital of the company by the issue of new shares and the allotment of such new shares to the Central Government;
- (l) the continuance of the services of such of the employees of the company as the Central Government may specify in the

scheme in the company itself, on its reconstruction, on such terms and conditions as the Central Government thinks fit;

- (m) notwithstanding anything contained in clause (1), where any employees of the company whose services have been continued under clause (1) have, by notice in writing given to the company at any time before the expiry of one month next following the date on which the scheme is sanctioned by the High Court, intimated their intention of not becoming employees of the company, on its reconstruction, the payment to such employees and to other employees whose services have not been continued on the reconstruction of the company, of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947 (14 of 1947), and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorizations of the company immediately before the date of its reconstruction;
 - (n) any other terms and conditions for the reconstruction of the company;
 - (o) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction of the company shall be fully and effectively carried out.
- (3) (a) A copy of the scheme, as approved by the Central Government, shall be sent in draft to the company, to the registered trade unions, if any, of which the employees of the company are members and to the creditors thereof for suggestions and objections, if any, within such period as the Central Government may specify for this purpose.
- (b) The Central Government may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the company, from the registered trade unions of which the employees of the company are members and from any members or creditors of the company.
- (4) The scheme shall thereafter be placed before the High Court for its sanction and the High Court, if satisfied that the scheme is in the interests of the general public or in the interests of the shareholders or for securing the proper management of the company and that the scheme is designed to be fair and reasonable to the members and creditors of the company, may,

after giving a reasonable opportunity to the company and to its members and creditors of showing cause, sanction the scheme without any modification or without modification as it may consider necessary.

- (5) The scheme, as so sanctioned by the High Court, shall come into force on such date as that court may specify in this behalf:
PROVIDED that different dates may be specified for different provisions of the scheme
- (6) The sanction accorded by the High Court under sub-section (4) shall be conclusive evidence that all the requirements that of this section relating to the reconstruction of the company have been complied with, and the copy of the sanctioned scheme certified by the High Court to be a true copy thereof, shall, in legal proceedings (whether original or in appeal or otherwise), be admitted as evidence to the same extent as the original scheme.
- (7) On and from date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the company and also on all the members and other creditors and employees of the company and on any other person having any right or liability in relation to the company.
- (8) On the coming into operation of the scheme or any provision thereof, the authorised person shall cease to function, and the management of the reconstructed company shall be assumed by the Board of Directors as provided in the scheme.
- (9) Copies of the scheme shall be laid before each House of Parliament, as soon as may be, after the scheme has been sanctioned by the court.
- (10) The provisions of this section and of any scheme made there under shall have effect notwithstanding anything contained in sections 391 to 394A (both inclusive) of the Companies Act, 1956 (1 of 1956).

18FG. Preparation of inventory of assets and liabilities and list of members and creditors of managed company

For the purposes of this Act, the authorised person shall, as soon as may be, after taking over the management of the industrial undertaking of a company under section 18A or section 18AA or section 18FA-

- (a) prepare a complete inventory of-
 - (i) all properties, movable and immovable, including lands, buildings, works, workshops, stores, instruments, plant, machinery, automobiles and other vehicles, stocks of materials in the course of production, storage or transit, raw materials, cash balances, cash in hand, deposits in bank or with any other person or body or on loan, reserve funds, investments and book debts and all other rights and interests arising out of such property as were immediately before the date of taking over of the industrial under taking in the ownership, possession, power or control of the company, whether within or without India; and all books of account, registers, maps, plants, sections, drawings, records, documents or titles of ownership of property, and all other documents of whatever nature relating thereto; and
 - (ii) all borrowings, liabilities and obligations of whatever kind of the company including liability on account of terminal benefits to its employees subsisting immediately before the said date;
- (b) prepare separately a list of members, and a list of creditors, of such company as on the date of taking over of the management of the industrial undertaking showing separately in the list of creditors, the secured creditors and the unsecured creditors:

PROVIDED that where the management of the industrial undertaking of a company has been taken over under the said section 18A before the commencement of the Industries (Development and Regulation) Amendment Act, 1971 (72 of 1971), the aforesaid functions shall be performed by the authorised person within six months from r such commencement.

18FH. Stay of suits and other proceedings

In the case of a company in respect of which an order under section 18FD has been made, no suit or other legal proceeding shall be instituted or continued against the company except with the previous permission of the Central Government or any officer or authority authorised by that government in this behalf.

CHAPTER III

B: CONTROL OF SUPPLY, DISTRIBUTION, PRICE, ETC. OF CERTAIN ARTICLES

18G. Power to control supply, distribution, price, etc. of certain articles

- (1) The Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein.\
- (2) Without prejudice to the generality of the powers conferred by sub-section (1), a notified order made there under may provide-
 - (a) for controlling the prices at which any such article or class of articles thereof may be bought or sold;
 - (b) for regulating by licences, permits or otherwise the distribution, transport, disposal, acquisition possession, use or consumption of any such article or class of articles thereof;
 - (c) for prohibiting the withholding from sale of any such article or class of articles thereof ordinarily kept for sale;
 - (d) for requiring any person manufacturing, producing or holding in stock such article or class of articles thereof to sell the whole or part of the any articles so manufactured or produced during a specified period or to sell the whole or a part of the article so held in stock to such person or class of persons and in such circumstances as may be specified in the order;
 - (e) for regulating or prohibiting any class of commercial or financial transactions relating to such article or class of articles thereof which in the opinion of the authority making the order are, or if unregulated are likely to be, detrimental to public interest;

- (f) for requiring persons engaged in the distribution and trade and commerce in any such article or class of articles thereof to mark the articles exposed or intended for sale with the sale price or to exhibit at some easily accessible place on the premises the price-lists of articles held for sale and also to similarly exhibit on the first day of every month, at such other time as may be prescribed, a statement of the total quantities of any such articles in stock;
 - (g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and
 - (h) for any incidental or supplementary matters, including, in particular, the grant of issue of licences, permits, or other documents and charging of fees therefor.
- (3) Where in pursuance of any order made with reference to clause (d) of sub-section (2), any person sells any article, there shall be paid to him the price therefor-
- (a) where the price can consistently with the controlled price, if any, be fixed by agreement, the price so agreed upon;
 - (b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any, fixed under this section;
 - (c) where neither clause (a) nor clause (b) applies, the price calculated at the market-rate prevailing in the locality at the date of sale.
- (4) No order made in exercise of any power conferred by this section shall be called in question in any court.
- (5) Where an order purports to have been made and signed by an authority in exercise of any power conferred by this section, a court shall, within the meaning of the Indian Evidence Act, 1872 (1 of 1872), presume that such order was so made by that authority.

Explanation : In this section, the expression "article or class of articles" relatable to any scheduled industry includes any article or class of articles imported into India which is of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry.

CHAPTER IV:

MISCELLANEOUS

19. Powers of inspection

- (1) For the purpose of ascertaining the position of working of any industrial undertaking or for any other purpose mentioned in this Act or the rules made there under, any person authorised by the Central Government in this behalf shall have the right-
 - (a) to enter and inspect any premises;
 - (b) to order the production of any document, book, register or record in the possession or power of any person having the control of, or employed in connection with, any industrial undertaking; and
 - (c) to examine any person having the control of, or employed in connection with, any industrial undertaking.
- (2) Any person unauthorized by the Central Government under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

20. General prohibition of taking over management or control of industrial undertakings

After the commencement of this Act, it shall not be competent for any State Government or a local authority to take over the management or control of any industrial undertaking under any law for the time being in force which authorizes any such government or local authority so to do.

21. Certain administrative expenses of Development Councils to be paid from moneys provided by Parliament

Such administrative expenses as relate to the emoluments of officers of a Development Council, who are appointed by or with the approval of the Central Government, shall be defrayed out of moneys provided by Parliament.

22. Power of the Central Government to issue directions to Development Councils

In the exercise of its function under his act, every development council shall be guided by the such instructions as may be given to it by the Central Government and such instructions may include direction relating to the manner in which, and the purpose for which, any proceeds of the cess levied under section 9 which may have been handed over to it, shall be expended.

23. Decision of Central Government final respecting in certain matters

If, for the purposes of this Act, any question arises as to whether-

- (a) there has been a substantial expansion of an industrial undertaking, or
- (b) an industrial undertaking is producing or manufacturing any new article, the decision of the Central Government thereon shall be final.

24. Penalties

- (1) If any person contravenes or attempts to contravene or abets the contravention of-
 - (i) the provisions of sub-section (1) or sub-section (4) of section 10, or of sub-section (1) of section 11 or of section 11A or of sub-section (1) of section 13 or of sub-sections (2), (2A), (2D), (2F) and (2G) of section 29B, or
 - (ii) any direction issued under section 16 or sub-section (3) of section 18B, or
 - (iii) any order made under section 18G, or
 - (iv) any rule the contravention of which is made punishable under this section, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both, and, in the case of continuing contravention, with an additional fine which may

extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

- (2) If the person contravening any of the said provisions is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (3) Notwithstanding anything contained in sub-section (2), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section-

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

24A. Penalty for false statements

If any person-

- (a) when required by this Act or by any order under this Act to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false or does not believe to be true; or

- (b) makes any such statement as aforesaid in any book, account, record, declaration, return, or other document which he is required by any other direction or order made under this Act to maintain or furnish; he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

25. Delegation of powers

- (1) The Central Government may by notified order, direct that any power exercisable by it under this Act (other than the power given to it by sections 16, 18A, 18AA and 18FA) shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority (including in the said expressions any Development Council, State Government or officer or authority subordinate to the Central Government) as may be specified in the direction.
- (2) Any power exercisable by a State Government by virtue of a direction under sub-section (1) may, unless otherwise provided in such direction, be exercised also by such officer or authority subordinate to that State Government as it may, by notified order, specify in this behalf

26. Power to issue directions

The Central Government may give directions to any State Government as to the carrying into execution in the State of any of the provisions of this Act or of any order or direction made there under.

27. Cognizance of offences

No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860).

28. Burden of proof in certain cases

Where any person is prosecuted for contravening any order made under section 18G which prohibits him from doing an act or being in possession of a thing without lawful authority

or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

29. jurisdiction of courts

- (1) Subject to the provisions of sub-section (2), no court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.
- (2) Any Magistrate or bench of Magistrates empowered, for the time being, to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 18983 (5 of 1898), may, on application in this behalf being made by the prosecution, try, in accordance with the provisions contained in sections 262 to 265 of the said Code, any offence which consists of a contravention of an order made under section 18G.

29A. Special provision regarding fines

Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 18983 (5 of 1898), it shall be lawful for any Magistrate of the first class and for any Presidency Magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of any offence under this Act.

29B. Power to exempt in special cases

- (1) If the Central Government is of opinion, having regard to the smallness of the number of workers employed or to the amount invested in any industrial undertaking or to the desirability of encouraging small undertakings generally or to the stage of development of any scheduled industry, that it would not be in public interest to apply all or any of the provisions of the Act thereto, it may, by notification in the Official Gazette, exempt, subject to such conditions as it may think fit to impose, any industrial undertaking or class of industrial undertakings or any scheduled industry or class of scheduled industries as it may specify in the notification from the operation of all or any of the provisions of this Act or any rule or order made there under.

- (2) Where any notification under sub-section (1) granting any exemption is cancelled, no owner of any industrial undertaking to which the provisions of section 10, section 11, section 11A or clause (d) of sub-section (1) of section 13, would have applied, if the notification under sub-section (1) had not been issued, shall carry on the business of the undertaking after the expiry of such period as may be specified in the notification canceling the exemption except under and in accordance with a licence issued in this behalf by the Central Government and, in the case of a State Government, except under and in accordance with the previous permission of the Central Government.
- (2A) In particular, and without prejudice to the generality of the provisions of sub-section (1), the Central Government may, if it is satisfied, after considering the recommendations made to it by the Advisory Committee constituted under sub-section (2B), that it is necessary so to do for the development and expansion of ancillary, or small scale, industrial undertakings, by notified order, direct that any article or class of articles specified in Schedule I shall, on and from such date as may be specified in the notified order (hereafter in this section referred to as the "date of reservation"), be reserved for exclusive production by the ancillary, or small scale, industrial undertaking (hereafter in this section referred to as "reserved article").
- (2B) The Central Government shall, with a view to determining the nature of any article or class or articles that may be reserved for production by the ancillary, or small scale, industrial undertakings, constitute an Advisory Committee consisting of such persons as have, in the opinion of that government, the necessary expertise to give advice on the matter.
- (2C) The advisory committee shall, after considering the following matters, communicate its recommendation to the Central Government, namely-
- (a) the nature of any article or class of articles which may be produced economically by the ancillary, or small scale, industrial undertakings;
 - (b) the level of employment likely to be generated by the production of such article or class of articles by the ancillary, or small scale, industries undertakings;

- (c) the possibility of encouraging and diffusing entrepreneurship in industry;
 - (d) the prevention of concentration of economic power to the common detriment; and
 - (e) such other matters as the Advisory Committee may think fit.
- (2D) The production Of any reserved article or class of reserved articles by any industrial undertaking (not being an ancillary, or small scale, industrial undertaking) which, on the date of reservation, is engaged in, or has taken effective steps for, the production of any reserved article or class of reserved articles, shall, after the commencement of the Industries (Development and Regulation) Amendment Act, 1984, or, as the case may be, the date of reservation, whichever is later, be subject to such conditions as the Central Government may, by notified order, specify.
- (2E) While specifying any condition under sub-section (2D), the Central Government may take into consideration the level of production of any reserved articles or class of reserved articles achieved, immediately before the date of reservation, by the industrial undertaking referred to in sub-section (2D), and such other factors as may be relevant.
- (2F) Every person or authority, not being the Central Government, who or which, is registered under section 10 or to whom, or to which, a licence has been issued or permission has been granted under section 11 for the production of any article or class of articles which has, or have, been subsequently reserved for the ancillary, or small scale, industrial undertakings, shall produce, such registration certificate, licence or permission, as the case may be, within such period as the Central Government may, enter therein all or any of the conditions specified by it under sub-section (2D), including the productive capacity of the industrial undertakings and other prescribed particulars.
- (2G) The owner of every industrial undertaking (not being an ancillary, or small scale, industrial undertaking) which, immediately before the commencement of the Industries

(Development and Regulation) Amendment Act, 1984 or the date of reservation, whichever is later-

- (a) was engaged in the production of any article or class of articles, which has, or have been, reserved for the ancillary, or small scale, industrial undertakings, or
- (b) had before such commencement or before the date of such reservation, as the case may be, taken effective steps for commencing the production of such reserved article or class of reserved articles, without being registered under section 10 or in respect of which a licence or permission has not been issued under section 11, shall refrain from the production of such reserved article or class of reserved articles, on and from the date of expiry of three months from such commencement or from the date of such reservation, whichever is later.

(2H) Every notified order made under sub-section (2A) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notified order or both Houses agree that the notified order should not be made, the notified order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notified order.

- (3) The provisions of this Act shall apply, so far as may be, in relation to the issue of a licence or permission to any industrial undertaking referred to in sub-section (2) as they apply in relation to the issue of a licence or permission to a new industrial undertaking.

29C. Protection of action taken under the Act

- (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule or order made there under.

- (2) No suit or other legal proceeding shall lie against the government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made there under.

29D. Debts incurred by the authorised person to have priority

Every debt arising out of any loan obtained by the authorised person for carrying on the management of, or exercising functions of control in relation to, an industrial undertaking or part thereof, the management of which has been taken over under section 18A or section 18AA or section 18FA-

- (a) shall have priority over all other debts, whether secured or unsecured, incurred before the management of such industrial undertaking was taken over;
- (b) shall be a preferential debt within the meaning of section 530 of the Companies Act, 1956 (1 of 1956); and such debts shall rank equally among themselves and be paid in full out of the assets of the industrial undertaking unless such assets are insufficient to meet them, in which case they shall abate in equal proportions.

30. Power to make rules

- (1) The Central Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,-
- (a) the constitution of the Advisory Council and Development Councils, the term of office and other conditions of service of, the procedure to be followed by, and the manner of filling casual vacancies among members of the Advisory Council or a Development Council;
- (b) the form of the statement of account to be furnished by a Development Council;

- (c) the intervals at which, the time within which, and the manner in which the cess leviable under section 9 shall be payable and the rebate for the prompt payment of such cess.
- (d) the expenses which a Development Council may meet from the proceeds of the cess levied under section 9 which may have been handed over to it;
- (e) the appointment by or with the approval of the Central Government of any officers of a Development Council;
- (f) the facilities to be provided by any industrial undertaking for the training of technicians and labour;
- (g) the collection of any information or statistics in respect of any scheduled industry;
- (h) the manner in which industrial undertakings may be registered under section 10 and the levy of a fee therefor;
- (i) the procedure for the grant or issue of licences and permissions under sections 11; section 11A, section 13 or section 29B, the time within which such licences or permissions shall be granted or issued including, in particular, the publication of notices calling for applications and the holding of such public inquiry in relation thereto as may be necessary in the circumstances;
- (j) the fees to be levied in respect of licences and permissions issued under this Act;
- (k) the matters which may be taken into account in the granting or issuing of licences and permissions, including in particular, the previous consultation by the Central Government with the Advisory Council or any Development Council or both in regard to the grant or issue of any such licences or permissions;
- (l) the procedure to be followed in making any investigation under this Act;
- (m) the conditions which may be included in any licences and permissions;
- (n) the conditions on which licences and permissions may be varied or amended under section 12;

- (o) the maintenance of books, accounts and records relating to an industrial undertaking;
- (p) the submission of special or periodical returns relating to an industrial undertaking by persons having the control of, or employed in connection with, such undertaking, and the forms in which, and the authorities to which such returns and reports shall be submitted;
- (pp) any matter which is to be or may be prescribed for giving effect to the provisions of Chapter IIIAA or Chapter IIIAC;
- (q) any other matter which is to be or may be prescribed under this Act;
- (3) Any rule made under this section may provide that a contravention thereof shall be punishable under section 24.
- (4) Every rule made under this section shall be laid, as soon as may be after it is made before the house of parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both houses agree in making any modification in the rule or both house agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule done under that rule.

31. Application of other laws not barred

The provisions of this Act shall be in addition to and not, save as otherwise expressly provided in this Act, in derogation of any other Central Act for the time being in force, relating to any of the scheduled industries.

32. Amendment of section 2, Act 14 of 1947

[Rep. by Repealing and Amending Act, 1957 (36 of 1957)]

**INDUSTRIES (DEVELOPMENT AND REGULATION)
ACT, 1951**

SCHEDULE I

[Sections 2 and 3(i)]

Any industry engaged in the manufacture or production of any of the articles mentioned in each of the following headings or sub-headings, namely:

1. METALLURGICAL INDUSTRIES:

A. Ferrous:

- (1) Iron and steel (metal).
- (2) Ferro-alloys.
- (3) Iron and steel castings and forgings
- (4) Iron and steel structurals.
- (5) Iron and steel pipes.
- (6) Special steels.
- (7) Other products of iron and steel.

B. Non-ferrous:

- (1) Precious metals, including gold and silver, and their alloys.
- (1A) Other non-ferrous metals and their alloys.
- (2) Semi-manufactures and manufactures.

2. FUELS:

- (1) Coal, lignite, coke and their derivatives.

- (2) Mineral oil (crude oil), motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydro-carbon oils and their blends including synthetic fuels, lubricating oils and the like.
- (3) Fuel gases (coal gas, natural gas and the like).

3. BOILERS AND STEAM-GENERATING PLANTS:

Boilers and steam-generating plants

4. PRIME MOVERS (OTHER THAN ELECTRICAL GENERATORS):

- (1) Steam-engines and turbines.
- (2) Internal combustion engines.

5. ELECTRICAL EQUIPMENT:

- (1) Equipment for generation, transmission and distribution of electricity including transformers.
- (2) Electrical motors.
- (3) Electrical fans.
- (4) Electrical lamps.
- (5) Electrical furnaces.
- (6) Electrical cables and wires.
- (7) X-ray equipment.
- (8) Electrical equipment.
- (9) Household appliances such as electric irons, heaters and the like.
- (10) Storage batteries.
- (11) Dry cells.

6. TELECOMMUNICATIONS:

- (1) Telephones.
- (2) Telegraph equipment.
- (3) Wireless communication apparatus.
- (4) Radio receivers, including amplifying and public-address equipment.
- (5) Television sets.
- (6) Teleprinters.

7. TRANSPORTATION:

- (1) Aircraft.
- (2) Ships and other vessels drawn by power.
- (3) Railway locomotives.
- (4) Railway rolling-stock.
- (5) Automobiles (motor cars, buses, trucks, motorcycles, scooters and the like)
- (6) Bicycles.
- (7) Others, such as fork-lift trucks and the like.

8. INDUSTRIAL MACHINERY:

A. Major items of specialized equipment used in specific industries:

- (1) Textile machinery (such as spinning frames, carding machines, power looms and the like) including textile accessories.
- (2) Jute machinery.
- (3) Rayon machinery.
- (4) Sugar machinery.
- (5) Tea machinery.
- (6) Mining machinery.
- (7) Metallurgical machinery.
- (8) Cement machinery.
- (9) Chemical machinery.

(10) Pharmaceutical machinery.

(11) Paper machinery.

B. General items of machinery used in several industries, such as the equipment required for various "unit processes":

(1) Size-reduction equipment -crushers, ball mills, and the like.

(2) Conveying equipment-bucket elevators, skip hoists, cranes, derricks and the like.

(3) Size separation units-screens, classifiers and the like.

(4) Mixers and reactors-kneading mills, turbo-mixers and the like.

(5) Filtration equipment-filter presses, rotary filters and the like.

(6) Centrifugal machines.

(7) Evaporators.

(8) Distillation equipment.

(9) Crystallizers.

(10) Dryers.

(11) Power-driven pumps-reciprocating, centrifugal and the like.

(12) Air and gas compressors and vacuum pipes (excluding electrical furnaces).

(13) Refrigeration plants for industrial use.

(14) Fire-fighting equipment and appliances including fire-engines.

C. Other items of industrial machinery:

(1) Ball, roller and tapered bearings.

(2) Speed-reduction units.

(3) Grinding wheels and abrasives.

9. MACHINE TOOLS:

Machine tools

10. AGRICULTURAL MACHINERY:

(1) Tractors, harvesters and the like.

(2) Agricultural implements.

11. EARTH-MOVING MACHINERY:

Bulldozers, dumpers, scrapers, loaders, shovels, drag lines, bucket-wheel excavators, road-rollers and the like.

12. MISCELLANEOUS MECHANICAL AND ENGINEERING INDUSTRIES:

(1) Plastic moulded goods.

(2) Hand-tools; small tools and the like

(3) Razor blades.

(4) Pressure-cookers.

(5) Cutlery.

(6) Steel furniture.

13. COMMERCIAL, OFFICE AND HOUSEHOLD EQUIPMENT

(1) Typewriters.

(2) Calculating machines.

(3) Air-conditioners and refrigerators.

(4) Vacuum cleaners.

(5) Sewing and knitting machines.

(6) Hurricane lanterns.

14. MEDICAL AND SURGICAL APPLIANCES:

Surgical instruments-sterilizers, incubators and the like

15. INDUSTRIAL INSTRUMENTS:

(1) Water meters, steam meters, electricity meters and the like.

(2) Indicating, recording and regulating devices for pressure, temperature, rate of flow, weights, levels, and the like.

(3) Weighing machines.

16. SCIENTIFIC INSTRUMENTS:

Scientific instruments

17. **MATHEMATICAL, SURVEYING AND DRAWING INSTRUMENTS:**
Mathematical, surveying and drawing instruments
18. **FERTILISERS:**
- (1) Inorganic fertilizers.
 - (2) Organic fertilizers.
 - (3) Mixed fertilizers.
19. **CHEMICALS (OTHER THAN FERTILISERS):**
- (1) Inorganic heavy chemicals.
 - (2) Organic heavy chemicals.
 - (3) Fine chemicals including photographic chemicals.
 - (4) Synthetic resins and plastics.
 - (5) Paints, varnishes and enamels.
 - (6) Synthetic rubbers.
 - (7) Man-made fibres including regenerated cellulose-rayon, nylon and the like.
 - (8) Coke oven by-products.
 - (9) Coal-tar distillation products like naphthalene, anthracene, and the like.
 - (10) Explosives including gunpowder and safety fuses.
 - (11) Insecticides, fungicides, weedicides and the like.
 - (12) Textile auxiliaries.
 - (13) Sizing materials including starch.
 - (14) Miscellaneous chemicals.
20. **PHOTOGRAPHIC RAW FILM AND PAPER:**
- (1) Cinema film.
 - (2) Photographic amateur film.
 - (3) Photographic printing paper.

21. DYE-STUFFS:

Dye-stuffs.

22. DRUGS AND PHARMACEUTICALS:

Drugs and pharmaceuticals.

23. TEXTILES (INCLUDING THOSE DYED, PRINTED OR OTHERWISE PROCESSED):

- (1) Made wholly or in part of cotton, including cotton yarn, hosiery and rope;
- (2) Made wholly or in part of jute, including jute, twine and rope;
- (3) Made wholly or in part of wool, including wool tops, woollen yarn, hosiery, carpets and druggets;
- (4) Made wholly or in part of silk, including silk yarn and hosiery;
- (5) Made wholly or in part of synthetic, artificial (man-made) fibres, including yarn and hosiery of such fibres.

24. PAPER AND PULP INCLUDING PAPER PRODUCTS:

- (1) Paper-writing, printing and wrapping.
- (2) Newsprint.
- (3) Paper board and straw board.
- (4) Paper for packaging (corrugated paper, kraft paper, paper bags, paper containers and the like).
- (5) Pulp-wood pulp, mechanical, chemical, including dissolving pulp.

25. SUGAR:

Sugar

26. FERMENTATION INDUSTRIES:

- (1) Alcohol.
- (2) Other products of fermentation industries.

27. FOOD-PROCESSING INDUSTRIES:

- (1) Canned fruits and fruit products.
- (2) Milk foods.

(3) Malted foods.

(4) Flour.

(5) Other processed foods.

28. VEGETABLE OILS AND VANASPATI

(1) Vegetable oil, including solvent oils.

(2) Vanaspati.

29. SOAPS, COSMETICS, AND TOILET PREPARATIONS:

(1) Soaps.

(2) Glycerin. .

(3) Cosmetics.

(4) Perfumery.

(5) Toilet preparations.

30. RUBBER GOODS:

(1) Tyres and tubes.

(2) Surgical and medicinal products including prophylactics.

(3) Footwear.

(4) Other rubber goods.

31. LEATHER, LEATHER GOODS AND PICKERS:

Leather, leather goods and pickers.

32. GLUE AND GELATIN:

Glue and gelatin.

33. CLASS:

(1) Hollow ware.

(2) Sheet and plate glass.

(3) Optical glass.

(4) Class wool.

(5) Laboratory ware.

(6) Miscellaneous ware.

34. CERAMICS:

- (1) Fire bricks.
- (2) Refractories.
- (3) Furnace lining bricks-acidic, basic and neutral.
- (4) Chinaware and pottery.
- (5) Sanitary ware.
- (6) Insulators.
- (7) Tiles.
- (8) Graphite crucibles.

35. CEMENT AND GYPSUM PRODUCTS:

- (1) Portland cement.
- (2) Asbestos cement.
- (3) Insulating boards.
- (4) Gypsum boards, wall boards and the like.

36. TIMBER PRODUCTS:

- (1) Plywood.
- (2) Hardboard, including fibre-board, chip-board and the like.
- (3) Matches.
- (4) Miscellaneous (furniture components, bobbins, shutters and the like).

37. DEFENCE INDUSTRIES:

Arms and ammunition

38. MISCELLANEOUS INDUSTRIES:

- (1) Cigarettes.
- (2) Linoleum, whether felt based or jute based.
- (3) Zip fasteners (metallic and non-metallic).
- (4) Oil stoves.
- (5) Printing, including litho printing industry.

Explanation 1: The articles specified under each of the headings Nos. 3, 4, 5, 6, 7, 8, 10, 11 and 13 shall include their component parts and accessories.

Explanation 2: The articles specified under each of the headings Nos. 18, 19, 21 and 22 shall include the intermediates required for their manufacture.

SCHEDULE II

[Section 6(4)]

Functions which may be assigned to Development Councils:

- (1) Recommending targets for production, co-coordinating production programmes and reviewing progress from time to time.
- (2) Suggesting norms of efficiency with a view to eliminating waste, obtaining maximum production, improving quality and reducing costs.
- (3) Recommending measures for securing the fuller utilization of the installed capacity and for improving the working of the industry, particularly of the less efficient units.
- (4) Promoting arrangements for better marketing and helping in the devising of a system of distribution and sale of the produce of the industry which would be satisfactory to the consumer.
- (5) Promoting standardization of products.
- (6) Assisting in the distribution of controlled materials and promoting arrangements for obtaining materials for the industry.
- (7) Promoting or undertaking inquiry as to materials and equipment and as to methods of production, management and labour utilization, including the discovery and development of new materials, equipment and methods and of improvements in those already in use, the assessment of the advantages of different alternatives and the conduct of experimental establishments and of tests on a commercial scale.

- (8) Promoting the training of persons engaged or proposing engagement in the industry and their education in technical or artistic subjects relevant thereto.
- (9) Promoting the retaining in alternative occupations of personnel engaged in or retrenched from the industry.
- (10) Promoting or undertaking scientific and industrial research, research into matters affecting industrial psychology and research into matters relating to production and to the consumption or use of goods and services supplied by the industry.
- (11) Promoting improvements and standardization of accounting and costing methods and practice.
- (12) Promoting or undertaking the collection and formulation of statistics.
- (13) Investigating possibilities of decentralizing stages and processes of production with a view to encouraging the growth of allied small-scale and cottage industries.
- (14) Promoting the adoption of measures for increasing the productivity of labour, including measures for securing safer and better working conditions and the provision and improvement of amenities and incentives for workers.
- (15) Advising on any matters relating to the industry (other than remuneration and conditions of employment) as to which the Central Government may request the Development Council to advise and undertaking inquiries for the purpose of enabling the Development Council so to advise, and
- (16) Undertaking arrangements for making available to the industry information obtained and for advising on matters with which the Development Councils are concerned in the exercise of any of their functions.

SCHEDULE III

[Section 18FB]

1. The Industrial Employment (Standing Orders) Act, 1946, (2 of 1946).
2. The Industrial Disputes Act, 1947 (14 of 1947).
3. The Minimum Wages Act, 1948 (11 of 1948).

Foot Notes

- 1 Appointed date is 8th. May, 1952.
- 2 Refer the Trade and Merchandise Marks Act, 1958 (43 of 1958). See now the Trade Marks Act, 1999 (Act No. 47 of 1999).
3. Refer to the corresponding provisions of Criminal Procedure Code, 1973.
- 4 See now the Companies Act, 1956

The Registration and Licensing of Industrial Undertakings Rule, 1952

1. Short Title: These rules may be called the Registration and Licensing of Industrial Undertakings Rules, 1952.
2. Definitions: In these rules, unless there is anything repugnant in the subject or context:-
 - (i) "the Act" means the Industries (Development and Regulation) Act 1951 (LXV of 1951),
 - (ii) "effective steps" shall mean one or more of the following:-
 - (a) that 60 per cent or more of the capital issued for an industrial undertaking which is a public company within the meaning of the Indian Companies Act, 1913 (VII of 1913) has been paid up;
 - (b) that a substantial part of the factory building has been constructed;
 - (c) that a firm order has been placed for a substantial part of the plant and machinery required for the undertaking.
3. Application for Registration: "(1) An application for the registration of an existing industrial undertaking shall be made to the Ministry of Industry (Department of Industrial Development), Government of India, New Delhi, at least three months before the expiry of the period fixed under sub-section (1) of section 10 of the Act in relation to that undertaking in such form and with such number of copies thereof as may be specified by the said Ministry:

Provided that an application which is not made in time may be entertained by the said Ministry, if the applicant satisfies that Ministry that there was sufficient cause for not making the application in time".

[(1A) where an application for the registration of an industrial undertaking is pending at the commencement of the Industries (Development & Regulation) Amendment Act, 1953, no fresh application for such registration shall be necessary under the

rule and any such pending application shall be disposed of in accordance with the provisions of these Rules].

- (2) Each application shall be accompanied by a crossed demand draft for Rs. 2500 drawn on the State Bank of India, Nirman Bhavan, New Delhi, in favour of the Pay and Accounts Officer, Ministry of Industry, (Department of Industrial Development), Government of India, New Delhi.
4. Acknowledgement of Application: On receipt of application, the receiving officer shall note thereon the date of its receipt, and shall send to the applicant an acknowledgement stating the date of receipt.
5. Power of Central Government to ask for Additional Information: The Ministry of (Industrial Development) or the authority appointed by it (in this behalf) may require the applicant to furnish within a period to be specified by it, such additional information as it may consider necessary for the purpose of registration.
6. Grant of Registration Certificate: If an application made under sub-rule (1) of rule 3 falls within the scope of that rule, the Ministry of (Industrial Development), shall after such investigation as it may consider necessary, grant to the applicant, before the (expiry of the period fixed under section 10 of the Act), a certificate of registration in Form C appended to these rules. If an application made under sub-rule (1) of rule 3 does not fall within the scope of that rule, the Ministry of (Industrial Development) shall inform the applicant accordingly.
7. Application for Licence :- (1) An application for a license or permission for the establishment of a new industrial undertaking or any substantial expansion of (or the production or manufacture of any new article in) an industrial undertaking shall be made before taking any of the following steps:
 - (a) Raising from the public any part of the capital required for the undertaking or expansion (or the production or manufacture of the new article).

- (b) Commencing the construction of any part of the factory building for the undertaking or expansion (or the production or manufacture of the new article).
- (c) Placing order for any part of the plant and machinery required for the undertaking or expansion (or the production or manufacture of the new article).
- (1A) An application for a license or permission for changing the location of the whole or any part of an industrial undertaking which has been registered (or in respect of which a license or permission has been issued shall be made before taking any of the following steps:
 - (a) the acquisition of land or the construction of premises for the purpose of housing the industrial undertaking at the proposed new site;
 - (b) the dismantling of any part of the plant and machinery at the existing site)
- [(2) and (2A)]*
- (3) Each application shall be accompanied by a crossed demand draft for Rs. 2500 drawn on the State Bank of India, Nirman Bhavan, New Delhi, in favour of Pay and Accounts Officer, Ministry of Industry, (Department of Industrial Development), Government of India, New Delhi.
- 8. Acknowledgement of Application: On receipt of the application, the receiving officer shall note thereon the date of its receipt, and shall send to the applicant an acknowledgement stating the date of receipt.
- 9. Power to call for Additional Information: The Ministry of (Industrial Development) or the authority appointed by it (in this behalf) may require the applicant to furnish, within a period to be specified by it, such additional information as it may consider necessary.
- 10. Application to be referred to Committee: (1) The Ministry of Industrial Development shall refer the application to a Committee appointed under sub-rule (2).

"(Provided that where an application relates to the extension of the period of validity of an industrial license or to the issue of a carry-on-business license or to diversification within the existing licensed capacity in respect of such schedule industries as may, from time to time be decided by the Central Government, having regard to the maximization of production, better utilization of existing plant and machinery and other factors, the Ministries concerned may dispose of such application without reference to the Committee)".

*omitted

2. The Central Government may, by notification in the Official Gazette, appoint one or more Committees, consisting of such number of members as it may think fit to represent the Ministries of the Central Government dealing with -
 - (i) the industry specified in the First Schedule to the Act;
 - (ii) Finance;
 - (iii) Science and Technology;
 - (iv) Environment, Forests and Wildlife;
 - (v) Small Scale Industries.

Provided that the Central Government may, if it deems fit, include in such committee any other member to represent any other Ministry.

- (3) A Committee appointed under sub-rule (2) may co-opt one or more representatives of other Ministries of the Central Government or of any State Government concerned, wherever it is necessary.
11. Submission of Report by the Committee: After such investigation as may be necessary, the Committee to which an application has been referred under rule 10 shall submit a report to the Ministry of Industrial Development.
12. Contents of the Report: In making the report under Rule 11, the Committee shall have regard to the approved plans, if any, of the Central Government for the development of the

scheduled industry concerned and, where no such plans exist, to the existing capacity of the scheduled industry, the demand and supply position, availability of raw materials and plant and machinery. The report should, among other matters, contain recommendations regarding capital and its structure, suitability of the location proposed from the point of view of the approved plans for the industry, capacity of the plant to be installed, availability of rail-transport capacity, availability of technical and other skilled personnel required, and collaboration, if any, with foreign manufacturers.

13. Recommendation regarding Public Enquiry: If the (Committee referred to in rule 11) is of the opinion that a public enquiry is necessary in respect of any application it may recommend such a step to the Ministry of (Industrial Development).
14. Invitation of Applications:
 - (1) The Ministry of (Industrial Development) or the authority appointed by it (in this behalf) may, where it considers necessary, invite, by means of a notice published in the Gazette of India, applications for the grant of Licences for the establishment of new industrial undertakings in any scheduled industry.
 - (2) An application received under sub-rule (1) shall be dealt with in the manner laid down in rule 10 to 13.
15. Grant of License or Permission:
 - (1) The Ministry of (Industrial Development) shall consider the report submitted to it under rule 11, and where it decides that a license or permission, as the case may be, should be granted it shall inform the applicant accordingly, not later than 3 months from the date of receipt of the application, or the date on which additional information under rule 9 is furnished, whichever is later.
 - (2) Where the Ministry of (Industrial Development) considers that certain conditions should be attached to the license or permission or that the license or permission should be refused, it shall not later than three months from the date of receipt of

the application or the date on which additional information under rule 9 is furnished, whichever is later, give an opportunity to the applicant to state his case, before reaching decision.

- (3) Where a license or permission has been refused the applicant shall be informed of the reasons for such refusal.
- (4) Licences or permissions shall be in Form F appended to these rules.
16. Variation or Amendment of Licences: (1) Any owner of an industrial undertaking in respect of which a license has been granted, who desires any variation or amendment in his license shall apply to the Ministry of (Industrial Development) giving the reasons for the variation or amendment.
- (2) The Ministry of (Industrial Development) after carrying out such investigation as it may consider necessary, may vary or amend the license. The Ministry of Commerce and Industry may also consult the Licensing Committee before coming to a decision.
17. Revocation of Licences: The Ministry of (Industrial Development) shall, before exercising its power of revocation of a license under sub-section (1) of section 12 of the Act, give an opportunity to the license to state his case.
18. Review of Licences by a Sub-committee: A sub-committee of the Central Advisory Council shall be constituted which will review all licences issued, refused, varied, amended or revoked from time to time; and advise Government on the general principles to be followed in the issue of licences for establishing new undertakings or substantial expansion of the existing undertakings. The results of the review shall be reported to the Central Advisory council.
19. Submission of Returns: (1) Every owner of an industrial undertaking in respect of which a license or permission has been granted (under the Act) shall send every half year ending 30th June and 31st December, commencing from the date of grant of the license or permission, as the case may be, till such time as the industrial undertaking commences production a

- return (with five spare copies), in Form G appended to these rules, to the Ministry of (Industrial Development), Government of India, New Delhi, (or to any authority appointed by it in this behalf). The return relating to every half year shall be sent within one month after the expiry of that half year.
- (2) Whether any condition has been attached to a license or permission granted in respect of an industrial undertaking to the effect that certain steps should be taken within a period specified therein every owner of such an undertaking shall send a return, with five spare copies, in Form G appended to these rules, to the Ministry of (industrial Development), Government of India, New Delhi (or to any authority appointed by it in this behalf) showing the progress made in taking such steps at the expiry of the period so specified. The return shall be sent within a period of seven days from the expiry of the period so specified.
- (3) Every owner of an industrial undertaking which has been registered by reason of effective steps having been taken for the establishment of that undertaking before the commencement of the Act shall send, every half year ending on the 30th June and the 31st December, and commencing from the 31st December 1953, till such time as the industrial undertaking commences production a return, with five spare copies, in Form G appended to these rules, to the Ministry of (industrial Development), Government of India, New Delhi, or to any authority appointed by it in this behalf. The return relating to every half year shall be sent within one month of the expiry of that half year).
- [19A. Notice of certain facts to be given.-(1) If there is any change in the name of registered industrial undertaking or an undertaking in respect of which a license or permission has been granted under the Act the owner thereof, shall within fourteen days from the date of such change, give notice in writing of the fact to the Ministry of (Industrial Development), Government of India, New Delhi and forward the registration certificate or the license as the case may be, to that Ministry for endorsing thereon the change in the name of the undertaking.

- (2) If there is any change in the owner of a registered industrial undertaking or an undertaking in respect of which a license or permission has been granted the new owner thereof shall, within fourteen days from the date of such change, give notice in writing of the fact to the Ministry of (Industrial Development), Government of India, New Delhi; and forward the registration certificate or the license, as the case may be to that Ministry for endorsing thereon the change in the owner of the industrial undertaking.
 - (3) If by reason of (a) reduction in the number of workers employed; (b) discontinuation of the production of articles falling within the scope of the Act; or (c) any other reason, all or any of the provisions of the Act become inapplicable to a registered industrial undertaking or an undertaking in respect of which a license or permission has been granted to be so inapplicable for a period of six months, the owner thereof shall, within fourteen days of the expiry of the said period of six months give notice in writing of the fact to the Ministry of (Industrial Development), Government of India, New Delhi;
 - (4) If a registered industrial undertaking or an industrial undertaking in respect of which a license or permission has been granted, has been closed for a period exceeding thirty days, the owner thereof shall within seven days of the expiry of the said period of thirty days, give notice in writing of the fact to the Ministry of (Industrial Development), Government of India, New Delhi.
 - (5) If any decision has been taken by a competent authority that a registered industrial undertaking or an industrial undertaking in respect of which a license or permission has been granted shall be liquidated, the owner thereof shall, within fourteen days from the date of such a decision, give notice in writing of that fact to the Ministry of (Industrial Development), Government of India, New Delhi (and return the registration certificate or the license as the case may be to that Ministry)].
- 19B. Loss of Registration Certificate or License, etc.: Where a registration certificate, a licence or a permission granted under these rules is lost, destroyed or mutilated, a duplicate copy

may be granted in receipt of a crossed demand draft for Rs. 25 drawn on the State Bank of India, Nirman Bhavan, New Delhi, in favour of the Pay and Accounts Officer, Ministry of Industry (Department of Industrial Development), Government of India, New Delhi.

20. **Penalty for Contravention of Rules:** Whosoever contravenes or attempts to contravene or abates the contravention of any of these rules shall be punishable under section 24 of the Act.
21. **Allotment of Controlled Commodities to Licensed Undertakings:** The owner of an industrial undertaking in respect of which a license or permission has been granted shall be eligible to the allotment of controlled commodities required by him for the construction or operation or for both construction and operation of his undertakings on such preferential basis as the Central Government may determine from time to time. In determining such preference the Central Government shall have due regard to the requirements of existing industrial undertakings.
22. **Concession in the Grant of Import Licences to Undertakings:** The owner of an industrial undertaking in respect of which a license or permission has been granted shall be eligible for the issue of licences for the import of goods required by him for the construction or operation or for both construction and operation of his undertaking on such preferential basis as the Central Government may determine from time to time. In determining this preference which may include such concession as the submission of one consolidated application in respect of the requirements from each currency area for all items shown as licensable to actual users, submission of separate application for highly specialized items even though such items may not be shown as licensable to actual users and priority in the matter of import from different currency areas, the Central Government shall have due regard to the requirements of existing Industrial undertakings.

The Central Advisory Council (Procedural) Rules, 1952

In exercise of the powers conferred by section 30 read with sub-section (3) of section 5 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby makes the following Rules, the same having been previously published as required under sub-section (1) of section 30 of the Act, namely:-

1. Short title and commencement

- (1) These rules may be called the Central Advisory Council (Procedural) Rules.
- (2) They shall come into force immediately after the commencement of the Act.

2. Definitions.

In these rules, unless there is anything repugnant in the subject or context:

- (a) 'The Act' means the Industries (Development and Regulation) Act, 1951 (65 of 1951).
- (b) 'Council' means the Central Advisory Council constituted under section 5 of the Act.
- (c) 'Chairman' means the Chairman appointed under sub-section (2) of section 5 of the Act.
- (d) 'Secretary' means the officer appointed by the Central government to carry on the functions of Secretary to the Council.

3. Chairman.

The Minister of Industry shall be the Chairman of the Council.

4. Tenure of appointment of chairman and members

A member of the Council other than the Chairman shall hold office for such period not exceeding two years from the date

of his appointment as may be specified in the order of appointment, and shall be eligible for re-appointment.

5. Resignation of members

A member of the Council may resign his office by letter addressed to the Secretary to the Government of India in the Ministry of Commerce and Industry.

6. Absence of members out of India

- (1) If a member intends to leave India for more than one month he shall intimate the Secretary the date of his departure from and the date of his expected return to India, and
- (2) If he intends to be absent from India for a period longer than six months, he shall tender his resignation.

7. Cessation of membership under certain circumstances

A member of the Council shall cease to be member on the happening of any of the following events, namely, if he resigns, becomes of unsound mind, becomes insolvent or be convicted of a criminal offence involving moral turpitude.

8. Filling of vacancies

- (1) Any vacancy in the membership of the Council caused by any reason mentioned in rule 7 shall be filled by appointment by the Central Government.
- (2) A member appointed to fill a casual vacancy shall hold office for so long as the member whose place he fills would have been entitled to hold office if the vacancy had not occurred.

9. Appointment of substitutes

Should a person appointed as member of the Council be prevented from attending a meeting of the Council, a substitute to take his place may be appointed by the Central Government. Such substitute shall have the rights and privileges of a member for that meeting only.

10. Meetings

- (1) The Central Government may at any time call a meeting of the Council and shall fix the date, time and place of every meeting of the council.
- (2) At least one meeting of the Council shall be held in every year.
- (3) Not less than nine members of the Council may by requisition in writing signed by them require the Central Government to call a meeting of the Council at any time and a receipt of such a requisition the Central Government shall call such a meeting at an early date.

11. Proposals to be considered at meetings or by circulation.

Any proposal which the Council is required to consider may be referred to all its members either at its meetings or by circulation among all its members and any question so circulated and approved by a majority of members by signing it shall be as effectual and binding as if such had been passed at a meeting of the Council, provided that at least nine members have recorded their views on the proposal.

12. List of business

- (1) The Secretary shall cause to be prepared and circulated among the members at least 7 days before the meeting of the Council the list of business to be considered at that meeting.
- (2) If any member desires to suggest any subject for discussion by the Council, he shall give at least 15 days clear notice.

13. Procedure at meetings

- (1) The Chairman shall preside over meetings of the Council. If the Chairman is not present at any meeting of the Council, the Council shall elect a chairman from amongst the members present to preside at such a meeting.
- (2) Nine members of the Council present in person shall form a quorum at a meeting of the Council.

- (3) In the case of a difference of opinion amongst the members of the Council present at a meeting, the opinion of the majority shall prevail.
- (4) Each member of the Council shall have one vote, and if there shall be an equality of votes on any question to be decided by the Council, the Chairman or the member presiding shall have a casting vote.

14. Duties of Secretary

The Secretary shall maintain a record of all business transacted by the Council.

15. Change in addresses of members

All members shall keep the Secretary informed of any change in their addresses. If they fail to notify their new address, the address in the roll or members maintained by the Secretary shall be deemed to be their address.

16. Validation of acts and proceedings

No act or proceeding of the Council shall be invalidated or questioned on the ground merely of any vacancy in, or any defect in the constitution of, the Council.

17. Power of Council to appoint committees

- (1) The Council shall have power to constitute such committees as it thinks fit and to assign to them such functions or refer to them such questions as it may consider necessary.
- (2) Every such committee shall consist of such number of persons, whether members of the Council or not, as the Council may think fit to appoint thereto].

18. Traveling allowance for attendance at meetings.

Non-official members of the Council and of its committees shall be entitled to draw traveling allowances for attending meetings of the Council or the committees at the rates prescribed by the Central Government from time to time for non-officials.

The Development Councils (Procedural) Rules, 1952

1. Short title and commencement:

These rules may be called the Development Councils (Procedural) Rules, 1952.

2. Definitions:

In these rules unless there is anything repugnant in the subject or context:-

- (a) "Chairman" means a Chairman appointed or elected under these rules;
- (b) "Council" means a Development Council constituted under Section 6 of the Act;
- (c) "Member-Secretary" means the officer appointed by the Central Government to carry on the functions of the Secretary to a Development Council;
- (d) "The Act" means the Industries (Development & Regulation) Act, 1951 (LXV of 1951); and
- (e) "Vice-Chairman" means a Vice-Chairman appointed or elected under these rules

3. Number of members:

Every Council shall consist of not more than twenty five members including the Chairman and the Member-Secretary.

4. Chairman -

- (1) The Chairman of a Council shall be appointed by the Central Government from amongst the members of that Council and shall hold office for a period of two years from the date of his appointment, and thereafter the Chairman shall be either nominated by the Central Government or elected by members of that Council as may be decided by the Central Government on each occasion.

- (2) The Chairman may resign his office by a letter addressed to the Secretary to the Government of India, Ministry of Industry (Department of Industrial Development) with a copy endorsed to the Member-Secretary to the Development Council concerned.
- (3) The vacancy caused in the Office of the Chairman by such resignation shall be filled by appointment by the Central Government of another member of the Council as Chairman, and the Chairman so appointed shall hold office for so long as the Chairman whose place he fills would have been entitled to hold the office, had he not resigned.
- (4) If the Chairman of a Council is a Government official, a Vice-Chairman may be appointed to that Council by the Central Government from amongst the members of the Council who shall hold office for a period, not exceeding 2 years, as may be specified by the Central Government, from the date of his appointment:

Provided that no person shall hold office of Vice-Chairman after he has ceased to be Member of the Council.

- (5) The Vice-Chairman may resign his office by communication in writing and addressed to the Chairman of the Council concerned with a copy to the Member-Secretary thereof.
- (6) Subject to the provisions of sub-rule (4), the vacancy caused by the resignation of the Vice-Chairman may be filled by the Central Government by appointment of another Member of the council as Vice-Chairman and the Vice-Chairman so appointed shall hold office for the remaining period of the term of the Vice-Chairman in whose place he is so appointed.

5. Tenure of appointment of members:-

- (1) A member of a Council shall hold office for two years from the date of his appointment and shall be eligible for re-appointment.
- (2) A member of a Council may resign his office by letter addressed to the Secretary to the Government of India, Ministry of Industry with a copy to the Secretary of the

Development Council concerned.

6. Absence of members out of India:-

- (1) If a member of a Council intends to leave India for more than one month, he shall intimate the Secretary of the Council the date of his departure and the date of his expected return to India; and
- (2) If he intends to be absent from India for a period longer than six months, he shall tender his resignation.

7. Cessation of membership under certain circumstances:-

A member of a Council shall cease to be member on the happening of any of the following events, namely, if he resigns, becomes of unsound mind, becomes insolvent or be convicted of criminal offence involving moral turpitude.

8. Filling of vacancies:-

- (1) Any vacancy in the membership of a Council caused by any reason shall be filled by appointment by the Central Government.
- (2) A member appointed to fill a casual vacancy shall hold office for so long as the member whose place he fills would have been entitled to hold office if the vacancy had not occurred.

9. Appointment of substitutes:-

Should a person appointed as member of the Council be prevented from attending a meeting of the Council, a substitute to take his place may be appointed by the Central Government. Such substitute shall have the rights and privileges as a member for that meeting only.

10. Meetings:-

- (1) A council may hold meetings whenever required but at least two meetings shall be held in a year.

The Secretary shall, with the approval of the Chairman fix the date, time and place of every meeting of the Council.

At least 10 days' notice shall be given to members for every meeting of the Council.

At least one third of the number of members of a Council but not less than three members may, by a requisition in writing signed by them, require the Chairman to call a meeting of the Council at any time and on receipt of such a requisition the Chairman shall call a meeting of the Council at an early date.

Proposals to be considered at meetings or by circulation:-

Any proposal which a Council is required to consider may be referred to all its members either at its meetings or by circulation among all its members and any proposal so circulated and approved by a majority of members by signing it shall be as effectual and binding as if such had been passed at a meeting of the Council, provided that at least one-third of the total number of members of a Council but not less than three members have recorded their views on the proposal.

List of business:-

The Secretary shall, with the approval of the Chairman or in the absence of the Chairman, the Vice-Chairman, cause to be prepared and circulated amongst the members at least 7 days before the meeting of a Council, the list of business to be considered by that meeting.

If any member desires to suggest any subject for discussion by a Council, he shall give at least 10 days' clear notice.

No business not in the list shall be considered without the approval of the Chairman or where the Vice-Chairman is presiding over the meeting, of the Vice-Chairman.

Procedure of meeting:-

The Chairman, or in his absence the Vice-Chairman, shall preside over the meetings of a Council and where both the Chairman and Vice-Chairman are absent the Members present shall elect a Chairman from amongst themselves;

One-third of the total number of members of a Council but not less than three members, present in person shall form a quorum at a meeting of the Council;

In case of difference of opinion amongst the members of a Council present at a meeting, the opinion of the majority shall prevail;

Each member of a Council shall have one vote and if there shall be an equality of votes on any question to be decided by a Council, the Chairman or if the Vice-Chairman or any other Member is presiding, the Vice-Chairman or such Member, as the case may be presiding shall have a casting vote.

Duties of Secretary:-

The Secretary of a Council shall be in charge of its office and shall be responsible for the correspondence of the Council.

He shall maintain a record of all business transacted by the Council.

He shall carry out such duties as are assigned to him by the Council in the discharge of the functions assigned to it under sub-section 4 and 5 of section 6 of the Act, and in the preparation and submission of the reports and accounts specified in Section 7 of the Act.

He shall forward to the Secretariat for Industrial Approvals in the Ministry of Industry a report on the activities of the Development Council after every meeting for submission to the Project Approval Board of the Ministry of Industry.

15. Authentication of acts and proceedings:-

All acts and proceedings of a Council when endorsed by the Chairman or by the Vice-Chairman or Member-Secretary with the approval of Chairman shall be deemed to be true proceedings of the Council.

The Chairman or the Vice-Chairman or the Member-Secretary with the approval of the Chairman shall perform such of the functions as assigned to them on behalf of the Council in accordance with its decisions.

Change in address of members:-

All members shall keep the Secretary informed of any change in their addresses. If they fail to notify their new addresses, the address in the roll of members maintained by the Secretary shall be deemed to be their address.

Validation of acts and proceedings:-

No act or proceedings of a Council shall be invalidated or questioned on the ground merely or any vacancy in, or any defect in the constitution of the Council.

Ministry of Industry

(Department of Industrial Development)

NOTIFICATION

CEMENT CESS RULES, 1993

S.O.264 (E) - WHEREAS the draft of the Cement Cess Rules, 1993 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated the 24th February, 1993, with the notification of the Government of India in the Ministry of Industry (Department of Industrial Development), No. S.O 126(E), dated the 24th February 1993, as required by sub-section (1) of section 30 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), for inviting objections and suggestions from all persons likely to be affected thereby within thirty days from the date on which the Gazette containing the said notification was made available to the public.

AND WHEREAS the said Gazette was made available to the public on the 9th March 1993,

AND WHEREAS the objections and suggestions received from the public on the said draft have been considered by the Central Government;

NOW, THEREFORE, in exercise of the powers conferred by section 30 of the said Act, the Central Government hereby makes the following rules, namely:

1. Short title. - These rules may be called the Cement Cess Rules, 1993
2. Definitions - In these rules, unless the context otherwise requires, -
 - (a) "Act" means the Industries (Development and Regulation) Act, 1951 (65 of 1951) ;
 - (b) "Cess means the cess levied and collected in terms of Order No. S.O 125 (E) dated 24th February, 1993 of Department of Industrial Development, issued under sub-section (1) section 9 of the Act;

- (c) "Collecting Agency" means the Development Commissioner for Cement Industry, Government of India, or such other officer or authority as may be authorised by the Central Government to collect the amount of Cess on its behalf under the Act;
 - (d) "Development Council" means the Development Council for Cement Industry established under section 6 of the Act;
 - (e) "cement" means any variety of cement manufactured in India, and includes portland pozzolana cement, blast furnace slag cement, water-proof (hydrophobic) cement, rapid hardening cement, low heat cement masonry cement, high strength ordinary portland cement, oil-well cement and white cement.
 - (f) "manufacturer" means any cement plant producing cement, excluding cement plants of capacity less than 99000 tonnes per annum based on rotary kiln and 66000 tonnes per annum based on vertical shaft kilns.
 - (g) words and expressions used herein and not defined but defined in the Act or the rules made there under, shall have the meanings respectively assigned to them in that Act or the rules.
3. Submission of Returns (1) Every manufacturer shall submit to the Collecting Agency, on or before the 15th of every month, a return in the Form specified in the Annexure to these rules, relating to stocks of cement manufactured or produced in, and removed from his undertaking during the previous month; (2) If any manufacturer fails to furnish the said return within the date specified in sub-rule (1) or furnishes a return which the Collecting Agency has reason to believe is incorrect or defective, the Collecting Agency shall serve notice on the manufacturer calling upon him to produce all or any of his accounts relating to the cement manufactured or produced by him.
4. Proceeds of the Cess
- (1) Every Manufacturer shall remit the amount of Cess as due for the previous month by the 15th of the following month through demand draft in favour of the Collecting Agency.

- (2) The proceeds of the cess shall first be credited to the Consolidated Fund of India under the head "0852-Industries - Cess on Cement" and the Central Government may after due appropriation made by Parliament by law in this behalf, hand over to the Development Council such sums as it may consider necessary from out of such proceeds after deducting therefrom the cost of collection.
5. Opening of Accounts. - The amount received by the Development Council under rule 4 shall be kept in the account with the State Bank of India.
6. Accounts of the Development Council -
 - (1) The Development Council shall maintain proper accounts relating to the amount received by it under rule. 4.
 - (2) The audited statement of accounts for every financial year, together with the auditor's report thereon, shall be submitted to the Central Government.
7. Budget estimates of the Development Council. -
 - (1) The Development Council shall in each year prepare a budget for the ensuing financial year and submit the same for sanction to the Central Government on or before such date as may be specified by the Central Government.
 - (2) No expenditure shall be incurred until the budget is sanctioned by the Central Government.
 - (3) The budget shall be prepared in accordance with such instructions as may be issued from time to time by the Central Government.
8. Purposes for which the proceeds of the Cess shall be utilized.
- In accordance with clauses (a), (b), (c) and (d) of sub-section 4 of section 9 of the Act, the proceeds of the cess collected under the said section shall be utilized for the following purposes, namely :-
 - (i) for assisting the National Council for Cement and Building Materials, a society registered under the Societies Registration Act, 1860 (21 of 1860) for partly meeting its recurring expenditure, provision for depreciation, capital expenditure

not covered under grant-in-aid from Government, and for carrying out Research and Development Projects and Training Programmes in the interest of the cement industry as may be decided by the Development Council;

- (ii) suggesting norms and methodology for productivity improvement covering production, energy, maintenance, quality, environmental improvement and cost reduction;
- (iii) - providing guidance and assistance in identification and optimum exploitation of raw materials for manufacture of cement and building materials;
- (iv) providing design and engineering support for setting up and modernization of cement plants;
- (v) development of new materials, and processes for cement manufacture including improved refractories;
- (vi) promoting environmental improvement programmes for the cement industry covering control of dust emission, noise pollution and environmental impact assessment in limestone quarries and cement plants;
- (vii) promoting standardization and quality control programmes in cement manufacture including providing testing and calibration support services to the cement industry;
- (viii) development of bulk supply and distribution system for cement by rail, road and water ways and improved system for packaging;
- (ix) promoting the training of persons engaged or proposing engagement, in the cement industry and their education in technical or artistic subjects relevant thereto;
- (x) development of national data bank and information services and library and documentation services for cement industry and dissemination of industrial information through publications;
- (xi) recommending targets for production, coordinating production programmes and reviewing progress thereof from time to time

- (xii) assisting in the distribution of materials and promoting arrangements for obtaining materials for the cement industry;
- (xiii) promoting the adoption of measures for increasing the productivity of labour, including measures for securing safer and better working conditions and the provision of improvement of amenities and incentives for workers;
- (xiv) defraying such minimum administrative expenses as may be involved in the discharge of its functions, including traveling allowance for the members of the Development Council.

Cement Control Order, 1967

ORDER

S.O. No.168 (E):- Whereas the Central Government has decided for the removal of price and distribution control of Cement w.e.f. the first day of March, 1989;

Now, therefore, in exercise of the powers conferred by Sections 18G and 25 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby makes the following amendment in the Cement Control Order, 1967, Namely:-

1. (i) This Order may be called the Cement Control (Amendment) Order, 1989 ;
- (ii) It shall come into force on the first day of March, 1989.

1A. APPLICABILITY

Omitted vide Notification No.1-5/89-Cem. Dated 1.3.1989
(S.O. No. 168 (E))

2. DEFINITIONS:

- (a) In this Order, unless the context otherwise requires "Cement" means any variety Cement manufactured in India, and includes Portland pozzolana cement, blast furnace slag

cement, water proof (Hydrophobic) cement, rapid hardening cement, low head cement, masonry cement and high strength ordinary Portland cement, but does not include oil-well cement and "white cement and colored cement made from white cement (other than grey Portland cement).

- (b) "Development Commissioner for Cement Industry" means any officer of the Central Government duly appointed as such by the Central Government by Notification in the official gazette.
- (c) "Mini Cement Plant" means a cement plant consisting of one or more kilns and having a total installed capacity of not exceeding 200 tonnes per day or 66,000 tonnes per annum but does not mean :-
 - (i) a cement plant owned by a company which is registered or is register-able under Section 26 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) or to which Section 28 of the Foreign Exchange Regulation Act, 1973 (46 of 1973) is applicable;
 - (ii) a cement plant manufacturing white cement or other varieties of cement, the price of which is not controller by the Cement Control Order, 1967;
 - (iii) a cement plant manufacturing cement commonly known as:-
 - (a) "SAGOL" obtained by heating lime stone by burnt coal;
 - (b) Ashmoh obtained by fine grinding of paddy hush ash and hydrated lime with an additive;
- (c) "Producer" means nay person who manufactures cement.
- 2. (d) & (e) deleted Notification No.1-5/89-Cem. Dated 1.3.1989 (S.O. No. 168 (E))

3 & 3A POWER TO PROHIBIT REMOVAL: Deleted Notification No.1-5/89-Cem.

Dated 1.3.1989 (S.O. No. 168 (E))

4. POWER TO DIRECT SALE OR TRANSPORT. Deleted Notification No.1-5/89-Cem. Dated 1.3.1989 (S.O. No. 168 (E))
5. POWER TO DIRECT DISPOSAL OR STOCK. Deleted Notification No.1-5/89- Cem. Dated 1.3.1989 (S.O. No. 168 (E))
6. MAINTENANCE & PRODUCTION OF ACCOUNTS ETC.
 - (1) Every producer shall keep such books, accounts and records relating to the Production, sale, removal and transport of cement as the central Government may require.
 - (2) Every producer and person employed by him in connection with the production sale, removal and transport of cement shall, on being required so to do by the Central Government and with such period as may be allowed in this behalf ;-
 - (a) produce and make available for inspection of such books, accounts, records or other documents, and
 - (b) furnish such return and other information relating to the business as may be specified by the Central Government.
7. RETENTION PRICE - Deleted vide Notification No.1-5/89-Cem. Dated 1989 (S.O. No. 168 (E)).
8. SALE PRICE -
EXPLANATION (i) & (ii) - Deleted vide Notification No.1-5/89-Cem. Dated 1989 (S.O. No. 168 (E))
9. PAYMENT TO CEMENT REGULATION ACCOUNT -- Deleted vide Notification No.1-5/89-Cem. Dated 1989 (S.O. No. 168 (E)).
9A NON LEVY CONTRIBUTION - Deleted on 15.12.1986.
10. WHOLESALE AND RETAIL PRICES - Deleted vide Notification No.1-5/89-Cem. Dated 1.3.1989 (S.O. No. 168 (E)).
11. CEMENT REGULATION ACCOUNT:

A Study on The Industries (Development and Regulation) Act, 1951

- (1) The Development Commissioner for Cement Industry shall maintain an account to be known as the Cement Regulation Account to which shall be credited the amounts paid by the producer and such other sums of money as the Central Government may after the appropriation made by Parliament by law in this Behalf, grant from time to time.
- (2) the amount credited under sub-clause (1) shall be meant only for the following purposes, namely:-
 - (i) Paying or equalizing the expenditure incurred by the producer on freight in Accordance with provisions of this order.
 - (ii) Equalizing concession, if any, granted in the matter of price, freight, supplies to Government or public or for the purposes of export under the second provision to clause 8 or for import.
 - (iii) Expenses incurred by the Development Commissioner for Cement Industry in discharging the functions under this order subject to such limits, if any, as may be laid down by the Central Government in this behalf.
 - (iv) Such expenses by the Development Commissioner for Cement Industry as may be necessary for the purpose of increasing the production of cement securing its equitable distribution and availability at fair prices.
3. The Development Commissioner for Cement Industry shall cause accounts to be kept or all moneys received and expended by him from out of the Cement Regulation Account and he shall prepare and submit such report and returns relating to the said accounts as may be required by the Central Government from time to time.
4. The balance, if any, remaining unspent in the Cement Regulation Account shall be disbursed in accordance with such directions as may be given by the Central Government in this behalf.
- 12 **POWER TO VARY THE PRICES AND TO ALTER THE SCHEDULE:-**

Deleted Notification No.1-5/89-Cem Dated 1.3.1989 (S.O. No.168 (E)).

13 DELEGATIONS:-

- (i) All powers exercisable by the Central Government under this Order except under Clause 8, 11(2) and 12 shall also be exercisable by the Development Commissioner for Cement Industry;
- (ii) Without prejudice to the delegation of powers under sub-clause (i) above, the State Government may exercise powers to the extent provided under proviso to Clause 4 of this Order.

14 PROCEDURE REGARDING CLAIMS BY PRODUCERS:-

Every producer shall make an application regarding his claim for any Reimbursement towards equalizing freight or equalizing concession in the matter of export price to the Development Commissioner for Cement Industry who may, in settling the claim, require the producer to furnish all Details relating thereto, including the cost of freight incurred, excise duty, if any, paid etc.

SCHEDULE

Deleted vide Notification No.1-5/89-Cem. Dated 1.3.1989 (S.O. No.168 (E)).

Provided that such deletion made vide S.O. No. 168 (E) dated 1.3.1989 shall not effect:-

- (a) the previous operation of the said paragraphs or anything duly done or suffered there under;
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the said paragraphs ; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said paragraphs; or
- (d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and
- (e) any investigation, legal proceedings or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture or punishment may be imposed as if the said paragraph had not been omitted.

ACKNOWLEDGEMENTS

The following websites were referred to while writing this book:

- www.dipp.nic.in - Department of Industrial Policy and Promotion, GOI
- www.exim.indiamart.com - Indian export import portal
- www.labour.delhigovt.nic.in - Office of Labour Commissioner New Delhi
- www.supremecourtonline.com
- www.mahalibrary.com